

Staff Report 44

APPLICANT:

Southern California Edison Company and San Diego Gas and Electric Company

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION

7.60 acres, more or less, of sovereign land in the Pacific Ocean, offshore of Marine Corps Base Camp Pendleton at San Onofre, San Diego County.

AUTHORIZED USE:

Maintenance of two existing non-operational concrete water circulating intake and discharge conduits associated with San Onofre Nuclear Generating Station (SONGS) Unit 1.

TERM:

13 years, beginning March 21, 2022.

CONSIDERATION:

\$126,629 per year; with an annual Consumer Price Index adjustment, and the State reserving the right to fix a different rent on every fifth anniversary of the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount of \$5,000,000 per occurrence and \$10,000,000 in the aggregate, or equivalent staff-approved self-insurance program. Lessee Southern California Edison Company may provide the required insurance on behalf of both Lessees.
- Performance Guaranty.
- Bond: \$44,938,000, to be reviewed and updated every 5 years.

- Lessor reserves the right to modify the base rent on each fifth anniversary of the lease based on an appraisal of the Lease Premises at Lessee's expense.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On September 24, 1964, the Commission authorized a 15-year General Lease – Right-of-Way Use to Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) for the installation and maintenance of two existing concrete water circulating intake and discharge conduits associated with the operation of SONGS Unit 1 ([Item 32, September 24, 1964](#)). SONGS Unit 1 began operation in 1968, and the lease was later amended to extend the term to 49 years ([Item 40, August 28, 1968](#)). In 1992, SONGS Unit 1 permanently ceased operations.

In 1993, SONGS Unit 1 was placed in a condition known as Safe Storage (SAFSTOR) by the U.S. Nuclear Regulatory Commission (NRC). In SAFSTOR, fuel is removed from the reactor and systems are retired that are no longer needed to maintain safe cooling of the irradiated fuel. The NRC operating license was converted to a Possession-Only License and categorized as "Not Required for Operation." In 2000, SCE began decommissioning Unit 1, removing structures and equipment and sending them to a disposal facility. The NRC issued a license amendment in February 2010 releasing the offshore conduits in place for unrestricted use. Decommissioning on the upland is not complete, but all above-ground structures have been demolished and removed. Unit 1 will remain in a SAFSTOR configuration until permanent retirement of Units 2 and 3, and until spent fuel has been moved offsite and the plant's Independent Spent Fuel Storage Installations (ISFSIs) are demolished.

As part of the decommissioning process for the offshore conduits, the lessee sought an amendment of its lease with the Commission. At its October 20, 2005 meeting, the Commission certified a Final Environmental Impact Report (EIR No. 729; State Clearinghouse Number 2004061092) for the Disposition of Offshore Cooling Water Conduits Project and authorized amendment of the lease to allow for partial removal of the vertical terminal structures, maintenance access risers, and surface marker buoys; to install mammal exclusion barriers with openings to allow sand migration into the intake and discharge conduits; and to abandon two existing

concrete water circulating intake and discharge conduits ([Item 31, October 20, 2005](#)).

The EIR analyzed full removal of the water circulating conduits but did not identify full removal as the environmentally preferable option. Pursuant to the Commission lease amendment in 2005, SCE and SDG&E completed the partial removal work contemplated in the EIR. That lease expired on September 23, 2013.

On October 16, 2015, the Commission authorized a 3-year General Lease – Right-of-Way Use to SCE and SDG&E to explore options to repurpose the water circulating conduits ([Item 55, October 16, 2015](#)). SCE and SDG&E explored options to repurpose the conduits but did not identify any potential reuse projects. That lease expired and has been in holdover since September 23, 2018.

The Applicant is now applying for a General Lease – Right-of-Way Use for two existing non-operational concrete intake and discharge conduits associated with SONGS Unit 1. The Applicant requested that the duration of the proposed lease, Lease 3193, coincide with existing Lease 6785 for Units 2 and 3 so that both leases will expire at the same time in 2035.

The Commission's accounting records show the annual rent for the previously authorized non-operational conduits is paid through September 23, 2022. This rent will be prorated through March 20, 2022.

Staff believes that the proposed lease would not result in substantial interference with Public Trust uses and values because the conduits are covered with approximately 4 feet of sand and sediment, in an average water depth of 25 feet. At the beach, the conduits are buried beneath approximately 4 feet of sand and sediment and do not have an impact on recreational uses. Through several inspections and surveys, the depth of cover of the conduits has not changed during their 50 years of existence. The prefabricated mammal exclusion barriers are designed to allow the conduits to fill naturally with sand. It is unknown how much sand has entered the conduits. Substantial work to remove the grates would be required to evaluate sand volume.

The proposed lease would not alienate the State's fee simple interest or permanently impair public rights. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred. The proposed lease also requires the Applicant to provide a surety bond of \$44,938,000, based on the Net Present Value to assure that funding would be available to ensure compliance with the lease provisions should the Applicant be unable to fulfill its responsibilities under the lease. The amount of the bond was determined by taking the lessee's estimated cost to remove the lease improvements at the anticipated

completion of decommissioning in the year 2051, and then calculating the Net Present Value of that amount. The surety bond will be reviewed and updated for sufficiency by Lessor on each fifth anniversary of the lease and the amount of the bond may be adjusted as necessary to cover the estimated cost for potential removal of the improvements on the lease premises. To compensate the people of the State for the occupation of public land, the lease requires the payment of annual rent, with an annual Consumer Price Index adjustment as specified in the proposed lease.

ENVIRONMENTAL JUSTICE:

The Commission is committed to promoting equity and advancing environmental justice through inclusive decision-making that considers the disproportionate burdens on disadvantaged communities and Native Nations. To further this goal, the Commission adopted a comprehensive Environmental Justice policy and Implementation Blueprint that establishes a framework for incorporating environmental justice considerations in the Commission's work. The existing conduits associated with Unit 1 are located offshore, beneath the sea floor and are non-operational. Staff concluded that the existing non-operational conduits associated with SONGS Unit 1 will not contribute to existing pollution burdens or create any additional impact.

TRIBAL CULTURAL RESOURCES:

SONGS Unit 1 offshore conduits are non-operational and have been naturally filling with sand for several years. The proposed lease would not result in any construction or other ground-disturbing activities.

As part of the SONGS Units 2 & 3 Decommissioning Project previously approved by the Commission, and adjacent to but not involving the Unit 1 conduits, implementation of mitigation measures and Applicant-proposed measures relating to Tribal Cultural Resources are covered in the Final Environmental Impact Report No. 784 (SCH No. 2016071025) and are discussed in the SONGS Units 2 & 3 staff report ([Item 01, March 1, 2019](#)). The measures require SCE and SDG&E to conduct all ground-disturbing activities within the historically excavated footprint of the entire SONGS site, conduct archaeological and tribal monitoring, follow certain steps in the event of a discovery, and utilize a qualified maritime archaeologist in the development and implementation of the geophysical surveys conducted to develop the Anchoring and Dredging Plans.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, more frequent and intense storm events, increased flooding, and erosion affect both open coastal areas and inland waterways in California. The SONGS site is located on the northern San Diego coast primarily within Marine Corps Base Camp Pendleton, which spans more than 125,000 acres and is the U.S. Marine Corps' primary amphibious training base on the west coast. The SONGS site is located adjacent to San Onofre State Beach in a tidally influenced area vulnerable to wave action at the current sea level of the Pacific Ocean.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. Projected sea level rise scenarios for the lease area (La Jolla tide gauge) are listed in Table 1.

Table 1. Projected Sea Level Rise for La Jolla¹

Year	Projection (feet)
2030	0.9
2040	1.3
2050	2.0
2100	7.1

Source: Table 31, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

The overall SONGS shoreline site includes a seawall, a walkway that permits pedestrian transit between open beach areas up- and down-coast from SONGS, and riprap (revetment) that armors the beach. The SONGS revetment provides protection to the SONGS seawall and is essential to maintaining the walkway that enables safe lateral access for beach users. The seawall has the potential to exacerbate the impacts of sea level rise and increased storm and wave activity on State sovereign land adjacent to the SONGS site. The beach area seaward of the seawall is subject to width reduction and loss from erosion, scour, and coastal squeeze (i.e., the reduction of beach width due to the inability of the beach to naturally migrate landward as a result of hard armoring infrastructure). Beach loss is anticipated to increase over the term of the lease, because of the combined factors of climate change impacts, natural dynamic coastal processes, and the presence of the seawall. However, as both conduits are buried beneath the ocean bottom and covered with approximately 4 feet of sand/sediment, in an average

water depth of 25 feet, impacts associated with climate change are unlikely to affect those structures.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons above, staff believes the issuance of a new lease for the continued maintenance of two existing non-operational concrete water circulating intake and discharge conduits will not substantially interfere with the public's right to navigation and fishing or with the Public Trust needs and values at this location and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Some below-grade (i.e., underground) Unit 1 structures remain on the upland. Some are anticipated to be removed at the time of Nuclear Regulatory Commission (NRC) license termination. Those structures beneath the ISFSIs will remain until the spent fuel is transferred to an off-site storage facility and the ISFSIs are dismantled. For additional information, see the NRC website (<https://www.nrc.gov/info-finder/decommissioning/power-reactor/san-onofre-unit-1.html>), the SONGS Community Engagement website (<https://www.songscommunity.com/about-decommissioning/decommissioning-san-onofre-nuclear-generating-station/safely-dismantling-songs/relocating-the-unit-1-reactor-pressure-vessel>), and the Commission's Final Environmental Impact Report for the SONGS Units 2 & 3 Decommissioning Project, Vol. II, pages ES-5, 1-18, and 4.1-52 (https://www.slc.ca.gov/wp-content/uploads/2019/02/SONGS_FEIR_Volume2_Feb2019.pdf).
2. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands. If the Commission denies the application, the Applicant, as prior lessee, may be required to remove the facilities located within Commission's jurisdiction and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

3. This action is consistent with the “Leading Climate Activism”, “Meeting Evolving Public Trust Needs”, “Committing to Collaborative Leadership”, and “Prioritizing Social, Economic and Environmental Justice” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Performance Guaranty

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE’S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the public’s right to navigation and fishing or with the Public Trust needs and values at this location; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning March 21, 2022, for a term of 13 years, for maintenance of two existing non-operational concrete conduits, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part

hereof; annual rent in the amount of \$126,629 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent on every fifth anniversary of the lease term, as provided in the lease; liability insurance in an amount no less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate, or equivalent staff-approved self-insurance program; Performance Guaranty; and surety in the amount of \$44,938,000 to be updated every 5 years.

EXHIBIT A

LEASE 3193

LAND DESCRIPTION

A strip tide and submerged land, one-hundred (100) feet wide in the Gulf of Santa Catalina, Pacific Ocean, adjacent to the San Onofre Generating Station, San Diego County, State of California, the centerline being described as follows:

BEGINNING at a point in that certain course in the southwesterly boundary of the 83.63-acre parcel of land shown on the licensed surveyor's map filed on June 13, 1963, as Map No. 6242 of Records of Survey in the Office of County Recorder of said county, said certain course is shown on said map as having a bearing of "S 52° 00' 51" E" and a length of "299.95 feet", said point being South 52° 00' 51" East 18.71 feet from the northwesterly terminus of said certain course; thence South 33° 00' 00" West 3310.11 feet to the TERMINUS of said centerline.

The sidelines of said strip of land to be lengthened or shortened as to begin on the ordinary high water mark of said Pacific Ocean and to terminate at a line perpendicular to the terminus of said centerline.

END OF DESCRIPTION

The above description is based on that original description prepared by Southern California Edison Company on August 27, 1964 as found in PRC 3193 file.

Revised 07/08/2020 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

GULF OF
SANTA
CATALINA

SAN ONOFRE NUCLEAR
GENERATING STATION

APN 760-211-02-01

APPROX.
SHORELINE

**LEASE
PARCEL**

PACIFIC
OCEAN

SAN ONOFRE NUCLEAR GENERATING STATION

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

LEASE 3193
SOUTHERN CALIFORNIA
EDISON CO. AND SAN DIEGO
GAS & ELECTRIC CO.
APN 760-211-02-01
GENERAL LEASE -
RIGHT-OF-WAY USE
SAN DIEGO COUNTY



TS 07/08/2020

EXHIBIT C

PERFORMANCE GUARANTY

For valuable consideration, the receipt of which is hereby acknowledged, Southern California Edison Company (SCE) unconditionally guarantees to the State of California, acting by and through the State Lands Commission ("State"), the full and punctual performance by SCE of all of SCE's obligations under the leases and rights-of-way in existence as of April 23, 2014 and which may be entered into hereafter by and between the California State Lands Commission and SCE and as provided below.

This Guaranty shall automatically terminate when the last of the Leases and Rights-of-Way (1) terminates and all of the Lease Premises have been either accepted by Lessor as improved or restored by Lessee as provided in the Leases or the Rights-of-Way; or (2) has been assigned from SCE to a party approved by the State and, as part of the assignment, SCE has been released from its obligations under the Lease or the Right-of-Way by the State.

SCE also guarantees the payment to State of any penalty and interest accruing under any obligation of the Leases and Rights-of-Way and any and all reasonable expenses incurred by State in enforcing its rights under this Guaranty (including, but not limited to, reasonable attorneys' fees and disbursements, court costs, and reasonable collection charges).

SCE waives any claims against State for State's lack of promptness, diligence, and the time period to issue a notice with respect to any State obligation or requirement to exhaust any right or to take any action against SCE under a Lease or a Right-of-Way. This waiver shall not apply where a lease or a Right-of-Way (1) has terminated and the Lease Premises have been either accepted by Lessor as improved or restored by Lessee as provided in the Lease or the Right-of-Way; or (2) has been assigned from SCE to a party approved by the State and, as part of the assignment, SCE has been released from its obligations under the Lease or the Right-of-Way by the State.

SCE represents and warrants that this Guaranty is a legal, valid and binding obligation of SCE, enforceable against SCE in accordance with its terms except as limited by bankruptcy or other laws of general application.

The rights afforded the State under this Guaranty are personal and not transferable by State without the express written consent of SCE and can be modified only by a written instrument signed by State and SCE.

This Guaranty shall be construed under and governed by the laws of the State of California.

If any provision of this Performance Guaranty or the application thereof to any person or circumstances shall for any reason and to any extent be invalid or unenforceable, neither the remainder of this Performance Guaranty nor the application of such provision to other person(s) or circumstances shall be affected thereby, but shall be enforced to the extent permitted by applicable law.

IN WITNESS WHEREOF, Southern California Edison Company has executed
this Guaranty as of this 13 day of June, 2014.

SOUTHERN CALIFORNIA EDISON COMPANY

By: 

Title: V.P. Engineering & Technical Services

Date: 6/13/14

ACKNOWLEDGEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On June 13, 2014

before me,

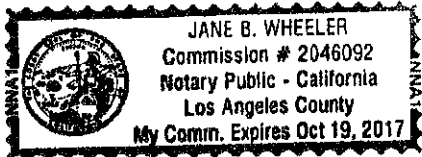
Jane B. Wheeler

Here Insert Name and Title of the Officer

personally appeared

Kevin R Cini

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jane B. Wheeler

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney In Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney In Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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