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 Atomic Safety and Licensing Board Panel

SUBJECT: Memorandum in support of DOI 810701 motion to quash
 subpoenas to WB Joyner & DM Boore. Testimony would be unduly
 repetitious of other witnesses.

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7/15/81

13 UNITED STATES OF AMERICA

14 NUCLEAR REGULATORY COMMISSION

15 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

16 In the Matter of)

17 SOUTHERN CALIFORNIA)
18 EDISON COMPANY, ET AL.)

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

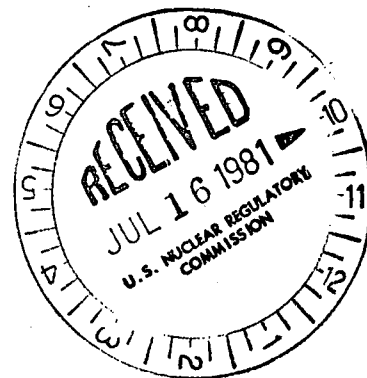
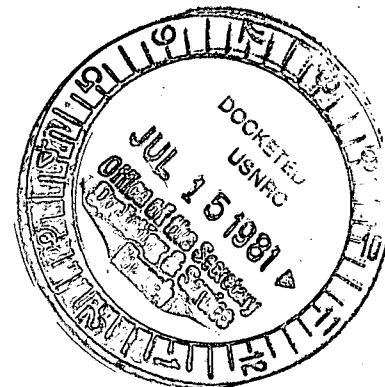
) Docket Nos. 50-361 OL
) 50-362 OL

) MEMORANDUM IN SUPPORT OF
) UNITED STATES DEPARTMENT OF
) INTERIOR MOTION TO QUASH
) SUBPOENAS TO DR. WILLIAM B.
) JOYNER AND DR. DAVID M. BOORE

21 I.

22 INTRODUCTION

23 On July 1, 1981, NRC Staff Counsel, Lawrence Chandler
24 personally served on the Atomic Safety Licensing Board ("Board")
25 and the parties to the above captioned proceeding two documents
26



1 from the United States Department of the Interior (USDOI) titled
2 "Motion to Quash Subpoenas" and "Memorandum in Support of Motion
3 to Quash Subpoenas". In these papers, USDOI Staff Attorney,
4 Mr. Robert H. Moll has moved the Board to quash the subpoenas
5 issued to Dr. William B. Joyner and Dr. David M. Boore, employees
6 of the United States Geological Survey (USGS), at the request
7 of Intervenor, Carstens et al.

8 Intervenor have indicated that they expect to call
9 Dr. Boore as a witness for purposes of presenting testimony
10 regarding the following matters:

- 11 1. Directivity observed in the Livermore earthquake;
- 12 2. Directivity for a rupture with variations in
13 rupture velocity;

14 3. Explanation of U.S.G.S. Circular 81-365 results
15 (Intervenor's, Carstens et al., Summary of Expected Testimony
16 of Subpoenaed Witnesses at p. 2 (July 1, 1981)).

17 In addition Intervenor have indicated they expect Dr. Joyner
18 to also present testimony on the U.S.G.S. Circular 81-365
19 results. (Id)

20 Applicants contend that the evidence which Intervenor
21 expect to introduce through these two witnesses would be unduly
22 repetitive and cause further delay in these licensing proceedings.
23 Applicants, therefore, support the USDOI Motion to Quash the
24 Subpoenas issued to Drs. Boore and Joyner and the basis for
25 the motion stated therein.

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1 II.

2 ONLY RELEVANT, MATERIAL, AND
3 RELIABLE EVIDENCE WHICH IS NOT
4 UNDULY REPETITIOUS CAN BE ADMITTED
5 IN A LICENSING PROCEEDING

6 10 CFR § 2.743(c) provides that:

7 "Only relevant, material, and reliable
8 evidence which is not unduly repetitious
9 will be admitted. . . ."

10 Furthermore, as the DOI Memorandum in Support of Motion to
11 Quash Subpoenas points out, a subpoena may be quashed if it
12 is unreasonable. 10 CFR § 2.720(f).

13 Applicants support the DOI's assertion that the
14 testimony of Drs. Boore and Joyner would be duplicative of
15 testimony of other witnesses who have already testified or are
16 expected to testify. For example, Applicants have presented or
17 will be presenting Dr. Robert McNeill, Dr. Stewart Smith and
18 Dr. Gerald A. Frazier as witnesses on the same matters that
19 Intervenor expect Drs. Boore and Joyner to testify, i.e.
20 USGS Circular Report 81-365 and the phenomenon of directivity
21 (See Testimony of Dr. Robert L. McNeill at p.25 (Contention #4);
22 Testimony of Dr. Stewart W. Smith at p.4-9 (Contention #1); and
23 Testimony of Dr. Gerald A. Frazier (Contention #1). Intervenor
24 have been given and will be given full opportunity to cross
25 exam these witnesses. Furthermore, the NRC Staff has indicated
26 that it will be presenting Dr. James Devine and Dr. Leon Reiter
as witnesses who are prepared to testify on the exact matters
which Drs. Boore and Joyner could be expected to testify.

1 Intervenor will have ample opportunity to question
2 these witnesses regarding matters which they deem important
3 to their case. In addition, the DOI has stated that Dr. Devine
4 is familiar with the work of Drs. Boore and Joyner and can
5 testify fully in relating their work and its significance to
6 SONGS 2 & 3.

7 In short, the testimony of Drs. Boore and Joyner
8 arguably will only serve to further delay these licensing
9 proceedings. Applicants contend that the testimony of Drs.
10 Boore and Joyner will be unduly repetitious of other witnesses
11 who have or will appear in this proceeding. Such evidence
12 is not admissible under 10 CFR § 2.743(c) and is not likely
13 to assist the Board in reaching its ultimate decision.

14

15

CONCLUSION

16 Applicants fully support the motion of the USDOJ
17 to quash the subpoenas issued to Dr. Boore and Dr. Joyner.
18 It would be unreasonable to require the attendance of these
19 two witnesses at these proceedings and the testimony they
20 are expected to present would be unduly repetitious of other
21 witnesses to this proceedings. For these reasons, Applicants

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1 respectfully request the Board to grant the USDOJ Motion
2 to Quash these Subpoenas.

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4 Dated: July , 1981

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By /s/
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