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 Atomic Safety and Licensing Board Panel

DOCKET #
 05000361
 05000362

SUBJECT: Memorandum supporting commencement of emergency planning hearings shortly after conclusion of seismic hearings. No advantage & potentially great prejudice is presented by further dividing emergency planning hearings. W/exhibits.

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

24 In the Matter of)

25 SOUTHERN CALIFORNIA EDISON)
26 COMPANY, et al.)

27 (San Onofre Nuclear)
28 Generating Station Units 2)
29 and 3).)

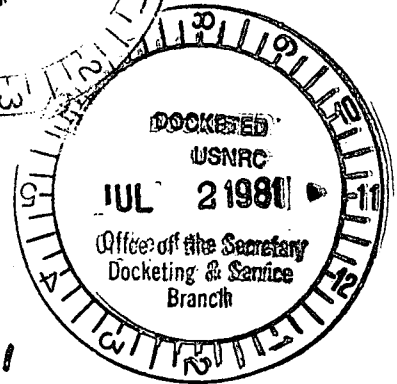
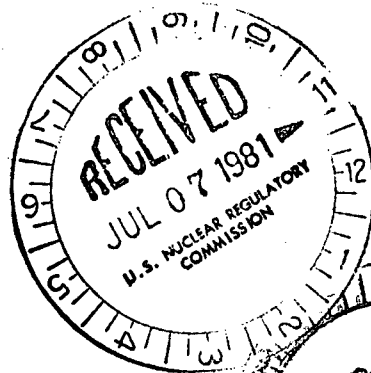
Docket Nos. 50-361 OL
50-362 OL

30 APPLICANTS' MEMORANDUM SUPPORTING COMMENCEMENT
31 OF EMERGENCY PLANNING HEARINGS SHORTLY AFTER
32 CONCLUSION OF SEISMIC HEARINGS.

33 I.

34 INTRODUCTION

35 By letter to Chairman Kelley of this Atomic Safety
36 and Licensing Board (the "Board"), dated June 15, 1981,



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1 Applicants Southern California Edison Company and San Diego
2 Gas & Electric Company ("Applicants") requested that this
3 Board commence hearings on emergency planning contentions
4 shortly after conclusion of the on-going seismic hearings.
5 Applicants' request is based on a schedule for issuance of a
6 full-power license for San Onofre Nuclear Generating Station,
7 Units 2 and 3 ("SONGS 2 and 3") that aims at minimizing delay
8 in the scheduled full-power operation of SONGS 2. A copy of
9 Applicants' proposed schedule is attached as Exhibit A.

10 At the final prehearing conference on emergency
11 planning contentions, the Board suggested that proceedings
12 leading to issuance of a fuel-loading and low-power testing
13 license ("low-power license") in "late October" followed by
14 hearings on Intervenor's emergency planning contentions would
15 expedite full-power operation of SONGS 2. (TR. 541-542.)
16 The Board has requested the parties' views on any legal
17 impediments to its suggested procedure. (TR. 545-546.)

18 This memorandum responds to the Board's request and
19 sets forth the reasons why Applicants believe commencement of
20 emergency planning hearings shortly after conclusion of the
21 on-going seismic hearings is most consistent with this
22 Board's mandate "to expedite the hearing process" consistent
23 with the need for "fair,...high quality decisions that
24 adequately protect the public health and safety." Statement
25 of Policy on Conduct of Licensing Proceedings (the "Policy

26 ///

1 Statement"), CLI 81-8, 46 Fed. Reg. 28533, 28534 (May 27,
2 1981).

3 It would appear that any time-savings in the
4 procedure suggested by the Board rests on the legal propriety
5 of issuing a low-power license for SONGS 2 without prior
6 hearings on Intervenor's' emergency planning contentions as
7 they relate to such low-power operations. A less extensive
8 showing on emergency planning may be made before issuance of
9 a low-power license, but opportunity for hearing must be
10 offered to Intervenor's. Assuming a hearing, the Board's
11 suggestion does not expedite the scheduled full-power
12 operation of SONGS 2. SONGS 2 will be essentially
13 constructed by August 1, 1981 and ready for fuel loading and
14 low-power testing by October 1, 1981. (TR. 505-511.)
15 Based on an October 1, 1981 fuel load date, Applicants
16 conservatively estimate that SONGS 2 will complete the low
17 power testing program and be ready to commence the program
18 for operation of SONGS 2 above 5 percent power (the "full
19 power operation program") on or about December 15, 1981. Any
20 delay in this schedule for commencement of the low-power
21 testing program and thus the full-power operations program
22 for SONGS 2 will result in unnecessary and additional costs
23 of over fifty (50) million dollars per month.

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II.

THE LICENSING BOARD'S SUGGESTED PROCEDURE WILL NOT EXPEDITE AND MAY SERIOUSLY DELAY THE SCHEDULE FOR OPERATION OF SONGS 2.

The Board appears to suggest the issuance of a low-power license without any hearings. The required emergency planning showing in a low-power hearing may be substantially less stringent than that necessary for a full-power license, but, some hearing, albeit limited, will be required unless Intervenor's do not contest the issuance of a low-power license.1/.

If hearings on a low power license are assumed; first, as they relate to a low power operation, and, second, as they relate to full power operations, duplicative hearings on emergency planning will result and delay will be inevitable.2/

1/ Stipulation and settlement in contested initial licensing proceedings is "encouraged" by Commission regulations "to the extent it is not inconsistent with hearing requirements in Section 189 of the Act (42 U.S.C. 2239)." 10 C.F.R. §§2.753 and 2.759. The likelihood of Intervenor's stipulating to issuance of a low power license for SONGS 2 without an opportunity for hearing appears low at this time. (TR. 544.)

2/ In the Diablo Canyon case, where construction has been complete for some time, the record reveals low power proceedings involving emergency planning contentions commenced in July, 1980 on motion by PG&E, and ultimately resulted in four days of hearings on May 19 through 22, 1981. Proposed findings of fact and conclusions of law were filed on June 24, 1981 by PG&E, with the other parties to follow. A meeting to consider Intervenor's motion to reopen the record is scheduled by the assigned Atomic Safety and Licensing Board on July 1, 1981. It does not appear that a decision on the matter can be expected before August or September.

1 Applicants propose full-power emergency planning hearings in
2 August shortly after conclusion of the seismic hearings.
3 Applicants may file an alternative motion for a low power
4 license under 10 C.F.R. §50.57(C), based upon the full-power
5 record, as soon after close of emergency planning hearings as
6 can be accommodated by the Board under the Commissions'
7 regulations. Such a license may enable Applicants to conduct
8 low-power testing, while the Board prepares its findings and
9 decision on the full-power license application.

10 A. An opportunity for hearing must be provided to
11 any party prior to issuance of a low power
12 license to the extent its contentions are
13 relevant to low-power operations.

14 The hearing requirement is based on the Atomic
15 Energy Act of 1954, as amended (the "Act"). Section 189(a)
16 of the Act directs that (emphasis added):

17 "In any proceeding under this Act, for the
18 granting . . . of any license or construction
19 permit . . . , the Commission shall grant a
20 hearing upon the request of any person whose
21 interest may be affected by the proceeding
22 In cases where such a construction
23 permit has been issued following the holding
24 of such a hearing, the Commission may, in the
25 absence of a request therefor by any person
26 whose interest may be affected, issue an
operating license . . . without a hearing, but
upon thirty days' notice and publication once
in the Federal Register of its intent to do
so." (42 U.S.C. §2239.)

27 Section 189(a) of the Act plainly requires an
28 opportunity for hearing. In Sholly v. Nuclear Regulatory
29 Commission, ___ F.2d ___, Nos. 80-1691 and 80-1783 (D.C. Cir.
30 November 19, 1980), cert. granted, 49 U.S.L.W. 3882 (May 26,

1 1981), the Court of Appeals for the District of Columbia
2 Circuit held that an opportunity for hearing is necessary
3 even for an operating license amendment involving no
4 significant hazards consideration. In 1973, the same court
5 had determined that a hearing must be provided upon request
6 before the extension of a completion date in a construction
7 permit. Brooks v. Atomic Energy Commission, 476 F.2d 924
8 (D.C. Cir. 1973); but cf. Union of Concerned Scientists v.
9 Atomic Energy Commission, 499 F.2d 1069 (D.C. Cir. 1974).

10 The Commission's regulations also make clear that the
11 issuance of a license for low-power operations must be
12 preceded by an opportunity for hearing. 10 C.F.R. §50.57(c)
13 states in part that (emphasis added):

14 "c) An applicant may, in a case where a
15 hearing is held in connection with a pending
16 proceeding under this section, make a motion
17 in writing, pursuant to this paragraph (c),
18 for an operating license authorizing low-power
19 testing (operation at not more than 1 percent
20 of full power for the purpose of testing the
21 facility), and further operations short of
full power operation. Action on such a motion
by the presiding officer shall be taken with
due regard to the rights of the parties to the
proceedings, including the right of any party
to be heard to the extent that his contentions
are relevant to the activity to be authorized."

22 Accordingly, a license for fuel loading and low-power testing
23 may be issued only if hearings have been held on contentions
24 relevant to such operation. See In re Virginia Electric and
25 Power Co., (North Anna Power Station, Units 1 and 2),

26 ///

1 LBP-77-64, 6 NRC 808 (November 26, 1977). Failure to allow
2 for such a hearing risks serious procedural error.

3 B. The Commission's regulations do not expressly
4 authorize issuance of a low power license
5 under 10 C.F.R. §50.57(c) without a record
6 supporting the findings
7 required by 10 C.F.R. §50.47.

8 Specific findings on emergency planning must be
9 made prior to issuance of any operating license. The
10 Commission's emergency planning regulations, effective
11 November 3, 1980, provide that (emphasis added):

12 "No operating license for a nuclear power
13 reactor will be issued unless a finding is
14 made by NRC that the state of onsite and
15 offsite emergency preparedness provides
16 reasonable assurance that adequate protective
17 measures can and will be taken in the event of
18 a radiological emergency." 10 C.F.R.
19 §50.47(a)(1).

20 The regulations allow substantial flexibility with respect to
21 the required showings (emphasis added):

22 "Failure to meet the standards set forth in
23 paragraph (b) of this subsection may result in
24 the Commission declining to issue an Operating
25 License; however, the applicant will have an
26 opportunity to demonstrate to the satisfaction
27 of the Commission that deficiencies in the
28 plans are not significant for the plant in
29 question, that adequate interim compensating
30 actions have been or will be taken promptly,
31 or that there are other compelling reasons to
32 permit plant operation." 10 C.F.R.
33 §50.47(c)(1).

34 However, no distinction is made in the above-quoted provision
35 between operating licenses for low-power operations and those

36 ///

1 for full-power operations in that findings are required
2 before issuance of either license.^{3/}

3 The showing required of Applicants in a low-power
4 license hearing may be substantially less than that required
5 prior to full-power operations. The NRC Staff and FEMA have
6 issued guidance suggesting that submission of emergency
7 response plans alone may be sufficient to support a fuel load
8 and low-power operating license. In contrast, plan
9 implementation and approval are not to be required until a
10 full-power license is issued. See SECY 81-188 (April 29,
11 1981) revising NUREG-0737 "Clarification of TMI Action Plan
12 Requirements," November, 1980", Enclosure 2, Clarification
13 Item III.A.2; cf. "FEMA/NRC Interim Agreement on Criteria for
14 Low Power Testing at New Commercial Nuclear Facilities",
15 copies of which are attached as Exhibit B.

16 The fact that a less stringent showing may be
17 sufficient in a hearing for a low-power license does not
18 limit in any way, however, the requirement that an
19 opportunity for such a hearing be provided to Intervenor.

20
21 3/ 10 C.F.R. §50.57(c) in pertinent part provides:

22 "Prior to taking any action on . . . a [low
23 power licensing] motion which any party
24 opposes, the presiding officer shall make
25 findings on the matters specified in
26 paragraph (a) of this section as to which
there is a controversy, in the form of an
initial decision with respect to the
contested activity sought to be authorized.

[Footnote continued on following page]

1 C. Without a stipulation by the Intervenor
2 not to oppose Applicants' motion for low
3 power license, proceedings for issuance
4 of a low power license followed by full
5 power hearings on emergency planning
6 contentions will not expedite and may
7 seriously delay the schedule for
8 operation of SONGS 2.

9 When the possibility of moving directly for a low
10 power license is viewed in light of the requirement for a
11 hearing prior to issuance of a low-power operating license,
12 it becomes clear that the procedure suggested by the Board
13 will delay, not expedite, full-power operation of SONGS 2.
14 Since some hearing on emergency planning will be required (if
15 requested by Intervenor) before issuance of low-power
16 license, such issuance could not take place at the earliest
17 until late November, well after SONGS 2 will be ready for
18 low-power testing. In order to issue a low-power license in

19 _____
20 [Footnote continued from previous page]

21 The Director of Nuclear Reactor Regulation
22 will make findings on all other matters
23 specified in paragraph (a) of this section.
24 If no party opposes the motion, the presiding
25 officer will issue an order pursuant to
26 §2.730(e) of this chapter, authorizing the
Director of Nuclear Reactor Regulation to
make appropriate findings on the matters
specified in paragraph (a) of this section
and to issue a license for the requested
operation." Applicants are assuming the
existence of some opposition from Intervenor
on emergency planning issues. (TR. 544.) In
this case, 10 C.F.R. § 50.57(a)(1) requires
this Board to find that the "facility will
operate in conformity with . . . the rules
and regulations of the Commission," including
10 C.F.R. § 50.47

1 October, emergency planning hearings will need to commence
2 shortly after conclusion of seismic hearings, as proposed by
3 Applicants. Even if Intervenor stipulate that they will not
4 oppose issuance of a low-power license or request a hearing
5 prior to issuance of that license, emergency planning
6 hearings on a full power license must also commence shortly
7 after conclusion of seismic hearings to minimize the delay in
8 full power operation of SONGS 2. For these practical
9 reasons, no time-saving benefit appears to derive from the
10 Board's suggested procedure.

11 Applicants have also considered the Board's
12 suggestion that commencement of full power emergency planning
13 hearings in the middle of October, rather than in August as
14 proposed by Applicants, leads to an initial decision
15 authorizing full power operation for SONGS 2 and 3 at about
16 the same time in January. (TR. 541-542.) Under the Board's
17 proposed schedule, as Applicants understand it, issuance of a
18 full power initial decision at about the same time as set
19 forth in Applicants' schedule requires emergency planning
20 hearings lasting only about twenty hearing days, findings of
21 fact and conclusions of law being completely filed in
22 approximately twenty-one days (including the Thanksgiving
23 holiday) when the regulations allow fifty-five days (10
24 C.F.R. § 2.754), and an initial decision being filed in
25 approximately 35 days (including the Christmas holiday).
26 Without arguing the exact number of days, Applicants submit

1 that such a critical decision to delay emergency planning
2 hearings beyond August should not be based on such extremely
3 optimistic estimates.

4
5 II.

6 NO REASON APPEARS FOR DENYING APPLICANTS REQUEST
7 FOR A HEARING ON EMERGENCY PLANNING CONTENTIONS
8 SHORTLY AFTER CONCLUSION OF SEISMIC HEARINGS.

9 Applicants recognize what appears to be a Board
10 preference to delay emergency planning hearings until such
11 time as the plans are fully implemented and a completely
12 favorable FEMA report has been submitted to the NRC. (TR.
13 536, 541.) As Applicants understand it, the gist of the
14 Board's concerns are that commencement of hearings before
15 this time may lead to the need for additional hearings (TR.
16 534, 536), or may unnecessarily lengthen the time it takes to
17 hear the contentions in the first place. (TR. 535.)
18 Applicants submit that neither of these considerations weigh
19 as heavily in the balance as the extreme cost of delay that
20 will be imposed upon Applicants if they are not permitted by
21 this Board to present their case on emergency planning
22 contentions shortly after the conclusion of seismic hearings.

23 More importantly, Applicants believe they have a
24 clear right to an emergency planning hearing at this time on
25 the controverted issues set forth in 10 C.F.R. §50.47.

26 Applicants' program for addressing the criticisms contained
in the FEMA Findings prior to fuel load is as set forth in
the accompanying Affidavit of Robert Dietch, Vice President

1 of Nuclear Engineering and Operations for Applicant Southern
2 California Edison Company, which is attached as Exhibit C.
3 Applicants are now prepared to carry their burden of proof
4 and otherwise make a sound decisional record supporting each
5 of the required findings at issue under 10 C.F.R.
6 §§50.47(a)(b) or (c)(1).

7 A. Favorable FEMA Findings are not a
8 legal prerequisite to hearings on
emergency planning contentions.

9 Applicants, as well as the NRC Staff, have
10 indicated to the Board that they are prepared to go to
11 hearings in the timeframe proposed by Applicants on the
12 general question of whether the emergency plans and the
13 required plan implementation capability will in fact be in
14 place by the time SONGS 2 becomes fully operational. (TR.
15 529-533.) The Board has indicated its reluctance to do so
16 without completely favorable FEMA Findings. (TR. 531.)
17 Applicants respectfully submit that the Board's reluctance
18 finds no support in the NRC's emergency planning regulations
19 or the expressed intentions of Congress.

20 The legislative history of the Commission's
21 emergency planning and preparedness requirements demonstrates
22 that full implementation of offsite capabilities in com-
23 pliance with 10 C.F.R. §50.47 need not be achieved before

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25 ///

26 ///

1 full power operations.4/ Accordingly, licensing hearings
2 turn on the state of offsite emergency planning and
3 preparedness as of the scheduled date of full-power

4 ///

5
6 4/ The Commission has consistently distinguished between
7 emergency planning requirements for low power, as
8 opposed to full power operations. NUREG-0694, entitled
9 "TMI-Related Requirements for New Operating Licenses"
10 addressed the emergency response requirements for low
11 power and full power operations and stated that
12 requirements in excess of those imposed on existing
13 facilities were to be imposed at the low power testing
14 stage only

11 "when there was a significant advantage to
12 have the new procedure or equipment in place
13 during fuel loading or power-ascension
14 testing. As a general rule, however,
15 implementation schedules for near-term
16 operating license requirements were
17 established with the intent of providing
18 adequate safety improvement without incurring
19 significant additional schedule and
20 construction delays." NUREG-0694, at p. 5;
21 emphasis added.

17 In order to obtain a low power license under NUREG-0694,
18 the Applicants were to:

18 "Comply with Appendix E [as amended in 1973],
19 'Emergency Facilities,' 10 C.F.R. Part 50,
20 Regulatory Guide 1.101, 'Emergency Planning
21 for Nuclear Power Plants,' and for the
22 offsite plans, meet essential elements of
23 NUREG-75/111 (Ref. 28) or have a favorable
24 finding from FEMA." NUREG-0694 at p. 19.

23 Appendix E generally addresses only the submission of
24 emergency response plans, and not the demonstration of
25 those plans. 10 C.F.R. Part 50, Appendix E (1973).
26 Under NUREG-0694, full demonstration of the offsite plan
was not required until authorization of full power
operation. NUREG-0737, which superceded NUREG-0694, has
recently been clarified as indicated in Exhibit B to
retain this distinction. Exhibit B, p. 10.

1 operation, not as of May 22, 1981, the concluding date of the
2 FEMA assessment. In order to avoid unnecessary delays in the
3 full-term licensing of near-term operating licenses, such as
4 SONGS 2 and 3, commencement of emergency planning hearings
5 cannot necessarily depend on completion of FEMA-approved
6 evaluations, exercises, drills or other improvements
7 contemplated in the FEMA Findings, but on whether Applicants
8 are prepared to demonstrate by the preponderance of the
9 evidence that (1) FEMA's concerns are not "significant", or
10 will be resolved prior to full power operation or such other
11 date specified in NRC regulations or guidance, (2) "other
12 adequate interim compensating actions have been or will be
13 taken promptly", or (3) there are "other compelling reasons to
14 permit plant operation." 10 C.F.R. §50.47(c)(1).5/

15 ///

16
17 5/ As stated in the preamble to the NRC's emergency
18 planning regulations explaining 10 C.F.R. § 50.47(c)(1),
19 "In determining the sufficiency of adequate interim
20 compensatory actions under this rule, the Commission
21 will examine State plans, local plans, and licensee
22 plans to determine whether features of one plan can
23 compensate for deficiencies in another plan so that the
24 level of protection for the public health and safety is
25 adequate. This interpretation is consistent with the
26 provisions of the NRC Authorization Act for fiscal year
1980, Pub. L. 96-295 (The "Act")." 45 Fed. Reg. 55403
(August 19, 1980). As stated in the Conference Report
on the Act, the expressed intent of Congress in passing
Section 109 of the Act was "to avoid penalizing an
applicant for an operating license if a State or
locality does not submit an emergency response plan
... for review or if the submitted plan does not

[Footnote continued on following page]

1 The FEMA Findings clearly anticipate the possibil-
2 ity of remedying the deficiencies noted in the FEMA Findings
3 within the "very near future," as follows (emphasis added):

4 "The conclusion reached is that there has
5 been insufficient time, training, drill, and
6 exercise to reflect the required ability of
7 offsite organizations to protect public
8 health and safety. Alternatively, the
9 efforts rendered, coupled with an aggressive
thorough approach to training and preparation
(equipment, SOP's etc.) generated as a result
of these findings or related incentives,
would create the necessary capability within
the very near future."

10 The accompanying Affidavit of Robert Dietch reveals that this
11 possibility will be a reality prior to the scheduled fuel
12 load date for SONGS 2. Thus, there can be no argument that
13 the Board or the parties do not know what Applicants' case in
14 response to the FEMA Findings is. (TR. 519.) Under these
15 circumstances it would be entirely inconsistent with the
16 scheme of NRC's regulations to deny or further delay

17 _____
18 [Footnote continued from previous page]

19 satisfy all the guidelines or rules." (Conference
20 Report, No. 96-1070, p. 27; emphasis added) As further
stated in the Conference Report to the Act (emphasis
added):

21 "In the absence of a State or local plan that
22 complies with the guidelines or rules, the
23 compromise permits NRC to issue an operating
24 license if it determines that a State, local
25 or utility plan, such as the emergency
preparedness plan submitted by the applicant
provides reasonable assurance that the public
health and safety is not endangered by
operation of the facility." Id.

1 emergency planning hearings by effectively giving
2 irrebuttable weight to the FEMA Findings.

3 10 C.F.R. §50.47(a)(1) in pertinent part states
4 (emphasis added):

5 In any NRC licensing proceeding, a FEMA
6 finding will constitute a rebuttable
presumption on a question of adequacy."

7 The operative meaning of this provision, as clarified by the
8 General Counsel of NRC before the Commission on the day the
9 Commission adopted this provision, is that this Board will
10 adopt a FEMA finding as its own "unless someone convinces
11 them otherwise." NRC Transcript, Discussion and Vote on
12 Emergency Preparedness Rule, July 23, 1980, pp. 48.

13 According to the General Counsel. "it would be illegal" to
14 make a "FEMA finding . . . an unlitigable basis for rejecting
15 a license." (NRC Transcript, pp. 50 and 52.)

16 Based on the foregoing authorities, Applicants
17 submit they have a legal right under 10 C.F.R. §50.47(c)(1)
18 to go to hearing on emergency planning contentions and the
19 FEMA Findings shortly after the conclusion of the seismic
20 hearings.

21 B. Expeditious Commencement of Hearings
22 on Emergency Planning Contentions is
Mandated by Commission Policy.

23 The Commission has mandated this Board "to avoid or
24 reduce such [licensing] delays [as presented in this case]
25 whenever measures are available that do not compromise the
26 Commission's fundamental commitment to a fair and thorough

1 hearing process." Policy Statement, supra, 46 Fed. Reg.
2 28534. The Board, in "expediting the hearings . . . should
3 ensure that the hearings are fair, and produce a record which
4 leads to high quality decisions that adequately protect the
5 public health and safety"(Id.)

6 Applicants are thoroughly prepared to carry their
7 burden of proof and otherwise make a sound decisional record
8 supporting each of the findings at issue under 10 C.F.R.
9 §50.47(a)(b) or (c)(1). The NRC Staff and FEMA have
10 indicated they are likewise ready to go to hearing in the
11 timeframe suggested by Applicants. (TR 529.) Finally,
12 Applicants have generally disclosed to Intervenors, in the
13 accompanying affidavit of Robert Dietch, the Applicants'
14 program, in active cooperation with the involved offsite
15 jurisdictions, for planned improvements in offsite response
16 capability to be implemented prior to full power operations.
17 Under these circumstances it is only fair to all parties
18 concerned to commence emergency planning hearings shortly
19 after conclusion of the seismic hearings.

20
21 IV.
CONCLUSION

22 For the reasons stated above, Applicants believe
23 the time is ripe to commence emergency planning hearings.
24 Applicants are prepared to make a sound decisional record
25 supporting each of the findings at issue under 10 C.F.R.
26 §50.47. Absent a change in the law or regulations revealing

1 some compelling, time-saving benefits, no advantage and
2 potentially great prejudice is presented by further
3 bifurcating emergency planning hearings into low-power
4 hearings and full power hearings. Accordingly, Applicants
5 request this Board to schedule hearings on emergency planning
6 contentions to begin shortly after conclusion of seismic
7 hearings.

8
9
10 DATED: June 29, 1981

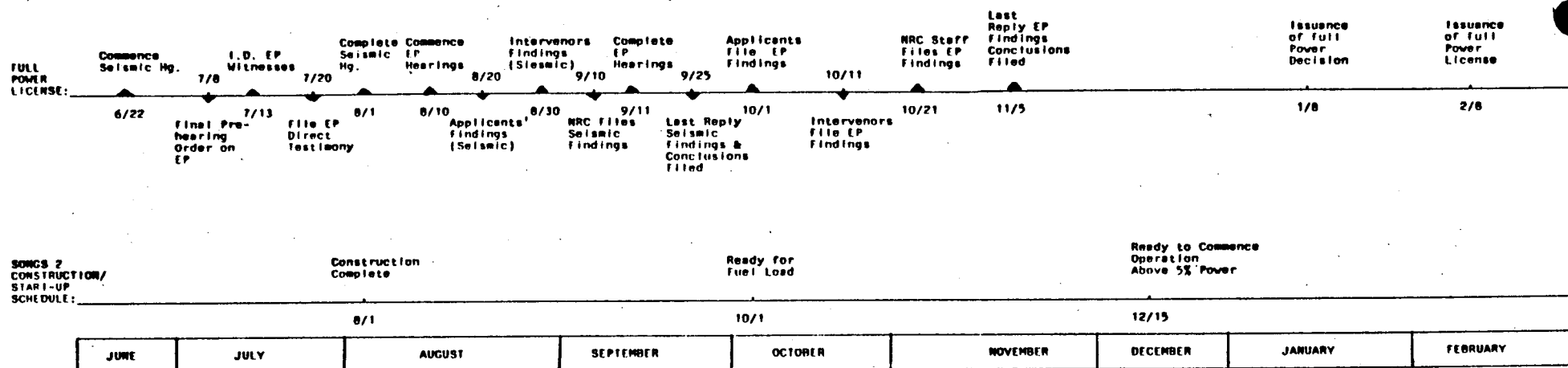
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23 By DAVID R. PIGOTT
24 David R. Pigott
25 One of Counsel for Applicants
26 Southern California Edison
Company and San Diego Gas &
Electric Company

EXHIBITS

**APPLICANTS' CURRENT LICENSING AND SONGS 2
CONSTRUCTION/START-UP SCHEDULE**



(6/26/81)

MEMORANDUM FOR: Harold R. Denton, Director, Office of Nuclear Reactor
Regulation, NRC

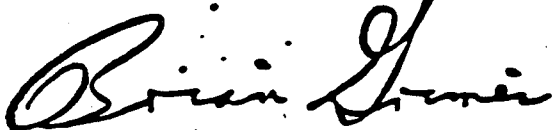
John W. McConnell, Assistant Associate Director for
Population Preparedness, FEMA

FROM: FEMA/NRC Steering Committee

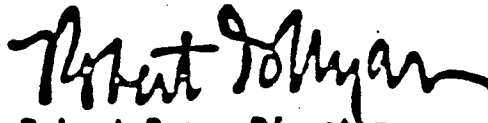
SUBJECT: EMERGENCY PREPAREDNESS CRITERIA FOR LOW POWER TESTING

In accordance with your exchange of letters, both dated February 14, 1980, the Joint FEMA/NRC Steering Committee has made a determination on whether specific emergency preparedness criteria should be developed for low power testing authorizations at new commercial nuclear power facilities. The Steering Committee has determined that the position in the enclosure with regard to emergency preparedness for low power testing is adequate and can serve as an interim basis for licensing facilities for low power testing. The Steering Committee concludes that in view of the minimal nature of the potential hazard, the development of specific low power testing criteria is not warranted.

We conclude that an appropriate objective for those facilities beyond North Anna, Salem and Diablo Canyon is to assess against the upgraded NRC/FEMA criteria and make findings with regard to the significance of any deficiencies for low power testing authorizations.



Brian K. Grimes, Director
Emergency Preparedness Task Group
Office of Nuclear Reactor
Regulation - NRC



Robert Ryan, Director
Division of Radiological Emergency
Preparedness - FEMA

Co-Chairmen
of the
FEMA/NRC Steering Committee

Enclosure:
Criteria for Low Power Testing

cc w/enclosure:
FEMA/NRC Steering Committee
K. Cornell
F. Camm

dupe B
8103030894

**FEMA/NRC INTERIM AGREEMENT ON CRITERIA FOR LOW
POWER TESTING AT NEW COMMERCIAL NUCLEAR FACILITIES**

The FEMA/NRC Steering Committee has agreed that for the purposes of low power testing (up to 5% power) at new commercial nuclear facilities that the public health and safety is adequately protected if such facility is located in a State which had received a concurrence under the previous voluntary concurrence program, administered by the NRC and based on evaluation by a multi-agency Federal Regional Advisory Committee. In addition, operator plans at individual sites must be consistent with both the existing NRC Appendix E to 10 CFR Part 50 and NRC Regulatory Guide 1.101 in order to assure adequate protection of the public health and safety prior to low power testing.

NRC and FEMA agree that State, local and nuclear facility operator plans must be adequate when judged against the criteria contained in NUREG-0654 and FEMA/REP-1 prior to full scale commercial operation.

This agreement is based on the considerations discussed in the exchange of letters between H. Denton, NRC and J. McConnell, FEMA, both dated February 14, 1980.

The parties note that the North Anna, Salem and Diablo Canyon sites are located in Virginia, New Jersey and California respectively, all of which have received prior NRC concurrence in State Plans. The Salem facility is located near the Delaware border; the radiological emergency plan of the State of Delaware has also received prior NRC concurrence. NRC stipulates that individual nuclear facility operator plans at these plants are in compliance with Appendix E and are consistent with Regulatory Guide 1.101.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

April 22, 1981

ACTION: Stello

*Emergency
Planning
file*

Cys: Dircks
Cornell
Rehm
✓ Grimes
Perkins
Denton
Haller

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-81-188 - EMERGENCY PREPAREDNESS

[Handwritten signature]

This is to advise you that the Commission (with all Commissioners approving) has approved the changes to page 2-11 of NUREG-0737 as provided in Enclosure 3 of the subject paper.

The Office of Inspection and Enforcement was informed of this action by telephone on April 22, 1981.

RECEIVED S.B.C.

JUN 24 1981

O.H.&S.

cc: Chairman Hendrie
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commission Staff Offices
Director, Inspection and Enforcement

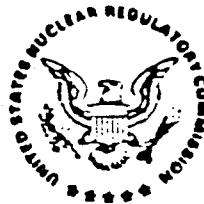
CONTACT:
E. W. McGregor (SECY)
41410

8107080212 810629
PDR ADOCK 05000361
G PDR

Exhibit B
Page 3 of 11

IE(5)

March 20, 1981



SECY-81-188

POLICY ISSUE (Notation Vote)

For: The Commissioners
From: William J. Dircks
Executive Director for Operations
Subject: EMERGENCY PREPAREDNESS

Background: NUREG-0694, "TMI-Related Requirements for New Operating Licenses," stated that prior to fuel loading it was necessary to comply with the then effective Appendix E to 10 CFR Part 50, "Emergency Plans for Production and Utilization Facilities," Regulatory Guide 1.101, "Emergency Planning for Nuclear Power Plants," and for offsite plans to meet the essential elements of NUREG-75/111 or have a favorable finding from FEMA. The submission and evaluation of emergency plans against the standards of NUREG-0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," was required prior to the issuance of a full power license. Copies of the appropriate pages from NUREG-0694 are attached as background information in Enclosure 1.

When NUREG-0737, "Clarification of TMI Action Plan Requirements," was being written, the timing for evaluation of offsite plans as set forth in NUREG-0654 was inadvertently changed to include those licensees requesting permission to conduct only fuel loading or low power testing. These changes appeared as entries on page 2-11 of a table to NUREG-0737 (Enclosure 2) as background information.

Discussion: 10 CFR § 50.47 became effective on November 3, 1980, and required compliance with emergency planning and preparedness standards prior to the issuance of operating licenses, including those authorizing fuel loading and low power testing. § 50.47(c) nevertheless provides a flexible approach for assessing the necessary

CONTACT:
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Ext. 27415

dupe of 8104020684

Exhibit B

degree of compliance, with the result that licensees requesting low power testing and fuel loading operating licenses can receive such licenses without having to meet every individual factor set forth in § 50.47, at least at that level of operation, provided that FEMA's findings support that approach. As discussed with the Commission prior to the issuance of NUREG-0694, it is unnecessary to require extensive offsite emergency capability at nuclear power plants where the licensee is performing either initial fuel loading or operating initially at low power levels because of the low potential for significant offsite releases.

In a parallel manner, 10 CFR § 50.57(c), governing adjudicatory hearings for the issuance of operating licenses, is specifically framed in terms of requiring Board findings only on those matters significant for the activity to be authorized. Thus, § 50.57(c) provides a basis for making a distinction between the Licensing Board findings necessary for issuance of full power operating licenses and those necessary for issuance of operating licenses authorizing low power testing or fuel loading.

A literal interpretation of the table in NUREG-0737 (Enclosure 2) could lead to a conclusion that the Commission intended to disregard the flexible, case-by-case approach expressly provided for in §§ 50.47(c) and 50.57(c), and to require that licensees comply with every facet of emergency planning contained in § 50.47 as prerequisite to the issuance of every operating license, even those where the activity sought to be authorized is fuel loading or low power testing. The staff did not intend, nor does it believe that the Commission intended, to interpret the table appearing in NUREG-0737 with respect to the effectiveness of 10 CFR § 50.47 so literally as to eliminate the flexibility provided by 10 CFR §§ 50.47(c) and 50.57(c). Consequently, the staff proposes that the Commission approve the suggested changes to the table in NUREG-0737 (Enclosure 2) to clarify the differences between the emergency planning requirements contained in 10 CFR § 50.47 that must be met prior to full power authorizations versus those prerequisite for operating license authorizations only for fuel loading or low power testing.

Enclosure 2 contains page 2-11 as it appears in NUREG-0737 marked with the staff's recommended conforming changes. Enclosure 3 is the same page retyped as it would be issued. The staff believes it is important to issue this change promptly to serve as the basis for consideration of low power applications now in the hearing process.

Recommendation: That the Commission approve the changes to page 2-11 of NUREG-0737 as provided in Enclosure 3.



William J. Dircks
Executive Director for Operations

Enclosures:

1. NUREG-0694 Pages-Background Information
2. NUREG-0737 Marked Page 2-11
3. NUREG-0737 Final Page 2-11

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, April 6, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners ^{ML} March 30, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION

Commissioners
Commission Staff Offices
Exec Dir for Operations
ACRS
ASLBP
Secretariat

II.K.3 FINAL RECOMMENDATIONS OF B&O TASK FORCE*

- C.3.9** For Westinghouse-designed reactors, modify the pressure integral derivative controller, if installed on the PORV, to eliminate spurious openings of the PORV.
- C.3.10 For Westinghouse-designed reactors, if the anticipatory reactor trip upon turbine trip is to be modified to be bypassed at power levels less than 50 percent, rather than below 10 percent as in current designs, demonstrate that the probability of a small-break LOCA resulting from a stuck-open PORV is not significantly changed by this modification.
- C.3.11 Demonstrate that the PORV installed in the plant has a failure rate equivalent to or less than the valves for which there is an operating history.
- C.3.12 For Westinghouse-designed reactors, confirm that there is an anticipatory reactor trip on turbine trip.

These requirements shall be met before fuel loading.

III.A.1.1 UPGRADE EMERGENCY PREPAREDNESS

Comply with Appendix E, "Emergency Facilities," to 10 CFR Part 50, Regulatory Guide 1.101, "Emergency Planning for Nuclear Power Plants," and for the offsite plans, meet essential elements of NUREG-75/111 (Ref. 28) or have a favorable finding from FEMA.

*The B&O recommendations were not specifically delineated as to fuel-loading or full-power requirements prior to the review of Sequoyah, North Anna 2, and Salem 2. The NRR staff is presently confirming compliance with these four items for these plants.

**Table C.3 of the Action Plan lists the requirements derived from final recommendations of the B&O Task Force.

This requirement shall be met before fuel loading.

III.A.1.2 UPGRADE EMERGENCY SUPPORT FACILITIES

Establish an interim onsite technical support center separate from, but close to, the control room for engineering and management support of reactor operations during an accident. The center shall be large enough for the necessary utility personnel and five NRC personnel, have direct display or callup of plant parameters, and dedicated communications with the control room, the emergency operations center, and the NRC. Provide a description of the permanent technical support center.

Establish an onsite operational support center, separate from but with communications to the control room for use by operations support personnel during an accident.

Designate a near-site emergency operations facility with communications with the plant to provide evaluation of radiation releases and coordination of all onsite and offsite activities during an accident.

These requirements shall be met before fuel loading. See NUREG-0578, Sections 2.2.2.b, 2.2.2.c (Ref. 4), and letters of September 27 (Ref. 23) and November 9, 1979 (Ref. 24) and April 25, 1980 (Ref. 29).

III.D.3.3 INPLANT RADIATION MONITORING

Provide the equipment, training and procedures necessary to accurately determine the presence of airborne radioiodine in areas within the plant where plant personnel may be present during an accident.

This requirement shall be met before fuel loading. See NUREG-0578, Section 2.1.8c (Ref. 4), and letters of September 27 (Ref. 23) and November 9, 1979 (Ref. 24).

- C.2.16 For B&W-design reactors, evaluate the effect of reactor coolant pump damage and leakage following a small-break LOCA concurrent with a loss of offsite power that results in the loss of seal cooling. See letter of August 21, 1979 (Ref. 30).

These requirements shall be met before issuance of a full-power license.

II.K.3 FINAL RECOMMENDATIONS OF B&O TASK FORCE

- C.3.3* Assure that any failure of a PORV or safety valve to close will be reported to the NRC promptly. All challenges to the PORVs or safety valves should be documented in the annual report.

This requirement shall be met before issuance of a full-power license.

III.A.1.1 UPGRADE EMERGENCY PREPAREDNESS

Provide an emergency response plan in substantial compliance with NUREG-0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (which may be modified as a result of public comments solicited in early 1980) except that only a description of and completion schedule for the means for providing prompt notification to the population (App. 3), the staffing for emergencies in addition to that already required (Table B.1), and an upgraded meteorological program (App. 2) need be provided (Ref. 10). NRC will give substantial weight ^(?) findings on offsite plans in judging the adequacy against NUREG-0654. Perform an emergency response exercise to test the integrated capability and a major portion of the basic elements existing within emergency preparedness plans and organizations.

This requirement shall be met before issuance of a full-power license.

*Table C.3 of the Action Plan lists all of the recommendations of the B&O Task Force.

ENCLOSURE 2 (CONTINUED)

Clarification Item	Shortened Title	Description	Implementation Schedule	Plant Applicability	Requirements Issued	Clarification Issued	Tech Spec. Req.	Remarks
II.K.3	Final recommendations, B&O task force (continued)	c. New analyses	In accordance with review schedule	All	^a	Encl. 3	No	
		31. Plant-specific analysis	1/1/83 ^a	All	^a	Encl. 3	No	
		44. Evaluate transients with single failure	1/1/81 ^a	BWR	^a	Encl. 3	As required	
		45. Manual depressurization	1/1/81 ^a	BWR	^a	Encl. 3	No	
		46. Michelson concerns	Fuel load	BWR	^a	Encl. 3	No	
III.A.1.1	Emergency preparedness, short term	Short-term improvements	Fuel load <i>Complete</i>	All	8/19/80	NUREG-0654	No	Use NUREG-0654 until 11/9/79 issued (due to 10/80)
III.A.1.2	Upgrade emergency support facilities	1. Establish TSC, OSC, EOF (interim basis)	TBD	All	9/27/79	11/9/79	No	
		2. Design	TBD	TBD	TBD	TBD	TBD	
		3. Modifications	TBD	TBD	TBD	TBD	TBD	
III.A.2	Emergency preparedness	1. Upgrade emergency plans to App E, 10 CFR 50	Full power <i>Full power</i>	All	8/19/80	NUREG-0654	No	<i>Yes</i>
		2. Meteorological data	Fuel load <i>Full power</i>	All	6/26/80	NUREG-0654	No	<i>Yes</i>
III.D.1.1	Primary coolant outside containment	Measure leak rates & establish program to keep leakage ALARA	Full power	All	9/27/79	11/9/79 Encl. 3	Yes	
III.D.3.3	Implant I ₂ radiation monitoring	1. Provide means to determine presence of radiiodine	Fuel load	All	9/27/79	11/9/79 Encl. 3	Yes	
		2. Modifications to accurately measure radiiodine	1/1/81 or prior to licensing	All	9/27/79	11/9/79 Encl. 3	Yes	
III.D.3.4	Control-room habitability	1. Identify and evaluate potential hazards	Full power	All	6/26/80	Encl. 3	No	
		2. Schedule for modifications	Full power	All	6/26/80	Encl. 3	No	
		3. Modifications	Full power	All	6/26/80	Encl. 3	Yes	

^aFour months before operating license is issued or 4 months before date indicated.

^aRequirement formally issued by this letter.

ENCLOSURE 2 (CONTINUED)

Clarification Item	Shortened Title	Description	Implementation Schedule	Plant Applicability	Requirements Issued	Clarification Issued	Tech Spec. Req.	Remarks
II.K.3	Final Recommendations, B&O task force (Continued)	c. New analyses	In accordance with review schedule	All	*	Encl. 3	No	
		31. Plant-specific analysis	1/1/03A	All	*	Encl. 3	No	
		44. Evaluate transients with single failure	1/1/01A	DWR	*	Encl. 3	As required	
		45. Manual depressurization	1/1/81A	DWR	*	Encl. 3	No	
		46. Michelson concerns	Fuel load	DWR	*	Encl. 3	No	
III.A.1.1	Emergency preparedness, short term	Short-term improvements	Complete				No	
III.A.1.2	Upgrade emergency support facilities	1. Establish TSC, OSC, EOF (Interim basis)	TBD	All	9/27/79	11/9/79	No	
		2. Design	TOD	TOD	TBD	TOD	TOD	
		3. Modifications	TOD	TOD	TOD	TOD	TOD	
III.A.2	Emergency preparedness	1. Upgrade emergency plans to App E, 10 CFR 50	Full power	All	8/19/80	NHREG-0654	Yes	
		2. Meteorological data	Full power	All	6/26/80	NHREG-0654	Yes	
III.D.1.1	Primary coolant outside containment	Measure leak rates & establish program to keep leakage ALARA	Full power	All	9/27/79	11/9/79 Encl. 3	Yes	
III.D.3.3	Implant I ₂ radiation monitoring	1. Provide means to determine presence of radiolodine	Fuel load	All	9/27/79	11/9/79 Encl. 3	Yes	
		2. Modifications to accurately measure radiolodine	1/1/81 or prior to licensing	All	9/27/79	11/9/79 Encl. 3	Yes	
III.D.3.4	Control-room habitability	1. Identify and evaluate potential hazards	Full power	All	6/26/80	Encl. 3	No	
		2. Schedule for modifications	Full power	All	6/26/80	Encl. 3	No	
		3. Modifications	Full power	All	6/26/80	Encl. 3	Yes	

Four months before operating license is issued or 4 months before date indicated.
 *Requirement formally issued by this letter.