

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman

Dr. Anthony J. Baratta

Dr. Gary S. Arnold

In the Matter of:)
)
SOUTHERN CALIFORNIA EDISON) Docket Nos. 50-361-CAL & 50-
) 362-CAL
)
) ASLBP No. 13-924-01
) CAL-BD01

(San Onofre Nuclear Generating Station, Units 2 and 3)

January 18, 2013

NATURAL RESOURCES DEFENSE COUNCIL'S
AMICUS RESPONSE IN SUPPORT OF FRIENDS OF THE EARTH

I. Introduction

The Natural Resources Defense Council (“NRDC”) respectfully submits this amicus response in support of the *Opening Brief* and *Petition to Intervene and Request for Hearing* filed by Friends of the Earth (“FOE”) on January 11th, 2013 (hereinafter “FOE January 11 Filing”) pursuant to the December 20th, 2012 Scheduling Order established by the Atomic Safety & Licensing Board (“ASLB” or “Board”).

II. Summary of Argument

The San Onofre Nuclear Generating Station (“San Onofre”) cannot legally resume operation unless the current license holder, Southern California Edison (“SCE”), applies for and receives a license amendment pursuant to a public adjudicatory proceeding, as mandated by Sec.

189(a) (1)(A) of the Atomic Energy Act, that concludes either by certifying that adequate protection of the public health and safety can be maintained under SCE’s proposed revised operating limits for the station, or finds that repairs to the replacement steam generators have put them back into compliance with the technical specifications contained in the existing license. The current licenses stipulates: “[a]ll in-service steam generator tubes shall retain structural integrity over the *full range of normal operating conditions* (including startup, operation in the power range, hot standby, cool down and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a safety factor of 3.0 against burst *under normal steady state full power operation* primary-to-secondary pressure differential, and a safety factor of 1.4 against burst applied to the design basis accident primary-to-secondary pressure differentials.” SONGS Unit 2 TS 5.5.2.11.b.1 (emphasis added).¹

At this date, as evidenced by the CAL process, SCE has not demonstrated that the in-service steam generator tubes in Units 2 will maintain their integrity at the full power level of 3,438 megawatts-thermal (“MWt”) as required by its license. Indeed, SCE recognizes the defective steam generators are not capable of running safely at full power and therefore proposes a new power limit. Rather than repair or replace the crippled steam generators to meet the license requirements, SCE proposes amending its license to eliminate the requirement that the steam generator tubes be capable of maintaining integrity at full power, or alternatively amending the license to reduce full rated power by 30% to allow continued operation with impaired steam generators not capable of operating safely at the current rated power.

¹ In other words, the technical specifications and safety margins outlined in the current license are specifically referenced against—and assume operation at—a baseline of full-power operation and the associated stresses and loads present at this power.

By law, under its licenses SCE is not permitted to obviate the steam generator integrity issue merely by operating either unit at a lower power to ensure safety, without first amending the applicable license to change either the technical specifications of the steam generators [required under 10CFR §50.36(a)] or the safety limit [required under 10CFR §50.36(c)] established with respect to the maximum thermal power permitted, or both.

Were the ASLB or Commission to allow operations of San Onofre Units 2 or 3 without prior amendment of the applicable licenses, a precedent would be established whereby anytime NRC staff, on the basis of new information, concludes a reactor cannot be operated safely under the full range of operating conditions permitted under the license, (*i.e.* as determined by the limits contained in the technical specifications of a reactor operating license) the Staff and the licensee could privately agree that the reactor would be permitted to operate under different technical specifications or other safety limits without amending the license. Such a precedent could open the way to wide discretion for Staff and licensees to exclude the public, a state, or any other affected party from challenging safety-related changes to existing licenses through an adjudicatory hearing process guaranteed under the AEA, Sec. 189a (42 U.S.C. § 2239(a)) to “any person whose interest may be affected.”

Elevating the Staff’s enforcement prerogatives to such an extent, so as to preclude the exercise of statutory citizen adjudicatory hearing rights before an impartial Atomic Safety and Licensing Board in connection with “any proceeding under this Act for the ...amending of any license,” should not be sanctioned by this Board, which should instead direct the convening of a license amendment proceeding, with an adjudicatory public hearing, to consider whether or not San Onofre’s license for Unit 2 should be amended to allow operation as proposed by SCE in the

restart plan. The Board should also prohibit SCE from restarting Unit 2 or 3 until SCE applies for and receives all amendments to the operating licenses for these units that are necessary to a determination by the ASLB that resumption of plant operation can be achieved with “adequate protection of public health and safety.”

III. Background

The original facts that led to FOE’s June 2012 Petition for Hearing and FOE’s January 11, 2013 Opening Brief are well documented and need only brief reiteration. Nearly one year ago today, on January 31, 2012, San Onofre Nuclear Generating Station (“San Onofre” or “SONGS”) owned and operated by SCE suffered a steam generator tube leak in Unit 3 that resulted in the release of radioactive material into the environment. SCE performed a rapid shut down of the unit. Prior to the leak in Unit 3, SCE discovered excessive wear in Unit 2, which was offline for refueling. Advanced deterioration of many tubes was discovered in the replacement steam generators, which had been in operation for eleven months in Unit 3 and fewer than two years in Unit 2. Subsequently, NRC staff issued a Confirmatory Action Letter (CAL) to SCE on March 27, 2012. The CAL directed SCE to keep San Onofre Units 2 and 3 shut down until SCE proposed and NRC reviewed the results of an investigation of the rapid tube degradation that was detected in both units and which caused a radioactive release in Unit 3. On July 18, 2012, NRC issued an inspection report identifying “unresolved” items which SCE must address “before the resumption of operations in both SONGS Units 2 and 3.”²

² See Elmo E. Collins, Regional Administrator, Region IV, US NRC, letter to Peter T. Dietrich, Senior Vice President and Chief Nuclear Officer, SCE, *San Onofre Nuclear Generating Station – NRC Augmented Inspection Team Report 05000361/2012007 and 05000362/2012007* (July 18, 2012) (ML12188A748).

On October 3, 2012, SCE submitted a letter stating that its response to the issues identified in the Confirmatory Action Letter had been completed for Unit 2, and included a proposed action plan for restart of Unit 2.³ Both units remain shut down while NRC reviews SCE's Response to the NRC Confirmatory Action Letter (SCE CAL Response). FOE describes in detail a range of significant technical issues associated with SCE's response, but for the purposes of the instant matter, SCE's CAL response includes a proposal to restart Unit 2 at no more than 70% power for 150 days, at which time SCE promises to shut down the reactor and inspect impaired steam generators for signs of further tube wear.

On November 8, 2012 the Commission issued CLI-12-20 and directed the Board to consider whether "(1) the Confirmatory Action Letter issued to SCE constitutes a de facto license amendment that would be subject to a hearing opportunity under Section 189a; and, if so, (2) whether the petition meets the standing and contention admissibility requirements of 10 C.F.R. § 2.309." CLI-12-20 at 5. Subsequently, the Board convened FOE, SCE, NRC Staff and NRDC and stated that in order to resolve the first question referred by the Commission, it would "consider ... whether the CAL granted SCE any greater operating authority and whether the activities authorized in the CAL extended beyond the ambit of the prescriptive authority granted under the license." December 7, 2012 Order at 3.⁴

³ See Peter T. Dietrich, Senior Vice President & Chief Nuclear Officer, SCE, letter to Elmo E. Collins, Regional Administrator, Region IV, US NRC, *Docket No. 50-361, Confirmatory Action Letter – Actions to Address Steam Generator Tube Degradation San Onofre Nuclear Generating Station, Unit 2* (Oct. 3, 2012) (ML12285A263).

⁴ The Board further clarified: "[m]ore precisely, determining whether the assessments and tests authorized in the CAL, and the results of these assessments and tests, including any new or temporary

On December 20, 2012, the Board approved the schedule currently in effect. And on December 26, 2013 NRC Staff sent to SCE a *Request for Additional Information* regarding its response to Confirmatory Action Letter (TAC No. ME9727) after previously issuing the questions in a draft form.⁵ In compliance with the Board's direction, FOE filed on January 11, 2013 and we file our amicus in support this day.

IV. Argument

We will not repeat FOE's detailed arguments other than to state we support FOE's assertions of fact, characterizations of the matters in dispute, and conclusions of law. We believe the Board can and should institute a license amendment proceeding on the basis of FOE's January 11th, 2013 filing.

Today we offer a brief set of additional observations supplementing those offered by FOE. With respect to whether a license amendment is required, there are two fundamental issues before the Board. First – raised by the Commission and properly interpreted by the Board – is whether the current CAL process constitutes a *de facto* license amendment?⁶

A second, equally important issue is whether the San Onofre reactors can operate at any

operational limits for Units 2 and 3, constitute a *de facto* license amendment will require consideration of documents and data that have been created incident to, and subsequent to, the CAL. This information will inform the Board's understanding of the CAL and its effect, and thereby materially assist the Board in resolving the issue referred by the Commission." *Id.*

⁵ See November 30, 2012 RAI (ADAMS Accession No. ML 12338A110), on December 10, 2012 (ADAMS Accession No. ML 12345A427), and on December 20, 2012 (ADAMS Accession No. ML 12356A198).

⁶ We will also not repeat FOE's analysis of the relevant case law (*see* FOE Opening Brief at 24-26), except to note that "[o]nly those actions falling "beyond the ambit of the prescriptive authority granted under the license" necessitate a license amendment." *See In the Matter of Cleveland Electric Illuminating Company, et al.* (Perry Nuclear Power 44 N.R.C. 315 (1995) (*10 on Westlaw), *citing Citizens Awareness Network, Inc. v. U.S. Nuclear Regulatory Com'n*, 59 F.3d 284, 295 (1st Cir. 1995).

power level and under any conditions without amending its license if it cannot be demonstrated that the reactors can operate safely and with structural integrity under the full range of conditions allowed under its license.

A. Issue #1 Is The CAL Process A *De Facto* Licensing Amendment?

1. Technical Specifications In The Law And Regulations

Section 182a of the Atomic Energy Act requires applicants for nuclear power plant operating licenses to include Technical Specifications (“TSs”) as part of the license. 42 U.S.C. § 2232. The licensee provides TSs in order to maintain the operational capability of structures, systems and components that are required to protect the health and safety of the public. The Commission’s regulatory requirements related to the content of the TSs are found in 10 CFR § 50.36, “Technical specifications,” which include the following categories: (1) safety limits, limiting safety systems settings and control settings (§ 50.36 (c)(1)); (2) limiting conditions for operation (LCOs) (§ 50.36 (c)(2)); (3) surveillance requirements (SRs) (§ 50.36 (c)(3)); (4) design features (§ 50.36 (c)(4)); and (5) administrative controls (§ 50.36 (c)(5)).⁷

In general, there are two classes of changes to TSs: (a) changes needed to reflect modifications to the design basis (TSs are derived from the design basis), and (b) voluntary changes to take advantage of the evolution in policy and guidance. The situation at San Onofre is within the regulatory ambit of changes needed to reflect modifications to the design basis.

⁷ See *In The Matter Of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station)*, 54 N.R.C. 349, 361 where the Commission notes “[t]echnical specifications... should be reserved for those reactor operation ‘conditions or limitations ... necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.’” (internal citations omitted).

2. Relevant Technical Specifications In San Onofre's License

In its December 26th RAI, NRC Staff lists the TSs in San Onofre's license that require safe operation of the steam generators:

SONGS Unit 2 Technical Specification (TS) 3.4.17 requires that steam generator structural integrity be maintained in Modes 1, 2, 3, and 4 (Power Operation, Startup, Hot Standby, and Hot Shutdown, respectively). Limiting Condition for Operation (LCO) 3.4.17, "Steam Generator (SG) Tube Integrity," requires that steam generator tube integrity shall be maintained and all steam generator tubes satisfying the tube repair criteria shall be plugged in accordance with the Steam Generator Program in MODES 1, 2, 3, and 4. The steam generator tube rupture (SGTR) accident is the limiting design basis event for SG tubes and avoiding an SGTR is the basis for LCO 3.4.17. Surveillance Requirement (SR) 3.4.17.1 requires "Verify SG tube integrity in accordance with the Steam Generator Program."

December 26th RAI at 7.

Next, NRC Staff describes San Onofre's explicit structural integrity performance criteria for the steam generators by citing condition TS 5.5.2.11.b.1 of the license:

All in-service steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, cool down and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a safety factor of 3.0 against burst under normal steady state full power operation primary-to-secondary pressure differential and a safety factor of 1.4 against burst applied to the design basis accident primary-to-secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with the design basis accidents, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

Id. (emphasis added by NRC Staff). If in full compliance with the above TSs and the specific terms of its license, Unit 2's steam generator tubes must be capable of retaining structural integrity at Rated Thermal Power (RTP), which is set by the license at 3438

megawatts thermal. Now we turn to the NRC Staff's assessment SCE's response to the CAL.

3. Operational Assessments That Examine SCE's Ability To Comply With The Technical Specifications In The License

In response to the CAL issued as a result of the steam generator tube failures in 2011 and 2012, SCE conducted a number of operational assessments (OA), discussed in detail in NRC Staff's December 26th RAI and FOE's Opening Brief (cite specific sections). One of the four OAs evaluated steam generator tube degradation caused by mechanisms *other* than tube-to-tube wear. In that particular OA, SCE asserted that there is reasonable assurance that the performance criteria for the license can be met for full power operation at 100% reactor power. *See* December 26th RAI at 7 (and cite to SCE's Reference 2).). NRC Staff stated that SCE acknowledged the requirements of License Condition TS S.S.2.11.b.1, cited above, by providing an analysis purporting to show, with respect to tube-to-support wear, that it could comply with the licensed full power condition.⁸

But in contrast to this first OA, NRC Staff pointed out that SCE performed three additional OAs that evaluated steam generator tube degradation *via* tube-to-tube wear. And it appears that in these OAs, SCE addressed structural integrity requirements at 70% reactor power, instead of at 100% reactor power.⁹ Again, we concur with NRC Staff's

⁸ It should be noted that FOE and NRDC do not agree with SCE's technical claims in this regard, but resolution of any technical disputes regarding whether the OAs satisfy the legal requirements to demonstrate safety should be addressed in a public adjudicatory hearing.

⁹ *See* December 26th RAI at 8 and Reference 3 of that document, where it quotes SCE's response:

conclusion that “SCE has not provided an operational assessment that addresses compliance with TS S.S.2.11.b. for tube-to-tube wear, *without reliance on compensatory measures* (e.g., limiting reactor power to 70% RTP).” *Id.* at 8 (emphasis added). Indeed, NRC Staff queries how “the information submitted by SCE demonstrates that the structural integrity performance criterion in TS 5.5.2.11.b.1 is met for operation within current licensed limits up to the licensed RTP.” *Id.*

4. Failure To Demonstrate Compliance With TSs And Submission Of Compensatory Measures For Operation Require A License Amendment

SCE has submitted a plan that recognizes that the damaged, defective steam generators cannot safely operate at full power, which ability is required by the terms of its license. Rather than repair or replace the impaired steam generators so they can meet the license requirements, SCE proposes to restart the reactor employing “compensatory measures:” (1) operation at 70 percent rather than at full power; and (2) a limited, 5 month term of operation. Operation of steam generators that cannot meet the TS requirements for maintaining tube structural integrity at full power is prohibited, absent issuance of an amendment of those requirements. Reliance instead on compensatory measures, and any pending approval/disapproval of such measures, constitute a *de facto* license amendment. As we have demonstrated, a change in the technical specifications is required. Therefore, under 10 C.F.R 50.59 (c) (1) (i), a license amendment is required.

Further, what SCE proposes is a “change, test or experiment” contemplated under 10

“A 70% operating power level returns the Unit 2 steam generators to within the operational envelope of demonstrated successful operation ... Operation at 70% power assures in-plane stability (SR<1) without dependence on any effective in-plane supports for U-bends.”

C.F.R. 50.59, where, if one or more of the eight criteria enumerated in subpart (c)(2) of §50.59 are met, a license amendment is required. The criteria, in part, require an amendment when the proposed changes would: (1) create a possibility for a malfunction of an *system, structure, or component* important to safety with a different result than any previously evaluated in the final safety analysis report (as updated); (2) create a possibility for an accident of a different type than any previously evaluated in the FSAR (as updated); or (3) result in a departure from a method of evaluation described in the FSAR (as updated) used in establishing the design bases or in the safety analyses. As FOE exhaustively demonstrated in its January 11, 2013 Opening Brief, the matter of the replacement steam generators at San Onofre met the criteria that trigger the need for a license amendment numerous times. *See* FOE Opening Brief at 12-25.

As noted *supra* in (A) (1), the licensee provides technical specifications in order to maintain operational capability of *structures, systems and components* that are required to protect the health and safety of the public. *See* 10 CFR 10 50.36 (c)(4) (Design Features) (emphasis added). Further, NRC requires a license amendment if a change, test or experiment results “in more than a minimal increase in the likelihood of occurrence of a malfunction of a *structure, system, or component* important to safety previously evaluated in the final safety analysis report (as updated).” *See* 10 CFR 50.59(c)(2) (emphasis added). Steam generators clearly fall into the category of *structures, systems, and components* and the proposed action of SCE—to run Unit 2’s damaged steam generators without repairing or replacing them and in the absence even of conclusive findings of the root cause of the wear—results in more than a minimal increase in the likelihood of occurrence of malfunction of the steam generators. *See* Hirsch Report at i, 6-16.

As described in FOE’s Opening Brief and attached expert declarations and report, Unit

2's steam generators already contain 1600 damaged tubes far outside the national norm for new replacement, recirculating steam generators. The Unit 3 experience demonstrates that such damage can rapidly and unpredictably lead to the bursting of tubes; *i.e.*, malfunction of the steam generators. Running Unit 2 of San Onofre with defective steam generators without repairing, replacing, or even conclusively establishing the root cause of the original problem via a transparent public process increases in more than a minimal way the likelihood of malfunction.

Law and precedent require NRC to provide the opportunity for a public adjudicatory hearing to consider whether a license amendment should be granted authorizing operation with steam generators that cannot meet the current license requirement for retaining tube structural integrity at full power, and permitting instead compensatory measures that would reduce thermal power and operating time. The new limit must correspond not only to the present and projected impaired heat rejection capacity over the period of resumed operation of the replacement steam generators, but also to a new safe operating point at which a recurrence of the recent rapid tube erosion phenomena can be precluded prior to restart of one or both units at San Onofre. In short, specification of a new maximum safe thermal power limit requires a license amendment and notice of opportunity for public hearing with all procedural rights that accrue in such an instance.

B. Should The Enforcement Process Further Reduce The Role Of The Public Hearing?

We urge the Board to consider the logic and legality of the following hypothetical: the NRC Staff, on the basis of new information, concludes that existing safety limits in the technical specifications of a reactor operating license no longer afford the public adequate protection, but need to be changed “to reasonably protect the integrity of certain of the physical barriers that guard against the uncontrolled release of radioactivity,” (*e.g.*, suppose NRC Staff concludes that

a reactor vessel's embrittlement via neutron bombardment strongly indicates the vessel should only be permitted to operate at 60 percent of the thermal power limit of its license). The Licensee then suggests to NRC Staff, "[p]lease don't change the technical specifications of our license. We promise we will not operate above 60 percent of our licensed thermal power limit and save both of us the trouble and expense of a license amendment proceeding." This is a close analogy to the current matter before the Board, and should be barred as a violation of Sec. 189a of the AEA. We note that had SCE voluntarily accepted the need for a license amendment proceeding when it was first proposed in June, 2012, and filed a timely application for a license amendment as soon as it had formulated its Unit 2 restart proposal, an adjudicatory proceeding could have been well along today toward resolving the matter.

The options here are straightforward. Either these requirements must be amended to match the impaired capacity of replacement steam generators, in a manner that an ASLB panel determines will afford adequate protection to the public with a sufficient margin of safety for the uncertainty that now attends the future performance and structural integrity of the replacement steam generators, or an ASLB panel must determine that these flawed safety-related systems and components have been repaired to meet the technical specifications required by the current license, such that the plant can be restarted without undue risk to the public health and safety.

The plain language of the Atomic Energy Act promises FOE, and any other "person whose interests may be affected" by a San Onofre restart, with the adjudicatory hearing opportunity it seeks. While over time a steady accretion of exclusionary NRC rules have compromised the public's ability to exercise its hearing rights under the AEA, and thus favored the use of the Commission's broad enforcement powers to resolve significant safety issues,

nowhere does the statute itself sanction the view that these enforcement powers may be used to preempt or supplant the right to a hearing in matters involving “the granting, suspending, revoking, or amending of any license or construction permit.”

The Board should thus endeavor to interpret the NRC’s statutory mandate and rules in a manner that gives full effect to the Commission’s enforcement *and* public adjudicatory obligations, rather than allowing exercise of the former to preempt the latter. These twin obligations under the Act should not be construed as being in conflict with each other, but rather as mutually reinforcing. In the past, licensing proceedings involving public intervenors have made valuable contributions to the safety of nuclear facilities, and to public confidence that the work of the Staff is actually getting to the root cause of important safety issues.¹⁰

Beyond the technical and legal considerations that argue for the existence of an ongoing *de facto* license amendment proceeding, we offer the observation that this matter involves the proposed restart of a nuclear unit with significantly impaired cooling and generating capacity that has a severe accident plume exposure pathway potentially affecting 8 million people within a 50 mile radius. We thus find it implausible in this situation that the legislative intent of Sec. 189a—which was adopted precisely to compensate states and localities for the unique monopoly

¹⁰ A former chief of the Atomic Safety and Licensing Board, B. Paul Cotter, Jr., outlined the value of public participation in 1981: “(1) Staff and applicant reports subject to public examination are performed with greater care; (2) preparation for public examination of issues frequently creates a new perspective and causes the parties to reexamine or rethink some or all of the questions presented; (3) the quality of staff judgments is improved by a hearing process which requires experts to state their views in writing and then permits oral examination in detail...and (4) Staff work benefits from [prior] hearings and Board decisions on the almost limitless number of technical judgments that must be made in any given licensing application.” “Memorandum to Commissioner Ahearne on the NRC Hearing Process,” May 1, 1981, at 8. as quoted in E. R. Glitzenstein, “The Role of the Public in the Licensing of Nuclear Power Plants,” in *Controlling the Atom in the 21st Century*, D.P. O’Very, C. E. Paine, and D.W. Reicher, eds. Westview Press, 1994, at 161.

granted the federal government under the Act to regulate the risks nuclear power generation poses to public health—may be properly construed today as countenancing a denial of the adjudicatory public hearing opportunity mandated by this section.

Conclusion

The CAL process, particularly SCE’s restart proposal and Staff’s RAI #32, provide indisputable evidence that there has been no demonstration that Units 2 and 3 can be operated safely at this time under the full range of operating conditions, including operations at or near full power, as required by the licenses. The Technical Specifications require that the steam generators be capable of maintaining tube integrity at full rated power. Neither Unit 2 nor 3 can do so, and for that reason, SCE is proposing new limiting conditions for operating Unit 2, restricting power to 70% and operations to 5 months, and allowing operation with steam generators incapable of operating safely at 100%. Units 2 and 3 with the existing impaired steam generators as currently configured cannot be operated under these licenses. Either the steam generators must be repaired or replaced so as to comply with the existing license requirements, or the licenses must be amended to change the technical specifications and/or safety limits in the licenses. SCE’s proposed limits in response to the CAL are unlawful *de facto* license amendments.

By granting FOE the relief it requests and providing for an opportunity for an adjudicatory hearing on the technical and safety basis for restarting the reactors, NRDC and other “persons whose interest may be affected by the proceeding” would have an opportunity to enter an appearance as a party, enter individual standing declarations, and obtain redress via a public, transparent and legally sufficient proceeding to protect interests that may be harmed by

the resumption of reactor operation at San Onofre. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572, n.7 (1992) (“[P]rocedural rights are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.”) (internal quotations omitted).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Amicus Response In Support Of Friends Of The Earth* in the captioned proceeding were served via the Electronic Information Exchange (EIE) on the 18th day of January 2013, which to the best of my knowledge resulted in transmittal of same to those on the EIE Service List for the captioned proceeding.

/Signed (electronically) by/
Geoffrey H. Fettus