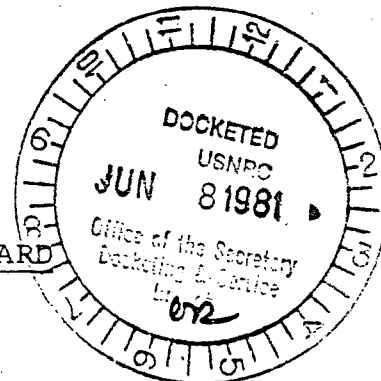


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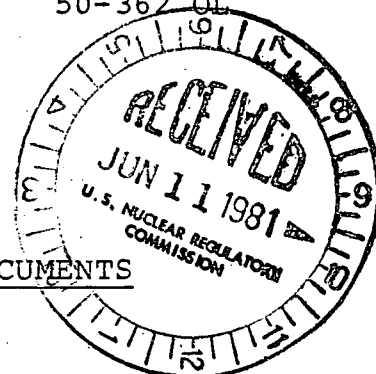
RELATED CORRESPONDENCE

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



INTERVENORS', FOE, ET AL. POSITION  
REGARDING STIPULATION TO ADMISSION OF CERTAIN DOCUMENTS  
AS PROPOSED BY APPLICANTS AND NRC STAFF

Pursuant to the Order of the Atomic Safety and Licensing Board dated May 28, 1981, Intervenor, FOE, et al., hereby submit its position with regard to the admissibility of certain documents which Applicants and NRC Staff are requesting be admitted into evidence by stipulation of all parties.

APPLICANTS' PROPOSAL

Attached as Exhibit "A" is a "Stipulation and Order" submitted to Intervenor FOE, et al. by Applicants. Applicants have requested that Intervenor FOE, et al. stipulate to the admission into evidence of the documents listed therein. Intervenor FOE, et al. will not enter into such stipulations and submit that before such documents can be entered into evidence, basic fundamental rules of evidence must be complied with.

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As stated in the Federal Rules of Evidence, Rule 801(c), hearsay "is a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(a) defines "statement" as "(1) an oral or written statement." (emphasis added)

The documents proposed to be entered into evidence by stipulation consist of written statements prepared by Applicants' and NRC Staff's declarants, and are being offered into evidence to prove the truth of the matter asserted in said documents.

The documents, in fact, contain the written opinions, analysis and conclusions of various unnamed expert witnesses of the Applicants and NRC Staff. As such, these documents are clearly hearsay in that they are being offered to prove the entire case of the Applicants and the NRC Staff and they are not statements made by the declarants at the hearing, but rather are statements made by unknown declarants, transcribed and written by unknown writers under unknown circumstances.

Further, those documents, sponsored by Southern California Edison, to wit: the FSAR, the Environmental Report--Operating License Stage and Application of Southern California Edison, have never been served on the Intervenor FOE, et al for review. While these documents may be found in the Public Document Room at the Mission Viejo Branch of the Orange County Library, it must be pointed out that such documents are sixty-five miles from San Diego, California and copying costs are 15¢ per page.

These documents are away from Intervenor's close scrutiny.

Under any standard of evidence, it would be erroneous to admit volumes of documentary evidence, the purpose of which is to prove up the case of the proponent of that evidence, without the declarant testifying regarding that evidence. Intervenor FOE, et al. submit that in order for the Applicants to have documentary evidence admitted into the record of the case, they must produce, for testimony, the declarant of that evidence so that that person may be examined regarding at least the following:

1. Authenticity of the document (Federal Rules of Evidence, Rule 901)
2. Qualification of declarant
3. Conditions and manner in which the document was proposed.
4. Bias or prejudice of declarant
5. Basis for opinions
6. Completeness of document
7. General cross-examination regarding details of statements of declarant.

The documents proposed to be entered by stipulation are not those class of documents that are self-authenticating. (See, Federal Rules of Evidence, Rule 902). The documents in question should be authenticated by and be presented by way of hearing testimony of the declarants. Intervenor FOE, et al. will not agree to less than what is required by fundamental rules of

evidentiary proceedings.

#### NRC STAFF PROPOSAL

The NRC Staff has proposed that Intervenor FOE, et al. stipulate to the admission into evidence of those documents listed in Exhibit "A" subject to a Motion to Strike. It is clear from 10 C.F.R. §2.732, which states "the applicant . . . has the burden of proof" and from 10 C.F.R., Part, Appendix A, V, (7), (c), (1), which states "the applicant, who has the burden of proof. . ." that Applicants have the burden of presenting the evidence in this proceeding.


The NRC Staff proposal would shift the burden of presenting the evidence from the Applicants to the Intervenor, FOE, et al. Instead of the Applicant having the burden of showing the admissibility of the offered evidence, the NRC Staff proposal would shift the burden to the Intervenor to show that the evidence, which has already been admitted, should be stricken from the record. Such a shift of the burden of presenting evidence is not something to which an attorney in an adversary proceeding can agree, absent a showing of extraordinary circumstances. Intervenor, FOE, et al. see no extraordinary circumstances here. In fact, the circumstances of the case would indicate that Applicants and Staff are not entitled to special consideration in helping them present their case. Between them, there are ten attorneys and an abundance of paid, on call, expert witnesses. The Applicants' case and the NRC Staff's case should be presented by direct testimony. All

aspects of their case should be subject to cross-examination by both Intervenors and the Board itself.

The issues to be decided in this matter are complex and the subject matter is such that it does not lend itself to hard and fast statements. The sciences of geology and seismology are evolving sciences. They are sciences in which conflicting theories combat each other in the search for truth. Intervenors expect the hearings to reflect the spirit of the sciences to which we look for the answer. The sciences of geology and seismology do not accept treatises, papers or theories without close scrutiny and interrogation of the authors. Neither should this Board. We should follow the wisdom of the fundamental rules of evidence which require the same scrutiny.

Intervenors, FOE, et al., therefore, request that this Board not admit into evidence documents which are not authenticated by their authors and request that this Board require that the declarants of the statements in those documents present themselves, testify as to the contents of their documents and be subject to cross-examination by the Intervenors and by the Board.

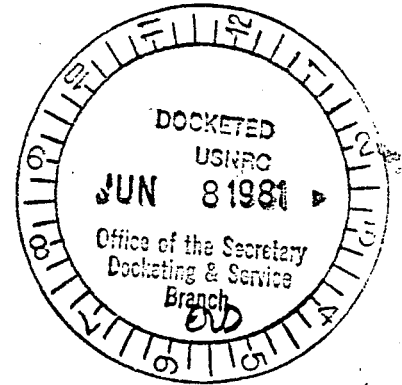
DATED: June 5, 1981

  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	)	Docket Nos. 50-361 OL
SOUTHERN CALIFORNIA EDISON	)	50-362 OL
COMPANY, et. al. (San Onofre	)	
Nuclear Generating Station,	)	STIPULATION AND ORDER
Units 2 and 3)	)	ADMITTING SPECIFIED DOCUMENTS
	)	INTO EVIDENCE FOR PURPOSES OF
	)	ATOMIC SAFETY AND LICENSING
	)	BOARD HEARING

IT IS HEREBY STIPULATED by the parties hereto, through their respective undersigned attorneys, that the following documents shall be admitted into evidence by the sponsoring party listed below, without objection from any party to the above referenced matter, for purposes of the Atomic Safety and Licensing Board hearing on Southern California Edison, et. al.'s application for an operating license for San Onofre Nuclear Generating Station, Units 2 and 3:

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1 DOCUMENT

SPONSORING PARTY

- 2 1) Final Safety Analysis Southern California Edison et al.  
3 Report, San Onofre Nuclear  
4 Generating Station Units  
2 & 3 (Volumes 1-24,  
inclusive)
- 5 2) Environmental Report - Southern California Edison et al.  
6 Operating License Stage  
7 San Onofre Nuclear Gen-  
8 erating Station Units  
2 & 3 (Volumes I-III,  
inclusive)
- 9 3) Application of Southern Southern California Edison et al.  
10 California Edison Company,  
11 San Diego Gas and Electric  
12 Company, City of Anaheim,  
13 and City of Riverside, for a  
14 Class 103 license to  
15 acquire, posses, and use  
16 two utilization facilities  
17 and related licenses in  
18 connection with Units Nos.  
2 and 3 of the San Onofre  
Nuclear Generating Station  
of Southern California  
Edison Company, San Diego  
Gas and Electric Company,  
City of Anaheim and City  
of Riverside.
- 19 4) Safety Evaluation Report Nuclear Regulatory Commission  
20 related to the Operation  
21 of San Onofre Nuclear  
22 Generating Station Units  
23 2 and 3, Docket Nos.  
24 50-361 and 50-362, Southern  
California Edison Company;  
San Diego Gas and Electric  
Company, City of Anaheim,  
California, City of River-  
side, California (including  
supplements)

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1 5) Final Environmental  
2 Statement related to  
3 operation of San Onofre  
4 Nuclear Generating Station,  
5 Units 2 and 3, Southern  
6 California Edison Company,  
7 San Diego Gas & Electric  
8 Company, City of Anaheim,  
9 City of Riverside,  
10 California (including  
11 supplements)

Nuclear Regulatory Commission

12 DATED: \_\_\_\_\_

DAVID R. PIGOTT  
SAMUEL B. CASEY  
JOHN A. MENDEZ  
CHICKERING & GREGORY

CHARLES R. KOCHER  
JAMES A. BEOLETT  
SOUTHERN CALIFORNIA EDISON  
COMPANY

Attorneys for Applicants  
SOUTHERN CALIFORNIA EDISON and  
SAN DIEGO GAS & ELECTRIC COMPANY

13 By \_\_\_\_\_  
14 David R. Pigott  
15 One of Counsel for Applicants

16 DATED: \_\_\_\_\_

17 By \_\_\_\_\_  
18 Richard J. Wharton  
19 Attorney for FRIENDS OF THE  
20 EARTH, ET AL.

21 DATED: \_\_\_\_\_

Phyllis M. Gallagher  
Attorneys for GROUPS UNITED  
AGAINST RADIATION DANGERS

22 DATED: \_\_\_\_\_

23 Lawrence J. Chandler  
24 Counsel for NUCLEAR REGULATORY  
COMMISSION STAFF

25 //

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ORDER

ON GOOD CAUSE BEING SHOWN THEREFOR:

The foregoing stipulation is hereby approved and  
ordered.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Chairman  
ATOMIC SAFETY AND LICENSING BOARD