

1 OFFICE OF THE GENERAL COUNSEL  
James F. Walsh (CSB No. 58565)  
2 Robert J. Borthwick (CSB No. 159544)  
3 101 Ash Street, Suite 1200  
San Diego, CA 92101-3017  
4 Telephone (619) 699-5005  
Facsimile (619) 696-4838  
5

6 Attorneys for Plaintiff  
SAN DIEGO GAS & ELECTRIC COMPANY  
7

**FILED**  
STEPHEN THUNBERG  
Clerk of the Superior Court

APR 29 2004

By: M. BONCZYK, Deputy

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

9 CENTRAL DIVISION

10  
11 SAN DIEGO GAS & ELECTRIC COMPANY,  
12

13 Plaintiff,

14 v.

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

17 Defendants.  
18

Case No: GIC828441

**FIRST AMENDED VERIFIED COMPLAINT**

Complaint Filed: April 14, 2004  
I/C Judge: Patricia A. Y. Cowett  
Dept.: 67

19  
20 Plaintiff SAN DIEGO GAS & ELECTRIC COMPANY ("SDG&E") brings this action against  
21 defendant SOUTHERN CALIFORNIA EDISON COMPANY ("Defendant" or "EDISON") seeking  
22 declaratory relief and complains and alleges as follows:  
23

**INTRODUCTION**

24 1. EDISON, SDG&E, the City of Anaheim, and the City of Riverside together jointly  
25 own San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3. EDISON operates SONGS  
26 Units 2 and 3 on behalf of all of the owners pursuant to a contract known as the Second Amended  
27 San Onofre Operating Agreement (the "Agreement").  
28

1           2.       EDISON and SDG&E together jointly own SONGS Unit 1, which began operating in  
2 1968 and was permanently shut down in 1992.

3           3.       SONGS Units 2 and 3 began operating in 1983 and 1984, respectively. SONGS Units  
4 2 and 3 use steam generators to convert heat from each Unit's nuclear reactor into steam for the  
5 production of electricity. These steam generators had an original life expectancy of 40 years.  
6 SONGS Units 2 and 3 were not designed with an expectation that these steam generators would need  
7 to be replaced during this life expectancy period. EDISON, for example, stated in its February 24,  
8 2000 application to the Nuclear Regulatory Commission for extension of the SONGS Units 2 and 3  
9 operating licenses from 2013 to 2022 that "SONGS Units 2 and 3 were designed, licensed and  
10 constructed for 40 years of operation...."

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

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

22          6.       The rights and responsibilities of the owners are set forth in the Agreement, which  
23 states that if an unplanned event or circumstance has the reasonably anticipated effect of reducing  
24 either the reliability of one or both of SONGS Units 2 and 3 or the electrical output of one or both of  
25 SONGS Units 2 and 3 below a level known as the "Maximum Dependable Capacity," then an  
26 "Operating Impairment" will be deemed to exist, triggering certain contractual terms and conditions  
27 including cost-sharing provisions.

28          7.       The Agreement provides that if an Operating Impairment exists, SDG&E could elect

1 not to participate in replacing the steam generators as EDISON has proposed in exchange for a  
2 reduction in SDG&E's ownership share of SONGS Units 2 and 3 according to a formula set out in  
3 Section 16.8 of the Agreement. Two components of this formula are the value of SONGS capacity to  
4 Edison and the value of SONGS capacity to SDG&E. The Agreement states that these values shall be  
5 agreed upon by Edison and SDG&E or, in the event that no agreement can be reached, settled through  
6 an arbitration. The Agreement further provides that once determined either by agreement or  
7 arbitration, these values are then subject to approval by the CPUC.

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

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

#### 12 JURISDICTION AND VENUE

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

15 11. Venue is proper in San Diego County Superior Court in that San Diego County is the  
16 county in which the contract at issue was to be performed pursuant to Code of Civil Procedure §  
17 395(a).

#### 18 THE PARTIES

19 12. SDG&E is a California corporation with its principal place of business in San Diego,  
20 California.

21 13. EDISON is a California corporation with its principal place of business in Rosemead,  
22 California.

#### 23 CAUSE OF ACTION

##### 24 (Declaratory Relief)

25 14. SDG&E incorporates each and every allegation set forth in the preceding paragraphs  
26 as though fully set forth herein.

27 15. On February 26, 1987, Plaintiff, Defendant, the City of Anaheim, and the City of  
28 Riverside entered into an agreement entitled the Second Amended San Onofre Operating Agreement

1 (the "Agreement") to operate the San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3 in  
2 the northwest corner of the Marine Corps Base at Camp Pendleton, California. A copy of the  
3 Agreement, without exhibits, is attached as Exhibit A.

4 16. Section 4.25 of the Agreement defines an "Operating Impairment" as "[a]ny  
5 unplanned event or circumstance...which at the time of such event or circumstance either reduces, or  
6 has the reasonably anticipated effect of reducing, the Maximum Dependable Capacity (Net), the  
7 reliability, or both, of one or more Units."

8 17. The relevant "Units" here are SONGS "Unit 2," which the Agreement defines as the  
9 "second nuclear generating unit at SONGS having at the effective date of this Agreement a Maximum  
10 Dependable Capacity (Net) of 1,070 megawatts..." and SONGS "Unit 3," which the Agreement  
11 defines as the "third nuclear generating unit at SONGS having at the effective date of this Agreement  
12 a Maximum Dependable Capacity (Net) of 1,080 megawatts..."

13 18. The Agreement defines "Maximum Dependable Capacity (Net)" as the "gross  
14 electrical output of a Unit as measured at the output terminals of the turbine generator during the most  
15 restrictive seasonal conditions (usually summer) less the normal station service loads for such  
16 Unit..."

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

27 20. An actual controversy has risen between the parties in that: (a) EDISON takes the  
28 position that no Operating Impairment exists here and has already taken steps to move forward with

1 its proposed \$813 million steam generator replacement project; and (b) SDG&E takes the position  
2 that an Operating Impairment does exist here, triggering the procedures in Section 16 of the  
3 Operating Agreement in which SDG&E has the right not to participate in paying for EDISON's  
4 proposed project in exchange for a reduction in SDG&E's ownership interest in SONGS Units 2 and  
5 3.

6 21. A judicial declaration is necessary and appropriate under the terms of the Operating  
7 Agreement.

8 **PRAYER FOR RELIEF**

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

11 23. 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 29, 2004

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


15  
16  
17 By   
18 ROBERT J. BORTHWICK  
19 Attorney for  
20 SAN DIEGO GAS & ELECTRIC COMPANY  
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SS.

Executed this 29<sup>th</sup> day of April, 2004, at San Diego, California.

  
JAMES P. AVERY