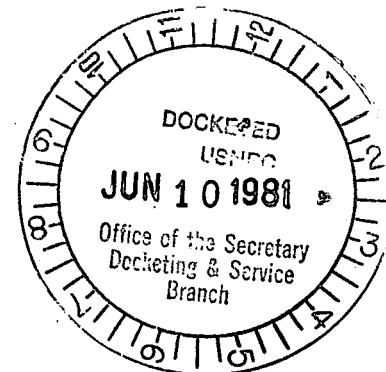


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12 UNITED STATES OF AMERICA
 13
 14 NUCLEAR REGULATORY COMMISSION
 15
 16 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

16 In the Matter of)	Docket Nos. 50-361 OL
)	50-362 OL
17 SOUTHERN CALIFORNIA)	
18 EDISON COMPANY, <u>ET AL.</u>)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
19 (San Onofre Nuclear Generating)	ISSUANCE OF A SUBPOENA TO
20 Station, Units 2 and 3))	TESTIFY TO DR. ROBERT L.
)	<u>McNEILL.</u>

I.

22 THE PRESIDING OFFICER IS AUTHORIZED
 23 TO ISSUE A SUBPOENA TO TESTIFY TO
 24 DR. ROBERT L. McNEILL UPON A SHOWING
OF GENERAL RELEVANCY

25 Section 161(c) of the Atomic Energy Act of 1954, as
 26 amended, in pertinent part authorizes the Nuclear Regulatory

1 Commission "by subpoena to require any person to appear and
2 testify . . . at any designated place." 42 U.S.C. § 2201(c).
3 The only limitation on this authority, contained in the
4 Commission's regulations, is the discretion of the presiding
5 officer to "require a showing of general relevance of the
6 testimony or evidence sought." 10 C.F.R. § 2.720(a). The
7 presiding officer may "withhold the subpoena if such a
8 showing is not made, but he shall not attempt to determine
9 the admissibility of the evidence." 10 C.F.R. § 2.720(a) In
10 fact, "the Commission's Rules of Practice preclude a
11 [presiding officer] from declining to issue a subpoena on any
12 basis other than that of a lack of 'general relevance' of the
13 testimony sought." Public Service Co. of New Hampshire
14 (Seabrook), ALAB-422, 6 NRC 33, 93 (1977). The general
15 relevancy standard is satisfied unless it is "palpable that
16 the evidence sought can have no possible bearing upon the
17 issues." Commonwealth Edison Company (Zion), ALAB-196, 7 AEC
18 457, 462 (1974).

19 II.

20 DR. McNEILL's TESTIMONY IS GENERALLY
21 RELEVANT TO ISSUES IN CONTENTION.

22 In its Revised Prehearing Conference Order, dated
23 May 28, 1981, the Board admitted for hearing the following
24 contention:

25 "4. Whether based on the geologic and
26 seismic characteristics of the OZD,
including its length, assignment of Ms7 as
the maximum magnitude earthquake for the

1 OZD renders the seismic design basis for
2 SONGS 2 & 3 inadequate to protect the
public health and safety."

3 (Order, p. 5.)

4 Dr. McNeill's direct written testimony, served
5 herein today under separate cover, is generally relevant to
6 this contention because it demonstrates that Dr. McNeill is
7 well qualified, and that the design basis earthquake spectrum
8 as used for the design of SONGS 2 & 3 is a conservative
9 representation of the motion of structures at the site due to
10 a very large, nearby earthquake.

11 III.

12 ALL OTHER PROCEDURAL PREREQUISITES
13 FOR ISSUANCE OF A SUBPOENA ARE
SATISFIED.

14 Notice procedures are generally satisfied by
15 service of the subpoena application upon the Board and the
16 witness to be subpoenaed ten (10) days in advance of the
17 hearing. See Commonwealth Edison Co., supra, 7 AEC, at 472;
18 with notice of service of the subpoena itself being given
19 within five (5) days of the time for the witnesses'
20 appearance. See Public Service Company of Oklahoma (Black
21 Fox), LBP-77-18, 5 NRC 671, 674 (1977). The only other
22 requirements for valid issuance of a Commission subpoena are
23 tendering the fees specified in 28 U.S.C. § 1821 upon proper
24 personal service of the subpoena, 10 C.F.R. §§ 2.720(c) and
25 (d), and satisfying the formal requirements for subpoenas set
26 forth in 10 C.F.R. § 2.720(b).

1 Applicants have attached a proposed subpoena which
2 satisfies the formal requirements. Notice requirements are
3 timely met by service of the application on Dr. McNeill and
4 notice of and issuance of the subpoena to Dr. McNeill on or
5 before June 15, 1981. Upon issuance of the subpoena,
6 Applicants will take all necessary steps to have it duly
7 served upon Dr. McNeill, along with the required statutory
8 fees, and thereafter returned with proof or acknowledgment of
9 service to the Secretary of the Commission. 10 C.F.R.
10 § 2.270(e).


11 CONCLUSION

12 Based on the foregoing points and authorities,
13 Applicants respectfully request issuance of the attached
14 subpoena to Dr. Robert L. McNeill and return to Applicants
15 for purposes of personally serving the subpoena on Dr.
16 McNeill on or before June 15, 1981.

17 Dated: June 8, 1981

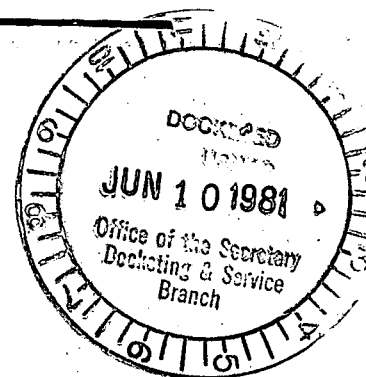
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United States of America

NUCLEAR REGULATORY COMMISSION



In the matter of:

SOUTHERN CALIFORNIA EDISON
COMPANY, ET AL.

DOCKET NO. 50-361 OL
50-362 OL

TO

DR. ROBERT L. MCNEILL
3936 Garcia, N.E.
Albuquerque, New Mexico 87111

SUBPOENA TO TESTIFY

YOU ARE HEREBY COMMANDED to appear before the Atomic Safety
and Licensing Board for the above-captioned proceeding
in the city of San Diego, California, United States District
Court, Courtroom No. 8, 940 Front Street, commencing
on the 22 day of June 1981 at 9:00 o'clock A.M.
to testify on behalf of Applicants Southern California Edison
Company and San Diego Gas & Electric Company
in the above entitled action and bring with you the document(s) or object(s) described
in the attached schedule.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY _____

DAVID R. PIGOTT
Of ORRICK, HERRINGTON & SUTCLIFFE
A Professional Corporation

ATTORNEY FOR APPLICANTS
SOUTHERN CALIFORNIA EDISON
COMPANY and SAN DIEGO GAS
& ELECTRIC COMPANY

TELEPHONE (415) 392-1122

10 C.F.R. 2.720 (f)

On motion made promptly, and in any event
at or before the time specified in the subpoena
for compliance by the person to whom the sub-
poena is directed, and on notice to the party at
whose instance the subpoena was issued, the

presiding officer or, if he is unavailable, the
Commission may (1) quash or modify the sub-
poena if it is unreasonable or requires evidence
not relevant to any matter in issue, or (2) con-
dition denial of the motion on just and reasonable
terms.

Y9CO

RETURN ON SERVICE

Received this subpoena at.....on
.....and on.....at.....
served it on the within named.....
by delivering a copy to h..... and tendering to h..... the fee for one day's
attendance and the mileage allowed by law.¹

Dated.....19..... BY.....

Service Fees

Travel..... \$
Services..... \$

Total..... \$

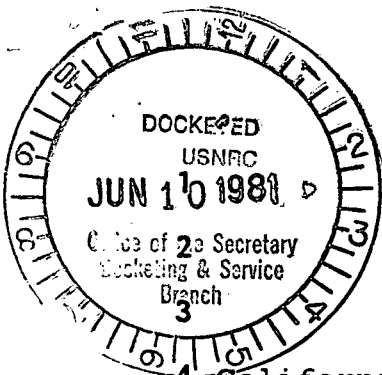
Subscribed and sworn to before me, athis.....
day of.....,19.....

NOTE — Affidavit required only if service is made by a person other than a United States
Marshal or his deputy.

¹ Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the
United States or an officer or agency thereof.

COPY

RELATED CORRESPONDENCE



CERTIFICATE OF SERVICE BY MAIL

I certify that:


I am employed in the City and County of San Francisco,
California, as one of counsel appearing for Applicants Southern
California Edison Company and San Diego Gas & Electric Company
herein.

I am over the age of eighteen years and not a party to
the within-entitled action; my business address is 600 Montgomery
Street, 11th Floor, San Francisco, California 94111.

On June 8, 1981, I served the attached "APPLICATION FOR
ISSUANCE OF A SUBPOENA TO TESTIFY TO DR. ROBERT L. McNEILL" and
the accompanying papers in said cause, by placing a true copy
thereof enclosed in the United States mail, first class, or where
indicated by an asterisk by Express Mail, at San Francisco,
California, addressed as follows:

* James L. Kelley, Chairman Administrative Judge Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	David W. Gilman Robert G. Lacy San Diego Gas & Electric Company P.O. Box 1831 San Diego, California 92112
* Dr. Cadet H. Hand, Jr. Administrative Judge c/o Bodega Marine Laboratory University of California P. O. Box 247 Bodega Bay, California 94923	Robert Dietch, Vice President Southern Edison California Company Company P. O. Box 800 2244 Walnut Grove Avenue Rosemead, California 91770
* Mrs. Elizabeth Johnson Administrative Judge Oak Ridge National Laboratory P. O. Box X, Building 3500 Oak Ridge, Tennessee 37830	Alan R. Watts, Esq. Rourke & Woodruff California First Bank Building 10555 North Main Street Santa Ana, California 92701

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11 Division of Mines and Geology
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Docketing and Service Section
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