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 Atomic Safety and Licensing Board Panel

SUBJECT: Response in opposition to any exercise of ASLB sua sponte  
 authority which would go beyond governing Commission  
 regulations & require specific consideration of earthquake  
 consequences.Certificate of Svc encl.

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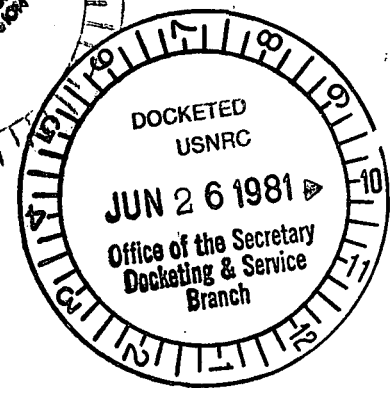
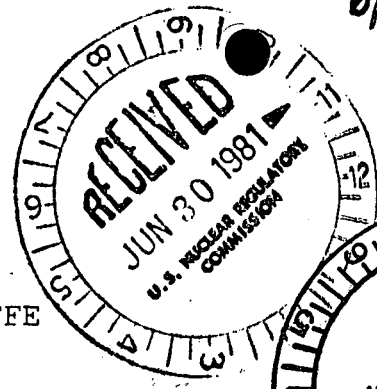
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12 UNITED STATES OF AMERICA

13 NUCLEAR REGULATORY COMMISSION

14 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

15 In the Matter of )  
16 SOUTHERN CALIFORNIA ) Docket Nos. 50-361 OL  
EDISON COMPANY, ET AL., ) 50-362 OL  
17 (San Onofre Nuclear Generating )  
18 Station, Units 2 and 3) )  
19 \_\_\_\_\_ )

20 APPLICANTS' MEMORANDUM OF LAW  
OPPOSING ANY EXERCISE OF ASLB  
21 SUA SPONTE AUTHORITY WHICH WOULD GO BEYOND  
22 GOVERNING COMMISSION REGULATIONS  
AND REQUIRE CONSIDERATION OF AN  
23 EARTHQUAKE THAT EXCEEDS THE SSE FOR  
EMERGENCY PLANNING PURPOSES.

24 Southern California Edison Company and San Diego  
25 Gas & Electric Company (the "Applicants") hereby respond to  
26 ///

DS03  
s  
1/1

1 the Atomic Safety and Licensing Board's invitation to submit  
2 their views on the following legal question:

3 "What is the extent of an applicant's  
4 obligation to take into account possible  
5 off-site effects of an earthquake on its  
6 emergency plans? Must he consider possible  
7 on-site and off-site effects of an earthquake  
8 more severe than the plant's safe shutdown  
9 earthquake, under the Vermont Yankee case, 8  
10 AEC 809, 812. See Memorandum and Order of  
11 April 17, 1981, at pp. 4-7."

12 (Memorandum and Order, May 8, 1981, p. 11.)

13 For the reasons fully set forth below, Applicants  
14 submit they have no legal obligation under applicable NRC  
15 regulations<sup>1/</sup> or the Vermont Yankee case, to consider the  
16 possible on-site and off-site effects of an earthquake more  
17 severe than the plant's safe shutdown earthquake (the "SSE")  
18 on emergency plans for San Onofre Nuclear Generating Station,  
19 Units 2 and 3 ("SONGS 2 and 3").<sup>2/</sup> Applicants recognize  
20 their obligation under 10 C.F.R., Part 100, Appendix A to  
21

22 <sup>1/</sup> Applicable NRC regulations on emergency planning are set  
23 forth in 10 C.F.R. §§ 50.33(g), 50.47, 50.54(q)(r)(s)(t) and  
24 (u), and Part 50, Appendix E. Applicable NRC regulations on  
25 consideration of earthquakes are set forth in 10 C.F.R.,  
26 Part 50, Appendix A.I.2, and Part 100, Appendix A.

27 <sup>2/</sup> The term "Safe Shutdown Earthquake" is defined for  
28 SONGS 2 and 3 in NUREG-0712, Safety Evaluation Report, Office  
29 of Nuclear Reactor Regulation, Nuclear Regulatory Commission,  
30 Related to the Operation of San Onofre Nuclear Reactor  
31 Regulation, Nuclear Regulatory Commission, Related to the  
32 Operation of San Onofre Nuclear Generating Station, Units 2  
33 and 3, February 6, 1981. See 10 C.F.R., Part 100, Appendix  
34 A.III.(c). The Applicants oppose the use of any "earthquake"  
35 which exceeds the "Safe Shutdown Earthquake" established for  
36 SONGS 2 and 3 for any regulatory purpose related to this  
proceeding.

1 implement operational procedures to safely shutdown and start  
2 up SONGS 2 and 3 in the event of an earthquake not exceeding  
3 the SSE. Applicants' intention to implement such procedures  
4 is reflected in the "Emergency Plan for San Onofre Nuclear  
5 Generating Station, Units 2 & 3, April 1981 (the "EP"), which  
6 was served by Applicants on the parties herein, June 1,  
7 1981.3/

8 I.

9 STATEMENT OF FACTS

10 On or about April 9, 1981, Applicants filed a  
11 motion for protective order in response to FOE, et al.'s  
12 motion to compel further answers to interrogatories (the  
13 "Protective Order Motion"). The facts up to that time are as  
14 stated in the Protective Order Motion and need not be  
15 repeated here. However, a recitation of factual developments  
16 since that time is warranted to demonstrate that the safety  
17 concerns that may have given rise to the legal question  
18 presented by the Board are not sufficiently serious to  
19 warrant a sua sponte exercise of the Board's investigative  
20 authority under 10 C.F.R. § 2.760a.

21 By Memorandum and Order, dated April 17, 1981, the  
22 Board agreed that that post-seismic emergency planning issues

23 ///

24 \_\_\_\_\_  
25 3/ Provision is made for the possible effects of an  
26 earthquake in the referenced sections of the EP.  
(Reference: EP, Sections 4.1.1, 4.1.2, 4.1.3, 5.4.1.D, 6.0,  
6.2.7, 6.4.2, 7.3.3, 7.5, and Appendix A.)

1 were beyond the scope of intervenors' contentions. The Board  
2 further found that planning for a major radiological  
3 emergency complicated by an earthquake which disrupts key  
4 elements of the emergency response "can be safely disregarded  
5 for any regulatory purpose." (Memorandum and Order, April  
6 17, 1981, p. 5.) However, without reaching a conclusion on  
7 the issue or articulating a factual basis for the concern,  
8 the Board requested the views of the parties regarding its  
9 legal authority, on its own motion, to require the Applicants  
10 to demonstrate planning for a radiological emergency caused  
11 by an earthquake at the site which exceeds the SSE and causes  
12 "extensive damage to offsite transportation, communication  
13 and the like." (Id. at pp. 5-6.)

14 On April 27, 1981, Applicants filed their  
15 supplemental response to FOE, et al.'s sixth set of  
16 interrogatories. This supplemental response set forth  
17 Applicants' plans for responding to a radiological emergency  
18 caused or complicated by an earthquake.

19 On April 29, 1981, during the third prehearing  
20 conference, the NRC Staff confirmed on record that both the  
21 NRC Staff and the Federal Emergency Management Agency were  
22 considering the impact of earthquakes in their review of  
23 on-site and off-site emergency planning for SONGS 2 and 3.  
24 (TR. 444). At the same time, Chairman Kelley agreed that  
25 planning for an on-going radiological emergency complicated  
26 by an earthquake, so-called "coincident event" planning, was

1 not required (TR. 450), but requested briefs on emergency  
2 planning for an earthquake which exceeds the SSE ("simply  
3 because [the question had] arisen and we've gotten responses  
4 from some, but not all, of the parties." (TR. 451)

5 On or about May 13, 1981 Applicants received a  
6 letter from the NRC Staff which clarified that an earthquake  
7 exceeding the SSE need not be considered for emergency  
8 planning purposes.<sup>4/</sup> A copy of this letter was made  
9 available to the parties herein.

10 On June 1, 1981, Applicants further supplemented  
11 their response to FOE et al.'s sixth set of interrogatories  
12 by informing the parties of steps to be taken by Applicants  
13 and involved offsite assistance agencies to protect the  
14 public health and safety in the event of any earthquake  
15 affecting SONGS 2 and 3 or the area surrounding SONGS 2 and  
16 3. That same day Applicants formally served on the parties  
17 Applicants' emergency plan for responding to earthquakes.<sup>5/</sup>

18 On or about June 3, 1981, FEMA reported to NRC that  
19 the involved offsite assistance agencies were prepared and  
20

21 <sup>4/</sup> The letter in pertinent part stated (emphasis added):

22 "[y]ou are requested to evaluate the effects  
23 earthquakes would have on your emergency response  
24 capability and include these considerations in your  
25 emergency plan. For purposes of this evaluation,  
26 as a planning basis you may assume that the plant  
site experiences earthquake effects no more severe  
than the Safe Shutdown Earthquake."

26 <sup>5/</sup> See footnote 3 supra.

1 capable of responding to the "potential seismic problem."6/  
2 The memorandum containing this report has been served on the  
3 parties herein.

4 On June 12, 1981, the NRC Staff filed its further  
5 response to FOE et al.'s third set of interrogatories (the  
6 "NRC Response"). This response explains the planning  
7 rationale for not requiring consideration of earthquake  
8 effects more severe than the SSE for emergency planning  
9 purposes, as follows:

10 "Emergency plans need not be explicitly  
11 written to respond to accidents created by failure  
12 of plant systems designed for the SSE as failures  
13 of such essential safety systems have been made  
14 adequately low in likelihood by explicit design  
15 against earthquakes at and below the SSE level. In  
16 addition, the characteristics of an accident which  
17 could theoretically be created by an earthquake  
18 larger than the SSE would be in the spectrum of  
19 accidents considered in determining the sizes of  
20 the emergency planning zones and the other planning  
21 elements which form the Commission's regulations in  
22 the area of emergency planning. Consequently, in  
23 planning for a moderate earthquake and meeting the

18  
19 6/ The memorandum to Brian Grimes, NRC, from John E.  
20 Dickey, FEMA, in pertinent part stated:

21 "While current plans reflect no direct assessment  
22 of earthquake issues, all planning considered the  
23 ramifications of such events and it is considered  
24 that a general capability exists to respond through  
25 basic emergency planning to what is considered to  
26 be the most likely and frequent levels of seismic  
activity. A catastrophic earthquake  
notwithstanding (which would likely nullify the  
significance of a nuclear emergency), the offsite  
jurisdictions reflect a level of preparedness  
through existent basic planning to minimally  
respond to the potential seismic problem."

1 planning standards set forth in the Commission's  
2 regulations, an emergency response base capability  
3 would be in place which could be expanded during an  
4 actual emergency. Emergency planning for less than  
5 worst-case events gives confidence that the  
6 occurrence of any of a spectrum of events,  
7 including very low likelihood events, would give  
8 decisionmakers a planning base from which specific  
9 actions could be chosen from among available  
10 alternatives."

11 The NRC Response further explains the conservatism  
12 of this rationale by pointing out that:

13 "Seismic Category I structures, systems, and  
14 components at San Onofre 2 and 3 are designed  
15 to remain functional during and after the  
16 SSE, as required by 10 C.F.R. 100, Appendix  
17 A.iii.(c). Further, these structures,  
18 systems, and components have sufficient  
19 margin that they are capable of withstanding  
20 earthquakes that exceed the SSE."

21 Finally the NRC Response contains the response of  
22 FEMA approving the adequacy of a planning basis which assumes  
23 an earthquake not exceeding the SSE:

24 "With respect to earthquake considerations  
25 for the San Onofre Nuclear Generating  
26 Station, Units 2 and 3 (SONGS 2 & 3), FEMA  
has considered earthquake effects in making  
its Interim Findings and Determination  
Relating to the Status of State and Local  
Emergency Preparedness for the San Onofre  
Nuclear Generating Station (Units 2 and 3)  
dated June 3, 1981. For purposes of the  
evaluation, earthquake effects no more severe  
than the Safe Shutdown Earthquake (SSE) were  
assumed to occur independently of a reactor  
accident. This planning basis is deemed  
adequate given the substantial conservatism  
applied by the Nuclear Regulatory Commission  
(NRC) in establishing the SSE, and the  
resulting low likelihood of its occurrence.  
Even should such a low likelihood event  
occur, a planning base would be available and  
could be expended to meet actual conditions,  
given a state of emergency preparedness in



1 conformance with the emergency preparedness  
2 planning standards of 10 CFR sub-section  
3 50.47."

4 The foregoing facts demonstrate that  
5 Applicants and the involved jurisdictions have in place  
6 emergency plans that take into account the possible  
7 off-site effects of an earthquake on offsite emergency  
8 response capability. Additionally, these facts  
9 demonstrate that specific consideration of an  
10 earthquake which exceeds the SSE in severity is not  
11 necessary to assure a proper level of earthquake  
12 emergency planning. Significantly, nothing in the  
13 record presently before the Board provides a factual  
14 basis to conclude that a serious safety question is  
15 presented by failure to go beyond the planning basis  
16 established in NRC regulations and to specifically  
17 consider an earthquake which exceeds the SSE for  
18 emergency planning purposes.

19 II.

20 THE ATOMIC SAFETY AND LICENSING  
21 BOARD IS CONSTRAINED TO EXERCISE  
22 ITS INVESTIGATORY JURISDICTION  
23 OVER MATTERS, NOT OTHERWISE PUT  
24 IN CONTROVERSY BY THE PARTIES, ONLY  
25 WHERE A SERIOUS SAFETY QUESTION NOT  
26 OTHERWISE GOVERNED BY NRC REGULATIONS  
27 HAS BEEN DETERMINED TO EXIST.

28 The legal question presented by the Board requires  
29 analysis of two related questions. The first question is  
30 whether a threshold showing of a serious safety question is

1 required before the Board may on its own motion exercise its  
2 investigatory power under 10 C.F.R. § 2.760a. The second  
3 question is whether the Board may go beyond the scope of  
4 applicable NRC regulations in the exercise of this power.  
5 Based upon an analysis of the Commission's decision in  
6 Vermont Yankee Nuclear Power Corporation (Vermont Yankee  
7 Nuclear Power Station), CLI-74-40, 8 AEC 809 (1974), as well  
8 as applicable NRC regulations, Applicants submit the Board is  
9 constrained to exercise its power to investigate matters, not  
10 otherwise put in controversy, only where a serious safety  
11 question, not otherwise governed by NRC regulations, has been  
12 shown by some evidence to exist. In this case, there is no  
13 need to exercise such power in the area of post-seismic  
14 event emergency planning. Unlike the situation in Vermont  
15 Yankee, such planning is not required or authorized by the  
16 governing NRC regulations and there has been no threshold  
17 showing by the federal agencies involved that the current  
18 level of on-site or offsite emergency planning may be  
19 inadequate to respond to a seismic emergency, including an  
20 earthquake exceeding the SSE in severity.

21 A. Vermont Yankee Does Not Support Imposition  
22 of a Different Planning Basis than  
23 Established in Applicable NRC Regulations.

24 Vermont Yankee involved an effort by the NRC Staff  
25 to impose a 5% metal-water reaction criteria for purposes of  
26 designing a system to control hydrogen concentrations within  
containment integrity parameters (the "Hydrogen Control

1 System"). The NRC Staff was opposed by Applicants based on  
2 the fact that a 1% metal-water reaction criteria had been  
3 previously imposed by regulation as the design basis for the  
4 the emergency core cooling system (the "ECCS System").

5 The Appeal Board held that the regulation imposing  
6 a 1% metal-water reaction criteria for design of the ECCS  
7 System preempted the field, thereby rendering invalid as a  
8 matter of law the use of any other metal-water reaction  
9 criteria as the design basis for the Hydrogen Control  
10 System. The Commission reversed on the ground that  
11 regulations governing ECCS System design did not preempt NRC  
12 Staff guidance on design of the Hydrogen Control System.

13 A determinative fact in that case was that there  
14 were no NRC regulations establishing metal-water reaction  
15 criteria for the design basis of the Hydrogen Control  
16 System.<sup>7/</sup> (8 AEC, at p. 810.) This fact distinguishes  
17

18 <sup>7/</sup> As stated by the Commission:

19 "However, neither [the Commission's guidance nor  
20 subsequent regulations on ECCS systems] purported  
21 to define the term "postulated accident" -- and  
22 consequences thereof -- for all purposes. Rather,  
23 they were and are, intended to set forth criteria  
24 for the acceptability of ECCS systems which are but  
25 "one of the engineered safety systems installed to  
26 mitigate [the LOCA's] consequences." Interim  
Policy Statement, 36 Fed. Reg. 12247. Thus, the  
accident "postulated" in the ECCS criteria need not  
necessarily be regarded as the accident to be "pos-  
tulated" for containment design purposes. Rather,  
as shown in our discussion of "defense-in-depth"  
infra, the use of successively increasing  
conservatism in postulated accidents contributes an  
added measure of protection to the public health  
and safety." 8 AEC, at p. 812.

1 Vermont Yankee from the instant case where the design or  
2 planning basis for development of emergency plans is  
3 definitively established in NRC regulations. 10 C.F.R.  
4 § 50.33(g) n.l.

5 In our case, unlike the situation in Vermont  
6 Yankee, the "defense-in-depth" concept has been accommodated  
7 in the area of emergency planning by a planning basis which  
8 assumes the occurrence of "worst case core melt sequences"  
9 tempered by "probability considerations" in establishing that  
10 level of planning necessary to provide a response capability  
11 adequate to protect the public health and safety. See 45  
12 Fed. Reg. 55406 (August 19, 1980); 44 Fed. Reg. 61123  
13 (October 23, 1979); NUREG-0396/EPA 520-1-78-016, "Planning  
14 Basis for the Development of State and Local Government  
15 Radiological Emergency Response Plans in Support of Light  
16 Water Nuclear Power Plants, December, 1978," pp. 4-6, 15 and  
17 Appendix I; NUREG-0654/FEMA-REP-1 (REV. 1), "Criteria for  
18 Preparation and Evaluation of Radiological Emergency Response  
19 Plans and Preparedness in Support of Nuclear Power Plants,  
20 November 1980," pp. 5-13. This focus on worst-case accident  
21 consequences, rather than particular accident sequences,  
22 provides assurance that the catastrophic consequences of an  
23 earthquake exceeding in severity the SSE has been considered  
24 and is governed by the planning basis established in NRC  
25 emergency planning regulations. That these regulations do  
26 not require specific planning for earthquake consequences,

1 including an earthquake that exceeds the SSE, is exhaustively  
2 demonstrated in the legislative history of these regulationse  
3 contained in the Protective Order Motion. This history may  
4 be referred to by the Board and need not be repeated here.

5 Accordingly, application of the Vermont Yankee  
6 rationale in the present case leads to the conclusion that  
7 the seismic design basis for SONGS 2 and 3 does form the  
8 maximum seismic hazard that need be postulated for any  
9 regulatory purpose because the planning basis for development  
10 of emergency plans is designed to preclude the need for  
11 consideration of any particular accident sequence, including  
12 seismic events which exceed the SSE. In this manner the  
13 defense-in-depth concept of "intermeshing and overlapping  
14 protections" sought to be protected in Vermont Yankee is  
15 accommodated by the NRC's emergency planning regulations.  
16 (8 AEC, at 813.)

17 Vermont Yankee is also instructive insofar as it  
18 states that the planning or design basis established in NRC  
19 regulations is to be followed unless the party asserting the  
20 inapplicability of the planning or design basis meets its  
21 "burden" of establishing a legal basis in the Commission's

22 ///

23 ///

24 ///

25 ///

26 ///

1 regulations for imposing an alternative planning or design  
2 basis.<sup>8/</sup> (8 AEC, at p. 811.)

3 No such legal basis appears for imposing an  
4 emergency planning basis based on an earthquake exceeding the  
5 SSE. As recognized by the Board in the Memorandum and Order  
6 of April 17, 1981, 10 C.F.R., Part 100, Appendix A.III.(c)  
7 establishes the SSE as the "maximum vibratory ground motion  
8 for which . . . systems . . . are designed . . . . to  
9 assure . . . (3) the capability to prevent or mitigate the  
10 consequences of accidents which could result in potential  
11 offsite exposures. . . ." Assuming an emergency plan is a  
12 "system" within the meaning of this provision, the SSE forms  
13 the maximum basis for emergency planning purposes. Moreover,  
14 as previously described in the Protective Order Motion, the  
15 Commission's emergency planning regulations, especially when  
16 considered in light of the legislative history surrounding  
17 the development of these regulations, provide no legal  
18

19 <sup>8/</sup> The Vermont Yankee decision in pertinent part states:

20 "At the outset, we observe that the Appeal  
21 Board correctly required the regulatory staff to  
22 bear the burden of supporting Safety Guide 7, once  
23 its validity was called into question. Safety  
24 Guides (and the newer Regulatory Guides) merely set  
25 forth methods acceptable to the regulatory staff of  
26 implementing specific parts of Commission  
regulations. While they are entitled to  
considerable prima facie weight because of the  
important day-to-day responsibilities of the  
Regulatory Staff in effectuating Commission policy,  
these guides do not themselves have the force of  
regulations." (8 AEC, at p. 811.)

1 authority for imposition of an emergency planning basis based  
2 on any particular earthquake, including an earthquake which  
3 exceeds the SSE. The NRC Staff has recognized these  
4 limitations on its legal authority for this purpose at the  
5 prehearing conference on April 29, 1981 (TR. 447), as well as  
6 in its letter to Applicants dated May 13, 1981, and in its  
7 supplemental response to FOE, et al.'s third set of  
8 interrogatories.

9 Based on the foregoing considerations, Applicants  
10 submit that the Board lacks the necessary legal authority to  
11 impose any emergency planning basis other than the emergency  
12 planning basis specified in 10 C.F.R. § 50.33(g), n.1 and 10  
13 C.F.R., Part 100, Appendix A.III.(c). As previously argued in  
14 the Protective Order Motion, imposition of a planning basis  
15 not specified or inconsistent with these regulations violates  
16 the Commission's regulation barring a challenge to the  
17 sufficiency of Commission regulations, or the basis upon  
18 which Commission regulations rest. 10 C.F.R. §2.758(a);  
19 Pennsylvania Power and Light Co. (Susquehanna Nuclear Power  
20 Plant), ALAB-613, 12 NRC, 324, n.11 (1980); Potomac Electric  
21 Power Co. (Douglas Point Nuclear Generator Station, Units 1  
22 and 2), ALAB-218, 8 AEC 79, 85-89 (1974); see Public Service  
23 Co. of Oklahoma (Black Fox Station, Units 1 and 2),  
24 CLI-80-31, 12 NRC 264, 270, n.7 (1980). Even if the Board is  
25 of the view that such a challenge should be considered, it  
26 may only allow such a challenge upon "a prima facie showing"

1 of its factual legitimacy and express direction to do so from  
2 the Commission. 10 D.C.F.R. §§2.758(b), (c) and (d). No  
3 such showing or Commission authorization is currently before  
4 the Board.

5 Based on the Commission's decision in Vermont  
6 Yankee, as well as applicable NRC regulations, Applicants  
7 submit the Board is constrained to exercise its power to  
8 investigate matters not otherwise put in controversy only  
9 where a serious safety question, not otherwise governed by  
10 NRC regulations, has been shown by some evidence to exist.  
11 There is no need to exercise such power in this case. Unlike  
12 the situation in Vermont Yankee, such post-seismic emergency  
13 planning is neither required nor authorized by the governing  
14 NRC regulations. Nor has there been a threshold showing by  
15 the federal agencies involved that implementation of the  
16 emergency planning basis established in the governing NRC  
17 regulations leaves a "serious" safety question regarding the  
18 ability to respond to a seismic emergency, including an  
19 earthquake exceeding the SSE in severity, at SONGS 2 and 3.

20 B. The Atomic Safety and Licensing Board Should  
21 Refrain from Exercising Its Discretionary  
22 Power Under 10 C.F.R. § 2.760a in a Case,  
Such as Presented Here, Where No Serious  
Safety Issue Has Been Shown to Exist

23 10 C.F.R. § 2.760a in pertinent part provides  
24 (emphasis added):

25 "Matters not put in controversy by the  
26 parties will be examined and decided by the



1           presiding officer only where he . . .  
2           determines that a serious safety . . . matter  
          exists."

3   This provison has been interpreted to mean that an Atomic  
4   Safety and Licensing Board has the power to raise "sua  
5   sponte" any "serious" safety issue. However this power  
6   should be used "sparingly" in operating license cases since  
7   the Board is "neither required nor expected to pass upon all  
8   the items which the staff must consider and resolve before it  
9   approves the license." Consolidated Edison Company of New  
10 York (Indian Point, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190  
11 (1976); see also Consolidated Edison Co. of New York (Indian  
12 Point, Unit 3), CLI-74-28, 8 AEC 7, 9 (1974). This rule is  
13 complemented by the general principle that a Licensing Board  
14 is not required to do independent research or conduct de novo  
15 reviews of applications, but may rely on uncontested NRC  
16 Staff and Applicant evidence. Consumer Power Co. (Midland  
17 Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 334-35 (1973);  
18 Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-83, 5  
19 AEC 354, 357 N.16 (1972), affirmed Union of Concerned  
20 Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974).

21           This does not mean "extraordinary circumstances"  
22 are required to invoke the Board's sua sponte power.  
23 However, it does mean that "important health and safety  
24 questions" must be presented before the Board should exercise  
25 its sua sponte power. (44 Fed. Reg. 67088 (November 23,  
26 1979), emphasis added.)

1           Such questions are not presented in this case. As  
2 fully described above in Part I of this Memorandum, the  
3 uncontroverted evidence submitted to the Board by Applicants,  
4 the NRC Staff and FEMA is that adequate consideration of the  
5 on-site and off-site effects of earthquakes has been given by  
6 Applicants and the involved offsite jurisdictions such that  
7 no "serious" or "important" health and safety issue exists.  
8 The Board has recognized that the Intervenorors have no standing  
9 to state contentions in this regard. Memorandum and Order,  
10 April 17, 1981, p. 7; TR. 446 (April 29, 1981). Given the  
11 total absence of facts suggesting the existence of a serious  
12 or important health and safety issue, there is no reason for  
13 the Board to exercise its sua sponte power. This is  
14 especially true in this case where the exercise of such power  
15 can only further delay the licensing of SONGS 2 and 3 at a  
16 great additional expense to Applicants' shareholders and  
17 ratepayers and the national goal of energy independence. See  
18 Statement of Policy on Conduct of Licensing Proceedings, 46  
19 Fed. Reg. 28533 (May 18, 1981); Senate Report No. 197-113,  
20 "Authorizing Appropriations to the Nuclear Regulatory  
21 Commission," 97th Congress, 1st Sess., May 15, 1981, pp. 8-14  
22 and Table 1; House Report 97-22 (Part 2), "Authorizing  
23 Appropriations for the Nuclear Regulatory Commission," 97th  
24 Congress, 1st Sess., June 9, 1981, pp. 9-12.  
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26 ///

1 III.

2 CONCLUSION

3 Based on the foregoing discussion, as well as the  
4 discussion set forth in the Protective Order Motion,  
5 Applicants submit that there is no legal authority or factual  
6 basis to support an exercise by the Atomic Safety and  
7 Licensing Board of its sua sponte power under 10 C.F.R.  
8 § 2.760a, which would require specific consideration of  
9 earthquake consequences, including an earthquake exceeding  
10 the SSE, for emergency planning purposes. An expeditious  
11 ruling on this question is requested to avoid further delay  
12 in the ultimate delineation of the issues in controversy and  
13 issuance of a final prehearing conference order on emergency  
14 planning contentions. Statement of Policy of Conduct of  
15 Licensing Proceedings, supra, III.F., 46 Fed. Reg. 28535.

16 Dated: June 22, 1981

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24 By \_\_\_\_\_  
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26 One of Counsel for Applicants  
Southern California Edison  
Company and San Diego Gas &  
Electric Company

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

On June 22, 1981, I served the attached "APPLICANTS' MEMORANDUM OF LAW OPPOSING ANY EXERCISE OF ASLB SUA SPONTE AUTHORITY WHICH WOULD GO BEYOND GOVERNING COMMISSION REGULATIONS AND REQUIRE CONSIDERATION OF AN EARTHQUAKE THAT EXCEEDS THE SSE FOR EMERGENCY PLANNING PURPOSES" 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:

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