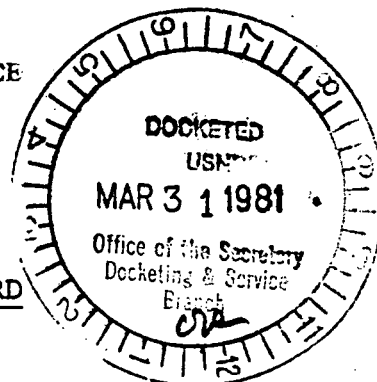


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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



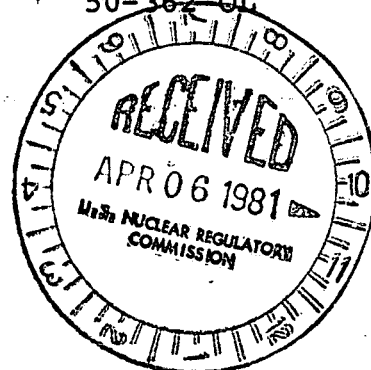
In the Matter of

SOUTHERN CALIFORNIA EDISON COMPANY,  
ET AL.

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

) Docket Nos. 50-361 OL  
) 50-362 OL  
)

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO COMPEL  
FURTHER ANSWERS TO INTERROGATORIES



Introduction

This memorandum is submitted pursuant to 10 C.F.R. § 2.730(b), in support of Intervenor F.O.E. et al Motion to Compel Further Answers to Interrogatories. On February 19, 1981, Intervenor served their SIXTH SET OF INTERROGATORIES ON SOUTHERN CALIFORNIA EDISON (hereafter "Applicants"). Applicants served their responses by mail to these interrogatories on March 10, 1981.

Applicants have failed to answer the vast majority of the questions posed by this set of interrogatories. Intervenor F.O.E. et al hereby request that the Atomic Safety and Licensing Board find that Applicants have failed to adequately answer Intervenor's Interrogatories, and further request that the Board order Applicants to provide full and complete answers to these interrogatories within such time as the Board shall deem just and appropriate.

The interrogatories for which Intervenor request an order compelling further answers are set forth below.

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## I

### APPLICANTS FAILURE TO ANSWER INTERROGATORIES ON GROUNDS THAT THE DISCOVERY SOUGHT IS OBJECTIONABLE IS NOT EXCUSED BECAUSE APPLICANTS FAILED TO APPLY FOR A PROTECTIVE ORDER PURSUANT TO 10 C.F.R. § 2.740(C)

Applicants failed to answer interrogatories numbers 1 through 26, 43, 73, 98, 99, 103, 104, 117, 122 and 123 on the stated grounds that these interrogatories were objectionable, for specific reasons to be set forth herein. However, Applicants have not applied for a protective order pursuant to 10 C.F.R. § 2.740(c) in response to these interrogatories. 10 C.F.R. Section 2.740 states: "Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section." Because the Applicants have not applied for such a protective order for any of these interrogatories, the Board should compel Applicants to give full and complete responses to these interrogatories.

## II

### APPLICANTS FAILED TO ANSWER INTERROGATORIES WHICH SOUGHT INFORMATION WHICH WAS REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE

10 C.F.R. § 2.740(b)(1) states: "It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

A. Interrogatories numbers 1-16, 21, 22, 122 and 123 refer to the functioning of the Applicant's Emergency Plan under conditions caused by "major" earthquakes. Specifically, the interrogatories



deal with the impact of a major earthquake upon:

Interrogatories Nos. 1 and 2:	Functioning capability of Applicant's Emergency Plan
Interrogatories Nos. 3 and 4:	Communications network employed in Emergency Plan
Interrogatories Nos. 5 and 6:	Transportation routes employed in Emergency Plan
Interrogatories Nos. 7 and 8:	Medical Facilities employed in Emergency Plan
Interrogatories Nos. 9 and 10:	Evacuation Time estimates
Interrogatories Nos. 11 and 12:	Onsite Emergency staff and resources availability
Interrogatories Nos. 13 and 14:	Emergency equipment availability
Interrogatories Nos. 15 and 16:	Overall Emergency response
Interrogatories Nos. 21 and 22:	Off-site jurisdictions emergency plans

Applicants objected to all of these interrogatories on the grounds that they sought "...information outside the emergency planning contentions in this proceeding because Applicants have no obligation under 10 C.F.R., Part 50, Appendix E, to inquire into the impact of a 'major earthquake' on the functioning of the Emergency Plan, and thus the requested information cannot lead to production of evidence that could be relevant to an issue in this proceeding." Each objection was "tailored" to the specific interrogatory, but generally each objection was based on this argument.

Intervenors contend that the impact of a major earthquake upon the emergency response plan is relevant and within the scope of this proceeding. Intervenors take this position for the following reasons:

1) In order to adequately protect the health and safety of millions of Californians and their visitors, the NRC has directed all California nuclear power plants to consider the impacts of major earthquakes upon their emergency response plan. This NRC Directive dated December , 1980, clearly demonstrates the relevance of Inter-



venor's interrogatories. The earthquake impact issue is considered to be a current issue by the NRC Staff. Intervenor's interrogatories requested information which may be used by Applicant's as evidence to satisfy the NRC Directive.

2) The information sought in Interrogatories 1-16, 21 and 22 may lead to the discovery of admissible evidence. The functioning capability of the emergency response may be drastically impaired by a major earthquake due to disruption of traffic routes, power outages, disruption of communications, overcrowding of medical facilities, unavailability of emergency equipment, and a myriad of other possible consequences. The Intervenor's and the NRC Staff agree that the emergency plans would be incomplete if they could not adequately function under conditions caused by a major earthquake.

Intervenor's interrogatories sought information which is reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Board is requested to overrule Applicants' objections to interrogatories 1-16, 21-22 and to compel full and complete answers.

3) Interrogatories nos. 17 and 18 deal with the possibility of a "simultaneous release" caused by a major earthquake. Applicants objected on the grounds that such information was outside the scope of the proceeding and that it could not lead to the discovery of admissible evidence.

Intervenor's contend that these interrogatories seek information which may be reasonably calculated to lead to the discovery of admissible evidence. For the reasons already stated, the impact of a major earthquake upon the emergency response is relevant. In the event of a major earthquake causing damage to the facility site,



it is possible that a radioactive release could occur simultaneously at the three reactors at SONGS. The emergency plan should give consideration to this possibility. Such a scenario is "reasonably foreseeable" considering the seismic history of the area. Failure to consider the impact of a simultaneous release upon the emergency response plan does not adequately protect the public health and safety, which is the primary purpose for the emergency plans. Therefore, Intervenor's request the Board to overrule Applicants' objections to Interrogatory nos. 17 and 18, and to compel full and complete answers.

B. Interrogatory numbers 23-26 concern the sizes of the plume and ingestion exposure pathway Emergency Planning Zones (EPZ). Applicants objected to these interrogatories on the grounds that they requested information beyond the bounds of the emergency planning contentions at issue in this proceeding. Furthermore, Applicants objected to these interrogatories because "...Applicants have no obligation under 10 C.F.R., Part 50, Appendix E, to assess the sufficiency of the plume (or ingestion) exposure pathway EPZ established by the Federal Requirements... Applicants consider themselves bound by the ten-mile plume exposure (or 50 mile ingestion exposure) pathway EPZ radius established by the Federal Requirements."

Intervenor's contend that the size of the EPZ's are relevant and within the scope of if not one of the major issues in this proceeding. 10 C.F.R. § 50.47(c)(2) states: "Generally, the plume exposure pathway for nuclear power plants shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size



and configuration of the EPZ's surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." (emphasis added). Clearly, the Federal Requirements call for the size of the EPZ's to be determined by site specific studies. Applicants response indicates that they merely adopted the 10 and 50 mile language of the Federal Requirements and that they did not conduct any such site-specific studies.

It must be pointed out that the contention in question was accepted by this board for purposes of discovery, and was formulated before the present regulations regarding the size of the EPZ. Since the language of 10 C.F.R. § 50.47(c)(2) clearly indicates that the size of the Emergency Planning Zone shall be determined on a case by case basis, and because no such determination has yet been made by this board, it is clearly an issue in these proceedings.

The size of the EPZ's is critical to the coordination and integration of Applicant's emergency plan with the emergency plans of the off-site jurisdictions. At this time, the only site-specific study that has been performed for San Onofre was conducted for the State Office of Emergency Services by SAI Associates of La Jolla. It recommended EPZ's of 20 mile radius for the plume exposure pathway and 60 mile radius for the ingestion exposure pathway. Until the size of the EPZ's are coordinated, the overall emergency response cannot be coordinated. Therefore, the size of the EPZ is a critical issue. Applicant's failure to conduct a site-specific study in order to determine the size of the EPZ's employed in their Emergency Plan



would be a violation of the Federal Requirements and would jeopardize the public health and safety.

Intervenors interrogatories 23-26 sought information which is calculated to lead to the discovery of evidence relevant to this EPZ issue. Therefore, the Board is requested to overrule Applicant's objections to interrogatories 23-26 and to compel full and complete answers.

C. Interrogatories numbers 103 and 104 refer to the coordination and integration of the Public Information and Education program of the Applicant's emergency plan with those of the off-site emergency plans. Applicants objected to these interrogatories on the grounds that they requested information beyond the bounds of the emergency planning contentions currently at issue in this proceeding for discovery purposes. Applicants objected further because "... Applicants have no obligation under 10 C.F.R., Part 50, Appendix E, 'to test the coordination and integration' of its Public Information and Education Program with any similar programs initiated by the off-site assistance agencies."

10 C.F.R. § 50.47(b)(7) requires that "...procedures for coordinated dissemination of information to the public are established." The primary element of a coordinated and integrated emergency response plan is a coordinated and integrated Public information and education program. Without a coordinated plan, the public health and safety will be in greater jeopardy. To minimize confusion and panic during the emergency response, the people within each jurisdiction must be well educated as to what their particular actions should be.

Applicants contend that they are not required to "test" the



coordination and integration of the Public Information and Educations plans. Intervenor's believe there may be a difference between plans which are coordinated on paper and plans which are coordinated when implimented. Intervenor's contention is that the plans will not be able to be coordinated and integrated upon implementation. Interrogatories numbers 103 and 104 seek information which is reasonably calculated to lead to the discovery of evidence which could be highly relevant to Intervenor's contention. The Board is requested to overrule Applicants' objections to interrogatories numbers 103 and 104 and compel full and complete answers.

### III

APPLICANTS MUST BE COMPELLED TO PROVIDE  
MORE COMPLETE RESPONSES TO INTERROGATORIES  
WHICH THEY HAVE ANSWERED IN  
AN EVASIVE OR INCOMPLETE MANNER

10 C.F.R. § 2.740(f) states "...an evasive or incomplete answer shall be treated as a failure to answer or respond."

Intervenors contend that the following responses by Applicants are evasive and/or incomplete:

1) Interrogatory No. 27, 28, 29, 30 - These questions ask the Applicants for any information concerning studies conducted by the off-site agencies to determine the size of the EPZ's. Applicants responded "Applicants are without sufficient information or belief to answer this interrogatory." Again, Intervenor's contend that for a coordinated emergency response plan capable of implementation to exist, there must be coordinated planning. Applicants should have knowledge of any studies performed by the local jurisdictions, as they have knowledge of the study conducted for the State Office of



Emergency Services. Therefore, Intervenor request that Applicants be ordered to provide more complete responses to Interrogatories 27(a),(b),(d),(e),(f), and (g), 28, 29(a),(b),(d),(e),(f),(g), and 30.

2. Interrogatories nos. 64-69, 77, 78, 81, and 82 ask Applicants whether any studies or investigations have been performed to determine the following:

- Interrogatories 64 and 65: Availability of Amateur radio services as an alternate emergency communications system.
- Interrogatories 66 and 67: Capability and Resources for radiological monitoring within Plume EPZ
- Interrogatories 68 and 69: Capability and Resources for radiological monitoring within ingestion EPZ.
- Interrogatories 77 and 78: Off-site jurisdiction studies on evacuation and earthquake impact.
- Interrogatories 81 and 82: Airlift evacuation

Applicants responded that they are without sufficient information to respond affirmatively or negatively. Such an evasive answer will only tend to delay discovery in this proceeding. If Applicants have no such studies or investigations on which they may rely as evidence at the hearings, they should respond with an unequivocal, complete "No", Applicants' response indicates that there may be such studies, which Applicants may later rely on. Applicants should be ordered to provide complete answers to interrogatories nos. 64-69, 77, 78 for the purpose of bringing an end to the discovery in this proceeding.

3) Interrogatories nos. 85, 86, and 87 concern the distribution of emergency equipment to emergency workers. Applicants provided responses as to the distribution of emergency equipment to on-site emergency workers. However, Applicants failed to provide complete responses with respect to distribution of emergency equipment to



off-site emergency workers. The necessity of a coordinated plan for distribution of emergency equipment is expressed in Applicant's response to Interrogatory no. 85: "Applicants are informed and believe on that basis state that under the local off-site emergency plans, advance arrangements are to be made by the involved jurisdictions, in cooperation with Applicants, to provide emergency workers utilized in each respective jurisdiction with radiation monitoring equipment and supplies under appropriate conditions." (emphasis added) Therefore, Applicants, by their own response, should have a working knowledge of the off-site plans for distribution of emergency equipment. Intervenors request the Board to order full and complete answers to Interrogatories 85-87.

4) Interrogatories 109-111 concern emergency plans made for the handling of radioactively contaminated animals. Once again, Applicants response is "Applicants are without sufficient information to affirmatively or negatively respond to this interrogatory." Intervenors seek complete, unevasive responses which clearly state Applicants position or knowledge in regards to the issue of radioactively contaminated animals. If there are no plans, they should so state. Therefore, the Board is requested to order Applicants to provide full and complete answers to Interrogatories 109-111.

#### IV

APPLICANTS RESPONSES TO INTERROGATORIES NO. 73 AND 93 ARE  
EVASIVE AND INCOMPLETE AND THE APPLICANTS FAILURE TO  
FULLY RESPOND TO INTERROGATORIES 73 AND 93 CANNOT BE JUSTIFIED  
ON THE BASIS THAT THE RESPONSE  
WOULD BE UNDULY BURDENSOME AND OPPRESSIVE

Applicants object to answering interrogatories 72 and 73 -  
(STUDIES re: Relation between contamination and exposure levels



and meteorological conditions) and 92 and 93 - (STUDIES re: Exposure time limits for emergency workers).

Applicants objected to these interrogatories on the grounds that requiring a comprehensive listing of all such studies would be "burdensome and oppressive" and that this information is just as available to Intervenor as it is to Applicants.

The purpose of discovery is to "put the cards on the table." Applicants are prolonging the discovery process by refusing to reveal and state the specific studies and investigations upon which Applicants will rely at the hearings. Intervenor request the Board to order the Applicants to respond to Interrogatories 73 and 93 in a manner that will identify the studies or investigations which Applicants reasonably expect to present as evidence, and on which they will rely. If Applicants have not performed any studies or investigations they should so state. If they have performed such studies Intervenor are entitled to the information requested.

V

THE INFORMATION REQUESTED BY INTERROGATORIES  
NUMBERS 16, 19 AND 20 DO NOT FALL UNDER  
ATTORNEY-CLIENT PRIVILEGE, OR  
ATTORNEY WORK PRODUCT

Interrogatories nos. 15, 16, 19 and 20 request information regarding any letters, telegrams, interoffice memorandum, data, photographs, videotape, diagrams, maps or charts prepared by representatives, agents or employees in regards to major earthquake impact (Nos. 15 and 16) and simultaneous release.

Applicants object to these interrogatories on the ground that such correspondence is subject to attorneys work product privilege



and attorney-client privilege.

10 C.F.R. (b) (1) specifically provides for discovery of the "existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

The only matter protected by this section is "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding."

The interrogatories in question ask for the existence, description, nature, location and custody of certain documents. The questions do not ask for mental impressions, conclusions, opinions or legal theories.

There is no showing that the information requested is confidential or intended to stay confidential as required to qualify as attorney-client privilege, nor is the information requested of a legal nature. It can only be concluded that this objection is made in bad faith for the sole purpose of concealing relevant information. If attorney work product and attorney-client privilege is allowed to be invoked, Applicants could avoid all discovery by stating that the information requested is in the custody of their attorney or that the information requested was at one time communicated to the Applicants attorney. This would lead to no discovery at all.

The attorney-client privilege and attorney work product privilege should be narrowly construed and not invoked for the sole purposes of avoiding reasonable discovery.



VI

APPLICANTS OBJECTION BASED ON INTERVENOR'S  
FAILURE TO COMPLY WITH 10 C.F.R.  
§ 2.741 IS NON-RESPONSIVE TO THE CALL OF THE QUESTION

Throughout this set of Interrogatories, Intervenor's made informal requests for any documents which may become evidence at the hearing. Intervenor's requested Applicants to identify certain reports and "whether you will make such reports available to intervenors to inspect and copy without the necessity of a formal motion to produce."

Applicants objected to this question in interrogatories 2, 4, 6, 8, 10, 12, 14, 18, 22, 24, 26, 28, 30, 35, 45, 71, 73, 78, 93, 99, and 100. This repeated objection was evasive and unnecessary. The interrogatory merely asked Applicants to identify a report and if they would consent to a waiver of the formal rules for production of documents.

Applicants failed to identify any reports in their responses to these interrogatories. Furthermore, Applicant's responded that "...F.O.E., et al. must follow the procedures set forth in 10 C.F.R. § 2.741 with respect to production and inspection of all documents." Applicants responses are evasive in that they ask Intervenor's to formally request documents which Applicants have refused to identify. To formally request documents, intervenor's must identify such documents with particularity and specificity. Applicants responses to Intervenor's interrogatories failed to provide the information necessary to support the formal motion to produce documents, which Applicants themselves insist upon.

Applicants objections based on Intervenor's failure to follow



10 C.F.R. § 2.741 are unnecessary and are another example of Applicant's bad faith and refusal to respond to Intervenor's sixth set of Interrogatories.

#### Conclusion

It is interesting to note that while Applicants are doing everything possible to rush the proceedings to hearing they have objected to 60 interrogatories of the Intervenor's thereby necessitating this lengthy motion to compel. Intervenor's have cooperated with Applicants to the best of their ability in expediting these proceedings.

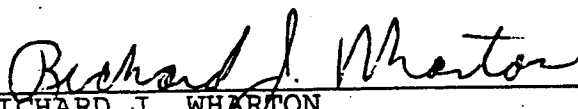
This cooperation has been met by refusal to answer interrogatories based on questionable and in some cases bad faith objections.

Intervenor's re-emphasize the broad discovery policy as set forth in 10 C.F.R. § 2.740(b)(1) "It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

We thereby request that the Board order Applicants to further answer the interrogatories as set forth herein.

DATED: March 25, 1981

Respectfully submitted,

  
RICHARD J. WHARTON  
Attorney for Intervenor's,  
F.O.E. ET AL.



CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March 1981, a copy of the foregoing MOTION TO COMPEL ANSWERS TO INTERVENOR F.O.E. ET AL.'S FIFTH SET OF INTERROGATORIES AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, MOTION TO COMPEL FURTHER ANSWERS TO INTERROGATORIES, ORDER COMPELLING ANSWERS TO INTERVENOR F.O.E.'S SIXTH SET OF INTERROGATORIES TO GUARD, and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL FURTHER ANSWERS TO INTERROGATORIES, Attorney, RICHARD J. WHARTON, was served upon each of the following by depositing in the United States mail, first-class, postage prepaid, addressed as follows:

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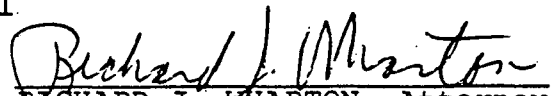
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