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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 Timothy B. Taylor, Dept. C-72

**MOTION TO ENFORCE SETTLEMENT
AGREEMENT PURSUANT TO
CAL. CODE CIV. PROC. § 664.6**

Date: November 1, 2019
Time: 1:30 p.m.
Dept.: 72
Judge: Hon. Timothy B. Taylor

Petition filed: November 3, 2015

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1 **I. INTRODUCTION**

2 Petitioners come now before this Court, which retained jurisdiction pursuant to Cal. Code
3 Civ. Proc. § 664.6, to enforce a Settlement Agreement that requires a for-profit utility to use
4 “commercially reasonable effort” to relocate 3.8 million pounds of nuclear waste from San
5 Diego’s beach to an offsite storage facility.

6 Southern California Edison (SCE) has engaged in deliberate actions that unfairly frustrate
7 its settlement agreement promise to make a commercially reasonable effort to relocate the 3.8
8 million pounds of irradiated nuclear fuel from the San Onofre Nuclear Power Station (“San
9 Onofre” or “plant”) to a safer location. SCE represented entombing the nuclear waste on San
10 Diego’s shoreline was a “critical first step” in relocating it to a safer location.¹ The California
11 Coastal Commission, when considering the permit application, found the location of the plant
12 would eventually be exposed to coastal flooding and erosion hazards beyond what SCE’s plant
13 was designed to handle.² Petitioners Citizen Oversight, Inc. and Patricia Borchmann initiated this
14 litigation to prevent SCE from permanently burying the nuclear waste along the shoreline of San
15 Onofre. Ultimately, the parties settled wherein SCE agreed to make a commercially reasonable
16 effort to relocate the nuclear waste to an offsite location.

17 Since entering into the Settlement Agreement, it has been revealed SCE has engaged in a
18 pattern of dangerous practices that will likely compromise, if not make it impossible, to transfer
19 the spent nuclear fuel to an off-site storage facility as required by the settlement agreement.
20 SCE’s improper actions include, *inter alia*, (1) failing to adequately train SCE staff regarding
21 downloading and storage operations for nuclear waste; (2) using storage canister designs not
22 approved by the Nuclear Regulatory Commission (NRC); (3) failing to report several instances of
23 canisters colliding with their storage silos during downloading operations; (4) falsely reporting
24 San Onofre operations were paused in August 2018 to provide “crew rest;” and (5) continuing to
25 use a downloading system that is systemically scratching and scraping canisters causing
26 unrepaired defects that even the Nuclear Regulatory Commission has questioned the compliance,

27 _____
28 ¹ See Declaration of Michael Aguirre filed concurrently herewith, ¶ 3, Exhibit 1.

² See Aguirre Decl., ¶ 3, Ex.1.

1 stating, “a design change is needed to deviate to allow scratches” and “I just don’t see how that
2 meets [Certificate of Compliance].” (See Aguirre Decl. ¶ 17, Ex. 10)

3 There is much support for SCE to remove the nuclear waste to a location that is more
4 inland, such as, the Palo Verde facility or out-of-state facilities in New Mexico or Texas.³
5 However, SCE’s actions have created a dark cloud over the integrity and stability of SCE’s
6 nuclear waste storage canisters that makes it highly unlikely an off-site storage facility will take
7 the damaged storage canisters once an off-site facility is negotiated. SCE’s actions, unless
8 changed by agreement or court order, will prevent it from being able to use commercially
9 reasonable effort to move the fuel as required by the Settlement Agreement that is under the
10 jurisdiction of this Court pursuant to Cal. Code Civ. Proc § 664.6.

11 Petitioners respectfully request this Court order: (1) SCE to pause downloading of the
12 nuclear waste into the canisters and silos; and (2) allow discovery to determine whether or not
13 SCE is making commercially reasonable efforts to relocate the waste to a safer location.

14 **II. RELEVANT FACTUAL BACKGROUND**

15 On 11 June 2015, SCE applied to the Coastal Commission for a permit to bury close to
16 3.8 million pounds of nuclear waste on a San Diego beach, calling the project an “Independent
17 Spent Fuel Storage Installation,” or “ISFSI.”⁴ In response, Coastal Commission staff stated:

18 This fuel is highly radioactive and requires secure storage for thousands of years
19 to prevent harms to humans and the environment. Because the existing ISFSI does
20 not have the capacity to hold the remaining spent fuel, a new ISFSI is being
21 proposed in order to provide for the **interim storage of the spent fuel until such
22 time as it can be accepted at a federal permanent repository or other off-site
interim storage facility.** Removing the fuel from the existing wet storage pools
would also facilitate the full decommission of SONGS Units 2 and 3 and the
restoration of the site. (emphasis added)

23 The Coastal Commission also warned that the removal of the spent nuclear waste was crucial
24 because the proposed storage location “**would eventually be exposed to coastal flooding and**

25 _____
26 ³ Luke Harold, *Del Mar asks for stricter regulation for dispose nuclear waste at San Onofre*, DEL MAR TIMES (Oct.
27 2, 2019), <https://www.delmartimes.net/news/story/2019-10-02/del-mar-asks-for-stricter-regulation-for-disposing-nuclear-waste-at-san-onofre>; Shalina Chatlani, *Is It Safe To Store Nuclear Waste At San Onofre? The Science Behind It*, KPBS (June 19, 2019), <https://www.kpbs.org/news/2019/jun/19/nuclear-waste-beach-science-and-safety-explained/>.

28 ⁴ Aguirre Decl. ¶ 3, Ex 1.

1 **erosion hazards beyond its design capacity...**⁵ However, SCE represented storing the nuclear
2 waste in the beach was a “critical first step before it can be accepted by an off-site storage
3 facility.”⁶



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13 After the Coastal Commission staff abdicated its responsibility to stop SCE from storing
14 3.8 million pounds of deadly nuclear waste on one of San Diego’s beaches, Petitioners brought a
15 Verified Petition for Writ of Administrative Mandate to block the Commission from granting a
16 Coastal Permit to allow the nuclear waste beach storage. The petition alleged storing 3.8 million
17 pounds of nuclear waste on the beach in San Diego was a violation of the California Coastal Act;
18 that the Coastal Commission’s findings did not support the permit; that the evidence did not
19 support the findings; and that the hearing violated due process rights and was scarred by a gross
20 pattern of unlawful ex parte communications.

21 While the case was set for a hearing, the parties reached a Settlement Agreement (or
22 “Agreement”).⁷ As part of the Agreement, SCE promised to use “Commercially Reasonable”
23 efforts to relocate the waste to a safer, inland location. SCE also promised to report on the status
24 of any loading of spent nuclear fuel at San Onofre.⁸ Some of the safer off-site storage facilities
25 stated in the Agreement included facilities in New Mexico, Texas or Palo Verde.

26
27 ⁵ Aguirre Decl. ¶ 3, Ex. 1.

⁶ Aguirre Decl. ¶ 3, Ex. 2.

⁷ See Agreement, Aguirre Decl. ¶ 6, Exhibit 3, p. 2, Sec. I.H)

⁸ *Id.*

1 Many warned that Petitioners were wrong to put faith in SCE’s promise to use its vast
2 resources (limited only by what is commercially reasonable) to make a good faith effort to move
3 the waste to Palo Verde. In light of this concern, Petitioners left the ultimate decision of SCE’s
4 fidelity to the promise in the hands of the court such that the agreement was written to retain
5 “jurisdiction to enforce the terms” with this court “pursuant to [CCP] Section 664.6.”⁹

6 On 31 January 2019, Petitioners initiated mediation with SCE, pursuant to the Sec. II.H.4
7 of the agreement, to resolve issues created by the SCE’s actions that were not in line with the
8 common purpose of the settlement agreement. Petitioners found the agreement’s common
9 purpose was frustrated because SCE: (1) downloaded spent fuel in four canisters not approved by
10 the NRC; (2) failed to adequately train and supervise SCE staff responsible for the downloading
11 and storage operations; and (3) failed to report multiple safety violations including multiple
12 abnormal downloading event.¹⁰ The mediator led the discussion between the parties, and agreed
13 to continue the mediation discussions by phone.

14 Petitioners again contacted SCE on 1 April 2019 to inquire about the expert consultants
15 SCE was required to retain to advise on “the proposed relocation of SONGS Spent Fuel to an
16 Offsite Storage Facility.”¹¹ Petitioners also requested SCE appoint a receiver to oversee SCE’s
17 actions regarding the downloading and relocation of the spent nuclear fuel, or in the alternative,
18 allow Petitioners to “take limited deposition and document discovery regarding” the frustration of
19 the common purpose of the Agreement.¹²

20 After the mediator’s follow-up on August 7, 2019, on 25 September 2019, Petitioners
21 contacted SCE to continue mediation discussions and to request SCE pause downloading to allow
22 the parties to develop a corrective plan. (Aguirre Decl. ¶¶ 10-15) Petitioners informed SCE it was
23 violating its promise to make a “Commercially Reasonable” effort to relocate the nuclear waste to
24 a safer location because it “(1) practiced downloading with canisters that were too small, (2) used
25 canisters with a shim supported cooling system the NRC had not approved, (3) did not report

26 _____
27 ⁹ Aguirre Decl. ¶ 6, Ex. 3: Settlement Agreement.

¹⁰ Aguirre Decl. ¶¶ 10, 11, Ex. 6.

¹¹ Aguirre Decl. ¶ 11, Ex. 6.

¹² Aguirre Decl. ¶ 11, Ex. 6.

1 several instances of the canisters colliding with their storage silos during downloading, (4) falsely
2 reported downloading was paused in order to give the crews a ‘rest,’ and (5) continued to use the
3 downloading system that is systemically scratching and scraping canisters causing unrepaired
4 defects.”¹³

5 Because ongoing mediation communications and attempts to resolve conflicts stemming
6 from SCE’s downloading errors have proven futile, Petitioners now present the instant motion to
7 enforce the settlement agreement.

8 **III. SCE HAS FAILED TO HONOR ITS OBLIGATIONS UNDER THE** 9 **SETTLEMENT AGREEMENT**

10 Since entering into the Agreement, SCE started moving 2,668 spent fuel assemblies from
11 San Onofre’s spent fuel pools in Units 2 and 3. SCE moved the spent fuel from the spent fuel
12 pools to try storage in canisters buried partially underground.

13 **First**, SCE failed to adequately train and supervise the workers SCE used to conduct
14 downloading operations for nuclear spent fuel at San Onofre. During a “Community Engagement
15 Meeting” on 9 August 2018, SCE representative Tom Palmisano falsely stated SCE paused
16 operations at San Onofre for “crew rest.”¹⁴ During this meeting, SCE failed to reveal an incident
17 where a canister was left unsupported and could have fallen 18 feet. However, at the end of the
18 meeting, a San Onofre whistleblower came forward revealing SCE failed to properly train its
19 workers many of which had no experience with nuclear waste: “We Don't have the proper
20 personnel to get things done safely. It's certainly undertrained.” The whistleblower also asked a
21 key question in light of these problems: “will they take it in a repository site?”¹⁵ NRC staff also
22 observed SCE did not train its staff on actual conditions of downloading operations and referred
23 to this as “negative training.”¹⁶

24 **Second**, the first four canisters into which SCE loaded spent nuclear fuel at San Onofre
25 was contrary to what SCE told the Coastal Commission and were not approved by the NRC. SCE
26 failed to obtain required license amendments prior to implementing changes. SCE loaded and

27 ¹³ Aguirre Decl. ¶ 15, Ex. 9.

¹⁴ Aguirre Decl. ¶ 9, Ex. 5.

¹⁵ Aguirre Decl. ¶ 9, Ex. 5: CEP Transcript p. 104-108.

¹⁶ Aguirre Decl. ¶ 8, Ex. 4: 8 Nov. 2018 NRC Transcript, p. 11

1 stored 148 spent fuel assemblies in the “baskets” located in four of the altered MPCs. Aluminum
2 shims are installed on the periphery around the baskets and serve two purposes: (1) to provide
3 lateral support and (2) when the fuel is loaded, and the basket heats up several hundred degrees,
4 the shims tighten up against the shell and provide a flow path for helium to come out of the top
5 of the fuel assemblies and to go down through the shims.¹⁷

6 The basic shim is a hollow aluminum tube. The bottom of the approved design has cutouts
7 that allow the helium to flow circulate through and around the cask. In the unapproved design
8 SCE used, the shims rest on “stand-off rods.” As SCE was loading the first three MPCs with the
9 stand-off rods, Holtec found a broken stand-off rod in an empty MPC before it was loaded. SCE
10 ordered 43 canisters with the unapproved design.¹⁸ SCE claims it “found this out after we loaded
11 the first four canisters.” Below is a picture showing the drastic difference between the shims the
12 NRC approved design (left) and the shims SCE used (right):



24 With regard to unloading and reloading the four canisters buried in the canisters with the
25 unapproved design, SCE claims “nobody has unloaded a commercial canister, either a bolted cask
26 or a welded cask or canister.”¹⁹ SCE claims reloading the waste in the first four canisters with the

27 ¹⁷ Aguirre Decl. ¶ 23, Ex. 13: 22 March 2018 CEP Meeting transcript.

28 ¹⁸ Aguirre Decl. ¶ 23, Ex. 13.

¹⁹ Aguirre Decl. ¶ 23, Ex. 13.

1 unapproved design “would probably be a two- to three-year project to develop the techniques.”²⁰
2 However, the NRC stated a licensee like SCE is required to be “designed to allow ready retrieval
3 of spent fuel, high-level radioactive waste, and reactor-related GTCC waste for further processing
4 or disposal.” See 10 C.F.R. § 72.122(l). Accordingly, SCE is required to demonstrate the ability
5 to retrieve a canister, for taking back into the spent fuel pool, if one’s available.

6 **Third**, SCE failed to make required reports of its violations of nuclear fuel storage rules.
7 SCE failed to report its 3 August 2018 “near-drop” incident to the NRC. Several months later,
8 SCE official Tom Palmisano admitted the nuclear waste owner failed to formally report the
9 incident to the NRC.²¹ Both the NRC and SCE admitted SCE failed to make the required
10 reports.²² As made public in the NRC Webinar in November:

11 [T]here was an event on July 22nd, where San Onofre experienced an abnormal
12 delay in downloading operations, what should have taken 15 minutes ended up
13 taking an hour and a half because they failed to get the MPC properly aligned for
14 downloading for over an hour and a half. Again, this should have taken place in 15
15 minutes or less, during that time, never was the MPC, or the canister, not
16 suspended by the slings, every time they attempted to download, they caught the
17 loss of load condition. (Aguirre Decl. Ex 4: NRC Webinar, 8 Nov. 2018, p.20)

18 Instead of forthrightly acknowledging the July 22nd event, again SCE’s Tom Palmisano, in
19 response, engaged in evasion:

20 MR. PALMISANO: Okay. ** I'm going to take you through what happened on
21 ** what happened on July 22nd, which had some similar elements of what
22 happened on August 3rd. **

23 So the real problem with July 22nd was not what **the crew did and recognized**;
24 the real problem was we really failed to learn from that. **The crew didn't report**
25 **the significant challenge** they had with the alignment and downloading. As a
26 result, we failed to really recognize that, teach the other crews how to avoid that
27 and recognize that.

28 Additionally, SCE failed to give the required Notification to the NRC Operations Center
about the August 3, 2018, misalignment until the SCE was prompted by the NRC team on
September 14, 2018. Indeed, SCE failed to report to the NRC even after a whistleblower came
forward at SCE’s Community Engagement Panel (CEP) on August 9, 2018.

²⁰ Aguirre Decl. ¶ 23, Ex. 13.

²¹ Aguirre Decl. ¶ 27, Ex. 16: 24 January 2019 NRC virtual webinar

²² Aguirre Decl. ¶ 28, Ex. 17: 28 March 2019 CEP Meeting.

1 **Fourth**, SCE was ultimately forced to stop operations altogether because from January to
2 August 2018, the bottoms of storage canisters were frequently getting caught on the shield ring
3 located inside the storage vaults. On 22 July 2018, there was an abnormal delay in a canister
4 downloading operation.²³ What should have taken 15 minutes to download a canister ended up
5 taking an hour and a half (90 minutes) because the nuclear waste canister was not properly
6 aligned for downloading.²⁴ On 3 August 2018, a nuclear waste canister became wedged during
7 downloading and sat unsupported on the shield ring inside the storage vault, as shown here:

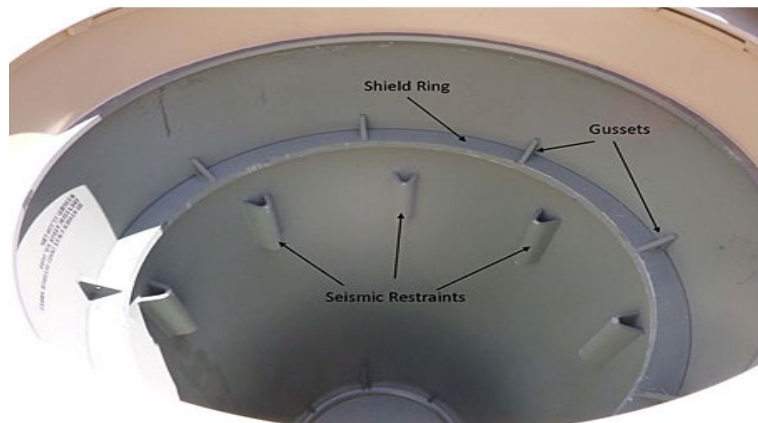
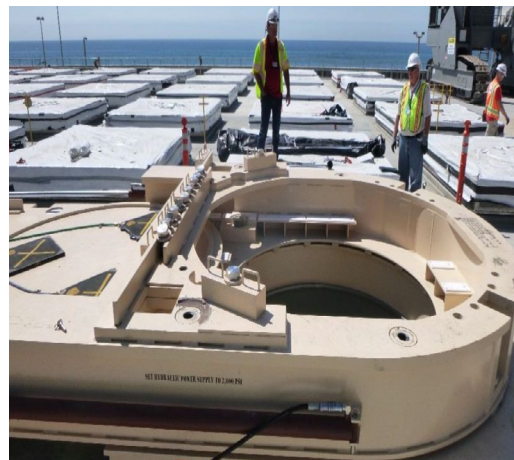


Figure 1 – Divider Shell

15 In total, SCE proposes to store 2,668 fuel assemblies in multi-purpose canisters (“MPC”)
16 in dry storage at San Onofre. As of August 2018, SCE had moved 40% or 1,067 fuel assemblies
17 from the spent fuel pools to dry storage. Under the Settlement Agreement, SCE promised to
18 move the 2,668 fuel assemblies to a safer location if commercially reasonable. The shield ring
19 and downloading operations can be seen in the pictures below:



23 Aguirre Decl. ¶ 8, Ex. 4: 8 November 2018 NRC’s webinar.

24 Aguirre Decl. ¶ 8, Ex. 4: 8 November 2018 NRC’s webinar.

1 **Fifth**, SCE continues to use a downloading system that is systemically scratching and
2 scraping canisters causing unrepaired defects that will make likely render it impossible for an off-
3 site storage facility to accept. In its original Final Safety Analysis Report (FSAR), SCE
4 represented no scratches on its storage canisters would ensure code compliance. This statement
5 was also mirrored in the Certificate of Compliance (CoC) issued to SCE for its storage system.

6 Since the original FSAR and CoC, the NRC observed multiple SCE canisters have
7 scratches and other defects that must be corrected to ensure code compliance. During the NRC's
8 review of SCE's storage system, NRC senior inspector Lee Brookhart identified a regulation
9 adopted by the NRC related to the "Elimination of Surface Defects." In so doing, the NRC
10 recognized the current scratching and gauging of storage canisters were not compliant with
11 required safety codes.²⁵ The NRC also noted under the code, if certain surface defects are not
12 corrected, it would make it unacceptable for another off-site storage facility to accept the canister
13 on delivery. Below are several pictures from SCE's Visual Assessment Report showing deep
14 scratches on several canisters:



22 **IV. LEGAL ARGUMENT**

23 **A. The Court Has Authority to Enforce Defendant SCE's Promise**

24 Under section 664.6 of the Code of Civil Procedure, a trial court may enforce a settlement
25 agreement made during pending litigation if the parties entered into the agreement either orally
26 before the court or in writing outside the presence of the court. *Elyaoudayan v. Hoffman* (2003)
27 104 Cal. App. 4th 1421, 1424. A party moving for entry of judgment pursuant to CCP § 664.6

28 ²⁵ Aguirre Decl. ¶ 17, Ex.10: NRC FOIA Response.

1 need not establish a breach of the settlement agreement. *Hines v. Luke* (2008) 167 Cal.App.4th
2 1174, 1184–85. Accordingly, the court is authorized to enter judgment pursuant to the settlement
3 regardless of whether the settlement’s obligations were performed or excused. *Ibid.* In ruling on a
4 motion under CCP § 664.6, the trial judge may receive oral testimony, or may determine the
5 motion upon declarations alone. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 994.

6 **B. Defendant SCE Breached the Settlement Agreement’s**
7 **Implied Covenant of Good Faith and Fair Dealing**

8 Settlement agreements are contracts and are governed by the same legal principles
9 applicable to contracts in general. *Nicholson v. Barab* (1991) 233 Cal.App.3d 1671, 1681. Every
10 contract imposes on each party “a duty of good faith and fair dealing in each performance and in
11 its enforcement.” (Rest. 2d, Contracts, § 205; *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d
12 809, 818; *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752, 768
13 (*Seaman's*); *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371,
14 1393.) The covenant of good faith and fair dealing have routinely and broadly found to be implied
15 in settlement agreements. *Landry v. Spitz* (2007) 102 Conn. App. 34; *Fitzgerald v. Cantor* (1998)
16 1998 Del. Ch. LEXIS 212; *Boardley v. Household Fin. Corp. III*, (2014) 39 F. Supp. 3d 689
17 (Maryland 2014).

18 Simply stated, the burden imposed is ““that neither party will do anything which will
19 injure the right of the other to receive the benefits of the agreement.”” (*Gruenberg v. Aetna Ins.*
20 *Co.* (1973) 9 Cal.3d 566, 573 [quoting *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d
21 654, 658].) The implied covenant of good faith and fair dealing imposes an affirmative obligation
22 upon each party “to do everything that the contract presupposes they will do to accomplish its
23 purpose.” *Schoolcraft v. Ross* (1978) 81 Cal.App.3d 75, 80. This rule was developed “in the
24 contract arena and is aimed at making effective the agreement’s promises.” *Foley v. Interactive*
25 *Data Corp.* (1988) 47 Cal.3d 654, 683 (*Foley*). The “precise nature and extent of the duty
26 imposed...will depend on the contractual purposes.” *Egan, supra*, 24 Cal.3d at p. 818.

27 The implied covenant “developed in contract law as ‘a kind of “safety valve” to which
28 judges may turn to fill gaps...”” *Foley, supra*, 47 Cal.3d at p. 684. The “precise nature and extent

1 of the duty imposed...will depend on the contractual purposes.” *Egan v. Mutual of Omaha Ins.*
2 *Co., supra*, 24 Cal.3d at p. 818. “The issue of whether the implied covenant of good faith and fair
3 dealing has been breached is ordinarily ‘a question of fact unless only one inference [can] be
4 drawn from the evidence.’” *Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 509
5 (internal citation omitted.)

6 *Foley* emphasized that an alleged breach of the implied covenant is a claim founded upon
7 contract and that a careful distinction must be maintained between “ex-delicto” and “ex-
8 contractu” obligations. “When a court enforces the implied covenant it is in essence acting to
9 protect ‘the interest in having promises performed [citation]...’” *Foley, supra*, 47 Cal.3d at pp.
10 689-690. This is the traditional function of a contract action. “The covenant of good faith is read
11 into contracts in order to protect the express covenants or promises of the contract[.]” *Id.* at p.
12 690. In short, a breach of a specific provision of the contract is not necessary for a claim for
13 breach of the implied covenant of good faith and fair dealing. *Thrifty Payless, Inc. v. The*
14 *Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244

15 Here, SCE’s frequent safety violations in storing the spent fuel, if not corrected or
16 stopped, will negatively affect SCE’s ability to use commercially reasonable effort to move the
17 spent nuclear fuel to a safer location because the integrity of the canisters have been
18 compromised. See *Merritt v. J. A. Stafford Co.* (1968) 68 Cal.2d 619, 626. Getting an inland
19 storage site to take San Onofre’s nuclear waste was already going to be difficult. However,
20 months of SCE’s safety violations will frustrate the common purpose of moving the waste to an
21 inland location. If SCE cannot even move the waste safely a few hundred yards, who can have
22 faith it can move it a few hundred miles?

23 SCE’s actions will impede its ability to move the waste. See *Sheppard v. Morgan*
24 *Keegan & Co.* (1990) 218 Cal.App.3d 61, 64 (implicit in the implied covenant of good faith and
25 fair dealing, was the understanding that an employer could not expect a new employee to sever
26 his former employment and move across the country only to be terminated before he
27 demonstrated his ability to satisfy the job requirements); *Pasadena Live, LLC v. City of Pasadena*
28 (2004) 114 Cal. App. 4th 1089, 1092–1094, (city breached implied covenant of good faith and

1 fair dealing by preventing plaintiff entertainment production company from even submitting
2 entertainment proposals for consideration).

3 As set forth above, SCE's actions in handling the waste during transfer to dry storage
4 demonstrate a lack of good faith. SCE delegates its work to contractors without proper oversight
5 and accountability. SCE failed to report the ongoing problems to its regulator as required by law.
6 SCE failed to provide a safety conscious work environment as required by the NRC and rules of
7 reasonableness and prudence. SCE moves towards fast decommissioning, using a different design
8 from that represented to the Coastal Commission to secure its permit; the new design had
9 problems. These actions all frustrate the ability to move the nuclear waste to an offsite, inland
10 location, and thus, violate the Settlement Agreement's implied covenant of good faith and fair
11 dealing.

12 **C. Defendant SCE's Actions Frustrate the Common Purpose**
13 **of the Settlement Agreement**

14 SCE has and is engaging in conscious and deliberate acts which, if continued unabated,
15 will unfairly frustrate the agreed common purposes of SCE's Settlement Agreement to move 3.8
16 million pounds of irradiated nuclear fuel from the San Onofre Nuclear Power Station ("San
17 Onofre" or "plant") and beach in San Diego to a safer, inland location. *Careau & Co. v. Security*
18 *Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.

19 **V. CONCLUSION**

20 Pursuant to the Settlement, SCE is required to use commercially reasonable effort to move
21 the nuclear waste to a safer location. SCE's pattern and practice of violating safety standards will
22 will make it impossible to eventually transfer the nuclear waste to a safer, inland location.
23 Ongoing mediation communications and attempts to resolve conflicts stemming from errors by
24 SCE while downloading spent nuclear fuel at San Onofre have proven futile. Accordingly,
25 Petitioners and the community depend on this court to enforce the Settlement Agreement.

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Therefore, Petitioners respectfully request this Court order: (1) SCE to pause downloading; and (2) allow discovery to determine whether SCE is making commercially reasonable efforts to relocate the waste to a safer location.

Respectfully submitted,
AGUIRRE & SEVERSON, LLP

Dated: October 7, 2019

/s/ Michael J. Aguirre
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