

## UNDERLYING DISPUTE ISSUES

On the surface this dispute is a result of the SONGS co-owners failure to approve the 2004 budgets. However, the roots of this dispute go much deeper than that. In actuality this dispute has at its core a disagreement among the SONGS owners over the remaining life of SONGS Units 2 and 3.

Edison has been inconsistent on the remaining life of SONGS, at times using 2013 and at other times using 2022, apparently based on what date best suits their needs at the time. If its 2013 then SGR is an attempt to extend remaining life without our permission. If its 2022, then they should declare steam generator degradation to be an operating impairment.

In their CPUC application Edison says the remaining life of SONGS is 2013 based on the original NRC license termination date, and the steam generator replacement project is an attempt as Edison says to extend the remaining life of SONGS, not a necessary restoration of an operating impairment. Under that premise, SCE is applying for CPUC permission to extend the life of SONGS without obtaining BOR approval. By doing so they are bypassing the authority of the BOR to determine the last 5 years of operating life as provided by the Operating Agreement [Section .....]. If in the alternative the remaining life of SONGS is 2022, as Edison has previously stated based on the current NRC license termination date, the degradation of steam generators which as Edison states will have the result of forcing SONGS to shut down by 2012 constitutes an Operating Impairment as defined in the Operating Agreement.

SDG&E's position in the first case is that we do not approve of a life extension to 2022 to replace the new steam generators, we prefer our obligation to SONGS end of the current remaining life of 2013, if in the alternative it is judged that the remaining life of SONGS is 2022, then SDG&E argues Edison must declare an Operating Impairment in regard to the degradation of the existing steam generators.

SDG&E wishes to end its obligation to SONGS in 2013, which is the original termination date of the NRC license. This is the termination date that was effective when the SONGS agreements were originally executed. This is the date that SDG&E and the other SONGS co-owners have always considered to be the termination date of SONGS operations until the point when the operating license was extended in 2000 through the NRC's process known as Construction Period Recapture. SDG&E and the other SONGS co-owners approved that license extension on the condition clearly stated in BOR minutes that doing so did not obligate the co-owners to operate SONGS during that recaptured period (2014-2022). However, SDG&E's obligation to support SONGS, contractually, does not hinge on the NRC license termination date; in fact, the SONGS operating agreement has no termination date other than the termination of the SONGS site easement which is 2023. However, as SONGS Operating Agent, Edison can extend the easement on behalf of the SONGS' owners, and they can further extend the SONGS' operating license on behalf of the SONGS owners. Although they state they would not do so over the objection of the SONGS co-owners, they have recently demonstrated their willingness to extend the physical operation of SONGS by replacing steam generators over the objection of the

SONGS' owners. Therefore, SDG&E has little doubt that Edison would when the time comes, further extend the NRC operating license and the site easement over the objection of the SONGS owners, which could have the effect of forcing them to continue their financial support SONGS operations potentially through [2046?] which is the license termination date would result from a renewal of the NRC license when it terminates in 2022.

The question of what is the remaining life of an existing nuclear plant is not a straight forward question. The remaining life can be considered to be the physical remaining life of the plant and its major components to operate safely and reliably, or it can be considered to be the termination date of the NRC operating license, or it can be determined by the regulatory authority of the CPUC to recover operating costs and amortize recovery of going forward capital expenditures. Regarding SONGS Units 2 and 3, we have discussed the NRC operating license termination date. Physically Edison claims the plant is capable of operating at least through 2012, based on the projected degradation of the steam generators and possibly longer because the projected degradation date of steam generators has a good deal of uncertainty, in regard to Unit 2, and more so in regard to Unit 3. Unit 3 steam generators are degrading much more slowly than Unit 2, and Edison has projected that it would last physically longer than Unit 2. [barring pressure from the NRC to shut the plant down early if it became the last operating unit with existing steam generators that have had not been replaced.] SCE has previously established that remaining life of SONGS is 2013 due to the original termination date of the NRC operating license and as a result, for example, the nuclear decommissioning trust funds which are regulated by the PUC have been authorized to collect funds thru 2013. Regarding the CPUC authorization to recover capital, SCE has argued in their 2003 general rate case that the remaining life of SONGS should be adopted by the CPUC to be 2012 based on steam generator degradation rate.

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**NO BOR APPROVAL**

On February 27, SCE filed with the CPUC to recover their share of the estimated \$680 M cost of the steam generators replacement project (SGRP) proposed for 2009-10. Their application states that there is a 25% and 15% chance respectively that Units 2&3 will not operate beyond 2009-10 without SGRP, and substantial system improvements would be needed if SONGS 2&3 were permanently shut down. SCE has asked for pre-approval by September 2004 to recover 100% of potential cancellation costs (up to \$50 M) to allow the project to remain on schedule. Final approval is sought by July 2005. SCE states that the approval of SONGS co-owners is required for the SGRP to go forward. This is absolutely true. SCE also states that the application is being filed prior to obtaining the necessary approval of the SONGS co-owners to allow the project to remain on schedule. In actuality, SCE has not sought co-owner approval, and their application represents an attempt such approval. Under the terms of the SONGS Operating Agreement (OA), the SONGS Board of Review (BOR) must unanimously approve all capital expenditures made by SCE in their role as Operating Agent for SONGS. SCE has discussed SGRP with the BOR, but has never asked the BOR to vote on SGRP. Instead, knowing that such a vote would not be unanimously affirmative, SCE has attempted to circumvent the co-owners' decision-making authority set forth in the OA by filing this

application. This has resulted in a formal dispute between SCE and the SONGS co-owners. The parties are currently following the contractually prescribed dispute resolution process which leads to Binding Arbitration.