

1 Michael J. Aguirre, Esq., SBN 060402  
2 Maria C. Severson, Esq., SBN 173967  
3 AGUIRRE & SEVERSON, LLP  
4 501 West Broadway, Suite 1050  
5 San Diego, CA 92101  
6 Telephone: (619) 876-5364  
7 Facsimile: (619) 876-5368

8 Attorneys for Plaintiffs/Petitioners

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO

11 CITIZENS OVERSIGHT, INC., et al.,  
12 Petitioners and Plaintiffs,

13 v.

14 CALIFORNIA COASTAL COMMISSION,  
15 et al.,  
16 Respondents and Defendants.

Case No. 37-2015-00037137-CU-WM-CTL  
Assigned for All Purposes to the Honorable Judith  
F. Hayes, Dept. C-68

**PETITIONERS' REPLY TO REAL PARTY  
IN INTEREST SOUTHERN CALIFORNIA  
EDISON'S OPPOSITION TO PETITION FOR  
WRIT OF ADMINISTRATIVE MANDATE**

Date: March 30, 2017, changed to **April 14, 2017**  
Time: **2:00 p.m.** (as changed per Court docket)  
Dept.: C-68

**IMAGED FILE**

Petition filed: November 3, 2015

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION .....5

II. SUMMARY .....5

    A. The Approved Project .....5

    B. There is No Plan for the Next Twenty Years or Beyond .....6

    C. There Are Alternative Sites .....7

III. REPLY TO SCE’S SUMMARY ARGUMENT .....8

IV. REPLY TO FACTUAL AND PROCEDURAL BACKGROUND.....9

    A. Casting Facts Not Aspersions .....9

V. THERE WAS AN UNFAIR HEARING .....11

    A. The Real Discussion was Not in Public:  
        Applicant and Commissioners Meet .....11

    B. The Staff Report was Changed after the  
        Private SCE-Commissioner Meetings .....11

    C. The Hearing Was a One-Sided Presentation.....11

VI. PETITIONERS HAVE MET THEIR BURDEN TO SHOW  
THE COMMISSION FAILED TO ANALYZE A REGIONAL  
RANGE OF FEASIBLE ALTERNATIVES .....11

VII. THE ORDER IS NOT SUPPORTED BY THE FINDINGS,  
AND FINDINGS ARE NOT SUPPORTED BY THE  
EVIDENCE (Code Civ. Proc., § 1094.5, subd. (b).) .....12

VIII. THE COMMISSION IMPROPERLY RELIED  
ON NRC REGULATIONS.....13

IX. CONCLUSION .....14

**TABLE OF AUTHORITIES**

**California Cases**

*216 Sutter Bay Associates v. County of Sutter*  
(1997) 58 Cal.App.4<sup>th</sup> 860.....11

*Lundgren v. Lundgren*  
(1966) 45 Cal App 2d 582.....11

**Federal Cases**

*Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*  
(1983) 461 U.S. 190.....7, 13, 14

**Other Authorities**

California Code of Civil Procedure

§ 1094.1.....5

§ 1094.5.....7

§ 1094.5(b).....12, 13, 14

California Civil Code

§ 3517.....11

California Public Resources Code

§ 25524.1(b).....13

§ 25524.2.....13

§ 30000 et seq. ....13

§ 30001(b).....14

§ 30001(c).....14

§ 30001.5(a).....13

§ 30600(a).....13

§ 30600(b)(1).....13

33 U.S.C. 1401-1445.....10

42 USCS § 2011 et seq. ....13

**Other Authorities**

12 Ecology L. Q 619-624-628 .....10

Moody-O’Grady, Kristin, *Nuclear Waste Dumping in the Oceans:  
Has the Cold War Taught Us Anything?*  
35 Natural Res. J 695, 700-701 .....10

1           **I. INTRODUCTION**

2           Contrary to Respondents’ brief, the CC violated the Coastal Act, failed to support its  
3 decision with adequate findings, failed to provide evidence supporting the findings it did make,  
4 and denied the opponents a fair hearing. See, Code Civ. Proc 1094.1 The permit challenge does  
5 not rest on radiological safety issues preempted by federal law. Rather, the CC failed to act in a  
6 manner provided by law when it made a mistake of law reading preemption as to issues properly  
7 under State jurisdiction. It did so after holding a perfunctory public hearing after its  
8 Commissioners held a half dozen meetings in private with SCE up and down the State to reach  
9 their decision before starting the CC-SCE-NRC spin presentation at the “public” hearing.

10           As will be shown below, the CC denied a fair hearing as the CC did not proceed in  
11 a manner required by law, the permit order is not supported by the findings, and the  
12 findings are not supported by the evidence. The findings as to lack of alternatives is not  
13 supported by the record when license amendments were possible, and the permit is for a  
14 mere fraction of the time the waste will remain with no monitoring/transport plans. A  
15 permit for a nuclear waste cemetery on our beaches, on this record, needs to be revoked.

16           **II. SUMMARY**

17           **A. The Approved Project**

18           The CC-approved nuclear dump at San Onofre is a dry cask concrete storage facility with  
19 75 5/8-inch-thick canisters (aka casks) containing 3,600,000 pounds of high-level nuclear spent  
20 fuel now in 2,668 assemblies submerged in water pools. (PAR 383, 450, 460-461) Radioactive  
21 exposure and contamination pose lethal health risks.<sup>1</sup> Spent nuclear fuel is used fuel from a  
22 reactor that is no longer efficient in creating electricity, because its fission process has slowed.  
23 However, it is still thermally hot, highly radioactive, and lethal.<sup>2</sup> This is especially true for San  
24 Onofre’s high burn up fuel.<sup>3</sup> The canister is to be the “boundary” for the fuel; a concrete  
25 overpack is supposed to provide protection from external events. (PAR 461)

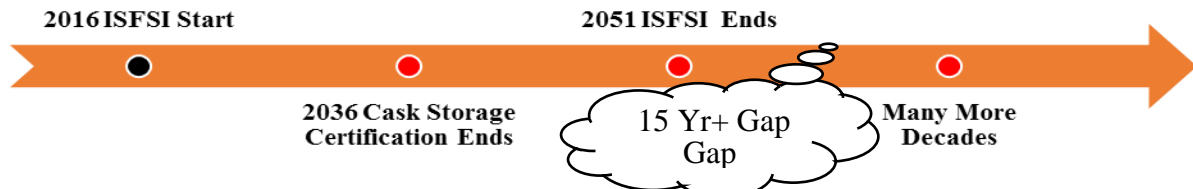
26           The CC assumed the storage facility would be in reliable physical condition for 35 years

27           <sup>1</sup> <https://emergency.cdc.gov/radiation/contamination.asp>

28           <sup>2</sup> <https://www.nrc.gov/waste/high-level-waste.html>

<sup>3</sup> High Burn Up Fuel: <https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/bg-high-burnup-spent-fuel.html>

1 until 2051. (PAR 386) However, the storage certification is only good for 20 years, creating a 15-  
2 year safety gap. (RSAR 453, 10426) The spent fuel may be stored beyond 2051, possibly for  
3 decades, on a permit with no aging management plan<sup>4</sup> for the storage casks. (PAR 385, 449)



4  
5  
6  
7 They admit the shoreline protection structures “cannot be counted upon to prevent erosion and  
8 flooding at the site in future decades.” (RSAR 576)

9 **B. There is No Plan for the Next Twenty Years or Beyond**

10 The permit was issued without an aging management system in place to monitor  
11 the storage dump. (PAR 476) There is no monitoring of temperature and humidity that  
12 could influence corrosion and degradation of the stainless-steel canisters. There is no visual  
13 observation or other inspection techniques to provide information on the canisters’  
14 physical condition. There are no non-destructive examination techniques and remote  
15 surface inspect tools. There is no clear answer to *when* these techniques, tools and  
16 standards will *become* available for use at the dump site. (RSAR 556-557) With the  
17 cooling time continuing to 2030 (PAR 448), there is no plan – only blind hope, with no  
18 reliable support that the hope will turn into reality. *See* “we're hoping that in the next 19  
19 and a half years, this kind of monitoring is -- is, uh, developed, but we don't have it now,  
20 which is to say it would not be in place for the next 20 years.” (RSAR 470) The applicant  
21 and the CC punt: “these issues pertain to radiological safety matters and that's an area  
22 where federal law, uh, limits our authority. (PAR 471)”

23 They admit the canister is 5/8 1/2 inch to 5/8-inch-thick that is sealed and welded. (PAR  
24 461) It goes into a concrete overpack, that's then pulled out, never opened again, and put in a  
25 transportation overpack, and shipped by rail. That is where the vendors have evolved in this  
26 country. The canister and concrete overpack “need to be transported by special purpose railcar.”

27 \_\_\_\_\_  
28 <sup>4</sup>[http://www.inmm.org/AM/Template.cfm?Section=Past\\_Events&Template=/CM/ContentDisplay.cfm&ContentID=2916](http://www.inmm.org/AM/Template.cfm?Section=Past_Events&Template=/CM/ContentDisplay.cfm&ContentID=2916)

1 (PAR 462) Remarkably, the permit buries these casks, despite that they do not yet have rail cars  
2 to move the canisters. (PAR 462). The weight of the transport cask (HI STAR 190) is  
3 undisclosed and has is not licensed. (RSAR 5775) On this basis, the CC approved the permit:

4 Federal preemption did not require, and the Coastal Act did not allow, the permit to be  
5 issued. The CC did not proceed in the manner required by law (CCP 1094.5) because the CC  
6 assumed it could not “evaluate” the project with respect whether it could be safely deployed on  
7 the edge of San Diego’s beach. (PAR 381) The CC could have decided not to issue the permit  
8 because the storage certification was only good for 20 years (RSAR 453, 10426), yet the project  
9 is proposed for 35 years or longer, possibly for many decades. (PAR 385) The CC could have  
10 decided to not place these risks on the shoreline in San Diego, especially when there was no aging  
11 management plan.<sup>5</sup> (PAR 449) See, *Pac. Gas & Elec. Co. v. State Energy Res. Conservation &*  
12 *Dev. Comm'n*, 461 U.S. 190, 205 (U.S. 1983)

13 **C. There Are Alternative Sites**

14 SCE wrongly represented to the CC there is no place else but this site to store this  
15 material. (PAR 453) The transcript shows the representation:

16 At present, there are no feasible off-site  
17 11 alternatives to the proposed project. There's no  
18 12 permanent fuel repository or other interim storage  
19 13 site and there are no near-term prospects for such  
20 14 sites being developed. Existing storage facilities at  
21 15 other nuclear power plants are not licensed --  
22 16 licensed to accept outside fuel, even if they are  
23 17 willing to do so. (PAR 384)

24 SCE admits there is no concrete plan to move the casks when the 20 year permit  
25 expires, and that possibilities may emerge once Units and are decommissioned and the  
26 structures removed, which is expected to be completed in 2032. (PAR 384-385)

27 However, the lack of an alternate permanent  
28 13 or interim storage site means that it is unclear  
14 whether Edison will be able to meet its timeline for  
15 decommissioning the facility in 2051. If no federal

<sup>5</sup>[http://www.inmm.org/AM/Template.cfm?Section=Past\\_Events&Template=/CM/ContentDisplay.cfm&ContentID=2916](http://www.inmm.org/AM/Template.cfm?Section=Past_Events&Template=/CM/ContentDisplay.cfm&ContentID=2916)

1 16 repository or other storage site emerges, or if it is  
2 17 significantly -- significantly delayed, **the facility**  
3 18 **could be required beyond 2051, possibly for many**  
4 19 **decades.**

5 20 Over time, the site would eventually be  
6 21 exposed to coastal -- and I should say in the absence  
7 22 of shoreline protection -- **the site would eventually**  
8 23 **be exposed to coastal flooding and erosion hazards**  
9 24 **beyond its design capacity**, or else would re -- it  
10 25 would -- or else it **would require protection** by

11 1 retaining, replacing, or expanding the existing  
12 2 shoreline armory, which we believe would be  
13 3 **inconsistent with a number of Coastal Act policies.**

14 4 The ability of the project to avoid  
15 5 potential hazards also depends on the spent fuel casks  
16 6 remaining in adequate physical -- physical condition  
17 7 to allow for on or off-site transfer to another  
18 8 storage location out of harm's way, thus allowing for  
19 9 the removal of the ISFSI. At present, the N.R.C. has  
20 10 certified the integrity of the proposed system,  
21 11 including the casks, for 20 years. (PAR 385-386)

22 The record established that the plan is inconsistent with a number of Coastal Act  
23 policies. (PAR 385-386)

### 24 **III. REPLY TO SCE'S SUMMARY ARGUMENT**

25 SCE is burying 3.6 million pounds of nuclear waste on the edge of the water (RSAR 601)  
26 on San Diego beach 33 1/3 yards from Pacific Ocean. While SCE calls it an expansion, SCE  
27 proposes to a new permanent beach side storage installation for the spent fuel. What is now stored  
28 dry and above ground, as shown on the left will be buried in caskets below ground:

The used-up nuclear fuel that produced electricity for Southern California, is being  
buried in San Diego, under SCE's plan. The billions of dollars taken from utility  
customers to pay to decommission San Onofre (See, 2010 Cal. PUC LEXIS 286, \*) are  
**not** to be spent to move the nuclear waste to a safer location. Once spent, those  
decommission funds will not be available to pay to move the spent fuel to a safer location.  
Thus, granting the permit does not advance the State of California has a legitimate interest  
"in minimizing **costs** and risks at the nuclear facilities." 2014 Cal. PUC LEXIS 653, \*43.

1 Utility customers are being charged more than \$750,000,000 to dispose or store the  
2 nuclear waste. (RSAR 9268) The CC did not ask whether these funds could be used to  
3 pay to transfer the waste to Palo Verde.

4 The issue before the Court, whether granting the permit to allow the ISFSI to go on San  
5 Diego's beach can and should be kept separate from any federal jurisdiction questions.  
6 Therefore, whether the Nuclear Regulatory Commission (NRC) or the U.S. Department of Energy  
7 has or has not built permanent nuclear storage facilities is not a question the court must or even  
8 should have to address. The legal question before the Court is whether nuclear waste on the  
9 beach falls into or outside of the limits of the Coastal Acts voters adopted.

#### 10 **IV. REPLY TO FACTUAL AND PROCEDURAL BACKGROUND**

11 SCE is building "a new ISFSI." (PAR 316.) The project description does not specify the  
12 expected life of the ISFSI. (RSAR 5691) SCE assumes the ISFSI will be in place until at least  
13 2051. (RSAR 5691) Leaving the spent fuel buried on the beach at San Onofre is inconsistent with  
14 the Coastal Act whether stored above or below ground. r above ground.

15 SCE concedes the spent fuel should be moved to an offsite storage location, but does not  
16 accept any responsibility for providing another storage location. RSAR 5692-3) The most SCE  
17 will is to work to support viable options. (RSAR 5693) SCE wants to hold the DOE, not SCE,  
18 accountable. (RSAR 5693) SCE urges docility, not urgency, when it states "there is no need to  
19 put such a plan in place more than 15-20 years prior to the date needed." (RSAR 5693)

#### 20 **A. Casting Facts Not Aspersion**

21 The petition casts damaging facts, not unjust insinuations. The plant failed 11 months after  
22 SCE installed the four new defective steam generators. The NRC found the computer models  
23 used to test the new generators' "were not appropriately modified." According to the NRC  
24 findings, there "were opportunities to identify this error during the design" phase. As a result, the  
25 "replacement steam generators were installed at San Onofre with a significant design deficiency,  
26 resulting in rapid tube wear of a type **never before seen** in recirculating steam generators." (See  
27 NRC findings <https://www.nrc.gov/docs/ML1326/ML13263A271.pdf>) In short, "The inspectors  
28 determined that the licensee [SCE] did not ensure that the thermal-hydraulic modeling and flow-



1 induced vibration analysis of the replacement steam generators were adequate with respect to the  
2 replacement steam generator design specification.” (*Id.* at p. 30)

3 Contrary to SCE’s claim, it was the defective steam generators that caused the plant to  
4 close, ushering in the immediate waste disposal problem. SCE supports its claim otherwise with  
5 a SCE letter written in May 2015 written 3 years after the steam generators failed and the plant  
6 closed. (RSAR 7930-7942) When the steam generators failed after only 11 months into their 40-  
7 year life, people asked how could SCE have spent hundreds of millions of utility customer funds  
8 for defective steam generators? The answer is SCE management did just what they are doing  
9 here: concentrating consultants, lobbyists, and powerful law firms to organize and present the  
10 information to get what SCE wants. Its unrestrained advocacy--win at any cost--that produced  
11 those unsustainable steam generators and plan to dump millions of pounds of waste by the sea.

12 Dumping nuclear waste in the ocean has been disfavored for many years. In 1972, the  
13 nations of the world came together to negotiate the London Convention treaty which prohibited  
14 dumping radioactive waste in the oceans. Annex 2 to the Convention on the Prevention of  
15 Marine Pollution by Dumping of Wastes and Other Matter of 1972 expressly prohibits ocean  
16 dumping of nuclear waste.<sup>6</sup> In October 1972, Congress enacted the Marine Protection, Research  
17 and Sanctuaries Act (MPRSA) to implement the London Convention. 33 U.S.C. 1401-1445; See,  
18 12 Ecology L. Q 619-624-628; Moody-O’Grady, Kristin, Nuclear Waste Dumping in the Oceans:  
19 Has the Cold War Taught Us Anything? 35 Natural Res. J 695, 700-701.

20 SCE used decommissioning, its protests notwithstanding, to pressure the issuance of the  
21 coastal permit to build the waste dump. SCE even admits “continued storage of spent fuel in the  
22 spent fuel pools is feasible.”(RSAR 7950) If so, what’s the hurry to bury the spent fuel in tombs  
23 likely to be a perpetual cemetery? SCE urged its shortened timetable as an economy measure:

24 One of the key project objectives is to offload the spent fuel pools by mid-2019, and  
25 SCE’s decommissioning cost estimate is based on this assumption. Moving the fuel  
26 to dry storage allows SCE to reduce the protected area footprint, reduce security  
27 requirements, and eliminate several active systems and components thereby  
achieving significant cost savings for the benefit of our customers. (SRAR 7950)

28 <sup>6</sup> <http://www.imo.org/en/OurWork/Environment/LCLP/Documents/LC1972.pdf>

1 SCE's decision to use defective steam generators at San Onofre started a chain reaction. First,  
2 the steam generators failed, then the reactors were shut down, causing the plant to close, leading to  
3 decommissioning and next the plan to tie up the radioactive waste loose with the San Diego burial  
4 plan. In so acting, SCE violates the basic legal maxim, "No one can take advantage of his own  
5 wrong." Cal Civ Code § 3517; *Lundgren v. Lundgren* (1966) 45 Cal App 2d 582.

## 6 **V. THERE WAS AN UNFAIR HEARING**

### 7 **A. The Real Discussion was Not in Public: Applicant and Commissioners Meet**

8 Before the short, unfair hearing of 6 October 2015, *six of the the eleven voting Commissioners*  
9 *admitted to meeting privately with SCE* at meetings up and down the state in the two weeks prior  
10 to discuss details relating to the application for the permit. (See PAR 278-308 [SCE roadshow to  
11 Commissioners in LA, San Francisco, San Onofre, Malibu, and San Diego]; Vote at PAR 495-  
12 499) The Commissioners had already made their decision through the prohibited acts: "the  
13 collective acquisition and exchange of facts preliminary to the ultimate decision." *216 Sutter Bay*  
14 *Associates v. County of Sutter* (1997) 58 Cal.App.4<sup>th</sup> 860, 877.

### 15 **B. The Staff Report was Changed after the Private SCE-Commissioner Meetings**

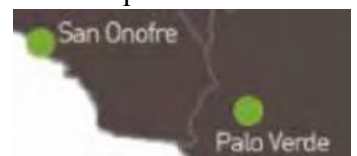
16 Before the hearing began, the CC staff report for the project was changed in favor of the  
17 permit with last minute interlineations. For example, at one part of the staff report the following  
18 was cross-out: ~~For several reasons, Commission staff believes that SCE's analysis underestimates~~  
19 ~~the potential for future flooding at the project site.~~ (PAR 5-6)

### 20 **C. The Hearing Was a One-Sided Presentation**

21 As more fully set forth in the reply to the Coastal Commission brief, the hearing was  
22 conducted as a one-sided presentation by the CC acting as advocates for the permit, and SCE and  
23 the NRC collusively presenting, with little public input and no meaningful deliberation amongst  
24 the Commissioners. (PAR 378-55)

## 25 **VI. PETITIONERS HAVE MET THEIR BURDEN TO SHOW THE COMMISSION** 26 **FAILED TO ANALYZE A REGIONAL RANGE OF FEASIBLE ALTERNATIVES**

27 The CC failed to analyze a range of feasible alternatives. Indeed, SCE's own map shows the  
28 proximity of Palo Verde (licensed ISFSI) to San Onofre (PAR 299):



1 Another example of the CC exercising jurisdiction to decide a safety related issue is the  
2 question of whether it preferable to store the spent fuel in pools or dry storage. The pools are  
3 protected by concrete containment facilities. The NRC has determined “**There is no pressing**  
4 **safety or security reason to mandate earlier transfer of fuel from pool to cask.**”<sup>7</sup> Yet, SCE  
5 switches gears when it says, “Our decision also reflects feedback from the California Energy  
6 Commission and community leaders **who prefer dry storage** of used nuclear fuel. (PAR 394)  
7 The State has much broader authority regarding “environmental concerns.” (RSAR 11849)

8 The CC did not require an system to monitor the structural integrity of the storage on the  
9 mistaken belief doing so was outside its jurisdiction: “As noted above, the NRC has exclusive  
10 jurisdiction over the radiological aspects of the Proposed Project. Therefore, consideration of the  
11 structural integrity of the proposed technology is outside the scope of the Commission’s review.”  
12 (RSAR 5700)

13 The CC staff began working with SCE to build a record to support SCE proposal to bury  
14 the waste at San Onofre long before the public hearing. The CC staff told SCE of “the importance  
15 and urgency of getting additional information from [SCE] related to the maintenance and  
16 monitoring of the ISFSI components.” SCE did not provide one because “it was not required.”  
17 With respect to the aging management report, Commissioner Shellenberger noted the staff  
18 report’s “grammar to me means that it doesn't exist now, that it will exist at the end of the  
19 permit.” (PAR 472) After a long, rambling non-answer, Shellenberger pressed (PAR 473-476):

20 MS. SHALLENBERGER: So -- so, as the technology improved, which you say is  
21 happening very rapidly, you're still gonna wait 20 years to require that they  
22 provide it to you; is that right?

22 MR. LOMBARD: For this system, yes.

23 MS. SHALLENBERGER: That's the only one before us.

23 MR. LOMBARD: I understand. I'm sorry. (PAR 476-477, RSAR 10522)

24 **VII. THE ORDER IS NOT SUPPORTED BY THE FINDINGS, AND FINDINGS ARE**  
25 **NOT SUPPORTED BY THE EVIDENCE (Code Civ. Proc., § 1094.5, subd. (b).)**

26 For the reasons set forth in the Petitioners’ Reply to the CC brief, filed herewith, the order is  
27 not supported by the findings, and the findings are not supported by the evidence.

28 <sup>7</sup> <https://www.nrc.gov/waste/spent-fuel-storage/faqs.html>

1           **VIII. THE COMMISSION IMPROPERLY RELIED ON NRC REGULATIONS**

2           In the briefing, Respondents overstate the law of preemption and what CC could or  
3 could not consider. SCE applied for a permit to the CC, as is required when any  
4 development in the Coastal Zone is sought. Cal. Pub. Res. Code § 30600(a). The Coastal  
5 Act sets forth an application and review process for those seeking development on the  
6 Coast. Cal. Pub. Res. Code § 30600(b)(1). The California Coastal Commission exists to  
7 protect the California coast. The permit requirement’s primary purpose is to “[P]rotect,  
8 maintain, and where feasible, enhance and restore the overall quality of the coastal zone  
9 environment and its natural and artificial resources.” Cal. Pub. Res. Code § 30001.5(a)

10           SCE’s proposed new development on the California Coast in the form of casks buried on  
11 the shoreline is within the Coastal Commission’s jurisdiction and authority. The CC can grant or  
12 deny a permit for the development. SCE is wrong when it claims Federal Law provides a  
13 wholesale preemption of the CC’s permit authority in this case. SCE induced the CC to apply the  
14 preemption concept incorrectly, therefore creating an abuse of its discretion by not proceeding “in  
15 the manner required by law.” Cal. Civ. Code §1094.5(b).

16           In the Atomic Energy Act (AEA) and its 1959 amendment, Congress granted the states  
17 authority over non-radiological aspects of the generation and transmission of nuclear power. 42  
18 USCS § 2011 et seq. Burying anything in the California shoreline allows California’s to “retain  
19 their traditional responsibility in the field of regulating electrical utilities for determining  
20 questions of need, reliability, cost, and other related state concerns.” *Pac. Gas & Elec. Co. v.*  
21 *State Energy Res. Conservation & Dev. Comm'n* (1983) 461 U.S. 190, 205. (hereafter “PGE”) In  
22 *PGE*, the Court considered whether provisions in Cal. Pub. Res. Code Ann. §§ 25524.1(b) and  
23 25524.2 (West 1977), which condition the construction of nuclear plants on findings by the State  
24 Energy Resources Conservation and Development Commission that adequate storage facilities  
25 and means of disposal are available for nuclear waste, are pre-empted by the AEA. *Id.* at 194-  
26 195. The high court held “Congress has preserved the dual regulation of nuclear-powered  
27 electricity generation: the Federal Government maintains complete control of the safety and  
28 ‘nuclear’ aspects of energy generation; the States exercise their traditional authority over ... land

1 use, ratemaking, and the like.” *Id.* at 211-212.

2 The Court found where the rationale for exercising its traditional authority exists [as here,  
3 the CC’s authority in protecting the California coast land use], “the statute lies outside the  
4 occupied field of nuclear safety regulation.” *Id.* at 216. The Coastal Commission, pursuant to the  
5 California Coastal Act of 1976,<sup>8</sup> exists to protect the coast in the manner required by law. The Act  
6 declares, “[T]hat the permanent protection of the state's natural and scenic resources is a  
7 paramount concern to present and future residents of the state and nation,” and “to promote the  
8 public safety, health, and welfare, and to protect public and private property, wildlife, marine  
9 fisheries, and other ocean resources, and the natural environment, it is necessary to protect the  
10 ecological balance of the coastal zone and prevent its deterioration and destruction.” Cal. Pub.  
11 Res. Code § 30001(b) and (c).

12 In exercising its authority, the CC imposes a Coastal Development Permit requirement  
13 and its accompanying review process to protect the shoreline – not to oversee “nuclear safety  
14 regulation.” *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. at  
15 216. Here, the CC issued its permit to allow burial of 3.6 million pounds of nuclear waste on the  
16 shoreline because the CC “did not act in a manner required by law” when it assumed it was  
17 preempted from exercising its routine and lawful state authority over land use. Cal. Civ. Code §  
18 1094.5(b); see also *PGE*, *passim*. The CC did not require a system to monitor the structural  
19 integrity of the storage on the mistaken belief doing so was outside its jurisdiction. (RSAR 5700)  
20 Yet even SCE admits state agencies properly regulate aspects of the nuclear sites (PAR 394) as  
21 the State has much broader authority to regarding “environmental concerns.” (RSAR 11849)

22 **IX. CONCLUSION**

23 For the foregoing reasons, a writ should issue directing to CC to revoke the permit as issued.

24  
25 AGUIRRE & SEVERSON, LLP

26 Dated: March 21, 2017

26 /s/Michael J. Aguirre  
27 Michael J. Aguirre, Esq.,  
27 Attorneys for Petitioners

28 <sup>8</sup> Cal. Pub. Res. Code § 30000 et seq.