UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

12/19/73

Before the Atomic Safety and Licensing Appeal Board

In the Matter of

SOUTHERN CALIFORNIA EDISON COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY

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

Docket Nos. 50-361
50-362

AEC REGULATORY STAFF
MOTION FOR EXTENSION OF TIME
TO FILE MEMORANDUM

On December 12, 1973, the Appeal Board in the captioned proceeding, in light of scheduled action by the Coastline Commission of the State of California on an application before that Commission for permits for the San Onofre Unit 2 and 3 facilities, ordered the applicant to inform the Appeal Board of whether action has been taken by such Commission and the nature of such action. The Appeal Board also ordered every party to file, by December 28, 1973, memoranda addressed to: the legal effect of the Coastline Commission's determination; and to the course which this Board should now follow with respect to the disposition of exceptions filed by the staff and the intervenors to the Initial Decision.

The staff has been informed informally in telephone conversations that the Coastline Commission, in fact, acted on the applications on December 5, 1973[1/], and we have sought a copy of such order. We have been informed that the Commission determination would be reflected in minutes of its action but that such minutes would not be available until some time the week ending December 21, 1973. Due to delays in Christmas mailing, it may be very close to December 28, 1973, before we receive these minutes.

In the absence of these necessary documents, it is not possible for the staff to respond, within the alloted time, to that portion of the Appeal Board Order relating to the "legal effect of the Coastline Commission's determination". While we could attempt to respond, in part, to that portion of the Appeal Board's Order requesting memoranda on the course the Appeal Board should follow with respect to consideration of exceptions, it is possible that such response may require modification in light of the California determination.

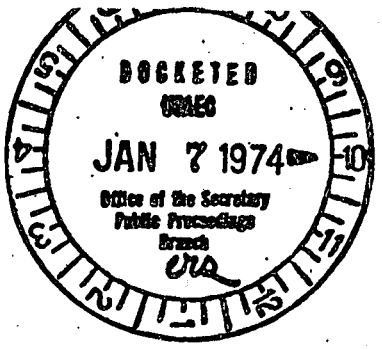
1/ Since we have not yet verified the nature of such action by our own review of the Coastline Commission's determination, we refrain from representing to the Appeal Board the nature of such action.

For the foregoing reasons, the staff respectfully requests an extension of time to file the memorandum called for by the Appeal Board's Order of December 12, 1973. We believe that an extension of one week, until January 4, 1974, should be sufficient, if the Coastline Commission minutes are received before December 28, 1973.

Respectfully submitted,

Joseph F. Scinto
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland,
this 19th day of December, 1973.



UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that service was made on the following, in the above-captioned matter, by depositing in the United States mail, first class or air mail, this 19th day of December, 1973, a copy of "AEC Regulatory Staff Motion for Extension of Time to File Memoranda":

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael C. Farrar, Esq.
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Fredric P. Sutherland, Esq.
Brent N. Rushforth, Esq.
Center for Law in the
Public Interest
10203 Santa Monica Boulevard
Los Angeles, California 90067

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U.S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Joseph F. Scinto
Assistant Chief Hearing Counsel

HQ-17 (11-65)

U. S. ATOMIC ENERGY COMMISSION

ROUTING SLIP

Organization: Reactor Projects

TO	NAME, TITLE, UNIT OR MAIL STATION
	ADD:RP
①	AD: LWR-1 — ~~DeYoung~~
	AD:AR
②	AD: LWR-2 — Collier
	AD:OR
	AD:EP
	TECH ASS'T
	PROGRAMS
	SPEC ASS'T STANDARDIZATION
③	PM — P. O'Reilly

- ☐ As Requested
- ☐ Correction
- ☐ Filing
- ☐ Full Report
- ☒ Information
- ☐ See Me
- ☐ Allotment Symbol
- ☐ Approval/Signature
- ☐ Comment/Concurrence
- ☐ Necessary action
- ☐ Note and Return
- ☐ Per Conversation
- ☐ Read & Destroy
- ☐ Recommendation
- ☐ Handle Directly
- ☐ Immediate Action
- ☐
- ☐
- ☐ Answer or Acknowledge Before _____
- ☐ Prepare Reply for the Signature of _____

REMARKS:

Cy sent to Larry Chandler 1/30/74 this

FROM

Name	Div./Off./Br.	Date	Telephone
A. Giambusso	DDRP	1/19	7373

HQ 200a (11-73) . WHITE HOUSE REFERRAL

NO. 74-2945 LOGGING DATE Jan. 15, 1974

AEC SECRETARIAT 1/15/74

TO: ☐ COMMISSIONER DATE: XXXXXXX

☐ GEN. MANAGER ☐ GEN. COUNSEL ☐ INFO. SERVICES

XX DIR. REGULATION ☐ PLAN. & ANAL. ☐ SECRETARY

☐

INCOMING FROM: Carpenter Technology Corp.
P.O. Box 20536
San Diego, Calf.

DATE: Dec. 13, 1973

SUBJECT: Feelings concerning the veto of the construction permit for the San Onofre Reactors 2 & 3

☐ PREPARE REPLY FOR SIGNATURE OF:

- ☐ CHAIRMAN
- ☐ COMMISSIONER
- ☐ GM, DR, GC, PA, IS, SECY
- ☐ SIGNATURE BLOCK OMITTED

A/D T PM

☐ PLEASE RETURN ORIGINAL WITH RESPONSE

☐ FOR DIRECT REPLY

☐ SEND COPY OF REPLY TO:

- ☐ SECY MAIL FACILITY (3)
- ☐ CHAIRMAN
- ☐ COMMISSIONERS
- ☐ SECRETARY

☒ FOR APPROPRIATE ACTION

☐ FOR INFORMATION

☐ FOR RECOMMENDATION

REMARKS: This is President Nixon's copy
The copy for Dr. Ray was forwarded
to Public Proceedings in Dec. 1973

FOR THE COMMISSION: Donna

WHEN SEPARATED FROM ENCLOSURES HANDLE THIS DOCUMENT AS

Rec'd Off. Dir. of Reg.
Date 1/16/74
Time 1:35

GPO 870-868 ACTION SLIP

CARTECH CARPENTER TECHNOLOGY CORPORATION
SPECIAL PRODUCTS DIVISION P.O. BOX 20536, SAN DIEGO, CALIFORNIA 92120 (714) 448-1000

Cyp Circ: LVG O'Leary
Docket File
PDR
LPDR

December 13, 1973

To The Honorable Richard M. Nixon, President of the United States
Honorable Dixy Lee Ray, Chairwoman, Atomic Energy Commission
Honorable Alan Cranston, United States Senator from California
Honorable John V. Tunney, United States Senator from California
Honorable Bob Wilson, United States Congressman from California
Honorable Ronald Reagon, Governor, State of California
Honorable Ed Reinecke, Lieutenant Governor, State of California
Honorable Edmund G. Brown, Jr., Secretary of State, State of California
Honorable Evelle Younger, Attorney General, State of California

CALIFORNIA STATE LEGISLATURE STATE SENATORS

Honorable Anthony C. Beilenson, 26th District
Honorable W. Craig Biddle, 36th District
Honorable Dennis E. Carpenter, 34th District
Honorable Lou Cusanovich, 23rd District
Honorable George Deukmejian, 37th District

Honorable Ralph C. Dills, 32nd District
Honorable Mervyn M. Dymally, 29th District
Honorable John L. Harmer, 21st District
Honorable Joseph M. Kennick, 33rd District
Honorable Robert J. Lagomarsino, 24th District

Honorable James R. Mills, 40th District
Honorable H. L. Richardson, 19th District
Honorable David A. Roberti, 27th District
Honorable Jack Shrade, 39th District
Honorable Alfred H. Song, 28th District

Honorable Robert S. Stevens, 25th District
Honorable Lawrence E. Walsh, 30th District
Honorable James Q. Wedworth, 31st District
Honorable James E. Whetmore, 35th District

CARTECH CARPENTER TECHNOLOGY CORPORATION
SPECIAL PRODUCTS DIVISION P.O. BOX 20536, SAN DIEGO, CALIFORNIA 92120 (714) 448-1000

CALIFORNIA STATE ASSEMBLYMEN

Honorable Richard J. Alatorre, 48th District
Honorable Michael D. Antonovich, 43rd District
Honorable Robert E. Badham, 71st District
Honorable Howard L. Berman, 57th District
Honorable Robert G. Beverly, 46th District

Honorable John V. Briggs, 35th District
Honorable Robert H. Burke, 70th District
Honorable Peter R. Chacon, 79th District
Honorable Robert C. Cline, 64th District
Honorable John L. E. Collier, 54th District

Honorable Kenneth Corey, 69th District
Honorable Mike Cullen, 44th District
Honorable Wadie P. Deddeh, 77th District
Honorable Julian C. Dixon, 63rd District
Honorable Jack R. Fenton, 51st District

Honorable Alex P. Garcia, 40th District
Honorable Joe A. Gonsalves, 66th District
Honorable Bill Greene, 53rd District
Honorable Frank Holoman, 65th District
Honorable Walter M. Ingalls, 74th District

Honorable Harvey Johnson, 58th District
Honorable Lawrence Kapiloff, 78th District
Honorable Walter Karabian, 45th District
Honorable Jim Keysor, 41st District
Honorable William H. Lancaster, 49th District

Honorable Frank Lanterman, 47th District
Honorable J. Ken MacDonald, 37th District
Honorable W. Don MacGillivray, 36th District
Honorable Joseph B. Montoya, 50th District
Honorable Bob Moretti, 42nd District

Honorable Paul Priolo, 60th District
Honorable John P. Quimby, 72nd District
Honorable Leon Ralph, 55th District
Honorable Newton R. Russell, 62nd District
Honorable Alan Sieroty, 59th District

Honorable John Stull, 80th District
Honorable Vincent Thomas, 68th District
Honorable Larry Townsend, 67th District
Honorable Floyd L. Wakefield, 52nd District
Honorable Charles Warren, 56th District
Honorable Henry A. Waxman, 61st District
Honorable Bob Wilson, 76th District

CARPENTER TECHNOLOGY CORPORATION
SPECIAL PRODUCTS DIVISION P.O. BOX 20536, SAN DIEGO, CALIFORNIA 92120 (714) 448-1000

BOARD OF SUPERVISORS

Honorable Jack Walsh, 1st District
Honorable Dick Brown, 2nd District
Honorable Lou Conde, 3rd District
Honorable Jim Bear, 4th District
Honorable Lee R. Taylor, 5th District

CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION

Mr. Joseph E. Bodovitz, Executive Director

Gentlemen and Madam Chairwoman:

We the undersigned wish you to know our feelings concerning the veto of the construction permit for the San Onofre Reactors 2 and 3 by the California State Coastal Zone Conservation Commission.

I APPROVE OF THE POSITION TAKEN BY THE CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION ON DENYING A CONSTRUCTION PERMIT FOR THE SAN ONOFRE NUCLEAR PLANTS 2 AND 3.

YES ~~NO~~

R Mavet

Rosemarie Cooley

Walter Kowalski

Kenneth W Stead

William Kent

K Stewart Peters

Frank Fromglin

Edward L. Hemphill

Mary Warren

P. E. Ellis

Fred C. Mogel

Joan Wetland

E R Abey

E. A. Wallace

I APPROVE OF THE POSITION TAKEN BY THE CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION ON DENYING A CONSTRUCTION PERMIT FOR THE SAN ONOFRE NUCLEAR PLANTS 2 AND 3.

YES

NO

James A. Hill

Pat Miller

Benjamin V. Salmon

Floyd L. Soon

Dorrick M. Johnson

Irene Stoke

Eileen Cross

Vernon H. Arnold

Joseph R. Berger

John T. Page

Gordon L. Jensen

Tony McCoven

Robert E. Pierce

Gilbert B. Munz

James A. Lindan Jr.

Michael L. Schwartz

D Casey

I APPROVE OF THE POSITION TAKEN BY THE CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION ON DENYING A CONSTRUCTION PERMIT FOR THE SAN ONOFRE NUCLEAR PLANTS 2 AND 3.

YES

NO

Robert M. La Follette
William J Richmond
Marvin E Floyd
Douglas H. Culver
Lofton L. Hatchford
Harry L Begg
B. H Wagner
Elton E. Nash
Walter J Perry
Byron M. Hopkins
Rachel A Craft
Douglas P. Mephers
Dale E Elwood
Ingwin Lovell
Archo Plantz
George Barth

I APPROVE OF THE POSITION TAKEN BY THE CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION ON DENYING A CONSTRUCTION PERMIT FOR THE SAN ONOFRE NUCLEAR PLANTS 2 AND 3.

YES

NO

J. A. Andari

DR Schrupbad

J Mayer

H Foglio

W. R. Taylor

A Green

Charles Paige

Bob Thorpe

Doran Cordry

E. M. Harrington

Ed Passalacqua

Jerry Mason

Peter Hall

Tony Hood

R. Arnold

Ida Clendenon

Bowen M. Pearson

I APPROVE OF THE POSITION TAKEN BY THE CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION ON DENYING A CONSTRUCTION PERMIT FOR THE SAN ONOFRE NUCLEAR PLANTS 2 AND 3.

YES

Ronald J. Kirk

NO

Charles A. Hapbell
Mary Ann Porter
Query Lee Willis
John R. Edmunds Jr.
R. C. Slater
W. C. Thrasher
Howard J. Swibel
William N. Beatty Jr.
A. G. Warner
James A. Jukaup
J. W. Hollandsworth
E E Post
Karl Gerzeabauser
Cook, W. L.
John W. Dooley Jr.
Joseph F. Frederick
Allan P. Schultz
Ralph O. Fuqua
Ernest F. Schutte

I APPROVE OF THE POSITION TAKEN BY THE CALIFORNIA STATE COASTAL ZONE CONSERVATION COMMISSION ON DENYING A CONSTRUCTION PERMIT FOR THE SAN ONOFRE NUCLEAR PLANTS 2 AND 3.

YES NO

Roy P. Lewis
Michael C. Jaf
Robert A. DeLong
Ed Harrington

CARPENTER
TECHNOLOGY CORPORATION
P.O. BOX 20536, SAN DIEGO, CALIFORNIA 92120

Carpenter SPECIALTY STEELS
W.H. Mail Reception & Security
Processed By
CREATE AMERICAN JOBS
Date

EL CAJON CALIF. DEC 13 '73 U.S. POSTAGE .16 PB METER P.B. 519693

Honorable Richard M. Nixon,
President of the United States
1600 Pennsylvania Avenue
Washington, D. C. 20006

DEC 17 '73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY (San Onofre Nuclear Generating Station, Units 2 and 3)	Docket Nos. 50-361 50-362

MEMORANDUM OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

On December 12, 1973, the Atomic Safety and Licensing Appeal Board (Appeal Board) ordered that every party to the above captioned proceeding shall, in the event that the California Coastal Commission disapproved the proposed additional units at the San Onofre facility, file a memorandum addressed to the following questions:

"1. The legal effect of the Coastline Commission's determination.

"2. The course which this Board should now follow with respect to the consideration and disposition of the exceptions which have been filed from the initial decision of the Licensing Board. In this connection, we are particularly interested in the views of the respective parties regarding whether we should proceed at this juncture to determine the issues presented by the exceptions; hold exceptions in abeyance pending further developments; or pursue some other course."

The California Coastal Commission has in fact issued such an order. Accordingly, the People of the State of California and the Public Utilities Commission of the State of California (California), assume that "every party" includes those participating under 10 C.F.R. §2.715(c) and submits the following response.

California has previously responded to questions regarding the legal effect of the California Coastal Commission's rulings and determinations under Proposition 20 (California Public Resources Code, Sections 2700, et seq.) on Atomic Energy Commission (AEC) proceedings in the course of its participation in the hearings regarding the construction permit for Pacific Gas and Electric Company's (PG&E) Diablo Canyon Nuclear Power Plant, Unit No. 2. (Brief of California filed in AEC Docket No. 50-323 attached hereto as Exhibit A.) California submits that the legal arguments presented by it in that proceeding, with the exception of those arguments regarding whether a permit would have been required for that project under Proposition 20, apply with equal force to this proceeding. In its brief regarding the applicability of Proposition 20 to that proceeding, California outlined the general provisions of Proposition 20 (Exh. A, pp. 2-3) and submitted that the Safety and Licensing Board in that proceeding was not the proper forum to consider issues involving Proposition 20 (Exh. A, p. 6). While California welcomes this Board's awareness of the policies and objectives

of Proposition 20 and the orders of the California Coastal Commission, it must again maintain that Proposition 20 and the California Coastal Commission's orders pursuant to Proposition 20 are not proper issues for consideration by this Board. Accordingly, as the Safety and Licensing Board in that proceeding ordered, this Appeal Board should also rule that the provisions of Proposition 20, and the orders of the California Coastal Commission are not proper issues for consideration before it. California therefore submits that in the absence of any modification or amendment of the proposed facilities by the applicants, the Licensing Board should proceed without delay to determine and rule on the issues presented by the exceptions filed to its Initial Decision.

Respectfully submitted,

/s/ JOHN P. MATHIS

John P. Mathis

/s/ J. CALVIN SIMPSON

J. Calvin Simpson

/s/ ANDREW J. SKAFF

Andrew J. Skaff

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

5066 State Building
San Francisco, California 94102

December 27, 1973

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY	)	Docket Nos. 50-361 50-362
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

NOTICE OF APPEARANCE AND SUBSTITUTION

Pursuant to 10 CFR §2.713, notice is hereby given that the undersigned attorney herewith enters his appearance and substitution for Tucker W. Peterson, Esq., in the above-entitled docket. The undersigned attorney appears on behalf of the People of the State of California and the California Public Utilities Commission. The name and qualifications of said attorney are as follows:

ANDREW J. SKAFF, ESQ.

California Public Utilities Commission
5241 State Building
350 McAllister Street
San Francisco, CA 94102

Admitted to practice
before the Supreme Court
of California,
January 7, 1971.

/s/ ANDREW J. SKAFF

Andrew J. Skaff

December 27, 1973

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of		
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY	)	Docket Nos. 50-361 50-362
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "MEMORANDUM OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA" and "NOTICE OF APPEARANCE AND SUBSTITUTION", dated December 27, 1973, in the above-captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 27th day of December, 1973:

Secretary
U.S. Atomic Energy Commission
Washington, D. C. 20545
Attn: Chief, Public Proceedings Staff

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Charles R. Kocher, Esq.
Southern California Edison Co.
2244 Walnut Grove Avenue
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Enerty Commission
Washington, D.C. 20545

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, Calif. 90272

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Brent N. Rushford
Frederic P. Sutherland
Center for Law in the Public Interest, Inc.
10203 Santa Monica Boulevard
Los Angeles, California 90067

Kenneth E. Carr, Esq.
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence J. Chandler
Office of the General Counsel
Regulation
U.S. Atomic Energy Commission
Washington, D. C. 20545

San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing Board Panel
U.S. Atomic Energy Commission
Washington, D. C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D. C. 20036

/s/ ANDREW J. SKAFF

Andrew J. Skaff

APPENDIX A

file

Legal Docket No. 1257

Dktd. AUG 14 1973

UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

In the Matter of the Application by PACIFIC GAS AND ELECTRIC COMPANY for authorization for construction and operation of Diablo Canyon Nuclear Power Plant Unit No. 2, in San Luis Obispo County, California.

Docket No. 50-323

BRIEF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA WITH RESPECT TO CONTENTION INVOLVING CALIFORNIA PUBLIC RESOURCES CODE, SECTIONS 27000, ET SEQ.

JOHN P. MATHIS
J. CALVIN SIMPSON
ANDREW J. SKAFF

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

5066 State Building
San Francisco, California 94102

August 13, 1973

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statutes

Opinions

UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

In the Matter of the Application by PACIFIC GAS AND ELECTRIC COMPANY for authorization for construction and operation of Diablo Canyon Nuclear Power Plant Unit No. 2, in San Luis Obispo County, California.	Docket No. 50-323

BRIEF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA WITH RESPECT TO CONTENTION INVOLVING CALIFORNIA PUBLIC RESOURCES CODE, SECTIONS 27000, ET SEQ.

INTRODUCTION

At the second prehearing conference held June 7, 1973, in San Luis Obispo, California, the Atomic Safety and Licensing Board (hereinafter referred to as the Board) considered petitions for leave to intervene and admitted as intervenors the People of the State of California and the Public Utilities Commission of the State of California (hereinafter referred to as California). Subject to submission of additional affidavits, the Board also admitted Scenic Shoreline Preservation Conference, Inc., Luigi Marre Land & Cattle Company and San Luis Obispo Bay Properties as "Consolidated Intervenors" (Intervenors).

The Board then considered various contentions raised by the parties, one of which was that the Board take particular

notice of the California Coastal Zone Initiative, Public Resources Code §27000, et seq. (hereinafter referred to as Proposition 20). The Board deferred ruling on this contention, and requested that the parties submit briefs to assist in determining Proposition 20's applicability, if any, to the instant proceeding.

The following is California's response to this request.

I.

THE GENERAL PROVISIONS OF PROPOSITION 20

Proposition 20 was enacted by approval of the voters of California at the General Election held November 7, 1972. As enacted, it provides in part that on or after February 1, 1973, any person wishing to engage in any "development" within the defined coastal area shall obtain a permit authorizing such development from the appropriate regional commission, in addition to any other permit or license required by any city, county, state or regional body. §§27100, 27103-27105, 27400, Pub. Res. Code.[1/]

The California Coastal Zone Conservation Commission (Commission) and the six regional commissions are the administrative bodies created by Proposition 20. §§27200-27202. During the period of their existence, the commissions are assigned two major functions, the first being to prepare, adopt and submit to the Legislature a coastal zone Conservation Plan and the

---

1/ Unless otherwise stated, all references are to the Public Resources Code.

second to regulate proposed development in this coastal zone by way of the permit system. §27300 and §27400. A majority, or, in some cases two-thirds, affirmative vote of the regional commission, or the commission on appeal, is required for approval of any permit (§§27001, 27400, and 27401), which shall only issue upon a finding:

> "(a) That the development will not have any substantial adverse environmental or ecological effect.
>
> "(b) That the development is consistent with the findings and declarations set forth in Section 27001 and with the objectives set forth in Section 27302." (§27402).

II.

AT THE TIME OF ENACTMENT, CERTAIN DEVELOPMENTS WERE EXEMPTED FROM PROPOSITION 20 PERMIT REQUIREMENTS

While Proposition 20 embodies the overwhelming mandate of the voters of California concerning conservation of the coastal zone, its terms also recognize that at the time of its enactment certain developments may have been either substantially completed or embarked upon in such a manner that compliance with the permit requirements of the Act could prove unjustly detrimental to the persons involved. For this reason, Section 27404 exempts from these requirements any person who had been issued a building permit by a city or county prior to the enactment of Proposition 20 and who had obtained a "vested right" thereunder by having diligently and in good faith performed substantial construction work on the development and incurred a substantial liability

for work and meterials in reliance on the permit prior to April 1, 1972.

Although §27404 refers on its face to April 1, 1972 as the date by which vested rights must be obtained in order to qualify for exemption, persuasive authority[2] does exist for the view that a person who has met all the requirements imposed by §27404 by November 7, 1972, the date of Proposition 20's enactment, would have a vested right to complete the development without a permit. An important part of this analysis is the notion that "development" under §27404 refers to a project which is a "single interdependent concept"; meaning a project involving a specific plan having a developer with both the determination and means to carry it out.[3] Coupled with the definition contained in the statute (See §27103), this latter interpretation sheds additional light on the meaning of "development" as embodied in §27404.

III.

DIABLO CANYON NUCLEAR POWER PLANT NO. 2 IS EXEMPT FROM PROPOSITION 20 PERMIT REQUIREMENTS

The construction of Diablo Canyon Nuclear Power Plant Unit 2, including all appurtenant structures and transmission lines, was authorized by the California Public Utilities

---

2/ 56 Ops. Cal. Atty. Gen. 72. This opinion of the Attorney General is set forth in Appendix A.

3/ Id. at pp. 75-76.

Commission (CPUC) in Decision No. 75471 issued March 25, 1969.[4] Prior to April 1972, numerous building permits for the power plant structures and transmission lines had been obtained from San Luis Obispo, Fresno, Kern, Kings and Monterey Counties.[5] Construction of the project began in 1969 according to its approved plan, and was carried on for approximately two years prior to April 1, 1972, in reliance upon the permits and certifications obtained. During this period a substantial amount of construction was completed and $71,193,000 had been expended for work and materials on the plant and its appurtenances. By November 1, 1972, this amount rose to $114,203,000.[6] Clearly, under either of the interpretations of §27404, a vested right had been perfected by Pacific Gas and Electric Company (PG&E), exempting it from any permit requirements.

4/ CPUC Decision No. 75471 is included as Appendix B to the Supplemental Petition of California for leave to intervene filed with the Board on May 1, 1973.

5/ A summary of the local permits obtained and their issuance dates can be found in Appendix 1-1 of the final environmental statement issued May 1973 by the Atomic Energy Commission, Directorate of Licensing, at pages A1-1-4 and A1-1-5.

6/ Figures based on information supplied by Pacific Gas and Electric Company of expenditures on Diablo Canyon Unit 2 as of March 31, 1972 and October 31, 1972, respectively.

IV.

THE ATOMIC SAFETY AND LICENSING BOARD IS NOT THE PROPER FORUM TO CONSIDER ISSUES INVOLVING PROPOSITION 20

As previously noted, Proposition 20 established six regional commissions and the Commission itself as administrative bodies. §§27200-27202. It is well settled that provisions of the Atomic Energy Act may not be construed to affect the authority of a state agency to regulate activities for purposes other than radiological health and safety. 42 U.S.C. §§2018, 2021(k); Maun v. United States, 347 F.2d 970 (1965). While the Board has jurisdiction over those matters set forth in the Atomic Energy Act as well as expanded responsibilities under the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., it is clear that this jurisdiction does not extend to matters of state law or regulation, such as Proposition 20.

While California welcomes the Board's cognizance of the policies and objectives of Proposition 20, and to this extent supports the Intervenors' contention, nevertheless, if the Intervenors' intention is to place Proposition 20 issues before the Board, California's position must be that the Board, sitting for the Commission, is not the proper forum to consider or decide these issues.

CONCLUSION

In conclusion it is respectfully submitted that Proposition 20 exempts by its own provisions Diablo Canyon Nuclear Power Plant No. 2, and, in any event, is not a proper issue for consideration before this Board. However, to the extent that Intervenors' contention would merely urge that cognizance of Proposition 20 policies and objectives be taken, California welcomes such awareness and would urge any actions of the Board which are consonant with these objectives and policies.

Respectfully submitted,

/s/ JOHN P. MATHIS

John P. Mathis

/s/ J. CALVIN SIMPSON

J. Calvin Simpson

/s/ ANDREW J. SKAFF

Andrew J. Skaff

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

5066 State Building
San Francisco, California 94102

Date: August 13, 1973

AEC Dkt No. 50-323

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing BRIEF OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA WITH RESPECT TO CONTENTION INVOLVING CALIFORNIA PUBLIC RESOURCES CODE, SECTIONS 27000, ET SEQ. by mailing a copy thereof by first-class mail, postage prepaid, to each of the following parties this 13th day of August 1973:

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing
Board Panel
U.S. Atomic Energy Commission
Washington, D. C. 20545

Charles A. Haskins, Esq.
Windy Hill Farm
Bluemont, Virginia 22012

Mr. Glenn O. Bright
Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dr. William E. Martin
Senior Ecologist
Battelle Memorial Institute
Columbus, Ohio 43201

Dr. Clark Goodman
Professor of Physics
University of Houston
3801 Cullen Boulevard
Houston, Texas 77004

Mr. Nathaniel H. Goodrich
Chairman
Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Secretary
U.S. Atomic Energy Commission
Washington, D. C. 20545
Attn: Chief, Public Proceedings
Staff

Mr. Angelo Giambusso
Deputy Director for Reactor Projects
U. S. Atomic Energy Commission
Washington, D.C. 20545

Philip A. Crane, Jr., Esq.
Pacific Gas & Electric Co.
77 Beale Street
San Francisco CA 94106

Bruce Sharpe, Esq.
General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, CA 93436

Lawrence J. Chandler, Esq.
U.S. Atomic Energy Commission
Washington, D. C. 20545

Gerald Mason, Esq.
Ogle & Gallo
P. O. Box 720
Morro Bay, CA 93442

/s/ ANDREW J. SKAFF

Andrew J. Skaff

APPENDIX "A"

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION

of

EVELLE J. YOUNGER
Attorney General
E. Clement Shute, Jr.
Deputy Attorney General

NO. SO 72/42

February 19, 1973

THE HONORABLE KENNETH L. MADDY, ASSEMBLYMAN, THIRTY-SECOND DISTRICT, has requested an opinion on the following question:

> Would a person be required to obtain a permit from a regional coastal zone conservation commission in order to complete a development commenced between April 1, 1972, and November 7, 1972, assuming that such person has met all of the requirements of law, such as obtaining a building permit, and that such person has performed substantial work and incurred substantial liabilities on the development by November 7, 1972?

The conclusion is:

If, as the question assumes, a person has met all the requirements of law and has performed substantial work and incurred substantial liabilities on the development by November 7, 1972, it is our conclusion that such person would have a vested right to complete the development without a permit from a regional coastal zone conservation commission provided that the development is a single interdependent concept and further provided that the person was not proceeding in a manner which seeks to evade the permit requirements of California Coastal Zone Conservation Act of 1972.

ANALYSIS

At the General Election on November 7, 1972, the voters adopted Proposition 20 (the coastline initiative) which enacted Division 18 of the Public Resources Code commencing with section 27000. 1/ Generally the initiative creates the California Coastal Zone Conservation Commission and six regional commissions. Sections 27102 and 27201. These commissions are to remain in existence until the 91st day after final adjournment of the 1976 Regular Session of the Legislature. Section 27650. During this period of time two primary functions are assigned to the commissions. They are to prepare, adopt, and submit to the Legislature a California Coastal Zone Conservation Plan which is to contain specified elements. See sections 27300 through 27320. Also they are to regulate proposed development (as defined in section 27103) within a defined area by way of a permit system. See sections 27104 and 27400 through 27424.

The point of beginning for our discussion is section 27404. That section contains a "grandfather clause" which is relevant to the status of construction commenced prior to the passage of Proposition 20. It reads as follows:

> "If, prior to the effective date of this division, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if, prior to April 1, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material."

The second sentence of section 27404 provides for a deemed statutory vested right if the conditions contained therein

---

1. Unless otherwise stated, all references are to the Public Resources Code.

are satisfied. However, according to the question we have been asked we are to assume that construction and reliance occurred after April 1, 1972, whereas the second sentence of the section requires such events to have occurred prior to April 1, 1972, in order to qualify for a deemed vested right. Therefore, there is no deemed vested right available under the assumptions in the question before us. Nevertheless, the first sentence of section 27404 by its own terms contemplates the possibility of acquiring vested rights status up to the effective date of the act which was November 8, 1972, the day after the General Election. California Constitution, article IV, section 24 subd. (a).

Thus, it is necessary to explore certain general principles of law involving reliance upon existing law prior to the enactment of new requirements in order to ascertain whether a vested right is possible under the circumstances of our question. These are discussed below:

1. It is stated in 8A McQuillin, Municipal Corporations, (3d ed.) that:

> "The question arises whether commencement of construction of a building or investment or expenditure directed to the commencement of a use entitles one to a right to complete the building or pursue the use as a non-conforming use. This question is closely allied to that of protection of a permit, where there has been expenditure or change of position thereunder prior to a zoning exclusion or restriction of the use. . . ." Id. § 25.181 (emphasis added).

Therefore, the body of law regarding previously issued permits and subsequent changes in the law is relevant and will be discussed at a later point.

2. It must also be observed that when the issue has been raised of whether one may have vested rights as against a subsequent law which could apply to an ongoing project, the courts have not been clear as to the legal basis of their decisions. Concepts of constitutional principles and estoppel

have been utilized. See, for example, Spindler Realty Corp. v. Monning, 243 Cal.App.2d 255, 262-263 (1966). In 2 Rathkopf, Law of Zoning and Planning, it is stated:

> ". . . the emphasis of the courts upon the rule that there is, in fact, no hard-and-fast rule by which it can be determined whether the action taken in a particular case, both in nature and extent, has been sufficient to clothe the permittee with vested rights, indicates clearly that, to a great extent, the decision of the courts involves a balancing of equities." Id. ch. 57-29.

We believe it an accurate conclusion that the effort of the courts has been to achieve basic fairness as between the public interest expressed through a change in ordinance or statute and one who may be "midstream" when the change occurs. See, generally, Tremarco Corp. v. Garzio, 161 A.2d 241, 245 (N.J. Sup.Ct. 1960).

From the above we distill the following guidelines. The most closely analogous body of law is that pertaining to the degree of reliance and change in position a permittee must have undertaken in order to be immune from a subsequent change which affects his project. Additionally, this is an area where equity plays a large part.

In regard to the body of California law pertaining to the requirements which must be satisfied in order for a permittee to win immunity from a newly enacted provision, the California Supreme Court stated in Russian Hill Improve. Assn. v. Board of Permit Appeals, 66 Cal.2d 34, 39 (1967), that a permittee could win such immunity from new criteria only by constructing "a substantial portion of the structure authorized by his permit in good faith reliance upon the prior law." However, this statement, which is dicta since no construction was involved in that case, cannot be taken literally. In some of the cases upon which the court relied substantial work was found to have been accomplished even though relatively small amounts of money had been spent in reliance on the permit. See, for example, Kissinger v. City of Los Angeles, 161 Cal.App.2d 454 (1958) (party had expended $2300 on work done under building permits issued). The court held the party had a vested right to construct the dwellings without regard to the changed zoning); Trans-Oceanic Oil Corp. v. Santa Barbara, 85 Cal.App.2d 776 (1948) (oil company had obtained a permit and had expended approximately $4500 in preparation for

drilling. The court held that the drilling could continue even though the area had been rezoned subsequently to exclude that use); Griffin v. County of Marin, 157 Cal.App.2d 507, 511 (1958) (party had a permit to build a gas station and had contracted to have the area leveled and had prepared plans and specifications. The area was then rezoned to preclude a gas station. The court held that the work had not progressed to the extent that it had in some other cases but since it had involved a material cost the good faith reliance on the permit operated to allow the completion of the gas station). 2/

Under these authorities and keeping in mind that to a large extent this is an exercise in equity, it is our opinion that a person who has met all of the requirements of law and relied in the manner indicated by the assumptions of the question presented to us (i.e., obtained a building permit, performed substantial work, and incurred substantial liabilities, all prior to November 7, 1972) would have a vested right as against the permit requirements contained in Proposition 20 if two further conditions are also satisfied.

The first of these conditions concerns the need to determine whether the development which has been commenced is a "development" within the meaning of section 27404. That section refers to "development" as the descriptive term defining what is exempt. It does not refer to a single structure or to a particular phase of a development. Thus, a question arises as to whether the development contemplated in the question is a "development" within the meaning of the section. 3/

---

2. A recent decision indicates that the quoted statement from Russian Hill should not be taken literally. In Morgan v. County of San Diego, 19 Cal.App.3d 636 (1971), the court held on several grounds that the county was compelled to grant an extension of time in which to complete a permitted project. In the course of its opinion the court noted that reliance cannot be measured merely by looking at the construction site since funding, planning and coordination with various government agencies may have to precede actual work. Morgan, supra, at p. 641.

3. Since the question asks us to assume that a development has been commenced, it would perhaps be sufficient for us to merely assume that it is a development as contemplated by section 27404, thereby obviating the need for discussing the criteria for what constitutes such a development. However, it is our hope that by discussing this matter some guidance will be provided for particular situations that will undoubtedly arise.

If the development is a single interdependent concept, then that development would fall within the term as used in section 27404. Detailed information concerning the nature of the development plan, the commitment to completion of that plan, the relationship of the various steps which have been taken, the content and status of contracts which have been signed and other relevant matters would be required in order to make a determination of whether a particular development is a "development" within the meaning of section 27404.

Support for this interpretation of "development" is found in People ex rel. S.F. Bay, etc.Com. v. Town of Emeryville, 69 Cal.2d 533 (1968). That case dealt with the grandfather clause set forth in the enabling legislation creating the San Francisco Bay Conservation and Development Commission. See Government Code sections 66600 through 66661 and particularly Government Code section 66632.1. As was stated by the proponents of Proposition 20, the new coastal agency is modeled after the San Francisco Bay agency. "Propositions and Proposed Laws" (General Election November 7, 1972) at p. 53.

While the statute in the Emeryville case used the work "project" as the descriptive term defining what qualifies for exemption assuming the conditions of the statute have been otherwise satisfied, it is our view that the meaning of "development" as used in section 27404 and "project" as there used are closely analogous in terms of the purpose of a grandfathering provision. In Emeryville the Supreme Court said:

> ". . . A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the operative decision to proceed toward the objective has not been made. Only when that decision has been made and a plan has been conceived in the detail necessary for prudent commencement of physical efforts to achieve the objective does a 'project' come into being." Id. pp. 545-546. (Emphasis added.)

It is apparent that the underlying requirement which the court indicated must be satisfied is a specific plan with the determination and means of carrying it out. If these criteria are satisfied then the project falls within the purpose of a grandfathering provision ("to preclude harsh and inequitable results" Id. at p. 548) and the work may proceed unaffected by the new law.

By analogy to the reasoning employed in Emeryville we believe the courts would inquire of any claim of entitlement to the protection of section 27404 whether the alleged development is actually a single concept such that the reliance which has occurred prior to the effective date of the initiative has set in motion a course of action which cannot be altered. 4/

The second condition concerns the legal effect of knowledge of the pendency of Proposition 20 with its permit requirements by the person who is claiming vested rights. Between April 1, 1972, and November 8, 1972, two different situations obtained. During the late spring and early summer the initiative was being circulated for qualification for the ballot. During the summer and fall up to the time of the election the initiative was pending as an issue on the ballot.

Spindler Realty Corp. v. Monning, 243 Cal.App.2d 255 (1966), is relevant in this regard. In that case the developer had obtained and relied upon a grading permit in anticipation of a development which would be allowed by the zoning then in effect. The developer, at the time of the grading, did not have a building permit. Before a building permit was issued, a proposed rezoning was announced by the planning commission. This proposal eventually resulted in a zoning change which precluded the proposed development. The court refused to hold that the developer had acquired a vested right to proceed and instead stated:

> "Here, of course, Spindler knew when it obtained its grading permit that under the municipal code it would be required to obtain a building permit in order to construct any buildings on its property. On October 27, 1961, it knew that proceedings had been initiated to rezone its property. While it then had 'every reasonable hope and expectation that the proposed rezoning of the subject property . . . would not eventually become the law,' as the trial court found, it cannot be said that it thereafter incurred any obligations or expended

---

4. It must be observed at this point that both section 27404 and the Emeryville decision (Id. p. 539) indicate that substantial or fundamental changes in the development would bring such development within the permit requirements of Proposition 20.

substantial sums of money in reliance upon the probability that a building permit for R-5 construction would be issued." Id. p. 268.

The court relied on City of Tucson v. Arizona Mortuary, 272 Pac. 923 (Ariz. 1928), in citing the following language:

> "'Instead of awaiting the action of the council, it apparently proceeded on the theory either that the ordinance would not be passed, or that, if passed, it was void. Having taken that chance, it may not now be heard to set up any loss to it which arose after it had knowledge that the ordinance was being considered.'" Id. p. 266 (emphasis by the court).
>
> "'. . . Any loss for money expended after plaintiff had notice of the proposed ordinance was at its peril and cannot be considered as a vested right, entitled to any consideration.'" Id. p. 266 (emphasis by the court). 5/

Further, it is stated in 8 McQuillin, Municipal Corporations (3d ed.), that:

> "The rule that a change in zoning regulations will not revoke a previously granted permit under which expenditures have been made does not apply, of course, where the expenditures are not made in good faith, as where the permittee had actual or constructive knowledge of the pendency of the zoning amendment at the time of the issuance of the permit and of the expenditures and work done under its authority . . . ." Id. § 25.157.

See, also, 8 McQuillin, Municipal Corporations (3d ed.), section 25.154 and 8A McQuillin, Municipal Corporations, (3d ed.), section 25.181.

---

5. Spindler may be read as having alternative holdings, one being the element of knowledge as precluding acquisition of vested rights and the other being that there could be no vested right in any event (absent a building permit) since vested rights cannot accrue until all necessary approvals have been obtained. Regardless of how the holding of the court may be characterized, we do not believe that the language we have cited can be regarded as mere dicta.

The difficulty in assessing the effect of knowledge is demonstrated by the following language from Russian Hill Improvement Assn. v. Board of Permit Appeals, 66 Cal.2d 34 (1967):

> "A permittee who delayed construction in the face of an impending amendment to the zoning laws might find that he had not progressed far enough in time to qualify for immunity; one who proceeded with unseemingly haste ran the risk that his conduct might bear the stigma of bad faith." Id. p. 39.

This language is also consistent with the view that an element of acquisition of vested rights is good faith. 6/

We recognize that there may be a distinction between the language cited above and the situation posed by the question before us. Where a developer proceeds with knowledge of a proposal which would specifically affect its parcel, usually by precluding the previously permitted use as in Spindler, it may be that the developer is proceeding rapidly in order to avoid the proposed new restrictions. Such an effort can prevent the acquisition of a vested right by clouding the prerequisite of good faith. On the other hand, section 27400 of Proposition 20 sets up the necessity for obtaining a permit for development. What kinds of decisions will be rendered by the various regional commissions on particular permit applications and what kinds of conditions might be imposed (see section 27403) can only be the subject of general speculation based upon the language of the initiative. In other words, it is much less reasonable in general to assume that any particular developer is necessarily proceeding in order to avoid a subsequent prohibition of its development.

With these factors in mind, it is our view that if a person is pursuing a particular development between April 1, 1972, and November 7, 1972, in a manner which seeks to evade the permit

---

6. There is authority in this area that a lack of actual knowledge on the part of the developer of any proposed or pending action with respect to its parcel or development, even though such proposals exist, preserves good faith and allows the acquisition of a vested right if the other criteria discussed previously in this opinion have been fulfilled. Gulf Oil Corp. v. Township Board of Supervisors, 266 A.2d 84 (Pa. Sup. Ct. 1970).

requirements of Proposition 20, the "stigma of bad faith" alluded to in Russian Hill attaches. Were this to be the situation, we do not believe that although the other conditions respecting vested rights have been satisfied, the person could acquire a vested right as against the permit requirements of Proposition 20. It is more likely that the courts would determine that such a person was proceeding at his own peril as in Spindler Realty Corp. v. Monning, supra.

However, if a person was proceeding with a development between April 1, 1972, and November 8, 1972, giving no indication of undue haste or other behavior suggesting bad faith, it is our view that his reliance could be in good faith even though he may have had knowledge concerning Proposition 20. This is so since the effect of Proposition 20 as it applies to particular parcels is much less certain than is a specific proposal to change the applicable zoning. Thus, the element of specific knowledge of the effect of the proposed change is lacking. In this situation it is likely that the courts would hold that good faith reliance may be established if the other conditions necessary to acquiring a vested right have been fulfilled. 7/

* * *

---

7. This is not to suggest, however, that a person with a vested right is immune from a regulation requiring such a person to appear before a regional commission to establish the basis for his vested right.

DISTRIBUTION:
OGC Files
Gmtwn Files
Reg. Central Files
PDR
LPDR
HShapar
TEngelhardt
JScinto
MKarman
LChandler
RBirkel
RFroelich
VWilson
GWilliams
Formal Files (2)
Chron

NOV 23 1973

50-361
-362

Your File Ref: W 9225

Ref: Environmental Impact of a lease of tide and submerged lands at San Onofre, San Diego County, for cooling water conduits, Units 2 and 3, San Onofre Nuclear Generating Station.

Mr. C. R. Kirks, Supervisor
Land Transactions
State Lands Commission
State Lands Division
1600 L Street
Sacramento, California 95814

Dear Mr. Kirks:

This will acknowledge receipt of your agency's "tentative Final Environmental Impact Report" relating to the captioned project, sent by cover letter dated November 9, 1973.

I have forwarded the report to Mr. Richard Froelich, the AEC's Environmental Project Manager responsible for the San Onofre Nuclear Generating Station who can more appropriately review and comment on the matter.

If we can be of any further assistance, please feel free to call upon me (301-973-7593) or Mr. Froelich (301-973-7241).

Sincerely,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

OFFICE	OGC				
SURNAME	LJCHANDLER:mll JESCINTO				
DATE	11/23/73				

Form AEC-318 (Rev. 9-53) AECM 0240 GPO C43 16 81468-1 445-678

Yellow

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

11/21/73

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	-362
	)	
(San Onofre Nuclear Generating Station,	)	
Units 2 and 3)	)	

RESPONSE OF AEC REGULATORY STAFF TO
REQUEST OF CONSOLIDATED INTERVENORS FOR
AUTHORITY TO RELEASE CLOSED RECORD TO NEW ATTORNEYS

On November 9, 1973, counsel for consolidated intervenors requested the authority to release the transcripts of the in camera sessions of the captioned proceeding to new counsel in this matter.

While the AEC regulatory staff has no objection to the requested release of these transcripts to new attorneys for the consolidated intervenors, it is to be noted that consolidated intervenors have not formally authorized the substitution of counsel.

Accordingly, staff would not object to the release upon receipt of appropriate notice and approval of substitution of counsel by Scenic Shoreline Preservation Conference, Inc. and Groups United Against Radiation Dangers (GUARD).

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 21st day of November, 1973.

Boring

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station,	)	
Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Response of AEC Regulatory Staff to Request of Consolidated Intervenors for Authority to Release Closed Record to New Attorneys," dated November 21, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 21st day of November, 1973:

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael C. Farrar, Esq.
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Yellow

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION 11/12/73

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS AND ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

BRIEF OF AEC REGULATORY STAFF IN SUPPORT OF EXCEPTIONS

Pursuant to 10 CFR §2.762(b), the AEC regulatory staff (staff) hereby submits its brief in support of the exceptions noted on October 23, 1973, with respect to the Initial Decision of the Atomic Safety and Licensing Board (Board), dated October 15, 1973.

I

In its first exception, the staff stated:

> "The Board erred, in Finding 61 at page 52, in stating that there 'may even be a small preponderance of

Leaving

> evidence presently in...[applicants'] favor' and that the 'lack of overwhelming evidence that the Applicants' interpretation [of the geologic details of the regional tectonic framework] is correct...require[s] this Board to adopt the more conservative position [espoused by the staff],' thereby suggesting an erroneous quantum of evidence necessary to sustain applicants' position; i.e., overwhelming rather than a preponderance."

It was the intention at the time of filing to note for the Appeal Board what appeared to the staff to be an error in the Board's Initial Decision, specifically with respect to Finding No. 61 thereby preserving same for further consideration. Upon further review, however, the regulatory staff does not believe that the error alleged in the Board's Initial Decision is of a nature which would require action by the Appeal Board. The staff takes this position in light of the fact that the error noted relates not to any issue in controversy, but rather solely to an interpretation of the Board's language, which we believe, in this instance, is unclear with respect to the status of the record.

II

The second exception noted by the staff is as follows:

> "The Board erred, in Finding 134 at page 121, in ruling that the staff's proposed condition, limiting total residual chlorine concentration in the immediate vicinity of the discharge to 0.1 mg/liter, is a 'condition of design, rather than...an effluent limitation or water quality standard' which is not subject to limitation by §511(c)(2) of the Federal Water Pollution Control Act and the Commission's Interim Policy Statement (38 F.R. 2679)."

In accordance with the views expressed in the Commission's Interim Policy Statement on implementation, Federal Water Pollution Control Act Amendments of 1972 (Interim Policy Statement)[1/] the Commission will not impose different limitations or other requirements to the extent that there exists applicable federally approved standards.[2/] The purpose of this position is to effectuate section 511(c)(2) of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA).[3/]

The State of California has promulgated applicable standards relating to discharge of chlorine which are considered to be federally

---

1/ 38 F.R. 2679

2/ Id., paragraph 3

3/ P.L. 92-500

approved under section 303 of the FWPCA. Said standards are to be found in the "Water Quality Control Plan for Ocean Waters of California" approved by the Environmental Protection Agency on August 18, 1972. Table B of Chapter IV of said plan sets forth the applicable standard with respect to chlorine and permits a total chlorine residual of 1.0 mg/liter 50% of the time and 2.0 mg/liter 10% of the time. Under the Interim Policy Statement, this standard is a "limitation or other requirement promulgated or imposed pursuant to the FWPCA" within the meaning of paragraph 3 of the Interim Policy Statement.

In their environmental report[4/], the applicants have indicated that operation of the facilities will result in a total chlorine residual less than 0.1 mg/liter, and applicants have not opposed the lower chlorine discharge requirement or in any way indicated that they would operate the facilities at the higher, state-permitted levels. Accordingly, the staff is of the view that applicants have voluntarily agreed to design and operate San Onofre Units 2 and 3 in accordance with a more stringent self-imposed level of 0.1 mg/liter. The condition proposed in the staff's Final Environmental Statement at page iv, paragraph 7.a.(2), merely reflects this agreement and does not indicate Commission imposition of a standard more stringent

---

4/ Applicants' Exhibit 3C, App. A, Section 5, p. 5-4

than that contained in the applicable federally approved state standard. It is our further belief that such action is consistent with the Interim Policy Statement, which does not specifically preclude development of license conditions consistent with agreements voluntarily undertaken by applicants.

The Board, however, did not address the question from the standpoint of an effluent limitation or water quality standard. Rather, as reflected in Finding 134, at page 121 of the Initial Decision, it considered the chlorine discharge condition as a "condition of design." The error to be noted is that the Board views such "condition of design" to be without the constrictions of section 511(c)(2) of the FWPCA and paragraph 3 of the Interim Policy Statement.

In a sense, such a requirement is a "condition of design" since its inclusion in construction permits directs applicants to design and construct the facilities so as to meet the discharge limitation in subsequent operation. However, neither the FWPCA nor the Interim Policy Statement recognize the distinction attempted to be drawn by the Board between an effluent limitation or water quality standard and a condition of design. Indeed, in section 316(b) of the FWPCA, the Act has taken specific cognizance of design requirements necessary

to achieve a specified limitation. Furthermore, paragraph 3 of the Interim Policy Statement extends to "applicable limitations or other requirements promulgated or imposed pursuant to the FWPCA" (emphasis added). A condition of design such as suggested by the Board, clearly falls within the "other requirements" set forth in the above-noted paragraph 3. Accordingly, absent an agreement by the applicants to voluntarily undertake, such lower discharge imposition thereof by the Commission as a condition to the construction permits would be contrary to section 511(c)(2) of the FWPCA and paragraph 3 of the Commission's Interim Policy Statement.

It is, therefore, the staff's position that despite the Board's characterization of this condition as a "condition of design", such condition should, nonetheless, not be stricken, even though subject to section 511(c)(2) of the FWPCA and paragraph 3 of the Interim Policy Statement, since it properly reflects applicants' voluntary agreement to maintain chlorine residuals at 0.1 mg/liter, irrespective of the more lenient state standard.

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 12th day of November, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Brief of AEC Regulatory Staff in Support of Exceptions," dated November 12, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 12th day of November, 1973:

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael C. Farrar, Esq.
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

11-9-73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361 and 50-362
	)	
SAN DIEGO GAS AND ELECTRIC COMPANY	)	
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

BRIEF OF CONSOLIDATED INTERVENORS

In accordance with Rules of Practice, Consolidated Intervenors submit the following in support of their Exceptions to the Initial Decision, filed October 25, 1973.

I. THE FINDING THAT NO INCIDENT IN THE OPERATION OF SAN ONOFRE NO. 1 RESULTED IN RELEASES OF RADIOACTIVITY TO THE ENVIRONMENT IN EXCESS OF LICENSED LIMITS OR OTHERWISE ENDANGERED THE HEALTH AND SAFETY OF THE PUBLIC IS UNSUPPORTED BY CREDIBLE EVIDENCE.

A. San Onofre No. 1 has no system for continuous monitor of radioactive releases. (T. 435) For the conclusion that there had been no releases of radioactivity in excess of licensed limits, the applicant relied on periodic sampling. (T. 436)

The finding, No. 47, that no incident resulted in a release of radioactivity is without support in the record.

II. THE FINDING OF SEISMIC CONSERVATISM IS NOT SUPPORTED BY A SUFFICIENT QUANTUM OF CREDIBLE AND ADMISSIBLE EVIDENCE.

A. Exception to Finding No. 76. In Finding No. 76, the Board has attempted to rationalize the conclusion that the standard for aseismicity is "conservative" by purporting to show a correlation among the Modified Mercali intensities of selected earthquakes and estimates of ground acceleration. The Board admits that the correlation is speculative, that Mr. Devine has left them "...in the dark as to his reasons for connecting these factors...", and they "...therefore, devise a line of reasoning reaching the same conclusions...."

The Board takes the 1940 El Centro Earthquake, with a subjective intensity of X and the single strong-motion record of .33g. It next considers the 1918 San Jacinto Earthquake, with a subjective intensity of IX and an "estimated (by whom, we do not know)..." acceleration of .24g. And, finally it considers the 1933 Long Beach Earthquake, with an intensity of IX and an assumed acceleration of .25g.

Not finding sufficient comfort in this tiny empirical "envelope," the Board weights their ratiocination with some hypothetical comparisons from the applicant.

The Board acknowledges that the relationship between intensity and ground acceleration is not a very precise one. They ignore, however, that attempts to relate the two data

mathematically are unreliable (T. 1703); and it ignores the fact that the gross, qualitative statements, for which intensity values are only a shorthand expression, have no relationship to actual ground movement. The statement, "tall buildings topple," says nothing about the reason for the structural failure: was the tall building wood frame, reinforced concrete, brick, or all steel construction? What was the period, duration or frequency of the acceleration?

There is not a single data point for correlation. Even assuming that the qualitative conclusion was supported by further data, however, the purported correlation really includes only ONE instrumented empirical observation, the 1940 El Centro accelerogram, a single measurement, an unknown distance from even the epicenter, with no data points at all for correlation and analysis.

But having made the first reckless and preposterous conclusion, without a shred of supporting evidence, that the relationship exists, notwithstanding the steadfast denials of every witness who testified on the subject, the Board proceeds to conclude "conservatism" from a historical record of less than 200 years, ignoring the fact that instruments capable of measuring ground accelerations have been available for only thirty years, and notwithstanding the irrelevancy, both by terms of the stipulated seismic issue and by reason of all the expert testimony on the subject, of any postulated tectonic stimulus.

B. Exception to Finding No. 77. The Board attempts, in Finding No. 77, to bolster its rationalization by reference to the "empirical envelope" of Dr. Smith. This is contrary to the warning of the applicant's other witness, Dr. Jahns (T. 1653) that the data base from recent seismicity is not good enough to predict satisfactorily the future probability of seismic activity, because the recurrence interval for events along a given fault is so large, relative to the length of the historical record. It is contrary to the admonition of Dr. Brune (T. 2975) that the historical record of observed strong-motion data is an extremely doubtful statistical sample on which to base estimates of the upper limit on acceleration. It is contrary to the record of assumed upper limits on ground accelerations which traces an increasing curve directly proportional to the number of records gathered. (T. 1806-1808; 2975-2976; 3014).

Perhaps the most defective part of the Board's rationalization is the statement that all strong-body data fit within the .67g envelope.

Dr. Smith admits (T. 1716) that filtering out the high-frequency accelerations of the Pacoima Dam record reduced the effective acceleration to .8g. But if the Board is to conclude that that datum is still within the envelope of .67g it must square Dr. Smith's "explanation" of the anomaly with other data: he says (T. 1716) that the reason why the data still fits the envelope is that Pacoima Dam is " 3 kilometers distance."

If attenuation of ground accelerations within the near field is minimal (T. 1687, 2962), and the near field is defined as a distance equal to one times the depth of the fault, and the depth of the fault is assumed to be ten miles (T. 1687, 1688), how is it possible to make any allowance in the empirical envelope for attenuation due to distance, when the comparative distances might be 3 kilometers in the case of the Pacoima Dam instrument compared with 8 kilometers at San Onofre! (T. 1716)

Even if it were appropriate to assume attenuation due to distance, how conservative is it to discount this extremely important datum to allow for distance, when the source (the start of rupture) of the .8g, low-frequency accelerations has generally come to be regarded as having been some 13 to 15 kilometers from the Pacoima Dam instrument (T. 2969), not the 3-kilometer epicentral distance referred to by Dr Smith.

C. Exception to Finding No. 78. The Board begins its consideration of the mathematical model of Dr. Brune with the pejorative conclusion that it "...of course, does not lead us to a specific number that we could adopt as being 'reasonably conservative'...."

The Board apparently draws this conclusion from the sophistic willingness of Dr. Smith and Mr. Devine to label their unsupported conclusions with the self-serving label of conservatism, which is nothing but a value judgment with unexpressed assumptions as to a level of risk which one is willing to assume. (T. 2985)

The Board plays fast and loose with its public trust when it ignores the warning of Dr. Brune that"...considering

all of the parameters, I think that accelerations certainly greater than 1 g are a possibility...." (T. 1820)

The Board must ignore the best and most reliable scientific predictions of seismic response to tectonic stimulus (T. 2991, 1992, 3011, 2957, 2958), concurred in by all the witnesses at this hearing, to discount the Brune testimony as it does.

D. Exception to Finding No. 79. All expert witnesses agree that none is willing to state a level of risk which could be assigned to an aseismic design of .67g. The uncertainty is so great that probabilities cannot even be stated within an order of magnitude. (T. 2978-2986)

The Board has not, as it claims to have done, placed"...the worst light on the geological evidence...." It has carelessly, and with willful and wanton disregard for the consequences, considered the evidence in the light most favorable to the applicant. It has ignored the unknowns in the assumptions of the applicant's witnesses, and dismissed the testimony of Dr. Brune, the expert whose qualifications are most outstanding and whose scientific detachment is demonstrated not only by the reserved tenor of his testimony (compared with the extravagant guile of the other witnesses) but also by his patent lack of bias from association with any party. (T. 1824-1826)

The conclusion that the design is "conservative" can be supported only by the purported conclusions as to the ultimate fact by two out of the three experts testifying.

E. Exceptions to Findings 61 and 62. Further evidence of the Board's prejudicial attitude towards the evidence on seismology and the tortuous course pursued by them in attempting to rationalize their conclusions is found in the consideration and discussion of geological testimony which was ordered excised from the record. (T. 900)

1. In Finding No. 61, the Board takes notice of the "...honest difference of opinion...as to the proper geological model to use...."

By accepting the stipulation of counsel as to the precise parameters of the seismologic issue, the Board made its determination, in accordance with 10 CFR Part 2, Appendix A, as to the controverted matter. (T. 891)

Accordingly, the Board has committeed a serious error in judgment by going beyond the mere recognition of the dispute to weighing the evidence as to the accuracy of the model and finding "...a small preponderance of evidence presently in their favor...."

2. In Finding No. 62, the Board further demonstrates that it has been prejudiced and tainted with evidence which was expressly taken out of contention.

III. THE FINDINGS THAT APPLICANT MET THE STANDARDS OF 10 C.F.R. PART 100 ARE NOT SUPPORTED BY EVIDENCE.

A. Exclusion Area.

1) The language of PL 88-92 does not expressly grant authority to exclude the public or in any way to control the activity of the public within the exclusion area. In point of law, as set forth in Para. IV, infra, applicant does not possess authority to deny members of the public access to the coast, or to exclude members of the public from the area of the beach below the mean high tide line.

2) No evidence has been adduced to show that effective traffic control could be instituted on Interstate 5, which passes through the exclusion area. (T. 1004, et seq.)

3) No evidence has been adduced to show that the vehicles parked within the San Onofre State Park parking lot can be promptly evacuated in the event of a design basis accident. In point of law, applicant does not possess police power to assure evacuation from the lot, and in point of fact has not made arrangements which will insure that, if necessary, prompt evacuation will be achieved.

B. Low Population Zone.

1) The Board's finding of fact that population distributions are not inconsistent with 10 C.F.R. Part 100 is not supported by the evidence. In fact, the applicant's estimate of the permanent population of Zone 8, the

southwestern corner of the City of San Clemente, within three miles from the proposed reactors is incorrect. By actual count, 488 dwelling houses are presently within the area, and the estimated permanent population for 1980 is estimated to be 945 dwelling houses. (T. 1559, 1560.)

2) The Board has made no finding with respect to the peculiar aspects of the site as they relate to low population; i.e., high seismicity, relative difficulty of evacuation, and possibility of visitor population at the beach, within the low population zone.

C. Population Center Distance.

1) The Board has made no finding of fact regarding the population center distance.

2) The City limits of San Clemente pass within the low population zone. (T. 1558.)

3) Applicant estimates the population of San Clemente and environs to be 33,250 in 1980. (Figure 4 following T. 909.)

IV. THE FINDING THAT APPLICANT HAS MET THE STANDARDS OF 10 C.F.R. PART 100 IS WRONG AS A MATTER OF LAW.

A. Applicant Does Not Possess Authority to Exclude the Public From That Portion of the Exclusion Area Which Lies Below the Mean High Tide Line.

The exclusion area described is transected

by the mean high tide line, below which there is substantial recreation activity by visitors to San Onofre Bluffs State Beach. Article XV, Section 2 of the California Constitution declares:

> No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

The Pacific Ocean is a navigable water, and within three miles of the coast is within the proprietary jurisdiction of the State of California. As a matter of law, the applicant has no authority to deny members of the public access to the coast within the exclusion area. Marks v. Whitney, 6 Cal.3d 351 (1971).

Furthermore, the beach area below the mean high tide line which is within the exclusion area is owned by the State of California, which holds the beach

area in trust for the people of this State. As a matter of law, the applicant has no authority to exclude members of the public from this area. Marks v. Whitney, supra; Kimball v. Macpherson, 46 Cal. 103 (1973); Long Beach Land and Water Co. v. Richardson, 70 Cal. 206 (1886).

B. The Population Center Distance Is Not As a Matter of Law in Compliance with 10 C.F.R. Part 100.

10 C.F.R. Part 100.11(a)3 defines a "population center distance" as a "distance at least one and one-third times the distance from the reactor to the outer boundary of the low population zone." "Population center distance" means the reactor to the nearest boundary of a densely populated center containing more than about 25,000 residents. (10 C.F.R. 100.3(c))

The "low population zone" is defined in Part 100.11(a)2 as an area described by a boundary at any point of which "an individual . . . . who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a total radiation dose to the whole body in excess of 25 rem or a total radiation dose in excess of 300 rem or a total radiation dose in excess of 300 rem to the thyroid from iodine exposure." In this case the "low population zone" has been designated as three miles in the AEC Staff Safety Evaluation Report (p. 28.). The

city limits of the population center of San Clemente, the projected 1980 population of which is 33,250, pass within the low population zone. As a matter of law, the distance of the San Clemente population center from the proposed nuclear facilities is significantly less than, and therefore not in compliance with, the "population center distance" defined in 10 C.F.R. Part 100.

V. THE FINDING THAT ADEQUATE SECURITY PROCEDURES CAN BE PROVIDED TO PREVENT UNCONTROLLED RELEASES OF RADIOACTIVE MATERIALS AS THE RESULT OF INTRUSION BY A DOMESTIC SABOTEUR IS NOT SUPPORTED BY THE EVIDENCE.

A. Counsel are advised that the transcript of the in camera sessions which dealt with security against intrusion by a domestic saboteur has been ordered sealed, and neither that transcript nor any other record of the sessions has been seen by Counsel.

B. On information and belief as to the weight of the confidential findings proposed by Consolidated Intervenors to the Atomic Safety and Licensing Board, it is submitted that those findings refute the conclusion in Finding No. 97.

VI. THE GENERAL FINDING AGAINST THE CONSOLIDATED INTERVENORS WITH RESPECT TO ALL CONTESTED ISSUES IS NOT SUPPORTABLE FOR THE INDIVIDUAL REASONS STATED ABOVE.

Consolidated Intervenors' exceptions to Findings No. 98 are stated in detail in the foregoing particular exceptions.

VII. NEW EVIDENCE HAS BEEN DISCOVERED SINCE THE HEARINGS, WHICH PLACES A SIGNIFICANTLY DIFFERENT PERSPECTIVE ON THE MATTER OF ENTRAINMENT, REQUIRING A REOPENING OF THE HEARINGS.

A. The Board, in Finding No. 112, adopts the Staff's consideration of loss through entrainment and thermal shock of plankton, eggs, larva and juvenile fish.

B. The FES does not consider the effect, regardless of thermal or mechanical shock, to plankton which are drawn into the river of cooling water and transported from the shallow, intertidal waters, where many of the entrained species are narrowly acclimated, to the deeps, generally two miles from their natural habitat.

C. Professor James Enright has given additional study to the problem and recently testified, before the California Coastal Zone Conservation Commission, that this change of habitat could have disasterous impacts on the survival of the entire species. He further testified that the magnitude of the impact is impossible to estimate from the primitive data gathered to date, but that the result of this effect alone could be to create a marine desert for as many as 100 miles from the site.

D. This information was not known to the Consolidated Intervenors or to any party at the time of the hearings, nor could it have been discovered reasonably

in time for the hearings. The evidence is of such recent origin and of such major significance that it requires that the hearings be reopened.

VIII. THE FINDING THAT APPLICANTS HAVE REASONABLY ESTIMATED THE MARINE ENVIRONMENTAL EFFECTS OF OPERATION IS NOT SUPPORTED BY THE RECORD.

A. The Board recognized the indisputable fact that the applicant's prediction of thermal dispersion requires further refinement. (Finding No. 145.) And yet, in the same finding, the Board concludes that the thermal dispersion model reasonably predicts the configuration of the four-degree isotherm. The findings of fact immediately preceding No. 145 clearly show the degree of uncertainty which attaches to the evidence on thermal dispersion models destroys any credible conclusion as to either the shape or the extent of the model.

B. The Board misstates the thrust of Dr. Enright's testimony, in Finding No. 148, when it concludes that there is an abundance of plankton near the discharge.

Dr. Enright's conclusion, to the contrary, was ". . . that the most probable interpretation is that these are distributional phenomena of the sort referred to in passing in the report here, that the plant may have induced these changes in numbers by induced circulation patterns in the surrounding water mass." (T. 2199)

The neglect of the Board to consider the significance of this opinion vitiates any token of accuracy in their analysis of the marine environment.

C. In Finding No. 149, the Board ignores the most significant aspect of Dr. Scanland's testimony: that the applicant has refused and neglected to deploy and monitor constant temperature recorders, and that they consequently have no way to know the temperature of the benthic environment. T. 2494, 2495.

D. The Board's Finding No. 152, that Intervenors ". . . have not demonstrated that one should deduce . . . that an adverse effect should be expected . . ." misplaces the burden of proof, flies in the face of the Board's other Findings, and ignores the requirement of the National Environmental Policy Act that all agencies shall:

> "Utilize a systematic, interdisciplinary approach which will insure the integrated use of the national and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." 42 U.S.C. §4332(2)(A).

It is irrational to find, on the one hand, that ". . . the monitoring program carried out during the past nine years has not been adequate to make sound predictions of the future effects of operating the three-unit

plant . . ." (Finding No. 154); that "thermal modelling" requires ". . . further work . . . in order to further refine the results . . ." (Finding No. 145); and, on the other hand, that ". . . the adverse effects on benthic organisms within the four-degree isotherm have been reasonably estimated by the applicants" (Finding No. 152).

Consolidated Intervenors stipulated to the narrow statement of a marine environmental issue, with the understanding that the agreed point ". . . appeared to be a representative and typical issue." (T. 255) It was clear that the contested issue did not exhaust the field of marine environmental impact, and that the contention only illustrated a pervasive defect.

In demonstrating significant defects in the baseline data regarding environmental impact on the marine environment, Intervenors have met the burden of persuasion, as acknowledged in the Board's findings, of the underlying conclusions.

Applicants and the staff have at their disposal the resources with which to conduct the kind of study of the marine environment which the Board recognizes as necessary ". . . to make sound predictions. . . ." (Finding No. 154. Emphasis added.)

If the predictions as to effects on the marine environment are admittedly unsound, it is inconsistent to find that the effects have been reasonably estimated. If

the case has been made to this extent, the burden of applicants to prove that their estimates are reasonable has not been met.

E. To recognize that the predictions are unreliable and yet find, No. 153, that justifiable damage only will result is inconsistent.

IX. THE FINDING THAT AN UNDERGROUND SITE IS NOT A PRACTICAL ALTERNATIVE FROM THE VIEWPOINT OF THRESHOLD FEASIBILITY IS NOT SUPPORTED BY THE EVIDENCE.

A. A fair balancing of the testimony of applicant's witness on the subject of underground siting against that of Dr. Goldsmith shows, at the least, that the threshold feasibility of underground siting was demonstrated. This was accomplished when applicant acknowledged that the proposal was technically feasible. (Finding No. 164.)

B. The Board's conclusions, Findings 162 and 171 and Order, docketed May 10, 1973, that threshold feasibility had not been shown, creates a distorted definition of "threshold feasibility."

X. THE ULTIMATE CONCLUSIONS THAT THE CONSTRUCTION PERMITS ISSUE, SUBSTANTIALLY WITHOUT RESERVATION, ARE NOT SUPPORTED BY THE EVIDENCE.

A. The exceptions noted and described above are incorporated by reference in a general exception taken

to the general conclusions in paragraphs 172, 174, 175, 176 and 177 of the Interim Opinion, as they relate to and form the underlying basis on which the ultimate conclusions are predicated.

B. The conclusions which the Board drew from the environmental impact statement are unsubstantiated generalities, expressed in gross qualitative terms. If the purported benefit, for example, of newly created employment or tax revenue were to be taken seriously, the benefit should be susceptible of being assigned a value. The fact that neither the applicant nor the staff could be troubled to test their assumptions of such ephemeral benefits suggests that they should not be dignified by being entered in the purported balance. It may be true that 2280 megawatts of electric power could be added to applicants' capacity if the plants were built, but the other "benefits" are not demonstrated by any evidence.

XI. THE RULINGS OF THE BOARD WITH RESPECT TO PROCEDURAL MATTERS WERE MADE WITH AN UNEVEN HAND IN SUCH A BIASED AND PREJUDICIAL MANNER AS DENIED INTERVENORS ELEMENTAL ADMINISTRATIVE DUE PROCESS.

A. Specific Rulings.

Rulings of the Board which prejudiced intervenors are listed here.

1. On January 16, at the opening of the hearings, intervenors renewed the motion, which they had made a week earlier by telephone conference, for additional time. (T. 355-375.) In essence, the need for additional time was related generally to the short time available for preparation, generally, and to resistance by both applicant and staff to legitimate attempts at discovery.

The issues for the hearing were specified and intervenors given authority to participate on November 29, 1972. (T. 219-259.) The period between that date and January 16, 1973 was the entire time allowed for discovery and preparation of any affirmative case.

As of the first day of the hearing, intervenors had received token answers to some of their interrogatories, but they were still denied access, as a practical matter, to operating records for San Onofre No. 1; the regulatory staff denied the existence of a report, prepared by an

outside consultant, which, intervenors had been informed, contained an extremely critical evaluation of the San Onofre project; and every objection by applicant and staff to interrogatories was sustained. These circumstances were set out for the Board, and all requests for additional time were denied.

Intervenors presented developments in administrative rulings which, it believed, justified a continuance. (T. 360.)

When that request was denied, intervenors suggested that the applicant and staff might procede with their case in chief, allowing intervenors time to prepare their case in chief for presentation at the next scheduled hearing session, then anticipated for sometime in May or June.

The Board at no time explained why the hearings on health and safety needed to be held in January, when it was known that additional hearings could not be scheduled before publication of the final environmental statement. But this request also was denied. (T. 375.)

2. After the Board made its ruling that it would not consider further testimony regarding the feasibility of the underground siting alternative, intervenors moved that the issue be amended to consider the use of available waste water or other alternative cooling mediums, which would make it feasible to relocate the power plant inland on Camp Pendleton.

The Board orally denied the amendment without

reason on April 3; it subsequently docketed its order confirming the denial on September 12, again without reason.

By its summary denial, the Board closed its mind to a significant design alternative, described in intervenors' motion, discovered only during the course of the hearings when the applicants' objections to underground siting became enmeshed with the preposterous assumption that they would be pumping seawater inland.

Such a summary denial deprived the Board of information which was necessary for it to make the consideration required under the National Environmental Policy Act, and deprived the public of its right to a careful consideration of environmentally advantageous alternatives.

3. Intervenors entered the environmental hearings with an understanding of the term, "four-degree isotherm" which included all that water which was subjected to temperature perturbation of four degrees or more. The applicant's expert on thermodynamics agreed that such an understanding was not unreasonable. (T. 1942-1944.)

The Board ruled that questions relating to thermal effects on larval forms of benthic organisms within the condensers was a matter of entrainment, and consequently irrelevant. (T. 2213.)

Intervenors moved to clarify the issue regarding the four-degree isotherm, based on the state of the record,

so as to include the whole, three-dimensional area which is subjected to temperature perturbation of four degrees or more. That motion was denied. (T. 2218-2254.)

The Board's crabbed interpretation of this issue was responsible, to a large extent, for the failure of the Board to have and consider substantial amounts of information which was the result of Dr. Enright's directed research.

Accordingly, the Board made its decision without the benefit of all the data it needed, and intervenors were denied due process of law.

4. The Board requested answers to a number of matters related to effects of the plant on the marine environment, and methods of mitigating adverse effects. (T. 2255, et seq.)

Oral answers were submitted by applicant; intervenors offered, as a friend of the Board, on its invitation, the comments of Dr. Enright with regard to those questions. (T. 3041, et seq.)

The Board has made no findings regarding the questions which, in their judgment, went beyond the scope of written environmental reports and were important enough to require answers. The Board's findings must be deemed incomplete, and a violation of their duty, under 10 C.F.R. Part 50, Appendix D, and the National Environmental Policy Act, in that no findings are made with respect to the important issues raised therein.

5. The United States Department of the Interior and the California Department of Fish and Game both made limited appearances. (T. 1872, et seq.; 1880, et seq.; 1917, et seq.) In them the formal comments of the respective departments were submitted. The comments raised serious doubts as to the sufficiency of applicant's conclusions that impact on the marine enviornment would be minimal, and grave questions as to the need for further study.

The Board received those comments and the written response of the regulatory staff.

Both agencies explained, as they submitted their comments, that the review schedule had not allowed them sufficient time to prepare the formal, thorough report which the project demanded.

The comments are not a part of the final environmental statement, and the Board does not analyze the comments and responses other than by casual reference.

This failure is a breach of the duty under the National Environmental Policy Act, to conduct and coordinate a thorough, interdisciplinary, inter-agency study, and a denial of due process to intervenors.

6. Intervenors were denied a continuance, supra, XI, 1, when it was necessary and convenient for them to prepare their case. Applicants, when they found that they had no understanding of the seismic issue, were persuaded by the Board to request a continuance until the

environmental hearings; the Board ordered a continuance from January until March for the applicant to try to assemble a case on seismology.

This denied intervenors the opportunity for a hearing before an impartial and unbiased panel, a denial of due process of law.

7. At the end of their presentation of seismic testimony, in March, the appicant rested its case. (T. 1841.)

Over the strenuous objection of intervenors, the Board reopened the record at the end of the environmental hearings. (T. 2653-2663.)

Applicant had had two opportunities to prove its case that the seismic design of the proposed plant was "conservative". They failed to raise a preponderance of evidence to support their position, obviously, or the Board would not have required an additional session, with all the expert witnesses on seismology.

Summary judgment on behalf of the intervenors was the appropriate disposition of applicant's position on that issue. Failure to enter such an order was a denial of due process, in that it contradicted the precedents established by the Board against the intervenors, and it was contrary to the orderly process for determination of facts before administrative bodies.

B. Authority.

1. Administrative agencies are required to

afford parties litigant the benefits of due process of law, in accordance with their rules and precedents, and the Constitution, even though the hearing and decision be discretionary. Service v. Dulles, 354 U.S. 363; United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260; Smith v. Resor, 406 F.2d 141.

2. The legislative intent of the National Environmental Policy Act cannot be frustrated through the administrative interpretations of the agencies which are charged with executing the law. Calvert Cliffs Coordinating Committee, Inc. v. Atomic Energy Commission, 449 F.2d 1109.

WHEREFORE it is submitted that the initial decision and order of the Atomic Safety and Licensing Board should be vacated, and this matter remanded for further hearings; and the construction permits issued under the interim opinion should be vacated, cancelled and rescinded.

DATED: November 9, 1973

Respectfully submitted,

FREDRIC P. SUTHERLAND

Attorney for Consolidated Intervenors

50-361

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

November 5, 1973

Bruce Sharpe, Esq.
General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Dear Mr. Sharpe:

In reply to your letter dated October 29, 1973, I direct your attention to 10 CFR Part 2, Section 2.712(d)(3). The initial decision which you reported as having received in a "mutilated envelope" was properly addressed, sealed and delivered to the United States Postal Service on October 16, 1973.

In order to place your letter in the decisional record, the Public Proceedings Staff will serve your communication upon the board and parties to this proceeding and thus meet the requirement of 10 CFR Part 2, Section 2.701(b) for you.

Today we are again serving you a copy of the Initial Decision, Docket Numbers 50-361, 50-362.

Sincerely,

Frank W. Karas

Frank W. Karas, Chief
Public Proceedings Staff
Office of the Secretary
of the Commission

Enclosure:
Initial Decision

SCENIC SHORELINE PRESERVATION CONFERENCE, INC.

President
Frederick Eissler

General Counsel
Bruce Sharpe

General Counsel's Office
1400 East Locust Avenue
Lompoc, California 93436

Telephone (805) 736-9594

October 29, 1973

Mr. Frank Karas
Director, Public Proceedings Branch
Office of the Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Re: Southern California Edison
San Diego Gas and Electric
Docket Nos. 50-361, 50-362
Initial Decision and Order

Dear Mr. Karas;

Today I received some 171 loose pieces of paper, wrapped in the enclosed piece of plastic together with the enclosed mutilated envelope.

On what appeared to be a title page, there appeared a caption, "Initial Decision." To that piece of paper was stapled a small slip of paper on which appeared the notation "Served 10/16/73."

I gather that what I am supposed to have is a copy of the initial decision and order, which, when assembled in the proper page-order number, will set out all the findings and conclusions to which I am supposed to make exceptions and file by last Friday.

Quite by accident, I received a copy of the Initial Decision from Mr. Kocher, last week.

I would like to have the condition and untimeliness of receipt of the decision and order noted for the record.

Very truly yours;
SCENIC SHORELINE PRESERVATION CONFERENCE, Inc.

Bruce Sharpe
General Counsel

BS:s
Encl: Noted

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS AND ELECTRIC COMPANY	)	and 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

EXCEPTIONS BY CONSOLIDATED INTERVENORS TO INITIAL DECISION OF OCTOBER 15, 1973

In accordance with Rule of Practice 2.762 (10 C.F.R. §2.762), Consolidated Intervenors appeal to the Commission by taking exception to the Initial Decision as follows:

A. References in the following are to paragraph numbers of the decision:

Item	Paragraph(s)	Exception
1.	38	Not supported by evidence.
2.	47	The conclusion that no incidents resulted in releases in excess of licensed limits is not supported by credible scientific evidence.
3.	58	Date should be June 29, 1972.
4.	61	Consideration of the purported dispute is expressly precluded by stipulation of the parties. The express weighing of evidence in this regard is prejudicial and improper.

Item	Paragraph(s)	Exception
5.	62	Discussion and consideration of tendered written testimony which was excluded is evidence of prejudice.
6.	63,64,65,66 67,70,71,72 73,74,75,76 77,78,79	General exception taken to all evidence taken after continuance was granted on the grounds of denial of due process.
7.	76	Attempted correlation among Modified Mercali intensities and ground accelerations is not supported by any evidence, and represents only the speculation and conjecture of the Board.
8.	77	The statement that the empirical envelope of Dr. Smith includes data points arising from earthquakes on the San Andreas-San Jacinto fault system is not supported by the evidence, and the statement that the envelope includes all data points is inaccurate unless the qualification is added that the data have been "analyzed" (i.e., compressed) in order to fit in the envelope.
9.	78	The Board's cavalier dismissal of Dr. Brune's testimony is not supported by the evidence.
10.	79	The conclusion of conservatism is not supported by the evidence.

Item	Paragraph(s)	Exception
11.	90	Applicants' conclusions with respect to the exclusion area are inconsistent with the law and are not supported by the evidence. Applicants' assumptions about population are not supported by the evidence.
12.	92	The conclusion that the cross-examination failed to establish that population distributions are inconsistent with 10 C.F.R. Part 100 is not supported by the evidence.
13.	94	The Board's finding that the projected population distributions comply with the projected population distribution guidelines of 10 C.F.R. Part 100 is not supported by the evidence. The population center distance as a matter of law does not comply with 10 C.F.R. Part 100, nor does the exclusion area.
14.	97	The finding is not supported by the evidence.
15.	98	The evidence does not support applicants' technical qualifications. The evidence does not support the conclusion that the construction of the plant will not endanger the health and safety of the public. The issues in contention and the evidence

Item	Paragraph(s)	Exception
		concerning them indicate substantial bases for the denial of the requested construction permits. The finding is inadequately supported under the Atomic Energy Act, 10 C.F.R. Parts 50 and 100.
16.	112	The staff has not considered entrainment and consequential translocation of eggs, larvae, spores, juvenile fish and other planktonic forms into an alien environment, and the resulting mortality or diminished viability of species.
17.	145	The conclusion is not supported by the evidence; it is self-contradictory; its adoption is contrary to the policies and provisions of the National Environmental Policy Act.
18.	149	The summary of Dr. Scanland's testimony is prejudicially incomplete.
19.	152	The finding that adverse environmental effects have been predicted is not supported by the evidence and is totally inconsistent with Finding No. 154, to the effect that the data base is inadequate.
20.	162,171	The conclusion that an underground site is not a practical alternative from the viewpoint of threshold feasibility is not

Item	Paragraph(s)	Exception
		supported by the evidence.
21.	172	The finding that no additional study is required is not supported by the evidence and inconsistent with the express findings of the Board.
22.	174	The finding is not supported by the evidence. The costs and benefits are stated in aphorisms and generalities.
23.	175	The exceptions as noted above are incorporated herein as applicable.
24.	176	The exceptions noted above are incorporated herein.
25.	177	The exceptions noted above are incorporated herein as applicable.

B. Consolidated Intervenors take exception to the following orders or rulings and to the whole of them:

26. From the oral order of the Board, January 16, 1973, denying a continuance (Transcript, p. 360) on the grounds of a denial of due process of law.

27. From the oral order of the Board, January 16, 1973, denying a partial continuance (Transcript, p. 375), on the grounds of a denial of due process of law.

28. From the order, docketed May 10, 1973, that evidence shall not be received on the contested issue of whether underground siting be a practical

Item

alternative during the hearings on the environmental aspects of the proceeding, on the grounds that the ruling was not supported by substantial evidence.

29. From the order, originally an oral ruling, April 3, 1973, denying Intervenors' motion to amend contested issue No. 10 to include a consideration of the availability of waste water for cooling, in a closed-cycle configuration, in the vicinity of San Onofre, which became a formal order, docketed September 12, 1973, on the grounds that the ultimate decision thereby fails to consider a significant, newly-discovered alternative, and is therefore contrary to the National Environmental Policy Act.

30. From the ruling, May 16, 1973, denying Intervenors' Motion for Clarification of Issue No. 6B as follows:

(1) change "benthic organisms and migratory fish species" to "marine organisms,"

(2) change "within the four-degree isotherm" to "resulting from thermal shock of four degrees of rise or more;"

so that the issue would state: ". . .whether the adverse impact, if any, on marine organisms, resulting from thermal shock of four degrees of rise or more has been reasonably estimated by Applicants" -- on the grounds of denial of due process of law. Ref: Transcript, pp. 2218-2254.

C. Consolidated Intervenors generally take exception as follows:

Item

31. To the omission from the record of special findings with respect to the issues raised by the Board, related to environmental impact on marine organisms, raised by the Board beginning at page 2255 of the transcript, on the grounds that begging those newly-raised issues is a violation of a fundamental responsibility under the National Environmental Policy Act.

D. Consolidated Intervenors take exception to the brief study and review schedule, which produced the following results:

Item

32. The Department of Interior and the California Department of Fish and Game were not allowed adequate time to file their formal reports; therefore, their comments received no consideration in the Final Environmental Statement and inadequate consideration by the Board.

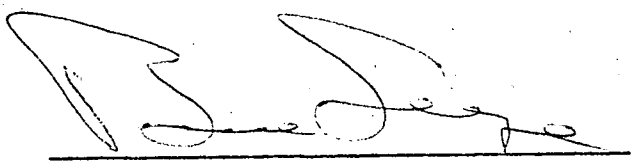
33. The Consolidated Intervenors had inadequate time for discovery and preparation of their case.

Such an abbreviated schedule is inconsistent with the orderly, interdisciplinary study required by the National Environmental Policy Act and a denial of due process of law.

WHEREFORE, the Intervenors respectfully request that the Initial Decision of the Atomic Safety and Licensing Board be vacated and the matter be remanded for further hearings.

DATED: October 25, 1973.

Respectfully submitted,



BRUCE SHARPE

Attorney for
Consolidated Intervenors

CERTIFICATE OF SERVICE

I hereby certify that copies of the within EXCEPTIONS BY CONSOLIDATED INTERVENORS TO INITIAL DECISION OF OCTOBER 15, 1973 for the consolidated intervenors, GUARD and Scenic Shoreline, dated October 25, 1973, in the above captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 25th day of October, 1973:

Michael Glaser, Esq.
1150 - 17th St., N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Elizabeth Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Board Panel
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Ave., N.W.
Washington, D.C. 20036

Alan R. Watts, Esq.
106 North Claudina St.
Suite 607
Anaheim, California 92805

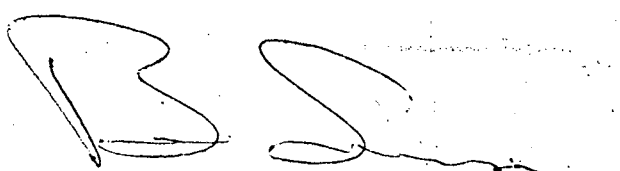
Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary
of the Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler, Esq.
Office of the General Counsel
U.S. Atomic Energy Commission
Washington, D.C. 20545

Charles R. Kocher, Esq.
Southern California Edison Co.
2244 Walnut Grove Ave.
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter St.
San Francisco, California 94104



BRUCE SHARPE

Yellow

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

10/23/73

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-361 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

EXCEPTIONS OF AEC REGULATORY STAFF TO INITIAL DECISION OF ATOMIC SAFETY AND LICENSING BOARD

In accordance with 10 CFR §2.762(a), the AEC regulatory staff respectfully notes its exception to the following findings of the Atomic Safety and Licensing Board set forth in its Initial Decision in the instant proceeding, dated October 15, 1973.

(1) The Board erred, in Finding 61 at page 52, in stating that there "may even be a small preponderance of evidence presently in...[applicants'] favor" and that "the lack of overwhelming evidence that the Applicants' interpretation [of the geologic details of the regional tectonic framework] is correct...require[s] this Board to adopt the more conservative position [espoused by the staff]," thereby suggesting an erroneous quantum of evidence necessary to sustain applicants' position; i.e., overwhelming rather than a preponderance.

JB

(2) The Board erred, in Finding 134 at page 121, in ruling that the staff's proposed condition, limiting total residual chlorine concentration in the immediate vicinity of the discharge to 0.1 mg/liter, is a "condition of design, rather than...an effluent limitation or water quality standard" which is not subject to limitation by section 511(c)(2) of the Federal Water Pollution Control Act and the Commission's Interim Policy Statement (38 F.R. 2679).

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 23rd day of October, 1973

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Exceptions of AEC Regulatory Staff to Initial Decision of Atomic Safety and Licensing Board," dated October 23, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 23rd day of October, 1973:

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael C. Farrar, Esq.
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.	)	Docket Nos. 50-361 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of Assignment of Members of Atomic Safety and Licensing Appeal Board dated October 19, 1973 in the captioned matter have been served upon those on the attached Service List by deposit in the United States mail, first class or air mail, this 19th day of October 1973.

Peggy A. Dunning
Office of the Secretary of the Commission

cc: Mr. Glaser
Mr. Malsch
ASLBP
V. Wilson
G. Williams
Reg. Files
ASLAB

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.	)	Docket Nos. 50-361 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

SERVICE LIST

Michael Glaser, Esq., Chairman
Atomic Safety and Licensing Board
1150 17th Street, N. W.
Washington, D. C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Alternate Chairman
Atomic Safety and Licnesing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

Martin G. Malsch, Esq.
Lawrence J. Chandler, Esq.
Regulatory Staff Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Rollin E. Woodbury, Esq., Vice President & General Counsel
Southern California Edison Company
P. O. Box 800
Rosemead, Calfironia 91770

Charles E. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Robert J. Cahall, Esq.
David N. Barry, III, Esq.
Kingsley B. Hines, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Sherman Chickering, Esq.
C. Hayden Ames, Esq.
Frank S. Bayley, III, Esq.
David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Alan R. Watts, Esq.
106 North Claudina Street
Anaheim, California 92805

Bruce Sharpe, Esq.
General Counsel
Scenic Shoreline Preservation Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Frederick Eissler, President
Scenic Shoreline Preservation Conference, Inc.
4623 More Mesa Drive
Santa Barbara, California 93105

Ms. Lyn Harris Hicks
Community Liaison
San Clemente-Capistrano Bay
Branch
3908 Ariana
San Clemente, California 92672

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 N. Perry Avenue
Montebello, California 90640

Mr. Kenneth E. Carr, City Manager
City of San Clemente
100 Avenida Presidio
San Clemente, California 92672

John P. Mathis, Esq.
J. Calvin Simpson, Esq.
Lawrence Q. Garcia, Esq.
5066 State Building
San Francisco, California 94102

Mrs. Phyllis Rauch
San Clemente Public Library
233 Granada Street
San Clemente, California 92672

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-361; 50-362]

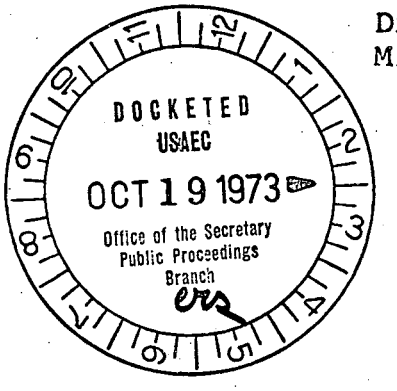
SOUTHERN CALIFORNIA EDISON COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY

(SAN ONOFRE NUCLEAR GENERATING
STATION, UNITS NOS. 2 AND 3)

Assignment of Members of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR §2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for these proceedings:

Alan S. Rosenthal, Chairman
Dr. John H. Buck, Member
Michael C. Farrar, Member



Margaret E. Du Flo
Secretary to the
Appeal Board

Dated: October 19, 1973

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

50-361

October 19, 1973

Director
Office of the Federal Register
National Archives and Records Service
Washington, D. C. 20408

Dear Sir:

Attached for publication in the Federal Register are an original and two certified copies of a document entitled:

SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.

Notice of Assignment of Members of Atomic Safety and Licensing Appeal Board

Publication of the above document at the earliest possible date would be appreciated.

Sincerely,

Paul C. Bender
Secretary of the Commission

Enclosures:
Original and 2
certified copies

bcc: Docket Clerk (Dir. of Reg.)
Information Services
Legal Files (OGC)
Office of Congressional Relations
GT Files (SECY)
Public Proceedings Branch (SECY)
~~Contracts~~

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-361; 50-362]

SOUTHERN CALIFORNIA EDISON COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY

(SAN ONOFRE NUCLEAR GENERATING
STATION, UNITS NOS. 2 AND 3)

Assignment of Members of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR §2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for these proceedings:

Alan S. Rosenthal, Chairman
Dr. John H. Buck, Member
Michael C. Farrar, Member

Margaret E. Du Flo
Margaret E. Du Flo
Secretary to the
Appeal Board

Dated: October 19, 1973

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

50-361

October 19, 1973

Director
Office of the Federal Register
National Archives and Records Service
Washington, D. C. 20408

Dear Sir:

Attached for publication in the Federal Register are an original and two certified copies of a document entitled:

SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.

NOTICE OF AVAILABILITY OF INITIAL DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD ...

Publication of the above document at the earliest possible date would be appreciated.

Sincerely,

Paul C. Bender
Secretary of the Commission

Enclosures:
Original and 2
certified copies

bcc: Docket Clerk (Dir. of Reg.)
Information Services
Legal Files (OGC)
Office of Congressional Relations
GT Files (SECY)
Public Proceedings Branch (SECY)
~~Contracts~~

UNITED STATES ATOMIC ENERGY COMMISSION

DOCKET NOS. 50-361 AND 50-362

SOUTHERN CALIFORNIA EDISON COMPANY

SAN DIEGO GAS AND ELECTRIC COMPANY
(San Onofre Nuclear Generating Station, Units 2 and 3)

NOTICE OF AVAILABILITY OF INITIAL DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD FOR THE SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3 AND ISSUANCE OF CONSTRUCTION PERMITS

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulations, Appendix D, Sections A.9 and A.11, to 10 CFR Part 50, notice is hereby given that an Initial Decision dated October 15, 1973, by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of construction permits to the Southern California Edison Company and the San Diego Gas and Electric Company for construction of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N. W., Washington, D. C. and in the San Clemente Public Library, 233 Granada Street, San Clemente, California 92672.

The Initial Decision is also being made available at the San Diego County Comprehensive Planning Organization, County Administration Center, 1600 Pacific Highway, San Diego, California 92101 and at the Office of Intergovernmental Management, 1400 10th Street, Room 108, Sacramento, California 95814.

Based upon the record developed in the public hearing in the above captioned matter, the Initial Decision modified in certain respects the contents of the Final Environmental Statement related to the proposed San Onofre Nuclear Generating Station, prepared by the Commission's Directorate of Licensing. Pursuant to the provisions of 10 CFR Part 50, Appendix D, Section A.11, the Final Environmental Statement is deemed modified to the extent that the findings and conclusions relating to environmental matters contained in the Initial Decision are different from those contained in the Final Environmental Statement dated March 1973. As required by Section A.11 of Appendix D, a copy of the Initial Decision, which modifies the Final Environmental Statement, has been transmitted to the Council on Environmental Quality and made available to the public as noted herein.

Pursuant to the above mentioned Initial Decision, the Atomic Energy Commission (the Commission) has issued Construction Permits Nos. CPPR-97 and CPPR-98 to the Southern California Edison Company and the San Diego Gas and Electric Company for construction of two pressurized water nuclear reactors to be known as the San Onofre Nuclear Generating Station, Units 2 and 3, each to be designed for a rated power of 3390 megawatts thermal with a net electrical output of approximately 1140 megawatts.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the construction permits. The application for the construction permits complies with the standards and requirements of the Act and the Commission's rules and regulations.

The construction permits are effective as of their date of issuance. The earliest date for the completion of Unit 2 is January 1, 1978, and the latest date for completion is January 1, 1979. The earliest date for the completion of Unit 3 is January 1, 1979, and the latest date for completion is January 1, 1980. Each permit shall expire on the latest date for completion of the facility.

In addition to the Initial Decision, copies of (1) Construction Permits Nos. CPPR-97 and CPPR-98, (2) the report of the Advisory Committee on Reactor Safeguards dated July 21, 1972; (3) the Directorate of Licensing's Safety Evaluation dated October 20, 1972; (4) the Preliminary Safety Analysis Report and amendments thereto; (5) the applicants' Environmental Report dated July 28, 1970 and supplements thereto; (6) the Draft Environmental Statement dated November 1972; and (7) the Final Environmental Statement dated March 1973, are also available for public inspection at the above-designated locations in Washington, D. C. and San Clemente, California. Single copies of the Initial Decision by the Atomic Safety and Licensing Board, the construction permits, the Final Environmental Statement, and the Safety Evaluation Report may be obtained upon request addressed to the U. S. Atomic Energy Commission, Washington, D. C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing, Regulation.

Dated at Bethesda, Maryland, this 18 day of October 1973.

FOR THE ATOMIC ENERGY COMMISSION

Original Signed by
K. R. Goller

Karl R. Goller, Chief
Pressurized Water Reactors
Branch No. 3
Directorate of Licensing

DISTRIBUTION:
OGC Files
Gmtwn Files
Reg. Central Files
PDR
LPDR
HShapar
TEngelhardt
JScinto
MKarman
LChandler
VWilson
GWilliams
RBirkel
RFroelich
Formal Files (2)
Chron

SEP 24 1973

Bruce Sharpe, Esq.
Scenic Shoreline Preservation Conference
General Counsel's Office
1400 East Locust Avenue
Lompoc, California 93436

In the Matter of Southern California Edison Company
San Diego Gas and Electric Company
(San Onofre Nuclear Generating Station, Units 2 and 3)
Docket Nos. 50-361 and 50-362

Dear Mr. Sharpe:

As per your loan arrangement with Mr. Chandler of our office, I am forwarding you the final pages of the transcript of the evidentiary hearing in the subject matter.

Sincerely,

Charles A. Barth
Counsel for AEC Regulatory Staff

Enclosure: Final transcript pages

OFFICE ▶	OGC					hearing
SURNAME ▶	CABARTH:mll	SCINTO/KARMAN				
DATE ▶	09/24/73					

Form AEC-318 (Rev. 9-53) AECM 0240 GPO c43—16—81465-1 445-678

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

09/13/73

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS AND ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

BRIEF OF AEC REGULATORY STAFF WITH RESPECT TO CONSOLIDATED INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW NUMBERS 71 - 82

In its Proposed Findings of Fact and Conclusions of Law, specifically numbers 71 - 82, dated July 23, 1973, Consolidated Intervenors (intervenor) raised several legal arguments concerning the propriety of the proposed site in the captioned proceeding from the standpoint of both 10 CFR Part 100 considerations and of California real property law. In general, its arguments go to applicants' authority to exclude individuals from the exclusion area and otherwise control activities therein.

In its cover letter transmitting its proposed findings of fact and conclusions of law, dated August 6, 1973, the AEC regulatory staff (staff) asked leave of the Atomic Safety and Licensing Board (Board) to response to consolidated intervenors legal allegations. By order dated September 11, 1973, the Board granted leave to the staff to submit a brief in reply to intervenor's above-noted legal arguments. Said brief follows.

In intervenor's Proposed Finding no. 74, it is suggested that the "right to exclude is not an incident of an easement unless expressly stated." Cited in support of this proposition is an early California decision as well as Section 806 of the California Civil Code. Intervenor has failed to note however, that Section 755 of the California Civil Code provides that, while California state law governs with respect to real property within the state, there is an exception where title is in the United States. Inasmuch as title to the San Onofre site is in the United States, which has granted an easement to applicants, 1/ California law is not applicable. The majority view with respect to the right of exclusion as related to easements is that a grantee of an easement is authorized to do that which is reasonably necessary to enjoy fully the rights granted him under the easement. U.S. v. 308 Acres of Land, More or Less, in Box Elder County, 209 F. Supp. 341, (E.D. Va., 1968), affirmed, 405 F. 2d 500 (6th Cir., 1968); Pitsenbarger v. Northern Natural Gas Company, 198 F. Supp. 655, (S.D. Iowa, 1961); Brown and Root, Inc. v. U.S., 116 F. Supp. 732, 126 Ct. Cl. 684 (1955). While not controlling, it is worth noting that this approach is consistent with California state law. City of Los Angeles v. Howard, 53 Cal. Rptr. 274 (1966).

Further, in proposed finding 77, the intervenor suggests that "the right

---

1/ Public Law 88 - 82.

of the public to beach access is guaranteed by the California constitution, and no imparement of public access beaches below the mean high tide line is allowed." Assuming, arguendo, that the California state constitution were in fact applicable, specifically article 15 section 2, the intervenor has utterly failed to demonstrate as a matter of law that applicants are in any way impairing a right of way to the ocean and/or that such right of way is required for any public purpose. Each of these elements, namely, infringement on the right of way and/or the necessity of such right of way, appear to be essential elements in applying this section of the California state constitution. It seems equally clear, however, that section 755 of the California Civil Code, cited above, precludes the application of California law in instances where title in the land is vested in the United States. Accordingly, the staff urges that the California state constitution and Civil Code are not applicable to the instant matter.

As set forth in intervenor's proposed findings 72 and 73, the San Onofre site is located on a portion of land granted to the utilities pursuant to an easement authorized by the United States, specifically by Public Law 88-82. Pursuant to section 1 of Public Law 88-82, the applicants were authorized this easement for the "construction, operation, maintenance and use of a nuclear electric generating station, consisting of one or more generating units and appurtenances thereto." A right clearly and necessarily inherent in the grant of an easement specifically for the purpose of construction and

operation of a nuclear generating station is the authority to exclude and to control activities within the exclusion area. Accordingly, it is the staff's position that the applicants have the authority to determine all activities including exclusion or removal of personnel and property from the area, as required by 10 CFR section 100.3(a).

In proposed findings 77 through 82, the intervenor suggests that, because of the existence of beach front, interstate highway 5, and an alleged parking lot in the existing state beach park, the applicants have failed to comply with 10 CFR section 100.3(a) with respect to the exclusion area. In this respect several comments must be made. First, with respect to the beach area, 10 CFR section 100.3(a), recognizes that "activities unrelated to operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazard to the public health and safety will result." Use of the beach area by members of the public is consistent with this regulation.

Second, proposed finding 81 fails to recognize that 10 CFR section 100.3(a) specifically provides that "this [exclusion] area may be traversed by a highway ... provided ... [it is] not so close to the facility as to interfere with normal operations of the facility and provided appropriate and effective

arrangements are made to control traffic ... in case of emergency, to protect the public health and safety." In this regard, the staff believes that its proposed findings with respect to Part 100 considerations as well as applicants' proposed findings as supplemented by the staff concerning emergency planning, adequately deal with the concerns in regard to appropriate and effective arrangements to control traffic.

Third, the parking lot referred to in proposed finding 82 is subject to the same argument as made above with respect to the beach area. Furthermore, the testimony at Tr. 1008 cited in proposed finding 82, does not state, as a matter of fact, that there is a parking lot in the state beach, but rather, makes the conservative worst-case assumption that one could exist (Tr. 1008, lines 14-17). Indeed the evidence would indicate that no such parking lot is planned (Tr. 1322, lines 1-3).

In conclusion, the staff believes that (a) the California state law cited by intervenor is not applicable to the instant proceeding, (b) the majority view with respect to the rights inherent in the grantee of an easement includes such rights as may be necessary by implication to the full enjoyment of the rights expressly granted him under the easement, (c) further, this approach is consistent, nonetheless, with California state law, (d) the right of exclusion and the authority to control and determine activity within the exclusion area are rights reasonably necessary to full enjoyment of the easement granted

applicants pursuant to Public Law 88-82, (e) the existence of 1) a beach, 2) a highway and 3) a parking lot are consistent with the terms of 10 CFR section 100.3(a), and (f) applicants' have complied fully with the requirements of 10 CFR section 100.3(a).

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 13th day of September, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station,	)	
Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Brief of AEC Regulatory Staff with Respect to Consolidated Intervenors' Proposed Findings of Fact and Conclusions of Law Numbers 71 - 82," dated September 13, 1973, in the captioned matter, have been served on the following be deposit in the United States mail, first class or air mail, this 13th day of September, 1973:

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

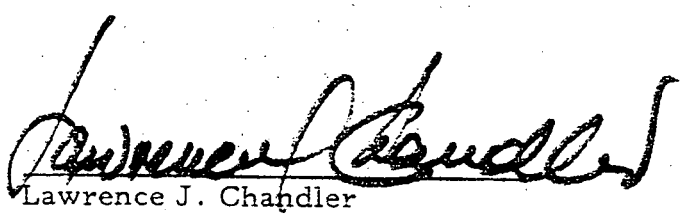
San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036



Lawrence J. Chandler
Counsel for AEC Regulatory Staff

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

50-361

September 20, 1973

Director
Office of the Federal Register
National Archives and Records Service
Washington, D. C. 20408

Dear Sir:

Attached for publication in the Federal Register are an original and two certified copies of a document entitled:

TOLEDO EDISON COMPANY, ET AL.

Davis-Besse Nuclear Power Station

NOTICE AND ORDER FOR SPECIAL PREHEARING CONFERENCE

Publication of the above document at the earliest possible date would be appreciated.

Sincerely,

Paul C. Bender
Secretary of the Commission

Enclosures:
Original and 2
certified copies

bcc: Docket Clerk (Dir. of Reg.)
Information Services
Legal Files (OGC)
Office of Congressional Relations
GT Files (SECY)
Public Proceedings Branch (SECY)
[redacted]

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
TOLEDO EDISON COMPANY AND CLEVELAND ELECTRIC ILLUMINATING COMPANY	)	Docket No. 50-346(OL)
	)	
(Davis-Besse Nuclear Power Station)	)	

NOTICE AND ORDER FOR SPECIAL PREHEARING CONFERENCE

Pursuant to Notice and Order of this Board, dated August 13, 1973, and in accordance with the Commission's Rules of Practice, Notice is hereby given that a Special Prehearing Conference will be held in this proceeding on October 12, 1973, at 10:00 am, local time, at the Lucas County Courthouse, Court of Appeals (Fourth Floor), Adams and Erie Streets, Toledo, Ohio.

All members of the public are invited to attend this Special Prehearing Conference as well as the Evidentiary Hearing to be scheduled and held at a later date. However, no evidence will be received at this Conference; nor will there be opportunity for presentation of limited appearance statements. Such statements

will be received on the initial day of the Evidentiary Hearing.

This Special Prehearing Conference will be conducted in accordance with Section 2.751(a) of the Commission's Rules of Practice, and will deal with the following matters:

a. the identification and simplification of the issues,

b. the obtaining of stipulations and admissions of fact,

c. the need for discovery and time required for such discovery, and

d. such other matters which will aid in the orderly disposition of the case.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

John B. Farmakides, Chairman

Issued at Washington, D. C.,
this 19th day of September, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	and 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

ORDER DENYING INTERVENORS' MOTION TO AMEND CONTESTED ISSUE NO. 10

By motion dated April 3, 1973, the Consolidated Intervenors in this proceeding moved the Atomic Safety and Licensing Board (Board) to amend its Prehearing Conference Order, dated December 11, 1972, to modify contested issue No. 10, as it was reflected in the stipulation between counsel for the parties and approved by the Board on November 29, 1972. The stipulation was attached as Exhibit A to the Board's Prehearing Conference Order of December 11, 1972.

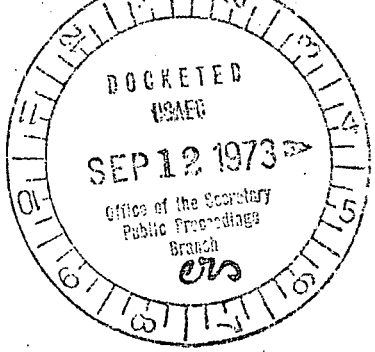
Upon consideration of the Consolidated Intervenors' motion, the responses of the applicants and Regulatory Staff thereto, the Board will deny Consolidated Intervenors' motion.

The Board initially ruled upon the Consolidated Intervenors' motion orally during the course of the proceeding. Accordingly, this Order confirms the Board's oral ruling.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD.

Michael L. Glaser
Chairman

Dated: September 11, 1973



UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY	)	Docket Nos. 50-361 and 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

ORDER GRANTING LEAVE TO FILE BRIEF

On August 6, 1973, the Regulatory Staff of the United States Atomic Energy Commission requested leave of the Board to file a brief in response to the consolidated intervenors legal argument respecting the applicants' exclusion area as may be effected by California real property law. The argument made by consolidated intervenors is found in their Proposed Findings, Nos. 71 through 82.

Upon consideration of the Staff's request, the Board has determined that good cause has been shown for leave to file a brief. Accordingly, the Staff is hereby granted leave to file such brief within five (5) days of the date of this Order.

In view of the Board's determination that leave should be extended to the Staff to file a brief, the Board also authorizes the consolidated intervenors to file such reply brief as they may deem appropriate within five (5) days after receipt of the Staff's brief.

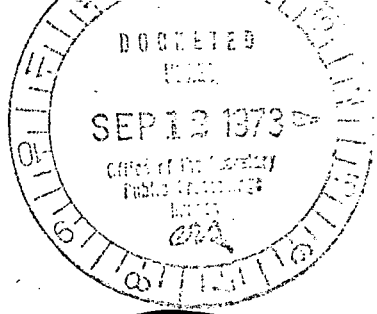
BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD.

Michael L. Glaser
Chairman

Dated: September 11, 1973

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD



In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY	)	Docket Nos. 50-361 and 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

ORDER AMENDING PREHEARING CONFERENCE ORDER

By motion dated December 21, 1972, applicants filed "Objection to Prehearing Conference Order and Motion to Amend Prehearing Conference Order; Memorandum of Points and Authorities" with respect to the Board's Prehearing Conference Order of December 11, 1972.

Specifically, applicants object to paragraph (b) of the Prehearing Conference Order, insofar as it provides that the motion of applicants that the American Association of University Women, San Clemente-Capistrano Bay Branch, be given permission to make a limited appearance was granted. Applicants noted that the record reflects at pages 132-133 of the transcript, that applicants requested an order denying the original request of the American Association of University Women for intervenor status, and that the Consolidated Intervenors requested that the latter organization be permitted to make a limited appearance. Accordingly, applicants respectfully move that paragraph (b) of the Prehearing Conference Order be amended to read as follows:

"Granted request of co-applicants that the American Association of University Women, San Clemente-Capistrano Bay Branch, be denied intervenor status, and granted request of Consolidated Intervenors that said organization be given permission to make a limited appearance in this proceeding."

Upon consideration of applicants' motion, the Board finds that good cause has been shown for amendment of the Prehearing Conference Order as requested, and accordingly, paragraph (b) of the Prehearing Conference Order of December 11, 1972, be amended as set forth above.

Applicants further state that paragraph (c) of the Prehearing Conference Order provides that the Board granted intervention for Scenic Shoreline Preservation Conference, Inc., and Groups United Against Radiation Dangers, as consolidated, and approved a stipulation agreed to between parties specifying the contentions of this intervenor. Applicants state, however, that the record reflects, at pages 148-49, 155-56 and 163, respectively, of the transcript, that applicants requested that the participation of the Consolidated Intervenors be limited to contested issues in this proceeding, that the Regulatory Staff did not object to an order limiting such participation, and that the Board ordered that intervention would be restricted to the matters raised in the petition for intervention of the Consolidated Intervenors.

Consequently, applicants suggest that paragraph (c) of the Prehearing Conference Order be amended to read as follows:

"G[redacted]ted intervention for Sce[redacted]: Shoreline and GUARD, as consolidated, approved a stipulation agreed to by the parties specifying the contested issues in this proceeding, and limited the participation in this proceeding of Scenic Shoreline and GUARD, as consolidated, to said stipulated contested issues. The stipulation is attached hereto as Exhibit A."

Upon consideration of applicants' motion, the Board has found that good cause has been shown for amendment of the Prehearing Conference Order, and accordingly, paragraph (c) is amended as set forth above.

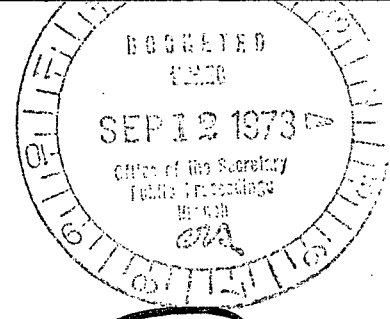
BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD.

Michael L. Glaser
Chairman

Dated: September 11, 1973

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD



In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY	)	Docket Nos. 50-361 and 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

ORDER AMENDING PREHEARING CONFERENCE ORDER

By motion dated December 21, 1972, applicants filed "Objection to Prehearing Conference Order and Motion to Amend Prehearing Conference Order; Memorandum of Points and Authorities" with respect to the Board's Prehearing Conference Order of December 11, 1972.

Specifically, applicants object to paragraph (b) of the Prehearing Conference Order, insofar as it provides that the motion of applicants that the American Association of University Women, San Clemente-Capistrano Bay Branch, be given permission to make a limited appearance was granted. Applicants noted that the record reflects at pages 132-133 of the transcript, that applicants requested an order denying the original request of the American Association of University Women for intervenor status, and that the Consolidated Intervenors requested that the latter organization be permitted to make a limited appearance. Accordingly, applicants respectfully move that paragraph (b) of the Prehearing Conference Order be amended to read as follows:

"Granted request of co-applicants that the American Association of University Women, San Clemente-Capistrano Bay Branch, be denied intervenor status, and granted request of Consolidated Intervenors that said organization be given permission to make a limited appearance in this proceeding."

Upon consideration of applicants' motion, the Board finds that good cause has been shown for amendment of the Prehearing Conference Order as requested, and accordingly, paragraph (b) of the Prehearing Conference Order of December 11, 1972, be amended as set forth above.

Applicants further state that paragraph (c) of the Prehearing Conference Order provides that the Board granted intervention for Scenic Shoreline Preservation Conference, Inc., and Groups United Against Radiation Dangers, as consolidated, and approved a stipulation agreed to between parties specifying the contentions of this intervenor. Applicants state, however, that the record reflects, at pages 148-49, 155-56 and 163, respectively, of the transcript, that applicants requested that the participation of the Consolidated Intervenors be limited to contested issues in this proceeding, that the Regulatory Staff did not object to an order limiting such participation, and that the Board ordered that intervention would be restricted to the matters raised in the petition for intervention of the Consolidated Intervenors.

Consequently, applicants suggest that paragraph (c) of the Prehearing Conference Order be amended to read as follows:

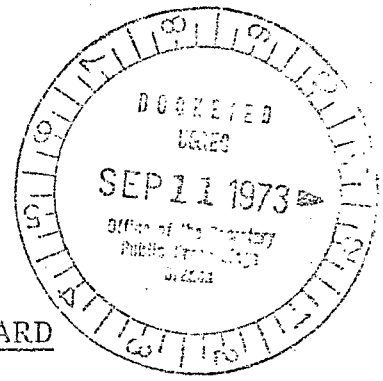
"Grantee intervention for Scenic Shoreline and GUARD, as consolidated, approved a stipulation agreed to by the parties specifying the contested issues in this proceeding, and limited the participation in this proceeding of Scenic Shoreline and GUARD, as consolidated, to said stipulated contested issues. The stipulation is attached hereto as Exhibit A."

Upon consideration of applicants' motion, the Board has found that good cause has been shown for amendment of the Prehearing Conference Order, and accordingly, paragraph (c) is amended as set forth above.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD.

Michael L. Glaser
Chairman

Dated: September 11, 1973



UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS AND ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

ORDER RECEIVING STAFF EXHIBITS IN EVIDENCE

By Motion dated August 1, 1973, and supplemented on August 2, 1973, the AEC Regulatory Staff (Staff) requested that certain material related to three matters identified in its Safety Evaluation as requiring resolution prior to authorization of construction permits be received in evidence. Specifically, the Staff requests that the material identified in Staff's Motion and Supplement as Staff Exhibits 8, 9 and 10 be received as the Staff's position regarding the Applicants' quality assurance program, tsunami analysis, and slope stability analysis.

Upon consideration of the Staff's Motion, and it appearing that good cause has been shown in support thereof,

it is Ordered that the Staff's Motion is granted, and that the record is reopened and Staff Exhibits 8, 9 and 10 are received in evidence effective the date of this Order.

ATOMIC SAFETY AND LICENSING BOARD

Michael L. Glaser LK

Michael L. Glaser, Chairman

September 11, 1973

Washington, D. C.

8-31-73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.	)	Docket Nos. 50-361 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of a letter from Lyn Harris Hicks dated August 31, 1973 in the captioned matter have been served per the attached Service List by deposit in the United States mail, first class or air mail, this 13th day of September 1973.

Peggy A. Dwiggins
Office of the Secretary of the Commission

Attachment: Service List

cc: Mr. Glaser
Mr. Malsch
ASLBP
V. Wilson
G. Williams
Reg. Files
ASLAB

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.	)	Docket Nos. 50-361 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

SERVICE LIST

Michael Glaser, Esq., Chairman
Atomic Safety and Licensing Board
1150 17th Street, N. W.
Washington, D. C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Alternate Chairman
Atomic Safety and Licnesing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

Martin G. Malsch, Esq.
Lawrence J. Chandler, Esq.
Regulatory Staff Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Rollin E. Woodbury, Esq., Vice President & General Counsel
Southern California Edison Company
P. O. Box 800
Rosemead, Califronia 91770

Charles E. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Robert J. Cahall, Esq.
David N. Barry, III, Esq.
Kingsley B. Hines, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

Sherman Chickering, Esq.
C. Hayden Ames, Esq.
Frank S. Bayley, III, Esq.
David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Alan R. Watts, Esq.
106 North Claudina Street
Anaheim, California 92805

Bruce Sharpe, Esq.
General Counsel
Scenic Shoreline Preservation Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Frederick Eissler, President
Scenic Shoreline Preservation Conference, Inc.
4623 More Mesa Drive
Santa Barbara, California 93105

Ms. Lyn Harris Hicks
Community Liaison
San Clemente-Capistrano Bay
Branch
3908 Ariana
San Clemente, California 92672

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 N. Perry Avenue
Montebello, California 90640

Mr. Kenneth E. Carr, City Manager
City of San Clemente
100 Avenida Presidio
San Clemente, California 92672

John P. Mathis, Esq.
J. Calvin Simpson, Esq.
Lawrence Q. Garcia, Esq.
5066 State Building
San Francisco, California 94102

Mrs. Phyllis Rauch
San Clemente Public Library
233 Granada Street
San Clemente, California 92672

August 31, 1973

Hon. Michael Glaser Esq. Chairman
United States of America Atomic Energy Commission
Atomic Safety and Licensing Board Docket Nos. 50-361,50-362

Dear Mr. Glaser:

Groups United Against Radiation Dangers is aware that the record is now closed on the recent hearings by your licensing board, but our researchers have elicited additional findings which we judge essential to be brought to the attention of the board, "off-the record" , if necessary.

GUARD requests the board's consideration of the following findings on San Onofre Units 2 and 3, number below with transcript page references noted. Nonnumbered paragraphs are supplementary and explanitory

1. Standard Format for Safety Analysis Reports, AEC requirement 2.1.3 (population) states that applicants will project population by decade for at least four decades, and section 2.1.3.2 requires that the area be to 50 miles.

2. All population related safety material presented by the applicants and AEC staff witnesses was based on 1980 projections of population.

3. The four decades stipulation reflecting anticipated operational life of the proposed reactors is essential to any population related safety data in consideration of proposed nuclear installation on the southern California coast, one of the fastest growing population areas in the world.

GUARD submits that it is grossly unrealistic to consider only the safety of populations anticipated at the date the plant is expected to become operational...when the reactors are designed for 30 years (plus) operation.

GUARD requests that the hearing board require this essential information of 40 year projections of near populations within 50 miles as specified in the AEC requirements, and re-evaluation of all related testimony by the applicants' "experts" to reflect those corrections, before the board concludes a decision on San Onofre.

4. Feasibility of evacuation must be based on accurate data of maximum populations which must be evacuated.

5. Applicant did not include in his population analysis any projected populations for:
   A. President Nixon's 5.9 acre property (Note: currently 45 plus numerous important visitors) in low-population zone.
   B. The Coast Guard Station adjacent to the Western White House property (currently 60 persons) in low-population zone.
   C. The 80 acre Elmore Ranch property in low-populations zone.

2.Hon. Michael Glaser cont. from GUARD

San Clemente City Manager Kenneth Carr did not include projected population for the 80 acres, in his testimony, because the official city projections are based on potential according to current zoning, and the ranch is zoned agricultural. Transcript page
However, no reasonable persons would assume that the ranch will remain agricultural for the next 30 years, when oceanfront lots in Cyprus Shore are now $100,000 on today's market.

GUARD asks, "How can the applicants' population count gross unrealities be explained? Why does the Final Environmental Statement Fig. 2.2 page 2-4 show no population in the 3 mile low-population zone of San Clemente, while Fig. 2.4 page 2-9 shows San Clemente to be 2 miles from the proposed plant, thus leaving one mile of populated San Clemente area in the low-population zone. These discrepancies lead to confusion in the determination of the low-population zone line .

GUARD notes a further discrepancy in the low-population zone totals. The AED's Environmental Statement page 2-6 gives a 3 mile population total of 18,180 in 1980, then on page 2-5 states that beach populations in this total are based on "an assumed 40% use factor." This assumption is in error. San Onofre is a summer-residence camping park, and the statistics of us of nearby San Clemente and Doheny State Parks(camping parks)show year around maximum use, and thousands turned away in summer season due to advance full reservations before the summer season even begins. See addenda, State Parks letter.

4. The applicant has provided no supporting data to substantiate the assumption of 40% use factor in projecting summer populations of San Onofre State Beach.

GUARD notes that when San Onofre Park is developed completely in the next few years it is expected to have maximum use also. The 40% use factor is a faulty assumption which results in a 60% inadequacy of population count of San Onofre as estimated in the Environmental Statement , page 2-5, 24,000 persons per day on the San Onofre beach and 10,000 in the adjoining San Mateo Canyon area of hike-in camping.

5. Northerly and northeasterly populations within six miles of the San Onofre site would have to evacuate toward the reactors through the low-population zone, because there is no northerly roadway out of the area. Transcript page 1334.

6. Evacuation of Concordia School and San Clemente State Park, on the three-mile low-population boundary, would be necessary in event of an accident at San Onofre requiring evacuation of that zone.

7. The total of populations which would be subject to evacuation from and through the low-population zone in the event of a 1980 summer accident at San Onofre,requiring evacuation of that zone, is in excess of 50,000 persons.

Note: populations and reference documentation listed on next page.

(cont.)

	Population		
Camp Pendleton New Town	4200	1½-2 miles NW of site	ES pg. 2-6
Camp San Mateo	4300	3-4 miles NE " "	" " "
Camp San Onofre	4600	2-3 miles NE " "	" " "
San Clemente(low-Pop.)	982	2½-3 miles NW " "	Area 1 of Exhibit 2 Tr. 1632
Concordia School	600	3miles NW " "	TR. 1183
SC State Park	3500 (7600)	2 3/4-3mi. NW " " 2 3/4-3½mi. NW 7600	Area 1 of Ex. 2TR1362 Area 2 Addenda letter
SO State Park Beaches	24000	0-3 miles S &NW " "	ES page 2-5
SO State Park Inland	10000	1-6 miles N-NE " "	ES page 2-5
Total	52200		

This 50,000 plus estimate does not include 1980 populations of the 80 acre Elmore Ranch, President Nixon's 5.9 acre estate, Coast Guard Station, nor summer beach population influx to Cyprus Shore community in low-population zone.

8. Approval of installation of San Onofre Units 2 and 3 as proposed by applicants would provide the largest nuclear complex ever constructed, in the heart of a population of double the number(25,000)of persons designated by the AEC as a population center, with a 0 distance to that population center's nearest boundary.

EVACUATION

Testimony of applicant' evacuation expert Wm. Sheppard Tr.pg. 1539 that "adequate evacuation routes are available" bears little credence when the population figures on which he based his calculations are many 1000s of percents inadequate. His incredibility is magnified when he states(same page) that the populations "can be evacuated in a timely manner" and then admits in cross-exam that no minimum times have been provided to him for his evaluations.

Sheppard's 2 hrs. and 35 minutes estimate to clear the low-population zone was negated by testimony of AEC witness John Sears that a 4.4 mile per hour breeze could carry deadly radiation to the 3 mile low-population boundary in 45 minutes. Tr. Pg. 1387

GUARD submits that even assuming Sheppard's time estimate to be accurate, his evacuation would not be speedy enough to avoid ezposure of beach populations to deadly radiation.

GUARD further submits that there is serious question of the adequacy of time estimates for evacuation derived by Sheppard. GUARD specifically notes a seriously underestimated time block for the clearing of the beaches inthe low-population zone 3 miles each side of the plant site, bringing the beach populations to the bluff parking lots. Sheppard allocates 20 minutes, TR. Pg. 21722) to a sequence of events beginning with the accident at San Onofre, then notification of park officials, notification of mobile vehicle operators, patrol of 6 miles of low-population zone beach in the jeeps, warning beachgoers to evacuate, beach populations hiking to one of 5 trails up the bluffs, climb 70 -120 ft. high bluffs and hike from top of bluff to parking lot inland and to their cars.

(more)

Sheppard's testimony is not substantiated by Parks Area Director Jewel Caughell , Tr. Pg. 1326, who said he would need 2-2½ hours to complete the sequence and clear the beach inpeak summer use.

Sheppard's allocation of the same 20 minutes time block for evacuating the bluff beach and for clearing the Enlisted Men's Club Beach , which is on the same level as its parking lot, casts doubt on the adequacy of Sheppard's knowledge of the geography of the area. Prepared Testimony pgs. 21,22,24.

If Sheppard's time allocations are inadequate for safe evacuation of 40% beach occupancy, they would most certainly be tragically inadequate for 100% occupancy.

Safety of school populations is a critical concern of any evacuation potential. Why did Sheppard not account for the time necessary to evacuate Concordia School on the boundary of the low-population zone in San Clemente? Why did he similarly ignore the other three public schools in San Clemente within 5½ miles of the nuclear plant? Why did he not confer with school district Disaster Preparedness Chairman Richard Herr to determine time estimaates for such an evacuation? Tr. Pg. 1181-82

Similarly, Sheppard, the utility companies and the AEC staff all failed to include in their listings of schools, and consequently in their allocations of evacuation time, the Lutheran Church School and the Cztholic Church School, two elementary schools within the same 5½ miles.

Sheppard's failure to calculate time for schools is especially damaging to the validity of his total-time for evacuation conclusionsin theone-way-out geographical conditions of San Clemente. Sheppard figured 2400 vehicles evacuating in the first hour from the south end of San Clemente and the low-population areas of Camp Pendleton northbound on Interstate 5, Tr. pg. 16. Yet the school district's Herr testified Tr. pgs. 1186 and 1705, that he would need 30 minutes lead time to bring busses into Concordia, plus 15 minutes load time, during which the residents of the south end of town could have no knowledge of an accident at San Onofre. Herr added to the 45 minutes a possible 10 minutes notification time, Tr. pg. 1701. Herr said he could not get the children out in busses from the one-way-out school street without the lead time because he would be besieged by panicked parents and other escaping population. He noted that the school's one-way-out is also the narrow street serving the Coast Guard, Presidential grounds and offices and the Cyprus Shore and Elmore Ranch community.

The 55 minute lead time (Herr Tr. pgs 1186-1201) cannot be reconciled with AEC witness John Sears' testimony, Tr. pg. 1387, that a 14.4 mile per hour breeze could carry deadly radiation to Concordia within 45 minutes. San Clemente City officials could not be expected to withhold warning from residents of the south of San Clemente until the school was evacuated, when it would mean sacrificing those residents to save the children. What if the breeze were faster?

The appalling inadequacy of Sheppard's time estimates is apparent when consideration of need for similar lead-time is recognized in bringing in busses and loading and evacuating the two schools of new-town on Camp Pendleton only 2 miles inland from the plant. If the children

(more)

of San Clemente would have to be bussed out before parents knew what was happening, to avoid chaos, would the same principle not be applicable in the Pendleton town?

GUARD submits that the use plan of the San Onofre State Park is not compatible with a nuclear reactor complex. The State Park sector of the low-population zone to the N and NE of the reactor site has been planned for hike-in campgrounds from which the 10,000 per day campers on 7200 acres would have to escape toward the reactor to the freeway as their only route out. According to Parks Area Director Caughell, the only feasible communication with these people to warn them to evacuate would be helicopters from Camp Pendleton. If, as Sears has suggested, helicopters could be used to evacuate the schools, is it not likely that the available helicopters might be all in use evacuating four or five schools and the Western White House Administrative Offices, and not be available to warn 10,000 campers spread through 7200 acres of canyons, much less to attempt to evacuate them?

The AEC staff's radiation expert John Sears' testimony that the populace of San Onofre threatened areas should be evacuated by walking them at 90° angles to the course of the radioactive plume, Tr. pgs. 1358,1383, 1389, .6 mile at Concordia was ridiculous to everyone with knowledge of the terrain of San Clemente and the San Onofre beach area. San Clemente City Manager Kenneth Carr's testimony detailed thegeographic conditions which rendered Sears' scheme impossible: Tr. pg. 1587, "There is no rectilinear grid of streets"; Tr. pg. 1591, there are 100 ft. high bluffs along the beach; Tr.pg.1593, "Canyons traverse the city", and Tr. pg. 1598 and 1599, only four identified beach accesses for evacuation up the bluffs in the city.

How can anyone walk at 90° to a plume over any populated sector of San Clemente or of San Onofre State Park, when he would have to either jump over the freeway, climb fences and houses and 100 foot bluffs or scale inland mountains...or swim out to sea, to go .6 mile or more in either direction 90° to that plume.

EVACUATION FINDINGS

9. On consideration of all testimony on population and evacuation, the Board finds that the low population zone could not be "evacuated in a timely manner" as claimed by applicants .

10. The Board further finds that applicants' credence of testimony in all areas of environmental and safety considerations is clouded by flagrantly incomplete and inaccurate population data. PSAR Fig. 2.2-2 Tr. pg. 1414 etc. etc.

11. Although the applicants are aware that the State of California is operating a State Beach Park in and near their exclusion zone of Unit 1, a park which is accommodating thousands of persons and by 1980 is expected to adcommodate a maximum of 34,000 persons per day, the applicants have provided to the responsible heads of the area parks department no information foundation on which an evacuation plan could be designed, according to testimony by Parks Ddpartment Area Director Jewell Caughell, Tr. Pgs. 1332,1333.

12. The emergency plan of the City of San Clemente "makes reference to evacuation" but "nowhere in thisplan would you find specifics" of an evacuation, according to testimony by City Manager Kenneth Carr, Chief Executive Officerof the City of San Clemente. Tr. pg. 163

(more)

13. The Board of Trustees of the Capistrano Unified School District has by resolution of the board recorded its opposition to construction of proposed units 2 and 3 at San Onofre, Tr. pg. 1213, and has sent to the AEC hearings spokesmen to protest failure of the utility companies to answer the essential questions of the school district, asked since 1970, necessary to the formation of an evacuation plan. TR. Pgs. 1209, 1212, 1213 etc.

14. The applicants have been operating a nuclear plant at San Onofre for five years, yet they have failed to provide effective comprehensive logistically operational evacuation plan information for the Capistrano Unified School District, the City of San Clemente and the low-population zone California State Parks.

UTILITY COMPANY EVASIONS

GUARD notes that the essence of the difficulty of public officials to obtain specific answers to their questions is firstly the utility company evasion into generalities and vague assurances that accidents are "highly unlikely", or "remote", or that radiation the plant is emitting is "insignificant", and secondly, their tendency to refer to sections of documents equally inadequate, obscure or difficult to obtain.

In some instances, sections of the applicants' and AEC Safety Analysis and Environmental Statement materials stimulated questions from school district officials which were answered merely by reference to the sections which had evoked the questions in the first place.

AIRCRAFT IMPACT

An example of this confusion is the question posed by the Capistrano Unified Council of Parent-Teacher Associations Safety and Civil Defence Chairman, who asked whether the proposed plants would be designed to withstand impact of jet aircraft. The same question was asked later by the school district officials. The AEC staff answer was reference to the Safety Analysis note that since the nearest airport is 12 miles away, the staff does not consider design for aircraft impact to be necessary.

The question had been raised by the local officials partly because the chairman of the Orange County Board of Supervisors, Ronald Caspers, has been leading a concerted effort to negotiate for a major international airport on Camp Pendleton to replace the obsolete Orange County Airport which is already second in the nation in air-traffic, and to supplement the jammed Los Angeles International Airport(see attached news clips).

GUARD submits that neither the utility officials nor the AEC can assure that the exposed site at San Onofre can be kept free of hazard from aircraft for the coming 20-30 years. Thus, design to protect from aircraft impact is the only prudent course. GUARD's engineers question whether either the containment sphere or auxiliary structures and mechanisms can be designed to withstand such impact on an exposed site as proposed at San Onofre.

UNANSWERED QUESTIONS

GUARD requests the AEC Hearing Board to require the applicants to answer the questions posed by the school district and others in the hearings, and to provide answers to the following questions which local officials have raised subsequent to the Final Environmental Statement and the Hearing testimony.

(more)

In southern California's unique inversion basin conditions, the prevailing winds which take the pollution from Los Angeles out to sea and then bring it back to the Capistrano Bay area populations often eventually deposit the pollution in Riverside or San Bernardino. Similarly, summer storms from Baja could carry radiation pollution from San Onofre into the Los Angeles inversion basin, and storm systems from the north could similarly deposit them in the San Diego basin.

GUARD notes the inadequacy of applicants' meteorological studies, which have evoked the following questions by local officials who are members of GUARD.

1. What would be the difference in radiological hazard between various wind conditions?
2. What differing effects would result from a gentle breeze on a stable directional path, and a gusty condition of almost hurricane type, which we have been getting in recent years here, in which varying velocities blow in many directions?
3. What times and proportions of the year would the hazard be, in what areas and what radius of the plant?
4. What is the effect of the on-shore, off-shore winds? Would the off-shore morning wind take the radiation out to sea, then blow it back on near populations in the change to on-shore winds in the afternoon?
5. How would inversion conditions of this area affect radiation hazard in a severe accident? If the winds blew the radiation plume to the Riverside-San Bernardino area, would the plume then be held there until it is dissipated on those populations and into the atmosphere, or would it return to the coastal populations while it is still hazardous?
6. How long would the nuclides of a radioactive plume be dangerous as they moved over the population areas of southern California? What are the longest lived radiation nuclides which would be in such a plume?
7. In an accident such as that described by witness John Sears where evacuation would be necessary beyond 15 miles, if the plume were carried by storm winds from the north toward Oceanside, how long would evacuation of Oceanside be necessary? What percentage of the reactor complex's radioactive inventory was Sears estimating would be released in the accident, and after operation of the reactor for how long?
8. Would the plume be hazardous as far south as San Diego, or if it were moving northward, as far north as Los Angeles?
9. What would be the difference in effect if the accident released double the amount radiation estimated by Sears?
10. In a serious accident which threatened near populations of from 15-20 miles in Capistrano Bay area, Fallbrook or Oceanside what would be the length of time people would be prevented from returning to homes and schools under various wind conditions?
11. What would be the effects of the radiation plume on the areas over which it moves, both in short-term damage and possible long-term hazard?

(more)

Several questions of the Ocean and Shoreline Planning Committee of the County of Orange were not answered during the course of the hearings. Most important of these are:

1. Which inland sites have the applicants considered in detailed cost-benefit analysis comparison for exposed or underground siting of units 2 and 3? Where are these analyses available for our study?

2. Considering the rigid limitations of availability of sandy-beach oceanfront land, how are the subjective values of critically needed oceanfront assessed for use in such a site comparison?

3. How are such dollar values allotted to numbers of persons whose lives are placed in jeopardy?

4. How can the remoteness of such a risk be evaluated when factors in assessment of an exposed site include: a. attractiveness to saboteurs ie largest nuclear complex in the world, combined with proximity to one of the residences of the President of United States? b. If our San Clemente area becomes the number one nuclear target of domestic and foreign saboteurs, what effect does this have on the odds of the hazard?

5. The people of California, by initiative vote, have indicated their unwillingness to permit expanding industrial use of theoceanfront. If the Coastal Zone Commissions rule against power plants on the oceanfront, do the applicants have an alternate site they could shift to, for construction of units 2 and 3? If not, why not?

6. Will the applicants' failure to provide feasible alternative sites be weighed against them in the siting decidion by the AEC and the Coastal Zone Commissions, or will the "gun to the head" approach of the applicants be rewarded by AEC and Coastal Zone Commission concession that time required to provide an alternate site, now, is so costly that this factor will overweigh such important factors as unexpected large population projections in the near-plant area?

GUARD urgently requests that the Hearing Board require from the utility companies answers to the questions of Dorothy Boberg of the American Association of University Women, San Fernando Valley Branch, which we submit, strike to the core of the issues of hazard. These questions were asked in the first day of the AEC hearings in January, and were ignored in subsequent testimony by the utility companies, in spite of instruction from the Hearing Board chairman that they and other questions posed and raised by the public be answered during the course of the hearings.

Testimony by Joseph M. Reeves, Edison Co., environmental planning engineer, held one of only two references to any of Mrs. Boberg's questions found by GUARD researchers. On transcript page 1514 Reeves dealt with question #13, saying, "Applicants clearly recognize their responsibility to decommission the site and plant facility consistent with the requirements of the property ownership at that time." This sweetness and light statement neither answers Mrs. Boberg's question #13 nor 14.

Applicants' witness Harold B. Ray, Tr. 1523, noted that radiation standards of the AEC "follow from" National Council on Radiation

(more)

Protection and those of the International Commission on Radiation Protection...an evasion, not an answer, to the entire thrust of Mrs. Boberg's questions #1,2,3. "Following from" is not "adherence to"... any standards established by the scientific community.

EARTHQUAKE HAZARD ADDENDA

Consolidated Intervenors' proposed findings of fact provide the key sections of testimony on the earthquake hazard issue. GUARD notes that the utilkity companies' claims that the Newport-Inglewood Fault ends in the ocean south of Newport Beach and that the offshore faults within five miles of San Onofre are unrelated to that fault were not substantiated by any of the expert witnesses during the course of the hearing. All of the geologists testifying, even those called by the applicants, identified the Santa Monica Baja fault as an active major fault running within five miles of the site.

Dr. James Brune, professor of geophysics at UCSD and foremost geophysicist of the southern California area has warned that this fault has the capability of generation of a 1.25 G quake, yet the utility companies request approval of plans to install two largest in the world reactors with a quake resistence design of .67 G, at San Onofre in a population center.

The staggering possibility that the Christianitos Fault, which runs within ½ mile of the San Onofre site, may have potential hazard, is inescapable in the testimony of Edison Co. witness Dr. Stewart W. Smith, professor of geophysics of the University of Washington, who answered, "no" to the question by intervenors' attorney, "Based on the plate techtonics framework, can you rule out activity on any fault in California?" Tr. pg. 1725.

GUARD members who live inthis atomic test tube request the AEC Board to require the applicants to upgrade Unit 1 from the current unrealistic .5 G design to a more protective 1.25 G or higher level.

GUARD requests that, in consideration of the hundreds of hours of research and analysis which volunteers have donated to produce the proposed 14 findings and related addenda comments in this letter, that the Hearing Board include this letter in its study material preparatory to its deliberation of a decision on San Onofre. Our peace-of-mind, and perhaps our lives are in the balance of your weighing of the benefits and the risks in this proposed game of nuclear roulette in which we are unwilling target. Finally, we ask again, "How many of us are too many to risk?"

Sincerely,

Lyn Harris Hicks

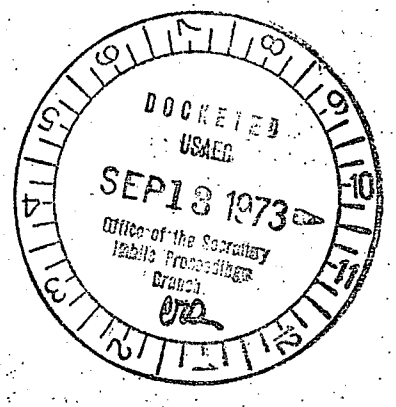
Lyn Harris Hicks, chairman
Groups United Against Radiation Dangers

STATE OF CALIFORNIA—RESOURCES AGENCY

RONALD REAGAN, Governor

DEPARTMENT OF PARKS AND RECREATION

PENDLETON COAST AREA
3030 Avenida del Presidente
San Clemente, CA 92672



August 31, 1973

TO WHOM IT MAY CONCERN:

The following information is compiled as an indication of the demand for overnight camping sites at the units of the Pendleton Coast Area.

	Persons Turned Away After Sites Filled		
Unit	F.Y. 71 - 72	F.Y. 72 - 73	Filled
San Onofre	1,069	5,767	5,220
San Clemente	45,103	32,986	7,601
Doheny	99,011	38,532	7,381

In addition, an unknown number of persons are "turned-away" at Ticketron outlets when attempting to make reservations for camping at Doheny and San Clemente State Beaches. Campgrounds at San Clemente and Doheny State Beaches are filled every night throughout the summer season.

Ronald L Hanshew

RONALD L. HANSHEW
Area Manager

RLH:ls

Capistrano EDITION

DAILY PILOT

N.Y. Stocks

VOL. 66, NO. 235, 5 SECTIONS, 74 PAGES — ORANGE COUNTY, CALIFORNIA — THURSDAY, AUGUST 23, 1973 — TEN CENTS

Fatalities Resurrect Coast's 'Slaughter Alley'

By JOHN VALTERZA
Of the Daily Pilot Staff

The grim nickname of "Slaughter Alley" once applied to the deadly stretch of highway between San Clemente and Oceanside is being resurrected by the California Highway Patrol because of a major increase of fatalities in recent months.

Patrol spokesmen from Oceanside said that the rate of traffic deaths on the now-modern stretch of freeway in the area through Camp Pendleton has jumped 27 percent for the first few six months of this year, compared to the same period in 1972.

They blamed the new crush of traffic brought on by the racing season at Del Mar as well as ever-increasing vacation traffic as two factors in the rapid increase.

CHP spokesmen said that during the first six months of this year eight persons died along the 19-mile stretch of freeway, compared to only one the year before. During the same period 226 accidents were reported on the stretch.

Officers said that yet another factor this year also has contributed significantly to the death totals.

Illegal aliens being dumped from smugglers' cars ahead of the San Onofre Border Patrol Checkpoint have caused the major new problem.

Earlier in the year four persons died in two incidents related directly to alien smuggling.

All were struck by fast-moving cars a few miles downcoast of the roadblock, and all had been trying to run across the busy roadway to walk north.

The CPH plans to beef up patrols along the stretch in an effort to reduce the accident rate, and seven new units will be pressed into service, said CHP spokesman Dave Helsel.

Besides the extra patrols, the CHP has convinced the state Department of Transportation to examine the deadly stretch to determine if changes could be made to the freeway in the interest of safety.

"It's very reminiscent of the nightmarish days of the past," Helsel said.

The roadway a decade ago bore the deadly reputation because of the massive number of deaths due to accidents.

One crash, which drew nationwide attention — and sparked an emergency program to complete the freeway sooner than planned — involved tanker trucks and passenger cars in a grinding series of collisions in the fog. Six persons were burned to death and several others were gravely injured in that tragedy.

The patrol's Oceanside office compiles the data related to the deaths and the spokesman for that district, Dan Henderson, said that subtle factors also the monotonous stretch of freeway also could be contributing to the death rate.

"We have to agree that there aren't any ramps or other features to keep a driver alert along the stretch. It's a little like 19 miles of nothing," he said.

Marine Airport Plan Eyed

Pendleton Jetport Said 'Possible'

By JOHN ZALLER
Of the Daily Pilot Staff

The U.S. Marine Corps has hired a consultant to find out if commercial jet use at El Toro and Camp Pendleton is feasible, Marine officials disclosed today.

And a preliminary conclusion is that it would be "technically possible" to build an "attractive jetport" at Camp Pendleton, but it would "cause irreversible ecological impact" on the coastline and would be "very expensive."

The study, conducted by Stanford Research Institute (SRI) of Menlo Park has not yet reached any conclusions about possible joint use of the Marine Corps Air Station at El Toro, according to H.B. Wilder, the man in charge of the study for SRI.

Civilian use at either base could relieve jet traffic at Orange County Airport and many officials are pushing that approach as an alternative to an expansion of the county air facility.

The proposal also has prompted strong opposition from some communities.

The investigation of possible civilian use is part of an overall study under way since January, which is designed to determine Marine Corps needs through 1994 at the six Marine bases in Southern California.

Marine Corps spokesmen today reaffirmed that the corps is still opposed to civilian commercial use at either El Toro or Camp Pendleton.

However, spokesmen said that the independent outside agency has been asked to make an objective study and to come to its own conclusions.

"The proposals for civilian use have been made and they should be taken into account in any long range planning for the two bases," Wilder said.

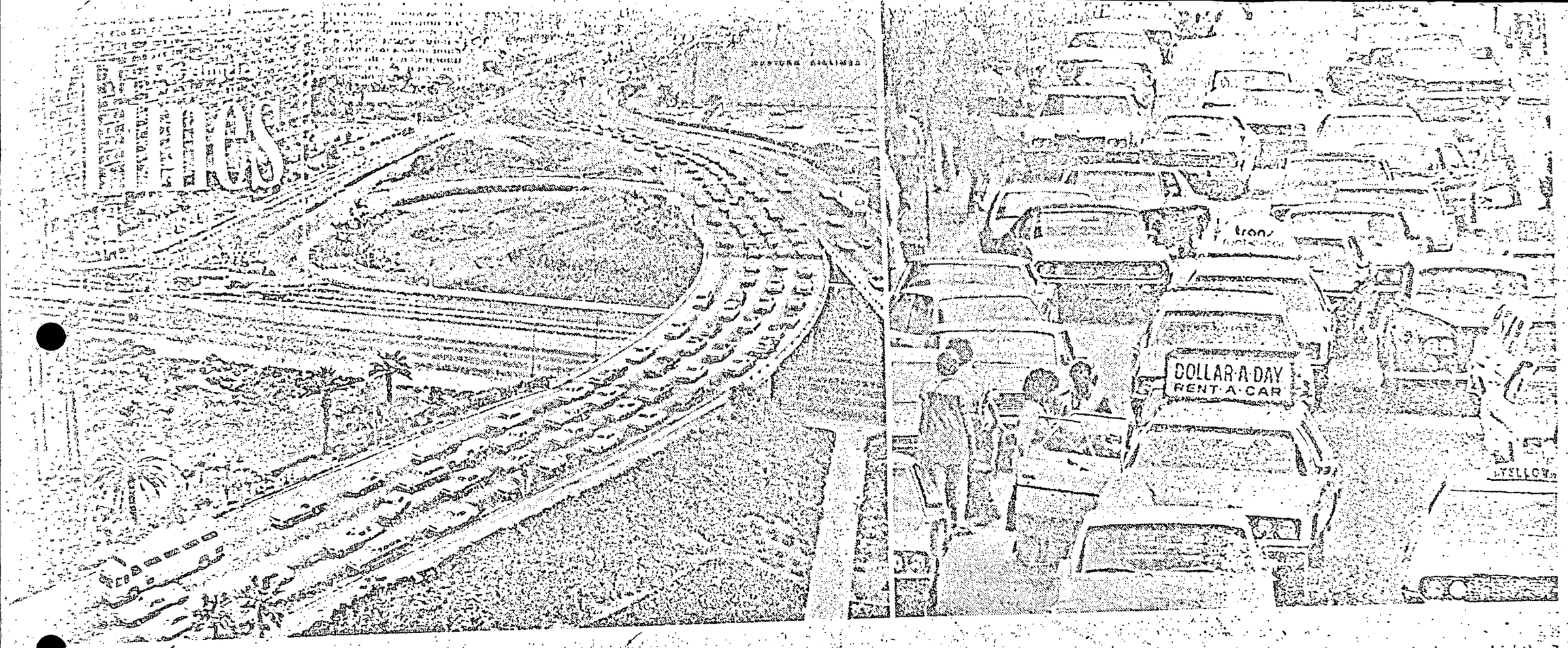
"It's one thing when the Marines stand up every week and say there shouldn't be any civilian use," added Lt. Col. Ed. Janz, community liaison officer at El Toro.

"But it would be another thing if someone on the outside who is widely respected for independence would come to the same conclusion."

The SRI study took as its starting point the level of operations the Marine Corps says it needs at the two bases over the next 20 years, Col. Janz said.

Investigators will then determine what, if any, level of civilian use of the two bases is compatible with the expected

(See JET USE, Page 2)



T JAM—Traffic bound for Los Angeles International Airport on Century Blvd. is backed up for miles (left) in a typical weekend scene, and don't expect any relief when you arrive at terminal area (right).
Times photos by Bill Varie

ic Glut Worsens at L.A. Airport

...trated Public Vents Its Anger at Innocent Police

...ROBERT KISTLER
Times Staff Writer

...on Patrolman Robert ... Airport television ... geles Police Department's airport detachment.

"Frankly, it's just a helluva mess. We've always had a lot of traffic people are flying every year, today's jumbo jets (often arriving in clusters at peak traffic periods) have created a particularly heavy ... and ...

PROTECTIVE STEP

Property Owners Turn to Inverse Condemnation

BY THOMAS FORTUNE

City Will Open Debate on Financial Future

Garden Grove Plan Will Seek to Correct Land-Use Errors, Shape Fiscal Destiny

DOCKET NUMBER
PROPOSED RULE EAC 50-361, 362

SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

August 22, 1973

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

FILE NO. CNB 200

Mrs. Helen L. Scantlin
5811 Box Canyon Road
La Jolla, California 92037

Dear Mrs. Scantlin:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

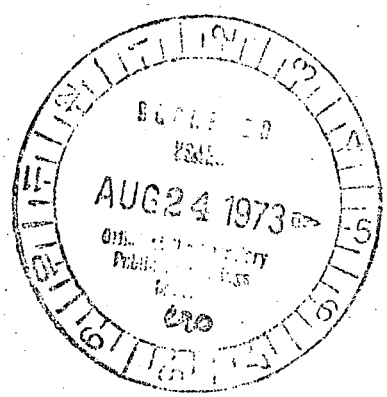
Sincerely yours,

Martin R. Engler, Jr.

MRE Jr wpc

Enclosure

cc: Frank Karas
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing Board Panel
Lawrence J. Chandler



SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

August 22, 1973

FILE NO. CNB 200

Mr. Dave Johnson
908 Monterey Court
Chula Vista, California 92011

Dear Mr. Johnson:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

Sincerely yours,

Martin R. Engler, Jr.

MRE Jr jah

Enclosure

cc: Frank Karas
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing Board Panel
Lawrence J. Chandler

SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

August 22, 1973

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

FILE NO. CNB 200

Mrs. Lloyd Von Haden
2889 Foothill
Vista, California

Dear Mrs. Von Haden:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

Sincerely yours,

Martin R. Engler, Jr.

MRE Jr wpc

Enclosure

cc: Frank Karas
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing Board Panel
Lawrence J. Chandler

DOCKET NUMBER
PROD. & UTIL. FAC. 50-361 362

SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

August 22, 1973

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

FILE NO. CNB 200

Mr. Lloyd Von Haden
2889 Foothill
Vista, California

Dear Mr. Von Haden:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

Sincerely yours,

Martin R. Engler, Jr.

MRE Jr wpc

Enclosure

cc: Frank Karas ✓
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing Board Panel
Lawrence J. Chandler

SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831, SAN DIEGO, CALIFORNIA 92112

DOCKET NUMBER
PROD. & UTIL. FAC. 50-361, 362

August 21, 1973

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

FILE NO. CNB 200

Mr. M. J. Murphy
Pan Continental Enterprises, Inc.
1283 East Main Avenue
El Cajon, California 92021

Dear Mr. Murphy:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

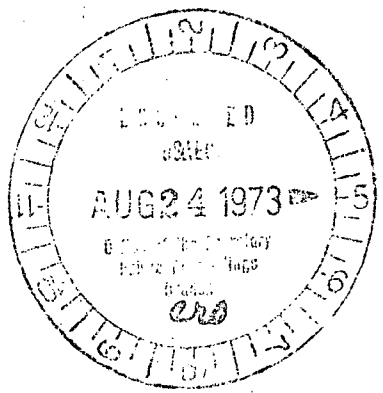
Sincerely yours,

Martin R. Engler, Jr.

MRE Jr wpc

Enclosure

cc: Frank Karas
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing
Board Panel
Lawrence J. Chandler



SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

August 22, 1973

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

FILE NO. CNB 200

Mrs. Laura Tallian
Box 2810
San Ysidro, California 92037

Dear Mrs. Tallian:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

Sincerely yours,

MR Engler

Martin R. Engler, Jr.

MRE Jr wpc

Enclosure

cc: Frank Karas ✓
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing Board Panel
Lawrence J. Chandler

DOCKET NUMBER
PROD. & UTIL. FAC. 50-361, 362

SAN DIEGO GAS & ELECTRIC COMPANY
P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

August 22, 1973

MARTIN R. ENGLER, JR.
SENIOR VICE PRESIDENT

FILE NO. CNB 200

Mrs. Bernice Harris
264 Montalvo
San Clemente, California

Dear Mrs. Harris:

This letter is in response to the concerns expressed by you to the Atomic Safety and Licensing Board at the public hearing held in San Diego on May 14, 1973. As you will recall, a number of individuals and public-interest groups expressed various concerns and posed numerous questions concerning the nuclear facilities which we propose to construct. In an attempt to answer these questions and concerns, the Companies presented limited appearances by persons qualified in the various areas of concern. Enclosed is a copy of official transcript of those responses, which we trust you will find responsive.

We have attempted for several years to keep our customers informed of the advantages offered by nuclear power. If you desire further information, or if you have not already done so, I would suggest you visit the Public Information Center at San Onofre. Personnel on duty at the Center are prepared to answer questions on nuclear topics.

Sincerely yours,

MR Engler

Martin R. Engler, Jr.

MRE Jr wpc

Enclosure

cc: Frank Karas ✓
Michael L. Glaser
Lester Kornblith, Jr.
Dr. Franklin C. Daiber
Bruce Sharpe
Allan R. Watts
Elizabeth S. Bowers
Atomic Safety and Licensing Board Panel
Lawrence J. Chandler

8-1673

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	
	)	and 50-362
(San Onofre Nuclear Generating Station, Units Nos. 2 and 3)	)	

APPLICANTS' REPLY TO THE A.E.C. REGULATORY STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Section 2.754(b)(3) of the Commission's Rules of Practice [10 C.F.R. § 2.754(b)(3)], Applicants hereby reply to the Regulatory Staff's proposed findings of fact and conclusions of law. For convenience of reference, Applicants have adopted paragraph numeration corresponding to the Regulatory Staff's proposed findings of fact and conclusions of law.

1a. It is recommended that the words ". . . rated at 3390 megawatts thermal to produce 1140 megawatts electric energy." be deleted and the following words be inserted ". . . having a rated core thermal output of 3390 megawatts."

24, 25, 34 and 35. The Regulatory Staff suggestion that Applicants' Proposed Findings Nos. 24, 25, 34, and 35 should be deleted is inappropriate. Proposed Findings Nos. 24 and 34 are factual, are supported in the record [Rep. Tr. pp. 163-166], and are necessary to an understanding of the procedural disposition of Issues Nos. 1 and 3 set forth in the Notice of Hearing. The Regulatory Staff proposal with respect to Applicants' Proposed Findings Nos. 25 and 35 represents no more than a renumbering of those proposed findings because the Regulatory Staff proposes their reinsertion as Regulatory Staff's Proposed Finding No. 69b.

27. It is recommended that the word "electrical" be inserted between the word "localized" and the word "fires." [Testimony of Kenneth P. Baskin, p. 3].

38(1) through (6). The Regulatory Staff proposal of some five pages of specific findings with respect to geology constitutes inexcusable overreaching. The Regulatory Staff joined the Consolidated

Intervenors in vigorously opposing what they considered to be an effort on the part of Applicants to litigate geology in the course of the January session of the public hearing. Indeed, Regulatory Staff counsel argued:

"Mr. Chairman, I think we have to distinguish in argument here between scientific methodology on the one hand, and legal issues in the proceeding on the other. It's quite true, as Mr. Kocher suggests, that the normal progress of methodology in developing seismic design is to first look at the geology, develop certain geological conclusions as to the area near the site, and then based upon those geological conclusions seismologists formulate opinions as to what kind of earthquakes can be expected and what kind of acceleration values should be used in the design.

"However, from the standpoint of issues in this hearing, it seems to me that by virtue of the stipulation we have eliminated the first half of that methodology."

[Rep. Tr. pp. 897-98].

Having achieved their goal of strictly limiting the contested issue to the subject of seismology, they now propose extensive findings with respect to geology.

Any suggestion that the testimony of Dr. Jahns represents a "litigation" of geology is untenable. The testimony of Dr. Jahns was an articulation on the record of the basis for a very limited aspect of the testimony of Dr. Smith. As will be recalled, Dr. Smith indicated that an examination of fault zones having geologic characteristics comparable to the Santa Monica-Baja California zone of deformation added confidence to his interpretations. [Testimony of Dr. Stewart W. Smith, pp. 7-9]. The testimony of Dr. Jahns provided the basis for the comparisons made by Dr. Smith. [Testimony of Dr. Stewart W. Smith, p. 7; Applicants' Proposed Finding No. 44]. It would be a gross mischaracterization of Dr. Jahns' testimony to suggest that it represented a litigation by Applicants of the geologic model assumed in this proceeding.

The Regulatory Staff's Proposed Finding No. 38(2) appears to suggest that the Applicants have accepted the geologic conclusions of the Regulatory Staff and its Consultants. On the contrary, the record is clear that the Applicants have done no more than assume such geologic conclusions. [See Applicants' Proposed Findings Nos. 22(2), 36, 40, and 45].

The Regulatory Staff's Proposed Finding No. 38(6) suggests that the Regulatory Staff's conclusions with respect to geology are uncontroverted. Such a suggestion is absurd inasmuch as geology was not in issue in this proceeding. Suffice it to say, however, that if geology were in issue in this proceeding, the record contains substantial probative evidence leading to conclusions different from those of the Regulatory Staff. [See Applicants' Exhibit No. 1-C, § 2.9 and Appendix 2A; Applicants' Exhibit No. 1-D, Appendices 2B, 2C, 2D and 2E].

Similarly, the Regulatory Staff suggests that the ". . . invalidity of portions of

Dr. Jahns' testimony describing the zone stand uncontroverted in the record. . ." Such a suggestion is ridiculous inasmuch as the record contains the testimony of both Dr. Jahns and the Regulatory Staff witnesses. If the Board considers a finding to be appropriate, a weighing of that evidence would be required. Applicants submit, however, that a determination of this particular question is not determinative of the issue of whether 0.67g is a reasonable design basis earthquake. As stated in Applicants' Proposed Finding No. 44:

> "He [Dr. Smith] judged that the maximum earthquake he had predicted would not be exceeded on the Whittier-Elsinore or western Mojave systems, both of which he considered to have greater earthquake potential than the Santa Monica-Baja California zone of deformation." [Testimony of Dr. Stewart W. Smith, pp. 7-9]. [See also Regulatory Staff's Proposed Finding No. 39(5)].

It is Applicants' position that should the Board determine findings with respect to geology to be necessary, the findings proposed by the Regulatory Staff are inaccurate and should not be adopted. The Regulatory Staff has confused a description of an assumed model as probative evidence with respect to the correctness of that model. As stated above, the record contains substantial probative evidence that the model is excessively conservative and demonstrates Applicants' disagreement with that model. The fact that Applicants were willing to assume that model as the basis for proving that 0.67g is a reasonably conservative design basis earthquake does not justify a finding beyond the scope of the stipulated issue determining the ultimate validity of the Regulatory Staff's geologic model.

39. Although Applicants believe the scope and substance of their Proposed Findings Nos. 36 through 49 to be preferable, Applicants have no specific disagreement with Regulatory Staff's Proposed Findings Nos. 39(1) through (5) and 48.

55a. It is recommended that the word "considered" be substituted for the word "proposed" in the first sentence of the Regulatory Staff's Proposed Finding No. 55a. In addition, it is suggested that the portion of Regulatory Staff's Proposed Finding No. 55a following the first word on page 13 is not relevant to the question of whether adequate routes are or will be available to enable development of an evacuation plan.

69a. Applicants have no basis for comment on the specific manner in which the Board has carried out its responsibilities with respect to matters not in contest among the parties. However, Applicants consider their Proposed Findings Nos. 24, 25, 33, 34, 35, 69 and 104 to constitute adequate findings with respect to the uncontested issues in this proceeding.

75a. The predictions attributed to Applicants in the second paragraph of Regulatory Staff's Proposed Finding No. 75a were not made by Applicants. However, such predictions appear to be based upon Applicants' thermal modeling studies and appear reasonably consistent with the results of those studies.

75b. and 75d. Regulatory Staff's Proposed Findings Nos. 75b and 75d are repetitive of Applicants' Proposed Findings Nos. 75 and 73.

84b. and 84d. Regulatory Staff's Proposed Findings Nos. 84b and 84d are concerned with entrainment of organisms into the circulating water system. They are therefore irrelevant to the contested issue, which was concerned with the adverse impact, if any, on benthic organisms and migratory fish species within the 4°F isotherm. [See Rep. Tr. pp. 2089-90].

102a - 103c Regulatory Staff's Proposed Findings Nos. 102a, 102b, 103a, 103b, and 103c are concerned with matters which were not the subject of contested issues in this proceeding. Applicants therefore consider their inclusion as findings of fact to be inappropriate. Moreover, the proposed condition with respect to chlorine and other halogens is, in substance, a proposed operating limitation and is, therefore, inappropriate as a condition of a construction permit. South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1) ALAB-114, RAI-73-4, at page 255 (April 13, 1973).

DATED: August 16, 1973.

Respectfully submitted,

SHERMAN CHICKERING
C. HAYDEN AMES
FRANK S. BAYLEY, III
DAVID R. PIGOTT

Attorneys for Applicant
SAN DIEGO GAS & ELECTRIC COMPANY

By Original Signed by David R. Pigott
David R. Pigott
111 Sutter Street
San Francisco, California 94104

ROLLIN E. WOODBURY
ROBERT J. CAHALL
DAVID N. BARRY, III
CHARLES R. KOCHER
KINGSLEY B. HINES

Attorneys for Applicant
SOUTHERN CALIFORNIA EDISON COMPANY

By Original Signed by
Charles R. Kocher
Charles R. Kocher
Assistant Counsel
2244 Walnut Grove Avenue
Rosemead, California 91770

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 1973, copies of the foregoing APPLICANTS' REPLY TO THE A.E.C. REGULATORY STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW were served upon each of the following by deposit in the United States mail, postage prepaid, addressed as follows:

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Mr. Frank Karas
Chief, Public Proceedings Staff
Office of the Secretary
U. S. Atomic Energy Commission
Washington, D.C. 20545 (Orig. + 20 copies)

Michael Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety & Licensing Board
U. S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Dept. of Biological Sciences
University of Delaware
Newark, Delaware 19711

Bruce Sharpe, Esq.
1400 East Locust Avenue
Lompoc, California 93436

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C.

San Clemente Public Library
Attn: Mrs. Phyllis Rauch
233 Granada St.
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California

Dr. Gerard A. Rohlich
Dept. of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Attorney at Law
Atomic Safety & Licensing Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Kenneth E. Carr, Esq.
City Manager
100 Avenida Presidia
San Clemente, California 92672

Atomic Safety & Licensing Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler, Esq.
Office of the General Counsel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

David Sakai
845 North Perry Ave.
Montebello, California 90640

CHARLES R. KOCHER

Charles R. Kocher
Assistant Counsel
SOUTHERN CALIFORNIA EDISON COMPANY
2244 Walnut Grove Avenue
Rosemead, California 91770

August 6, 1973

Michael L. Glaser, Esq.
1150 17th Street, N. W.
Washington, D.C. 20036

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

In the Matter of Southern California Edison Company
San Diego Gas & Electric Company
(San Onofre Nuclear Generating Station, Units 2 and 3)
Docket Nos. 50-361 and 50-362

Gentlemen:

The staff submits herewith its Proposed Findings of Fact and Conclusions of Law. We have reviewed the findings submitted by applicants and by intervenors, and inasmuch as the staff is in agreement with a substantial portion of those findings and conclusions proposed by applicants, we have not undertaken to repeat those with which we agree. Rather, the staff is submitting findings and conclusions which we feel necessary to modify, add to, elaborate upon or substitute for those proposed by applicants. In addition, included are the staff's proposed construction permits identified as Staff Attachment A and Staff Attachment B, a document headed CONFIDENTIAL which sets forth the staff's proposed findings in regard to industrial security, which is being distributed in accordance with the Board's Protective Order of April 17, 1973, and the staff's proposed transcript corrections.

With respect to Staff Attachments A and B, please be advised that paragraph no. 4 on page 4 and paragraph no. 5 on page 5 of each Attachment are independent paragraphs and are not intended as conditions for the protection of the environment under paragraph E.

The staff notes that intervenors have for the first time raised a legal argument with respect to the applicants exclusion area as allegedly effected by California real property law. These matters are found in intervenors' Proposed Findings Numbers 71 through 82. Inasmuch as neither the Board's Order

OFFICE ▶						Hearing
SURNAME ▶						
DATE ▶						

Form AEC-318 (Rev. 9-53) AECM 0240 GPO 943—16—81465-1 445-678

of June 25, 1973, nor the Commission's Rules of Practice specifically provide the staff with an opportunity to reply to intervenors' Proposed Findings and Conclusions of Law, the staff respectfully asks leave of the Board to file a brief in this regard.

Sincerely,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Enclosure:
Proposed Findings of Fact and Conclusions of Law in the Form of a Proposed Initial Decision

cc w/enclosure:
Elizabeth S. Bowers, Esq.
Charles R. Kocher, Esq.
Dr. Gerald A. Rohlich
Bruce Sharpe, Esq.
Mr. Kenneth E. Carr
Alan R. Watts, Esq.
George Spiegel, Esq.
Mr. Larry E. Moss
Lawrence Q. Garcia, Esq.
San Clemente Public Library
David R. Pigott, Esq.
Mr. David Sakai
Atomic Safety and Licensing Appeal Board
Atomic Safety and Licensing Board Panel
Mr. Frank W. Karas

Distribution:
OGC files
Germantown
Reg. Central files
Shapar/Engelhardt
Scinto/Karman
DRL - R. Birkel
EP - R. Froelich
Formal file (2)
L. J. Chandler
PDR
LPDR
ASLBP
ASLAB (5)
Chron.

OFFICE ▶	OGC					
SURNAME ▶	LCHANDLER:cb					
DATE ▶	8/6/73					

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION 8/06/73

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

AEC REGULATORY STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the order of the Atomic Safety and Licensing Board, dated June 25, 1973, the applicants have filed their Proposed Findings of Fact and Conclusions of Law in the Form of a Proposed Initial Decision on July 10, 1973. Also, in accordance with said order, the consolidated intervenors have filed their Proposed Findings of Fact and Conclusions of Law on July 23, 1973.

The AEC regulatory staff (staff) has reviewed each of the above submittals, and adopts the Findings proposed by applicants with the following exceptions.

I

1a. Add a new finding as follows:

"The applicants request issuance of construction permits for two pressurized water reactors, each rated at 3390 megawatts thermal to produce 1140 megawatts electric energy.

"The proposed facilities are to be located on an 84-acre site within the United States Marine Corps Base Camp Pendelton, San Diego County, California approximately five miles from San Clemente, California. The units will be adjacent to Unit 1, a pressurized water reactor that was licensed by the Commission on March 27, 1967, for operation at a power level of 1347 megawatts thermal. The site is located approximately 62 miles southeast of Los Angeles and 51 miles northwest of San Diego. The proposed facilities will be built on an easement granted by the United States Government which will expire May 12, 2023."

3a. Add a new finding as follows:

"The three items indicated in the Safety Evaluation as requiring resolution prior to authorization of construction permits, namely, the applicants' quality assurance program, tsuanami analysis and slope stability analysis, have, in fact, been satisfactorily resolved for the construction permit stage of this proceeding. [Staff Exhibit Nos. 8, 9, 10]."

4. Add, after "Exhibit No. 1" on p. 3, line 3, "and has been independently received as Staff Exhibit No. 1-A." and substitute "No. 1-A" for "No. 1, Appendix B." on page 3, line 9.

13. p. 6 - Add, after "closed", "for all matters other than for receipt of staff's submittals with respect to their review of applicants' tsunami and slope stability analyses." (Board's Order, June 25, 1973).

24, 25, 34, 35. Delete proposed findings.

27. Add, after."[Tr. pp. 1263 - 64]" on p. 16, line 6, "These incidents were (1) localized fires due to overloaded conductors, (2) boric acid crystalization causing blockage of flow in two of the available flow paths, (3) leakage in excess of allowable design limits from two small isolation valves, and (4) core transient analyses indicating that certain control rod movements, might, under certain circumstances, cause axial power distribution more adverse than that previously predicted. The fifth

occurrence, identified by the staff, concerned the failure of the tsunami gate, evidently due to faulty design of the support structure".

27a. Add a new finding as follows: "When operating problems have occurred that required plant modifications, the applicants have made such modifications expeditiously (Rep. Tr. 1264, 1281, 1285, 1296)."

35. Insert "Sec. 7 (pp. 108 - 109), Sec. 9.0 para. 6 (p. 112) and Appendix G" after "Exhibit No. 1" on p. 20, line 3.

37-45. Delete entire proposed findings as well as last sentence of proposed finding 47.

38. Substitute the following new findings:

38(1) "During the staff's safety review of the application, there was substantial discussion with the applicants concerning the geologic framework of the San Onofre site, particularly with respect to the characteristics of the offshore area. Safety Evaluation, Geological Survey reports, pp. C-4 to C-36. The final conclusion as set forth in the staff's Safety Evaluation concerning the offshore area was that the data presented by the applicant lead us (staff) to the conclusion that the Newport-Inglewood zone of folds and faults, the South Coast offshore fault, and the Rose Canyon fault zone cannot be disassociated. Instead, an extensive, linear zone of deformation, at least 240 KM long, extending

from the Santa Monica Mountains to at least Baja, California, seems well established by the present evidence. In addition, the staff concluded that this zone of deformation must be considered potentially active and capable of an earthquake of whose magnitude could be commensurate with the length of the zone. Safety Evaluation, Geological Survey report, pp. C-14 and C-15; Safety Evaluation at pp. 15-16.

38(2) "The issue as posed by the parties was intended to put the geologic issue 'to rest' by accepting the above geologic conclusions as a premise for the 'seismic' issue whether 0.67g is a reasonably conservative design basis earthquake for San Onofre Units 2 and 3. There was no dispute among the parties that the Santa Monica-Baja California (SM-BC) zone of deformation as described by the staff in the Safety Evaluation would produce the limiting design-basis earthquake. The Safety Evaluation had concluded that the other geological feature of particular interest, the Christianitos fault, was inactive (Safety Evaluation, pg. 16). Nevertheless, during the hearings some dispute arose between applicants and staff regarding the features of the SM-BC zone as described in the Safety Evaluation. This dispute is discussed briefly below.

38(3) "The applicant's witness on geology, Dr. Richard H. Jahns, served as Chairman of the San Onofre Board of Technical Review, a group of engineers, geologists, and seismologists retained by applicants to evaluate the geological aspects of the San Onofre site (Testimony of Dr. Jahns, pg. 1, following Tr. 1651). Dr. Jahns received a Ph.D. degree in geology in 1943, and is Professor of Geology and

Dean of the School of Earth Sciences at Stanford University (Id. at pp. 1, 2). The conclusions of the applicant's Board of Technical Review as set forth in the application, are discussed in detail in the Safety Evaluation in the Geological Survey reports (pp. C-4 to C-36). As can be seen from the Safety Evaluation, Dr. Jahns' conclusions on the basic characteristics and structure of the SM-BC zone were inconsistent with those of the staff and Geological Survey.

38(4) "Dr. Jahns' testimony at the hearing proceeded on the basis of language in the Safety Evaluation describing the SM-BC zone and attempted to examine the characteristics of that zone in more detail (Jahns' testimony, pp. 4-11; Tr. 1643-1644). Briefly, Dr. Jahns concluded that the SM-BC zone is a 'third-order element in the tectonic framework that dominates the coastal region of Southern California and expresses the San Onofre stress-strain system' (Jahns' testimony pg. 11).

38(5)"However, at the hearing the staff offered convincing evidence as a part of its direct case that Dr. Jahns in his testimony had not completely accounted for geological information concerning the SM-BC zone set forth in the Safety Evaluation (Tr. 1759-1770). The staff's direct case on this point consisted of the testimony of Mr. Anthony Cardone of the staff, and Dr. Elmer Baltz and Mr. Francis McKeown of the Geological Survey. Mr. Cardone is a geologist in the Site Analysis Branch of the Directorate of Licensing and has performed geological evaluations of a number of nuclear power plant sites, including the

San Onofre Site. Mr. Cardone received B.S. and M.S. degrees in geological engineering and is a registered professional engineer (Professional Qualifications of Cardone, following Tr. 1756). Mr. McKeown is presently the Principal Investigator of the Geological Effects of Nuclear Explosion Project conducted by the Geological Survey. He has received B.A. and M.A. degrees in geology and has authored and co-authored eight published papers and more than 50 administrative and open-file reports in his field. Mr. McKeown is the author of the detailed report by the Geological Survey on the geology of the San Onofre Units 2 and 3 sites set forth as pages C-5 to C-16 of the Safety Evaluation (Professional Qualifications of McKeown, following Tr. 1756; Safety Evaluation at pg. 64; Tr. 1757). Dr. Baltz has received B.S., M.S., and Ph.D. degrees in Geology, and is presently the Deputy Chief of Engineering Geology for the Geological Survey (Professional Qualifications of Baltz, following Tr. 1756). Dr. Baltz is the author of the detailed report by the Geological Survey on the geology of the San Onofre 2 and 3 sites set forth on pages C-18 to C-36 of the Safety Evaluation (Safety Evaluation at pg. C-17; Tr. 1757). The two cited reports were received into evidence at the hearings as the testimony of Mr. McKeown and Dr. Baltz (Tr. 1757). Other experts in the Geological Survey also contributed to these two reports (Tr. 1758).

38(6) "Mr. Cardone, Mr. McKeown, and Dr. Baltz gave oral detailed testimony at the hearing regarding the nature of the SM-BC zone as described in the Safety Evaluation and how this zone had not completely been accounted for by Dr. Jahns. Briefly, the staff experts did not agree with the methods

whereby the SM-BC zone was ranked as a third-order feature (Tr. 1762-1765), stated that Dr. Jahns had not considered a fundamental feature of the SM-BC zone as set forth in the Safety Evaluation -- the zone of deformation in the underlying basement rocks (Tr. 1765-1767), and not considered evidence of Quaternary deformation other than for the northern part of the SM-BC zone (Tr. 1767-1769). The staff testified that the SM-BC zone could not be compared with the San Andreas fault but could be compared with the Whittier-Elsinore fault zone (Tr. 1769-1770). There was no cross-examination of the staff experts and applicants offered no rebuttal testimony on this point. Consequently, the staff's conclusions as to the nature of the SM-BC zone, and as to the invalidity of portions of Dr. Jahns' testimony describing the zone stand uncontroverted in the record. For this reason, and because the oral testimony along with the detailed geological Survey Reports cited above are convincing in themselves, the Board adopts as the proper description of the SM-BC zone the description set forth by the staff in the Safety Evaluation at pp. C-4 to C-36 as explained in the testimony at Tr. 1760-1770."

39. Substitute the following new findings:

39(1) Testimony pertinent to the seismic issue was presented by the applicants, the regulatory staff, and the Consolidated Intervenors in the course of the March session of the public hearing. In addition, the seismological witnesses were recalled during the May session of the public hearing for examination by the Board.

The Regulatory Staff and its consultants, the Seismological Investigations Group of the Earth Sciences Laboratories of the Environmental Research Laboratories of the National Oceanic and Atmospheric Administration, recommended that a basic acceleration of 2/3g be used to represent the ground motion from the maximum earthquake likely to affect the site of proposed Units 2 and 3 of the San Onofre Nuclear Generating Station. [Safety Evaluation, § 3.1.4 and Appendix D]. The recommendation was based upon an evaluation of the geological characteristics of the area around the proposed site as defined in the reports of the United States Geological Survey and staff geological testimony presented at the hearing and the seismological characteristics of the area around the proposed site as determined by the Seismological Investigations Group. [Safety Evaluation, pp. D-4 to D-7, Tr. 1778].

The report of the Seismological Investigations Group, Staff Exhibit No. 1, Appendix D, was prepared by Mr. Leonard Murphy, Director of the Seismological Investigations Group, and Mr. James F. Devine, a a geophysicist with the Group (Tr. 1777). The Group has a close working relationship with the Geological Survey since it is not

possible to render a conclusion with respect to the seismic evaluation of a proposed reactor site without information on site geology. (Tr. 1776-1777).

39(2) The report of the Seismological Investigations Group was sponsored i to evidence at the hearing by Mr. Devine (Tr. 1778). Mr. Devine has been engaged in the practical application of the empirical and theoretical relationships that have been developed in the field of seismology and seismological engineering since 1961, and has conducted seismic evaluations of over 50 proposed nuclear power reactor sites (Professional qualifications of Mr. Devine, following Tr. 1775; Tr. 1774).

39(3) The Seismological Investigations Group recommended that an acceleration of 2/3g, resulting from a strong intensity (MM) event, be used to represent the ground motion from the maximum earthquake likely to affect the San Onofre Units 2 and 3 site, and that the accelerogram may contain a few peaks between 2/3 and 3/4g during the 2/3 g interval. In reaching this conclusion the Group assumed that an earthquake could occur at any point along the SM-BC zone, including at a point within a few miles from the site (Safety Evaluation at D-7). This conclusion was supported by Mr. Devine in oral testimony at the hearing (Tr. 1774).

39(4) The historical activity of the Southern California region has been discussed extensively in the literature and in the application (Safety Evaluation, pg. D-4). The envelope of

a large body of actual strong motion data, including the Pacoima Dam Station recording of the San Fernando earthquake, does not exceed o.67g for a site at five miles from the earthquake source, irrespective of the size of the earthquake or the site conditions. (Testimony of Stewart W. Smith, p. 6, following Tr. 1655; Tr. 1675-80). This data includes hundreds of strong motion records, most dealing with events in California and covering a wide variety of earthquake and site conditions (Tr. 2971, 3014, 3015). Mr. Devine testified that this broad data base forms a reasonable basis for seismic evaluations of proposed power reactor sites (Tr. 2970-2971, 3014, 3015). Dr. Stewart Smith, applicants' expert geophysicist, agreed with this approach (Tr. 2966).

39(5) Dr. Stewart Smith also supported the recommendations of the staff. The staff had testified that the SM-BC zone could be compared with the Whittier-Elsinore zone (Tr. 1770), and Dr. Smith testified, among other things, that the size of an earthquake in this system should not exceed those postulated by him for the SM-BC zone with peak accelerations no greater than 0.67g in the near field (testimony of Stewart W. Smith, pp. 1-2, 5, 7-8). In Dr. Smith's opinion, 0.67g was a reasonably conservative design basis earthquake for the proposed site (Id. at 1-2).

48. Add the following, after "Rep. Tr. pp. 2967-68].," on p. 26:

"Further, there are no field tests that would demonstrate the validity of Dr. Brune's equations (Tr. 2970)."

55a. Add a new finding as follows: "In discussing whether adequate routes are or will be available to enable development of a plan for evacuation as a result of a nuclear incident, the applicant's consultant proposed three alternatives for the exclusion area: walking, walking and trucking, automobile [Sheppard page 980]. He stated 'Quite frankly, the best way to evacuate the exclusion zone would be to walk everybody out [Sheppard page 1008]'. The applicant's consultant concluded that, adequate roads are and would be available for evacuation of the population in the exclusion area, the low population zone and surrounding communities. He stated that his study considered a simultaneous evacuation utilizing all roads in all directions and that meteorological conditions were not considered [Sheppard page 1051]. The staff witness (Sears page 1357) stated that he agreed with the conclusions of the applicant's consultant with respect to the adequacy of the roads, and the conclusions as to times necessary for evacuation of the particular methods

employed. The staff witness [Sears page 1357] emphasized that proper pre-planning should take into account a realistic evaluation of the source of radiation, knowledge of the meteorological conditions, and efficient communication with the effected people. He stated [Sears page 1358] that the best plan may be to walk a fairly short distance at right angles to the direction of the center line of the plume resulting from the accident, in order to get out from under the plume [Sears page 1383, 1385]. The staff witness illustrated his evacuation model by disagreeing with school and Civil Defense authorities who had stated that they would evacuate the Concordia School, which is 3 miles from the reactor, by bringing in school buses, with resultant delays and traffic problems [Herr page 1186]. Instead the staff witness stated [Sears page 1403] that he would walk the children approximately 3/4 of a mile from the school across the highway overpass to the golf course, a path at an approximate right angle to the line from the reactor to the school. At the golf course, further distribution or evacuation would be possible before the plume reached the area of the school or the walking children, and consequently the children would be evacuated without exposure or chaos."

58. Add "[Staff Exh. No. 1, Sec. 3.3. (p. 91)]" after "new units" on p. 30, line 2.

63. Add "Staff Exh. No. 1, Secs. 3.1.2 (pp. 11-14)" after "Figure 6 and 7" on p. 31, Proposed Finding No. 63, last line.

64. Add "Staff Exh. No. 1, Sec. 3.1.2 (pp. 11-14)" after "2.2-1" on page 32, line 2.

67a. Add a new finding as follows: "The contentions of intervenors as to whether adequate safeguards can be provided to prevent uncontrolled release in excess of licensed limits of radioactive materials to the environment as a result of intrusion of a domestic saboteur were addressed in in camera sessions. Subsequently, the Board Chairman summarized the proceedings of the in camera sessions with the following statement for the benefit of the public: [Tr. page 1175].

> "Applicants presented testimony concerning industrial sabotage and what measures Applicants will take or could take to minimize or prevent sabotage at San Onofre Units #2 and #3.
>
> "Intervenors presented testimony on exactly how in general sabotage of the plant could occur, what means and measures a saboteur might take to sabotage the plant so as either to destroy its operation or interfere with the normal function of the plant.
>
> "The Staff presented testimony concerning measures which either will be taken or might be taken to prevent such sabotage from occurring at the plant, and the requirements of the AEC to minimize or prevent industrial sabotage."

68. Add, after "§3.4" on p. 34, "Rep. Tr. B-125]".

69a. Add a new finding as follows:

"Issues nos, 1 and 3 as set forth by the Commission's Notice of Hearing were not specifically contested by the parties to the proceeding. In evaluating the application, the Board has, however, reviewed the extensive information provided in the PSAR and the Safety Evaluation relating to such matters as the population, density and land use characteristics of the site environs and the physical characteristics of the site to establish that these characteristics had been determined adequately and will be given appropriate consideration in the final design of the plant.

"Further, the Board has evaluated and reviewed the design, fabrication, construction and testing criteria and expected performance characteristics of the plant structures, systems and components import to the safety and has reviewed the applicants' quality assurance program. We have determined that they are in accord with the Commission's general design criteria, quality assurance criteria, safety guides, and other appropriate rules, codes and standards, such as, for example, the Commission's interim acceptance criteria for emergency core cooling systems.

"In addition the Board has evaluated the expected response of the facility to various anticipated operating transients and to a broad spectrum of postulated accidents and determine that the potential consequences of a few highly unlikely postulated accidents (design basis accidents) would exceed those of all other accidents considered.

"The Board has also evaluated the design criteria for the systems that will be provided for control of the radiological effluents from the plant to determine that these systems will be capable of controlling the release of radioactive wastes from the facility within the limits of the Commission's Regulations (10 CFR Part 20) and the equipment to be provided will be capable of being operated in such a manner so as to reduce radioactive releases to levels that are as low as practicable within the contemplation of the Commission's Regulations (10 CFR Part 50).

"We have evaluated the research and development program proposed for those plant design features which have been identified as requiring such further effort to determine that the program proposed by the applicant will be capable of demonstrating the adequacy of design and resolving any safety question associated with the design. With respect to issue no. 3 as set forth in the Commission's Notice of Hearing the Board has specifically reviewed the information provided in the PSAR, Amendment 15, and in Appendix G to the Staff's Safety Evaluation (Staff Exhibit No. 1). It is found that the anticipated cost for the construction of the proposed facilities, including certain transmission facilities and other associated costs, and the initial reactor corps, will total about 893.9 million dollars. It is further found that construction of the proposed facilities will be financed by the applicants in the normal course of financing their plant construction programs, from internally generated funds such as unappropriated earnings and provision for depreciation, from sale of debt and/or equity securities, from short-term loans needed to meet requirements on a temporary basis, and from treasury funds on hand.

"San Diego Gas and Electric Company will own an undivided 20% interest and Southern California Edison an undivided 80% interest in the proposed units. The costs of the proposed facilities will be shared by the applicants in those percentages.

"Further, with respect to the applicants' financial qualifications, it is found that both Southern California Edison Company and San Diego Gas and Electric Company are soundly financed and have significant resources at the command of each (Staff Exhibit No. 1, Appendix G at G-6 to G-7).

69b. Insert applicants' proposed finding 25 and 35.

75a. Add a new finding as follows: "The initial dilution of the effluent jet with surrounding ocean water will occur rapidly. The staff estimates, based on the use of the Hirst submerged jet model, that when the ocean surface is 62°F and the natural ocean temperature falls 0.2°F/ft of depth, the maximum observed ocean surface temperatures would range between 68.1°F and 60.5°F depending on the depth of the port [Staff Exh. No. 2, Table 3.2].

"The applicant's near-field analysis is in agreement with the staff's in predicting rapid initial jet dilution. The applicant predicts for the 20°ft submerged port surface heated zones of 4.4, 21.5, and 34.4 ft in diameter for the 8, 4, and 2°F temperature excess isotherms, respectively. The deeper ports show smaller surface temperature excess zones [Staff Exh. No. Table 3.1].

75b. Add a new finding as follows: "With regard to the question of heat accumulation in the general vicinity of the diffuser pipes - the so-called far-field problem, the staff has determined that widespread temperature accumulations will not occur during the four weeks in which the current conditions were carefully analyzed [Supplemental testimony of R. P. Wichner, p. 4]. During these four weekly periods, which were selected from the 1972 current data supplied by the applicant [Current Meter Observations

and Statistics off San Onofre Nuclear Generating Station, Jan. 5 - Nov. 22, 1972, prepared for SCE], the surface width of the 4°F temperature excess isotherm ranged between 16.8 ft and 40.0 [Supplemental testimony of R. P. Wichner, Table 1]."

75c. Add a new finding as follows: "Staff examination of ocean current records for five additional weeks in 1972 taken from the same source as above, though less complete, indicate however that far-field temperature accumulations would be qualitatively similar to that described in the staff's written testimony [Rep. Tr. 2556]."

75d. Add a new finding as follows: "Consultants for the applicant at Battelle Northwest Laboratory conducted physical model studies in which one

geometrically similar diffuser port was constructed on a 1:50 scale in a rectangular pool. The results indicated that the 4°F isotherm extended over a surface area equivalent to a circular area 10 ft in diameter. The maximum observed surface temperature was 8°F [testimony of D. S. Trent, pp. 6-8]."

84a. Add a new finding as follows: "The heated effluents from Units 2 and 3 should not reach the ocean bottom in the sublittoral zone. Therefore, no adverse effect would be anticipated on the benthic fauna in that area [Staff Exh. No. 2, pages 5-34]."

84b. Add a new finding as follows: "An indirect effect on the benthic organisms would be the entrainment of eggs and gametes of the benthic organisms [Staff Exh. No. 2, page 5-34]. The probability of entrainment or exposure to increased temperatures is given in Table 5.2 of the FES (Staff Exh. No. 2) page 5-11. Because of the reproductive capabilities of most of the benthic organisms, no widespread significant effect from entrainment of eggs and gametes is expected [Staff Exh. No. 2, 5-34]."

84c. Add a new finding as follows: "Fish which were considered important in the San Onofre area because of their commerical value, sports interest, aesthetic value or contribution to the stability of the structure and function of the ecological community are listed in Table 2.17 [Staff Exh. No. 2, page 2-52-2-53]. The impact of plant operation on species which were considered

of particular importance are discussed separately in the FES, page 5-35 - 5-42. Of the species discussed the anchovy, jack mackerel, yellowtail, California barracuda and the White sea bass are considered migratory species [Staff Exh. No. 2, pages 5-35 - 5-39 and Testimony of Dr. Robert R. Given, pages 7-8]. No significant impact is anticipated on these migratory fish species [Staff Exh. No. 2, pages 5-35 - 5-39]."

84d. Add a new finding as follows: "Entrainment of adult fish represents a major fish mortality problem in plant operation. The maximum estimated lbs. of fish that would be killed by the operation of Units 2 and 3 was 142,000 lbs. per year. Anchovy, one of the migratory fish species made up about 40% of the fish killed at Unit 1. No major impact is anticipated on the aquatic community as a result of the anchovy kill. Other fish species listed as being killed by entrainment were the opaleye, yellowfish croaker, California sargo, black perch and the kelp bass which are not considered migratory fish species [Staff Exh. No. 2, page 5-15 and Testimony of Dr. Robert R. Given, pages 7-8]."

84e. Add a new finding as follows: "An indirect effect on migratory fish species would be the attraction to the warm water discharge. Some warm water species not now present may be attracted to the San Onofre area [Staff Exh. No. 2, pages 5-7]."

93a. Add a new finding as follows: "The Regulatory Staff in the AEC Final Environmental Statement, San Onofre Units 2 and 3, examined the applicant's forecasts, comparing them to the range of reserve margins accepted by the Federal Power Commission. Also, the staff considered the effect of late news that the in-service dates of Units 2 and 3 and the Kaiparkowitz Project had slipped. The combination of these factors were found to bring the applicant's reserve margin projections well within the FPC accepted range. Further, the staff examined the Western Systems Coordinating Council's "Summary of Loads and Resources - 1970" and computed the reserve margins which would be available under the assumption of Units 2 and 3 not being built. The resulting margins were judged unacceptable. Upon the above bases the AEC staff concluded that the applicants have correctly assessed the need for power. These conclusions were not contested. [Staff Exh. No. 2, Section 11]."

93b. Add a new finding as follows: "The Regulatory Staff in the AEC Final Environmental Statement, San Onofre Units 2 and 3 (Staff Exh. No. 2, Section 14) also examined the California Public Utilities Commission - "Report of Ten-Year and Twenty-Year Forecasts of Electric Utilities Loads and Resources - 1972" and the Federal Power Commission response to solicitation of other - agency comments of the AEC Draft Environmental Statement. The staff concluded that both of the PUC report and the FPC response support the correctness of the applicant's forecasts. These conclusions were not contradicted."

101a. Add a new finding as follows: "The matter of underground siting received consideration as an alternative to the proposed action by the regulatory staff in its Final Environmental Statement, reaching the same conclusion as did applicants. [Staff Exh. No. 2, Sec. 14.2.4 (pages 14-26 - 28)]."

102a. Add a new finding as follows: "In order to verify the environmental impacts indicated, the applicants will expand their current environmental monitoring program (chemical, biological and thermal) to determine environmental effects which may occur as a result of site preparation and construction of Units 2 and 3, and to establish an adequate preoperational baseline by which the operational effects of Units 2 and 3 may be judged. If harmful effects or evidence of irreversible damage are detected by the monitoring program, the applicants will provide to the staff an analysis of the problem and a plan of action to be taken to eliminate or significantly reduce the detrimental effects or damage. [Staff Exh. No. 2, Secs. 6, 14.1.10]."

102b. Add a new finding as follows: "Further, measures will be undertaken to assure good practices to minimize the impacts resulting from the clearing of land, dredging operations, construction equipment oils and lubricants, and cleaning of plant equipment and piping. [Staff Exh. No. 2, Sec. 4]."

103a. Add a new finding as follows: "The applicant's have undertaken to limit chlorine discharges to 0.1 mg/liter in the immediate vicinity of the

discharge system [Applicant's Exh. 3C, App. A, Sec. 5, p. 5-4]."

103b. Add proposed finding as follows: "In the Final Environmental Statement, the staff proposed that certain conditions be incorporated in the construction permits for the prosection of the environment. [Staff Exhibit No. 2, p. iv, para. 7a, 7b, 7c]. The applicants have not opposed such conditions."

103c. Add proposed finding as follows: "The Board agrees that such conditions are appropriately expressed in the construction permits as set forth in the attached construction permits."

ORDER

Insert " Staff " between "of" and "Attachments" on line 5. Substitute " shall constitute, with respect to the matters covered therein, the final action of the Commission forty-five (45) days after the issuance hereof, subject to any review pursuant to the Commission's Rules of Practice. Exceptions to this Initial Decision may be filed by any party within seven (7) days after service of this Initial Decision. Within fifteen (15) days thereafter (twenty (20) days in the case of the regulatory staff) any party filing such exceptions shall file a brief in support of or in opposition to such exceptions." for lines 9 through 11.

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 6th day of August, 1973.

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

SOUTHERN CALIFORNIA EDISON COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY

DOCKET NO. 50-361

SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 2

CONSTRUCTION PERMIT

Construction Permit No. CPPR-

1. The Atomic Energy Commission (the Commission) having found that:

   A. The application for construction permit complies with the requirements of the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission, there is reasonable assurance that the activities authorized by the permit will be conducted in compliance with the rules and regulations of the Commission, and all required notifications to other agencies or bodies have been duly made;

   B. The Southern California Edison Company and San Diego Gas & Electric Company (the Applicants) have described the proposed design of the San Onofre Nuclear Generating Station, Unit 2 (the facility), including, but not limited to, the principal architectural and engineering criteria for the design and have identified the major features or components incorporated therein for the protection of the health and safety of the public;

   C. Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

   D. Safety features or components, if any, which require research and development have been described by the Applicants and the Applicants have identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components;

E. On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

F. The Applicants are technically qualified to design and construct the proposed facility;

G. The Applicants are financially qualified to design and construct the proposed facility;

H. The issuance of a permit for the construction of the facility will not be inimical to the common defense and security or to the health and safety of the public; and

I. After weighing the environmental, economic, technical and other benefits of the facility against environmental costs and considering available alternatives, the issuance of a construction permit (subject to the conditions for protection of the environment set forth herein) is in accordance with 10 CFR Part 50, Appendix D, of the Commission's regulations and all applicable requirements of said Appendix D have been satisfied.

2. Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and Title 10, Chapter I, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and pursuant to the Initial Decision of the Atomic Safety and Licensing Board, dated the Atomic Energy Commission (the Commission) hereby issues a construction permit to the Applicants for a utilization facility designed to operate at 3390 megawatts thermal as described in the application and amendments thereto (the application) filed in this matter by the Applicants and as more fully described in the evidence received at the public hearing upon that application. The facility, known as the San Onofre Nuclear Generating Station, Unit 2, will be located on the Applicants' site at Camp Pendleton, San Diego County, California.

3. This permit shall be deemed to contain and be subject to the conditions specified in Sections 50.54 and 50.55, of said regulations; is subject to all applicable provisions of the Act,

and rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the conditions specified or incorporated below:

A. The earliest date for the completion of the facility is January 1, 1978, and the latest date for completion is January 1, 1979.

B. The facility shall be constructed and located at the site as described in the application, at Camp Pendleton, San Diego County, California.

C. This construction permit authorizes the Applicants to construct the facility described in the application and the hearing record, in accordance with the principal architectural and engineering criteria and environmental protection commitments set forth therein.

D. Pursuant to Section 105c (8) of the Act, the Commission has consulted with the Attorney General regarding the issuance of this construction permit. After said consultation, the Commission has determined that the issuance of this permit, subject to the conditions set forth in this subparagraph D, in advance of consideration of and findings with respect to matters covered in Section 105c of the Act, is necessary in the public interest to avoid unnecessary delay in the construction of the facility. At the time this construction permit is being issued an antitrust proceeding has not been noticed. Therefore, the Commission has made no determination with respect to matters covered in Section 105c of the Act, including conditions, if any, which may be appropriate as a result of the outcome of any antitrust proceeding. On the basis of its finding made as a result of an antitrust proceeding, the Commission may continue this permit as issued, rescind this permit or amend this permit to include such conditions as the Commission deems appropriate. Southern California Edison Company and San Diego Gas & Electric Company and others who may be affected hereby are accordingly on notice that the granting of this construction permit is without prejudice to any subsequent licensing action, including the imposition of appropriate conditions, which may be taken by the Commission as a result of the outcome of any antitrust proceeding. In the course of its planning and other activities, Southern California Edison Company and San Diego Gas & Electric Company will be expected to conduct itself accordingly.

E. This facility is subject to the following conditions for the protection of the environment:

1. Plant design shall be such that:

   (a) The total residual concentration of chlorine and other halogens in the immediate vicinity of the discharge from each unit will be limited to less than 0.1 mg/liter for no more than six 15-minute periods each day.

2. The Applicants will expand their current environmental monitoring program (chemical, biological and thermal) to determine environmental effects which may occur as a result of site preparation and construction of Units 2 and 3, and to establish an adequate preoperational baseline by which the operational effects of Units 2 and 3 may be judged. If harmful effects or evidence of irreversible damage are detected by the monitoring program, the Applicants will provide to the staff an analysis of the problem and a plan of action to be taken to eliminate or significantly reduce the detrimental effects or damage.

3. Measures will be undertaken to assure good practices to minimize the impacts resulting from the clearing of land, dredging operations, construction equipment oils and lubricants, and cleaning of plant equipment and piping.

4. This permit is subject to the limitation that a license authorizing operation of the facility will not be issued by the Commission unless (a) the Applicants submit to the Commission the complete final safety analysis report, portions of which may be submitted and evaluated from time to time; (b) the Commission finds that the final design provides reasonable assurance that the health and safety of the public will not be endangered by the operation of the facility in accordance with procedures approved by it in connection with the issuance of said

license; (c) the Commission finds that operation of the facility will be in accordance with 10 CFR Part 50, Appendix D, of the Commission's regulations and all applicable requirements of said Appendix D were satisfied; and (d) the Applicants submit proof of financial protection and the execution of an indemnity agreement as required by Section 170 of the Act.

5. This permit is effective as of its date of issuance and shall expire on the latest completion date indicated in paragraph 3.A above.

FOR THE ATOMIC ENERGY COMMISSION

A. Giambusso, Deputy Director
for Reactor Projects
Directorate of Licensing

Date of Issuance:

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

SOUTHERN CALIFORNIA EDISON COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY

DOCKET NO. 50-362

SAN ONOFRE NUCLEAR GENERATING STATION, UNIT 3

CONSTRUCTION PERMIT

Construction Permit No. CPPR-

1. The Atomic Energy Commission (the Commission) having found that:

A. The application for construction permit complies with the requirements of the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission, there is reasonable assurance that the activities authorized by the permit will be conducted in compliance with the rules and regulations of the Commission, and all required notifications to other agencies or bodies have been duly made:

B. The Southern California Edison Company and San Diego Gas & Electric Company (the Applicants) have described the proposed design of the San Onofre Nuclear Generating Station, Unit 3 (the facility), including, but not limited to, the principal architectural and engineering criteria for the design and have identified the major features or components incorporated therein for the protection of the health and safety of the public;

C. Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

D. Safety features or components, if any, which require research and development have been described by the Applicants and the Applicants have identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components;

E. On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

F. The Applicants are technically qualified to design and construct the proposed facility;

G. The Applicants are financially qualified to design and construct the proposed facility;

H. The issuance of a permit for the construction of the facility will not be inimical to the common defense and security or to the health and safety of the public; and

I. After weighing the environmental, economic, technical and other benefits of the facility against environmental costs and considering available alternatives, the issuance of a construction permit (subject to the conditions for protection of the environment set forth herein) is in accordance with 10 CFR Part 50, Appendix D, of the Commission's regulations and all applicable requirements of said Appendix D have been satisfied.

2. Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and Title 10, Chapter I, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and pursuant to the Initial Decision of the Atomic Safety and Licensing Board, dated , the Atomic Energy Commission (the Commission) hereby issues a construction permit to the Applicants for a utilization facility designed to operate at 3390 megawatts thermal as described in the application and amendments thereto (the application) filed in this matter by the Applicants and as more fully described in the evidence received at the public hearing upon that application. The facility, known as the San Onofre Nuclear Generating Station, Unit 3, will be located on the Applicants' site at Camp Pendleton, San Diego County, California.

3. This permit shall be deemed to contain and be subject to the conditions specified in Sections 50.54 and 50.55, of said regulations; is subject to all applicable provisions of the Act, and

rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the conditions specified or incorporated below:

A. The earliest date for the completion of the facility is January 1, 1979, and the latest date for completion is January 1, 1980.

B. The facility shall be constructed and located at the site as described in the application, at Camp Pendleton, San Diego County, California.

C. This construction permit authorizes the Applicants to construct the facility described in the application and the hearing record, in accordance with the principal architectural and engineering criteria and environmental protection commitments set forth therein.

D. Pursuant to Section 105c (8) of the Act, the Commission has consulted with the Attorney General regarding the issuance of this construction permit. After said consultation, the Commission has determined that the issuance of this permit, subject to the conditions set forth in this subparagraph D, in advance of consideration of and findings with respect to matters covered in Section 105c of the Act, is necessary in the public interest to avoid unnecessary delay in the construction of the facility. At the time this construction permit is being issued an antitrust proceeding has not been noticed. Therefore, the Commission has made no determination with respect to matters covered in Section 105c of the Act, including conditions, if any, which may be appropriate as a result of the outcome of any antitrust proceeding. On the basis of its finding made as a result of an antitrust proceeding, the Commission may continue this permit as issued, rescind this permit or amend this permit to include such conditions as the Commission deems appropriate. Southern California Edison Company and San Diego Gas & Electric Company and others who may be affected hereby are accordingly on notice that the granting of this construction permit is without prejudice to any subsequent licensing action, including the imposition of appropriate conditions, which may be taken by the Commission as a result of the outcome of any antitrust proceeding. In the course of its planning and other activities, Southern California Edison Company and San Diego Gas & Electric Company will be expected to conduct itself accordingly.

E. This facility is subject to the following conditions for the protection of the environment:

1. Plant design shall be such that:

   (a) The total residual concentration of chlorine and other halogens in the immediate vicinity of the discharge from each unit will be limited to less than 0.1 mg/liter for no more than six 15-minute periods each day.

2. The Applicants will expand their current environmental monitoring program (chemical, biological and thermal) to determine environmental effects which may occur as a result of site preparation and construction of Units 2 and 3, and to establish an adequate preoperational baseline by which the operational effects of Units 2 and 3 may be judged. If harmful effects or evidence of irreversible damage are detected by the monitoring program, the Applicants will provide to the staff an analysis of the problem and a plan of action to be taken to eliminate or significantly reduce the detrimental effects or damage.

3. Measures will be undertaken to assure good practices to minimize the impacts resulting from the clearing of land, dredging operations, construction equipment oils and lubricants, and cleaning of plant equipment and piping.

4. This permit is subject to the limitation that a license authorizing operation of the facility will not be issued by the Commission unless (a) the Applicants submit to the Commission the complete final safety analysis report, portions of which may be submitted and evaluated from time to time; (b) the Commission finds that the final design provides reasonable assurance that the health and safety of the public will not be endangered by the operation of the facility in accordance with procedures approved by it in connection with the issuance of said license; (c) the Commission finds that operation of the facility will be in accordance with 10 CFR Part 50, Appendix D, of the Commission's regulations and all applicable requirements of said Appendix D were satisfied; and (d) the Applicants submit proof of financial protection and the execution of an indemnity agreement as required by Section 170 of the Act.

5. This permit is effective as of its date of issuance and shall expire on the latest completion date indicated in paragraph 3.A above.

FOR THE ATOMIC ENERGY COMMISSION

A. Giambusso, Deputy Director
for Reactor Projects
Directorate of Licensing

Date of Issuance:

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station,	)	
Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff's Proposed Findings of Fact and Conclusions of Law", in the captioned matter, dated August 6, 1973, have been served on the following by deposit in the United States mail, first class or air mail, this 6th day of August, 1973.

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

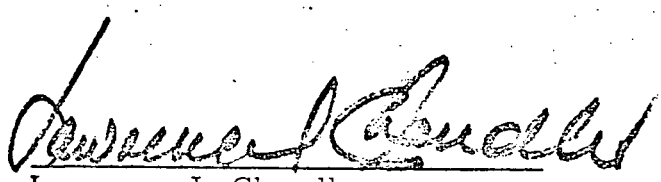
San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036



Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Yellow

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

08/06/73

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

AEC REGULATORY STAFF'S PROPOSED TRANSCRIPT CORRECTIONS

The AEC regulatory staff hereby proposes the following corrections of the transcript prepared in the captioned proceeding:

Page	Line	Correction
1302	8	Substitute "result" for "release" (third word).
1395	12	Substitute "evacuation" for "evaluation".
1425	5	Insert "MR. SHARPE: " preceding "Could you ...".
1758	5	Substitute "Holly" for "Holle".
	6	Substitute "Menlo" for "Environmental".
2556	15, 16	Substitute "five" for "nine".

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 6th day of August, 1973.

hearing

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff's Proposed Transcript Corrections," dated August 6, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 6th day of August, 1973:

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

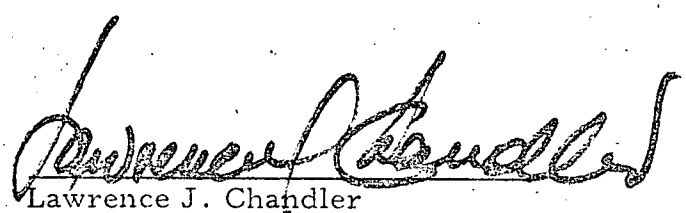
San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036



Lawrence J. Chandler
Counsel for AEC Regulatory Staff

8-3-73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY SAN DIEGO GAS & ELECTRIC COMPANY	)	DOCKET NOS. 50-361 AND 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

APPLICANTS' TRANSCRIPT CORRECTIONS

PAGE	LINE	CHANGE
474	18	Substitute "Generation Engineering" for "Steam Generation"
682		Delete page number and insert "683"
683		Delete page number and insert "682"
879	24	Insert "Engineering" after "Generation"
1099		Delete page number and insert "1100"
1100		Delete page number and insert "1099"
1106		Delete page number and insert "1107"
1107		Delete page number and insert "1106"

Leaving

PAGE	LINE	CHANGE
1246	8	Substitute "too" for "to that"
1246	9	Substitute "Kocher's" for "Chandler's"
1400	8	Substitute "Sears" for "Sheppard"
1434	17	Substitute "Bulk" for "Berkeley"
1483	13	Substitute "1954" for "195r"
1678	4	Substitute "9" for "69"
1678	24	Substitute "out" for "such that no"
1686	21	Delete comma and insert "from"
1689	10	Delete "would"
1689	11	Delete comma after "off"
1709	24	Substitute "If" for "It is"
1709	25	Insert comma after "feet"
1710	1	Delete period and insert comma
1866		Delete page number and insert "1867"
1867		Delete page number and insert "1866"

PAGE	LINE	CHANGE
2135	16	Delete "esthetics" and insert "his studies"
2160	3	Delete "Mal Sweeney" and insert "Mel Swinney"
2241	25	Insert "MR. KOCHER:" before "I"
2243	1	Substitute "KOCHER" for "KORNBLITH"
2580	16	Substitute "North" for "Northe"
2580	17	Substitute "North" for "Northe"
2806	22	Substitute "Certificate No. 72-28" for "Order 72-26" and "30 pages" for "8 pages"
2983	1	Substitute "DR. SMITH" for "CHAIRMAN GLASER"
3049	21	Substitute "Ray" for "Rainey"
3050	3	Substitute "Ray" for "Rainey"

DATED: August 3, 1973.

Respectfully submitted,

SHERMAN CHICKERING
C. HAYDEN AMES
FRANK S. BAYLEY, III
DAVID R. PIGOTT

Attorneys for Applicant
SAN DIEGO GAS & ELECTRIC COMPANY

ROLLIN E. WOODBURY
ROBERT J. CAHALL
DAVID N. BARRY, III
CHARLES R. KOCHER
KINGSLEY B. HINES

Attorneys for Applicant
SOUTHERN CALIFORNIA EDISON COMPANY

By CHARLES R. KOCHER
Charles R. Kocher
Assistant Counsel
2244 Walnut Grove Avenue
Rosemead, California 91770

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 1973, copies of the foregoing APPLICANTS' TRANSCRIPT CORRECTIONS were served upon each of the following by deposit in the United States mail, postage prepaid, addressed as follows:

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Mr. Frank Karas
Chief, Public Proceedings Staff
Office of the Secretary
U. S. Atomic Energy Commission
Washington, D.C. 20545 (orig. + 20 copies)

Michael Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety & Licensing Board
U. S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Dept. of Biological Sciences
University of Delaware
Newark, Delaware 19711

Bruce Sharpe, Esq.
1400 East Locust Avenue
Lompoc, California 93436

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C.

San Clemente Public Library
Attn: Mrs. Phyllis Rauch
233 Granada St.
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California

Dr. Gerard A. Rohlich
Dept. of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Attorney at Law
Atomic Safety & Licensing Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Kenneth E. Carr, Esq.
City Manager
100 Avenida Presidia
San Clemente, California 92672

Atomic Safety & Licensing Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler, Esq.
Office of the General Counsel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

David Sakai
845 North Perry Ave.
Montebello, California 90640

CHARLES R. KOCHER

Charles R. Kocher
Assistant Counsel
SOUTHERN CALIFORNIA EDISON COMPANY
2244 Walnut Grove Avenue
Rosemead, California 91770

Yellow

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION 8/2/73

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS AND ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

SUPPLEMENT TO MOTION
OFFERING EXHIBITS
BY AEC REGULATORY STAFF

On August 1, 1973, I transmitted to the Board and parties a document entitled "Motion of AEC Regulatory Staff Offering Exhibits 8, 9, 10 in Evidence."

Inadvertently, the attached two-page letter from Nathan M. Newmark to Mr. R. R. Maccary, dated July 27, 1973, was omitted from the offer of Staff Exhibit 10.

Accordingly, the staff hereby supplements its Motion of August 1, 1973, insofar as it relates to Staff Exhibit 10, to include the attached letter, identified herein as Attachment 1.

Respectfully submitted,

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 2nd day of August, 1973.

LB

NATHAN M. NEWMARK
CONSULTING ENGINEERING SERVICES

1114 CIVIL ENGINEERING BUILDING
URBANA, ILLINOIS 61801

Attachment 1

27 July 1973

Mr. R. R. Maccary
Assistant Director for Engineering
Office of Technical Review
Directorate of Licensing
U.S. Atomic Energy Commission
Washington, D.C. 20545

Re: Contract No. AT(49-5)-2667
Comments re Draft Amendment No. 19
San Onofre Nuclear Generating Station Units 2 and 3
Southern California Edison Company
San Diego Gas and Electric Company
AEC Docket Nos. 50-361 and 50-362

Dear Mr. Maccary:

This letter reports my comments on Draft Amendment 19 to the Preliminary Safety Analysis Report and refers also to Amendment No. 17, concerning which questions were raised in our letter of 8 June 1973 to you. Draft Amendment No. 19, together with clarifications received by and transmitted to me on 18 July from Mr. Tom Cardone of your staff, replies to the questions that were raised in our letter of 8 June. Additional comments are now made thereon.

Item 1 refers to the program for dynamic testing of soil properties and further analyses and comparisons to confirm the conservatism of the slope designs with regard to Class I structures during a Safe Shutdown Earthquake. This item answers one of the principal questions raised in our letter of 8 June, and appears to be an appropriate and reasonable approach to the matter of confirming the soil parameters for use in the dynamic and static analyses, thereby further insuring the adequacy of the calculations.

It was noted in my telephone conversation that the scales of the abscissa and ordinates in Fig. 2 were omitted; these are to be supplied by the applicant.

Item 2 discusses the possibility of flattening plant slopes, and the reply indicates that slopes which are subject to failure during the Safe Shutdown Earthquake will be stabilized appropriately. This reply appears appropriate.

Item 3 identifies the distances to the various slopes from Class I structures, and indicates that they are at a safe minimum distance.

Item 4 refers to the second principal question raised in our letter of 8 June, relating to the specific direction of the vertical components of acceleration considered in the slope stability analysis. It appears that both upward and downward directions were considered and these were considered in phase with the horizontal component used in the analysis. The worst case was taken as defining the minimum factor of safety. This is quite a conservative procedure, and in my opinion the appropriate minimum factor of safety lies somewhere between the two extremes, and therefore the analysis is acceptable.

Item 5 indicates the results of slight modifications that had been made since Amendment No. 17 in the switchyard configuration. The results are in accord with the present state-of-the-art, and appear quite reasonable and appropriate.

It is my conclusion, therefore, that Amendment No. 19 as developed in the draft form reviewed by me, and with the explanations of several points that are being modified, as given in my telephone conversation with Mr. Cardone, is quite satisfactory and that the slope stability analyses are credible, reasonable, and adequately safe.

Respectfully submitted,

N. M. Newmark

N. M. Newmark

pg

cc: W. J. Hall
A. J. Hendron Jr.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station,	)	
Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Supplement to Motion Offering Exhibits by AEC Regulatory Staff," dated August 2, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 2nd day of August, 1973:

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036

Lawrence J. Chandler
Counsel for AEC Regulatory Staff

8-2-73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	DOCKET NOS. 50-361
SOUTHERN CALIFORNIA EDISON COMPANY	)	
SAN DIEGO GAS & ELECTRIC COMPANY	)	AND 50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

APPLICANTS' REPLY TO CONSOLIDATED INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Section 2.754(b)(3) of the Commission's Rules of Practice [10 C.F.R. § 2.754(b)(3)], Applicants hereby reply to Consolidated Intervenors' proposed findings of fact and conclusions of law. For convenience of reference, Applicants have adopted paragraph numeration corresponding to Consolidated Intervenors' proposed findings of fact and conclusions of law.

1. Proposed Finding No. 1 incorrectly suggests that the technical qualifications of the Applicants were the subject of three factual issues. On the contrary, a single factual issue was tendered by the parties, and that was whether the operating history of San Onofre

hearing

Nuclear Generating Station Unit No. 1 reveals design defects in that unit which demonstrate the Applicants are not technically qualified to design and construct San Onofre Nuclear Generating Station Units Nos. 2 and 3.

2. Proposed Finding No. 2 inappropriately suggests a qualified finding that none of the incidents or conditions identified by Applicants resulted in releases of radioactivity to the environment in excess of licensed limits. The testimony of the witnesses tendered by the Applicants and the Regulatory Staff was factual as opposed to opinion testimony, and was unequivocal. [Testimony of Kenneth P. Baskin, p. 2; Rep. Tr. pp. 409, 1264, 1314].

3. Proposed Finding No. 3 is unsupported in the record. An examination of the transcript reference cited by Consolidated Intervenors indicates questions and responses concerning monitoring of the various radionuclides as opposed to monitoring of gross activity. [See Rep. Tr. pp. 433-36]. Provisions for continuously monitoring gross activity are described at Rep. Tr. pp. 427-28.

4. In view of the foregoing, Proposed Finding No. 4 is inappropriate.

5. Proposed Finding No. 5 is irrelevant to the issue because the record is devoid of any evidence that the aseismic design of Unit No. 1 of the San Onofre Nuclear Generating Station was in any manner defective. [See Rep. Tr. pp. 1275-1279]. The proposed finding is therefore inappropriate. Moreover, the proposed finding is without support in the record. An examination of the transcript reference cited by Consolidated Intervenors indicates questions and responses concerned with whether an ongoing design review and improvement program considers the aseismic design of the unit. The consideration given the aseismic design of the unit by Applicants' engineering organizations is simply not addressed. [See Rep. Tr. pp. 420-21].

6. Proposed Finding No. 6 is irrelevant to the issue because the record is devoid of any evidence that the design of the emergency core cooling system of Unit No. 1 of the San Onofre Nuclear Generating Station was in any manner defective. [See Rep. Tr. pp. 1270-1275, 1277-1279]. The proposed finding is therefore inappropriate. Moreover, the proposed finding is unsupported in the record. The transcript reference cited by the Consolidated Intervenors indicates questions and responses concerned with whether the emergency core cooling system design was evaluated by the Design Review Committee. The consideration given emergency

core cooling system design by Applicants' engineering organizations is not addressed. [See Rep. Tr. pp. 411-15].

7. In view of the foregoing, Proposed Finding No. 7 is inappropriate.

9. - 17. Proposed Findings Nos. 9 - 17 are irrelevant because geology was not contested in this proceeding.

It is true that geologic evidence is contained in the record. However, it is present in the record as an articulation of geologic matters assumed to be fact for purposes of the formulation of seismological judgments. It is not present in the record in support or in contravention of any contested issue with respect to geology.

It may, therefore, be appropriate that such proposed findings be articulated as matters assumed to be fact for purposes of the formulation of seismological judgments. However, it would not be appropriate that they be articulated unequivocally as matters of fact.

18. Proposed Finding No. 18 is unsupported in the record. An examination of the transcript reference cited by the Consolidated Intervenors reveals questions and responses concerned with the usefulness of probability curves which were quite clearly limited to the general method outlined in the question. [See Rep. Tr. p. 1653].

19. - 23. Proposed Findings Nos. 19 - 23 set forth evidentiary matter having essentially no tendency in reason to support or contravene ultimate findings relevant to the contested issue under consideration. As a result, they are neither helpful nor relevant to a decision in this matter.

25. - 26. Proposed Findings Nos. 25 - 26 are based upon evidentiary matter of insufficient probative value to support their standing as findings. Dr. Brune is, himself, unwilling to accept the Hanks estimate as proven [Rep. Tr. pp. 3005-3006] and speaks of both the Hanks and Kanamoori estimates as no more than possibilities. [Rep. Tr. pp. 2964-65, 3006]. Moreover, there is substantial evidence that stresses in excess of 100 bars do not exist in the area of San Onofre. [Rep. Tr. pp. 2986-87].

27. Proposed Finding No. 27 is unsupported in the record. An examination of the transcript reference cited by the Consolidated Intervenors reveals that the only mathematical model of which Dr. Brune is aware is his own or modifications of it. [Rep. Tr. p. 1808]. Moreover, the record is clear that both Dr. Smith and Mr. Devine consider such mathematical models to be inapplicable for design purposes. [Rep. Tr. pp. 2965-66, 2970-72].

28. - 30. Proposed Findings Nos. 28 - 30 are argumentative. Moreover, they set forth evidentiary matter having essentially no tendency in reason to support or contravene ultimate findings relevant to the contested issue under consideration. If, indeed, such evidentiary matters support any relevant inference, it is that the fund of data upon which seismologists may base their judgments is constantly improving.

31. Proposed Finding No. 31 suggests development of a mathematical model for use " . . . in predicting maximum ground displacement from tectonic stimulus." The transcript reference cited by the Consolidated Intervenors suggests instead that the mathematical model is concerned with maximum ground velocity. [See Rep. Tr. pp. 1808-1809].

35. Proposed Finding No. 35 appears to suggest the mathematical model is subject to a single uncertainty. On the contrary, the model is subject to a number of simplifying assumptions, theoretical limitations, and uncertainties with respect to input variables. [See Rep. Tr. pp. 1827-28, 2966-67, 2970-71].

36. Proposed Finding No. 36 is argumentative. Moreover, it is based upon evidentiary matter of insufficient

probative value to support its standing as a finding. The testimony of Dr. Brune is that the subject phenomenon ". . . would bring the peak velocities up to something between that given by the simple formula and one half of that." However, he then goes on to say that he doesn't think we can place any faith in that result until we see the exact solutions. [Rep. Tr. p. 2992].

37. Proposed Finding No. 37 suggests a linear relationship between critical frequency and total ground accelerations. Such a suggestion is not supported by the transcript reference cited by Consolidated Intervenors.

38. - 44. Proposed Findings Nos. 38 - 44 set forth evidentiary matter having essentially no tendency in reason to support or contravene ultimate findings relevant to the contested issue under consideration. It is clear that the spectra of earthquakes differ greatly in terms of overall energy level and phase interference gaps. [Rep. Tr. pp. 3010-12]. Moreover, the record is clear that the conditions associated with the San Fernando earthquake are not comparable to the conditions found in the San Onofre area. [Rep. Tr. pp. 2972-73].

45. Proposed Finding No. 45 suggests that the Brune mathematical model has been "proven." On the contrary, the

transcript reference cited by the Consolidated Intervenors suggests merely that several studies have lent support to approximate results with respect to particle velocities and accelerations. [Rep. Tr. p. 2957]. Indeed, the theoretical solutions of Kostrov and Kanamoori, and the physical model study of Brune, predict peak particle velocities less by a factor of two than those predicted by the Brune theoretical model. [Rep. Tr. pp. 2958-59].

46. - 47. Proposed Findings Nos. 46 - 47 incorrectly suggest that the near field is generally agreed to be one times the depth of faulting and that attenuation at that distance is minimal. On the contrary, there is significant attenuation at a distance comparable to the depth of faulting and the near field is defined as a distance short compared to the depth of faulting. [Rep. Tr. pp. 1691-92].

48. - 56. Proposed Findings Nos. 48 - 56 are argumentative. Moreover, such proposed findings fly in the face of both reason and the record of this proceeding. It is clear the recommendation of the Regulatory Staff and its consultants that an acceleration of 2/3 g be used to represent the ground motion from the maximum earthquake likely to affect the site was based upon an evaluation in which adequate assurance of public safety was the imperative. [Staff's Exhibit No. 1, Appendix D, p. D-6]. And, the

testimony of Dr. Smith is clear that the possibility of ground motions exceeding 0.67 g is so small that it can safely be disregarded. [Rep. Tr. pp. 1697, 2979]. Such expert opinions are of the very highest probative value on complex technical issues such as that under consideration and are clearly adequate to sustain the burden of proof imposed by Section 2.732 of the Commission's Rules of Practice [10 C.F.R. § 2.732]. C.f., Pacific Gas & Electric Co. v. Security & Exchange Commiss., 127 F. 2d 378, 382 (9th Cir. 1942).

57. Proposed Finding No. 57 suggests interrelated issues concerning population and evacuation plans, and further suggests such issues to be connected to the criteria of 10 C.F.R., Part 100. Such suggestions appear at first blush to be plausible. However, by stipulation the parties clearly articulated separate and independent issues with respect to such matters. Furthermore, the issue agreed to by the parties was not with respect to evacuation plans as such, but rather was concerned with the adequacy of routes to enable development of evacuation plans. Finally, the site evaluation factors set forth in 10 C.F.R., Part 100, do not address the subject of evacuation planning.

58. - 63. Proposed Findings Nos. 58 - 63 represent statements of Commission regulations rather than findings of fact. Commission regulations are not in issue in this proceeding and, therefore, findings with respect to such regulations are not appropriate.

64. Proposed Finding No. 64 is irrelevant inasmuch as the contested issue is concerned with population density as opposed to reactor design characteristics. [Compare 10 C.F.R. § 100.10(a) with 10 C.F.R. § 100.10(b)]. The proposed finding is therefore inappropriate.

65. Proposed Finding No. 65 represents a statement of a Commission regulation rather than a finding of fact. Commission regulations are not in issue in this proceeding and, therefore, findings with respect to such regulations are not appropriate.

66. - 68. Proposed Findings Nos. 66 - 68 are irrelevant, and therefore inappropriate, inasmuch as the issue is concerned with population density as opposed to site physical characteristics. [Compare 10 C.F.R. § 100.10(c) with 10 C.F.R. § 100.10(b)].

69. The parameters set forth in Proposed Finding No. 69 are approximations. The precise boundaries of the exclusion area proposed by Applicants are depicted at Applicants' Exhibit No. 1-G, Figure 14.5.1-1].

71. Proposed Finding No. 71 represents a statement of a Commission regulation rather than a finding of fact. Commission regulations are not in issue in this proceeding and, therefore, findings with respect to such regulations are inappropriate.

72. - 73. Proposed Findings Nos. 72 - 73 incorrectly suggest that Applicants rely upon Public Law 88-82 for authority to control activities within the exclusion area. On the contrary, Applicants' authority to control activities within the exclusion area derives from the site easement granted pursuant to Public Law 88-82. [Applicants' Exhibit No. 1-B, pp. 1.8-2 aj-ak].

74. - 76. Proposed Findings Nos. 74 - 76 constitute purported statements of law rather than findings of fact. California law is not in issue in this proceeding and, therefore, findings with respect to such matters are not appropriate. Moreover, such proposed findings are irrelevant inasmuch as the site easement expressly authorizes removal of persons. [See Applicants' Exhibit No. 1-B, pp. 1.8-2 aj-ak].

77. Proposed Finding No. 77 represents a purported statement of law rather than a finding of fact. California law is not in issue in this proceeding and, therefore,

findings with respect to California law are not appropriate. Moreover, the contested issue under consideration is whether projected population distributions comply with Commission regulations and such regulations clearly contemplate that an exclusion area may be traversed by a waterway. [10 C.F.R. § 100.3(a)].

78. Proposed Finding No. 78 is unsupported in the record. Indeed, the record is clear that Applicants have authority to exclude [Applicants' Exhibit No. 1-B, pp. 1.8-2 aj-ak] and plan to exclude the public from their property. [Testimony of Robert A. Rosebraugh, pp. 5-7; Applicants' Exhibit No. 1-F, pp. 12.3-5 to 6].

79. - 82. Proposed Findings Nos. 79 - 82 are unsupported in the record. The exclusion area proposed by Applicants is clearly and unambiguously depicted in Figure 14.5.1-1 of Applicants' Exhibit No. 1-G. Arrangements have or will be made to protect users of the beach park. [Applicants' Exhibit No. 1-F, pp. 12.3-33 to 33b]. Arrangements have or will be made to control traffic on Interstate Highway 5. [Applicants' Exhibit No. 1-C, § 2.1.2.1]. And, the Commission's regulations contemplate activities unrelated to station operation, such as recreation and parking. [10 C.F.R. § 100.3(b)]. Indeed, the record

is clear that the exclusion area proposed by Applicants complies with applicable Commission regulations. [Testimony of Lawrence D. Hamlin, pp. 2-3; Staff's Exhibit No. 1, § 3.1.2].

83. Proposed Finding No. 83 represents a statement of a Commission regulation rather than a finding of fact. Commission regulations are not in issue in this proceeding and, therefore, a finding with respect to such regulation is inappropriate.

84. - 87. Proposed Findings Nos. 84 - 87 are unsupported in the record. Projected population within the low population zone has variously been estimated at 200 [Testimony of William V. Sheppard, Exhibit No. WVS-1, Figure 4], 425 [Applicants' Exhibit No. 1-C, Table 2.2-1], 500 [Applicants' Exhibit No. 3-B, Figure 2.2-2], 4000 [year 2010) [Staff's Exhibit No. 1, § 3.1.2], and 945 [but see Rep. Tr. pp. 1605-1606]. Such projected populations are, in any event, sufficiently small that their protection is reasonably assured. [Testimony of Lawrence D. Hamlin, pp. 3-7; Staff's Exhibit No. 1, § 3.1.2].

88. - 102. Proposed Findings Nos. 88 - 102, to the extent they represent findings of fact as opposed to

statements of Commission regulations, are irrelevant inasmuch as the record is clear that the nearest densely populated center containing more than about 25,000 residents is the City of Oceanside, located some seventeen miles distant from the site. [Applicants' Exhibit No. 1-C, § 2.2; Staff's Exhibit No. 1, § 3.1.2].

103. Proposed Finding No. 103 is not supported in the record. On the contrary, the design criteria applicable to the proposed units specifically provide that systems and components shall be shared only to the extent consistent with safety. [Applicants' Exhibit No. 1-B, pp. 1.7-6 to 7 and Applicants' Exhibit No. 1-G, Appendix C].

104. - 105. Proposed Findings Nos. 104-105 are unsupported in the record. Indeed, there is ample evidence that adequate safeguards against domestic sabotage can be provided. [Testimony of Robert A. Rosebraugh, p. 8; Rep. Tr. pp. B 73, B 125; Applicants' Exhibit No. 1-F, § 12.3.4; Staff's Exhibit No. 1, § 3.4].

106. Proposed Finding No. 106 incorrectly suggests that Applicants' predictions concerning the configuration of the 4°F isotherm were based solely upon the SYMJET computer code. The record is clear that Applicants' predictions were based upon both the SYMJET computer code and physical

modeling studies. [Testimony of Dr. Donald S. Trent, pp. 3, 6-7].

107. Proposed Finding No. 107 is not supported in the record. An examination of the transcript reference cited by the Consolidated Intervenors reveals that Dr. Davis was unfamiliar with the details of the SYMJET computer code. [Rep. Tr. p. 2432, l. 21; p. 2433, l. 11; p. 2433, l. 17]. Moreover, the record is clear that the SYMJET computer code accounts for turbulent mixing, entrainment, and buoyancy in the vertical plume rise. [Testimony of Dr. Donald S. Trent, p. 3]. The SYMJET computer code is, of course, somewhat limited by the necessity of simplifying assumptions, but it is the best known tool for defining the near field thermal plume at San Onofre. Moreover, the predictions of the SYMJET computer code were verified by physical model studies. [Testimony of Dr. Donald S. Trent, pp. 6-10].

108. Proposed Finding No. 108 incorrectly suggests that the 4°F isotherm will be continuous over the length of the outfall. The use of the term "may" would be considerably more appropriate inasmuch as Dr. Davis suggested that under some circumstances the 4°F isotherm would not even appear at the surface. [Rep. Tr. 2434]. In any event,

the matter is of little significance because the Regulatory Staff assumed for purposes of its evaluations that the 4°F isotherm would be continuous over the length of the outfall. [Supplemental Testimony of Robert P. Wichner, pp. 3-4 and Table I].

109. Proposed Finding No. 109 is unsupported in the record. The purported evidentiary basis for such a finding is insubstantial and of insufficient probative value to support it as a finding inasmuch as it represents the speculation of a witness who had neither mathematically nor physically modeled the near field thermal plume of the proposed discharge. [Rep. Tr. pp. 2438-40]. Moreover, the physical model studies of which the witness was aware were conducted for purposes of design optimization on a diffuser configuration different from that which was the basis of Applicants' predictions. [Rep. Tr. pp. 2450-52].

110. Proposed Finding No. 110 is unsupported in the record. On the contrary, the record is clear that Applicants have reasonably predicted the configuration of the 4°F isotherm. [Testimony of Dr. Donald S. Trent, p. 10; Supplemental Testimony of Robert P. Wichner, p. 4].

111. - 118. Proposed Findings Nos. 111 - 118 are irrelevant, and therefore inappropriate, inasmuch as the contested issue under consideration was concerned solely with the adverse impact, if any, upon benthic organisms and migratory fish species within the 4°F isotherm. Moreover, such proposed findings set forth evidentiary matter having essentially no tendency in reason to support or contravene ultimate findings relevant to the contested issue. It is always desirable to have more or better quality data upon which to base judgments. However, the biological data collected over a nine year period was sufficient to enable the judgments expressed. [Rep. Tr. pp. 2150-52, 2646].

120. - 125. Proposed Findings Nos. 120 - 125 are irrelevant, and therefore inappropriate, inasmuch as the contested issue under consideration was concerned solely with the adverse impact, if any, upon benthic organisms and migratory fish species within the 4°F isotherm. The record is devoid of any substantial evidence that the 4°F isotherm will impinge upon the new kelp bed [compare Rep. Tr. p. 2435 with Rep. Tr. p. 2440] and, contrary to the suggestion of Proposed Findings Nos. 123 and 124, it was Dr. North's opinion that no substantial expansion of the bed in the direction of the proposed outfalls is to be anticipated.

[Rep. Tr. pp. 2586, 2601]. Moreover, the new kelp bed is of no greater scientific interest than any other kelp bed. [Rep. Tr. p. 2601].

126. - 128. In view of the foregoing, and the substantial evidence presented by and on behalf of the Applicants and the Regulatory Staff, Proposed Findings Nos. 126 - 128 are inappropriate.

129. - 130. Proposed Findings Nos. 129 - 130 are unsupported in the record. On the contrary, the record discloses that the effect of price upon demand has been considered, and that thus far no strong correlation has been detected. [Rep. Tr. pp. 2853-54, 2859-60].

131. - 136. In view of the foregoing, Proposed Findings 131 - 132, Proposed Conclusions 133 - 136, and the proposed form of Order are inappropriate.

///

///

///

///

///

///

///

DATED: August 2, 1973

Respectfully submitted,

SHERMAN CHICKERING
C. HAYDEN AMES
FRANK S. BAYLEY, III
DAVID R. PIGOTT

Attorneys for Applicant
SAN DIEGO GAS & ELECTRIC COMPANY

ROLLIN E. WOODBURY
ROBERT J. CAHALL
DAVID N. BARRY, III
CHARLES KOCHER
KINGSLEY B. HINES

Attorneys for Applicant
SOUTHERN CALIFORNIA EDISON COMPANY

By CHARLES R. KOCHER

Charles R. Kocher
Assistant Counsel
2244 Walnut Grove Avenue
Rosemead, California 91770

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 1973, copies of the foregoing APPLICANTS' REPLY TO CONSOLIDATED INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW were served upon each of the following by deposit in the United States mail, postage prepaid, addressed as follows:

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Mr. Frank Karas
Chief, Public Proceedings Staff
Office of the Secretary
U. S. Atomic Energy Commission
Washington, D.C. 20545 (orig. + 20 copies)

Michael Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety & Licensing Board
U. S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Dept. of Biological Sciences
University of Delaware
Newark, Delaware 19711

Bruce Sharpe, Esq.
1400 East Locust Avenue
Lompoc, California 93436

George Spiegel, Esq.
2600 Virginia Ave., N.W.
Washington, D.C.

San Clemente Public Library
Attn: Mrs. Phyllis Rauch
233 Granada St.
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California

Dr. Gerard A. Rohlich
Dept. of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Attorney at Law
Atomic Safety & Licensing Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Kenneth E. Carr, Esq.
City Manager
100 Avenida Presidia
San Clemente, California 92672

Atomic Safety & Licensing Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Lawrence J. Chandler, Esq.
Office of the General Counsel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

David Sakai
845 North Perry Ave.
Montebello, California 90640

CHARLES R. KOCHER

Charles R. Kocher
Assistant Counsel
SOUTHERN CALIFORNIA EDISON COMPANY
2244 Walnut Grove Avenue
Rosemead, California 91770

Yellow

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

08/01/73

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

MOTION OF AEC REGULATORY STAFF
OFFERING EXHIBITS 8, 9, 10 IN EVIDENCE

In the Safety Evaluation prepared by the AEC regulatory staff (staff) in the captioned proceeding (Staff Exh. No. 1), it was indicated that three matters required resolution prior to authorization of construction permits in the instant matter; viz., applicants' quality assurance program, tsunami analysis, and slope stability analysis.

By transmittals dated February 20, 27, 1973 and March 5, 1973, the staff submitted its review of applicants' quality assurance program to the Board and parties.

By its Order dated June 25, 1973, the Atomic Safety and Licensing Board (Board) closed the record in this proceeding for all matters other than receipt of staff's review of the applicants' tsunami and slope stability analyses.

CB

On July 6, 1973, the staff transmitted its review of applicants' tsunami analysis to the Board and parties, and this date transmits its review of applicants' slope stability analysis.

Accordingly, the staff hereby moves to have the Board mark for identification and receive the above stated documents in evidence as follows:

Staff Exh. No. 8 - Staff's transmittals dated February 20, 27, 1973 and March 5, 1973, dealing with applicants' quality assurance program, identified by the respective cover letters as attachments A - E.

Staff Exh. No. 9 - Staff's transmittal dated July 6, 1973, dealing with applicants' tsunami analysis.

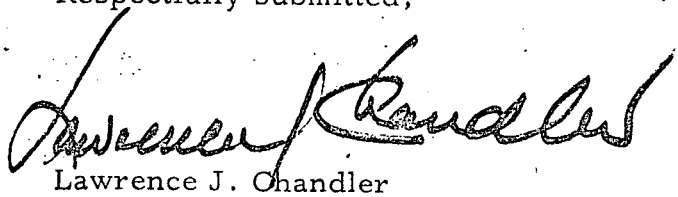
Staff Exh. No. 10 - Staff's transmittal dated August 1, 1973, attached hereto, dealing with applicants' slope stability analysis, consisting of a one page memorandum from Harold R. Denton to R. C. DeYoung, dated August 1, 1973, appended to which is a 4 page document entitled "Foundation Engineering Summary Report For Slope Stability ..." and a 4 page letter from the staff's consultant, Nathan M. Newmark to Mr. R. R. Maccary, dated June 8, 1973. [Inasmuch as Amendment 19 to applicants' PSAR was transmitted directly to the Board and parties on July 25, 1973, it will not be retransmitted. In addition, those documents identified above

as Staff Exh. Nos. 8 and 9, having been previously submitted, will not be retransmitted].

With respect to Staff Exh. No: 8 above, the staff respectfully requests that the Board open the record of the proceeding for receipt of said exhibit. Inasmuch as Staff Exh. No. 8, as well as the other exhibits, are not related to any issue in controversy, it is staff's view that no prejudice will result to the position or rights of any party.

Staff counsel has contacted counsel for applicants and intervenors and has been authorized to represent applicants consent to the receipt of the above documents in evidence in this proceeding, and that intervenors, being parties only with respect to matters in controversy, take no position in this regard.

Respectfully submitted,



Lawrence J. Chandler
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 1st day of August, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361
SAN DIEGO GAS & ELECTRIC COMPANY	)	50-362
	)	
(San Onofre Nuclear Generating Station, Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion of AEC Regulatory Staff Offering Exhibits 8, 9, 10 in Evidence," in the captioned matter, dated August 1, 1973, have been served on the following by deposit in the United States mail, first class or air mail, this 1st day of August, 1973:

Michael L. Glaser, Esq.
1150 17th Street, N.W.
Washington, D.C. 20036

Mr. Lester Kornblith, Jr.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Dr. Franklin C. Daiber
Department of Biological Sciences
University of Delaware
Newark, Delaware 19711

Charles R. Kocher, Esq.
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770

David R. Pigott, Esq.
Chickering & Gregory
111 Sutter Street
San Francisco, California 94104

Dr. Gerard A. Rohlich
Department of Civil Engineering
University of Texas
Austin, Texas 78712

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Larry E. Moss
15201 DePauw
Pacific Palisades, California 90272

Mr. David Sakai
845 North Perry Avenue
Montebello, California 90640

Bruce Sharpe, Esq.
Office of the General Counsel
Scenic Shoreline Preservation
Conference, Inc.
1400 East Locust Avenue
Lompoc, California 93436

Mr. Kenneth E. Carr
City Manager
City of San Clemente
100 Avenido Presidio
San Clemente, California 92672

Alan R. Watts, Esq.
Assistant City Attorney
City Hall
Anaheim, California 92805

Lawrence Q. Garcia, Esq.
California Public Utilities
Commission
5066 State Building
San Francisco, California 20036

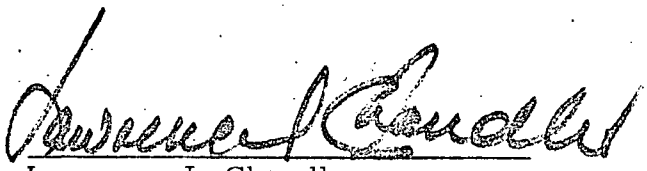
San Clemente Public Library
233 Granada Street
San Clemente, California 92672

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Atomic Safety and Licensing
Appeal Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary of the
Commission
U.S. Atomic Energy Commission
Washington, D.C. 20545

George Spiegel, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20036



Lawrence J. Chandler
Counsel for AEC Regulatory Staff

L. Chandler

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

AUG 1 1973

R. C. DeYoung, Assistant Director for PWR's, L

FOUNDATION ENGINEERING SUMMARY OF SLOPE STABILITY

PLANT NAME: San Onofre Units 2&3
LICENSING STAGE: CP - Carry On
DOCKET NUMBER: 50-361 & 362
RESPONSIBLE BRANCH : PWR Branch 3
REQUESTED COMPLETION DATE: August 3, 1973
APPLICANTS RESPONSE DATE NECESSARY FOR
NEXT ACTION PLANNED ON PROJECT: N/A
DESCRIPTION OF RESPONSE: N/A
REVIEW STATUS: Site Analysis Branch (Foundation Engineering) - Complete for CP

Enclosed is the foundation engineering summary of the slope stability analyses for the subject plant. The summary is based upon our review of the analyses performed by the applicant and incorporates the review of our consultant (Dr. Nathan M. Newmark). Dr. Newmark's report is appended.

Based on our review, we have concluded that the design slopes above the plant complex will be adequate, provided that the investigatory program to be performed by the applicant demonstrates the slope material properties used in the stability analyses are representative of in-situ conditions. In the event they are not, we are of the opinion that alternatives to the proposed design will assure safety of the plant.

Harold R. Denton

Harold R. Denton, Assistant Director
for Site Safety
Directorate of Licensing

Enclosure:
As stated

cc: See attached sheet

AUG 1 1973

cc: w/o enclosure
A. Giambusso
W. McDonald

cc: w/enclosure
S. H. Hanauer
J. M. Hendrie
W. Gammill
K. Goller
R. Birkel
R. Maccary
L. Chandler, OGC
A. T. Cardone

FOUNDATION ENGINEERING SUMMARY REPORT FOR SLOPE STABILITY
SAN ONOFRE 2&3 SLOPE STABILITY ANALYSES
UNITS 2&3 PSAR
DOCKET NOS. 50-361 & 362

In Appendix 2H of Amendment 17 to the PSAR for Units 2&3, the applicant provided analyses of the proposed 2:1 slope above and east of the plant complex, and analyses of proposed 1/2:1 slopes northwest of the proposed switchyard. The so-called 2:1 switchyard slope has an actual effective slope of about 3.25:1 because of the flattening effect of the wide benches, illustrated in Figure 1 of Amendment 19. The 1/2:1 slopes are assumed to fail in the event of a safe shutdown earthquake (SSE) by both the applicant and AEC staff. However, we concur with the applicant that all class I structures are well beyond the maximum distance affected by any expected slope failure modes. It is the opinion of the staff and its consultant, Dr. Nathan M. Newmark, that construction of the 1/2:1 slopes, as shown in Figure 1.8-A of Amendment 19, should not create a hazard to the safety of Units 2&3.

The possibility of failure of the 2:1 switchyard slope was analyzed under both static and dynamic conditions. The results of the analyses indicate that the slopes will remain stable under static loading conditions but that surficial sloughing will occur under SSE loading

conditions. The sloughing should not be hazardous to plant safety. For deeper failure modes that could be hazardous to plant structures, the computed factors of safety were 1.1 or greater, illustrated in Figures 3 through 9 of Amendment 19. Furthermore, Dr. Newmark states in his appended report that "...the possible movements that might be expected are not likely to be more than an inch or so, even under the worst conditions, with the design as made,..."

Amendment 19 responds to some concerns, which resulted from our review of Amendment 17, regarding the design and analyses of the slopes. Since the conservatism of the analyses and the computed safety factors are a function of the soil properties assumed and input to the analyses, the staff's first major concern was that the applicant had not derived the dynamic properties of the soil underlying the slopes by standard dynamic testing procedures, but had assumed the dynamic properties based on the static properties and with relationships obtained from the literature. In view of the unusually large earthquake accelerations specified for this site and the computed factors of safety as low as 1.1, the degree of conservatism applied by AEC required that the dynamic soil properties used in the

stability analyses be corraborated by means of a detailed program for dynamic testing of the soil properties and further analyses and comparisons that will confirm the conservatism of the slope designs.

The investigatory program that the applicant has committed to perform to satisfy the above staff concern is described in Amendment 19. In summary the program consists of:

a) drilling 5 to 10 holes approximately 100 ft deep through the slope material in the proposed switchyard area,

b) sampling at 5 foot vertical intervals downhole,

c) dynamic testing of the weakest materials to determine dynamic strength parameters, modulus, and damping values,

d) the stability of each element in the same finite-element mesh used in Appendix 2H of Amendment 17 will be reevaluated and the factor of safety computed,

e) the results of the dynamic testing program together with the finite-element stability analysis will be documented and reported to AEC for review.

If results of the dynamic testing and slope stability analysis program indicate that some modification in slope configuration is required to assure plant safety, the applicant proposes to either stabilize the slopes,

redesign the switchyard, construct retaining walls to protect against localized slope failures, or a combination of these alternatives.

The results of the investigatory program will be submitted in a documentary report to AEC for review before construction of the plant complex proceeds to the point where modification of the proposed slopes or redesign of the switchyard becomes a problem. We are of the opinion that in the event the results of the investigatory program do not confirm adequate stability of the switchyard slope under SSE conditions, the alternatives to the proposed design can provide an adequate factor of safety to assure safety of the plant under all static and assigned dynamic conditions.

NATHAN M. NEWMARK
CONSULTING ENGINEERING SERVICES
1114 CIVIL ENGINEERING BUILDING
URBANA, ILLINOIS 61801

8 June 1973

Mr. R. R. Maccary
Assistant Director for Engineering
Office of Technical Review
Directorate of Licensing
U.S. Atomic Energy Commission
Washington, D.C. 20545

Re: Contract No. AT(49-5)-2667
Comments and Questions re Amendment No. 17
San Onofre Nuclear Generating Station, Units 2 and 3
Southern California Edison Company
San Diego Gas and Electric Company
AEC Docket Nos. 50-361 and 50-362

Dear Mr. Maccary:

This letter reports our comments and questions regarding the above amendment to the Preliminary Safety Analysis Report, in accordance with Mr. T. Cardone's request to review Appendix 2H, "Stability of Proposed Slopes". I have reviewed this appendix in detail and have discussed the analysis and comments with Drs. A. J. Hendron, Jr. and W. J. Hall. This letter represents our joint views.

Analyses were made by Woodward-McNeill & Associates for both static and dynamic stability of 2:1 slopes above the reactor building, and 1/2:1 slopes below the switchyard.

The analyses were made using both a finite element analysis and the Bishop modified method of slices for both the static and the dynamic cases. The material properties used in the analyses are given in Table 1 of Appendix 2H.

The values reported in Table 1 are reasonable and consistent with our estimates of the strength of similar deposits, and are consistent with observations of natural stable slopes in the general vicinity.

Although no data are given on dynamic soil properties, these being taken as the same as the static values, it is our feeling that, for the materials considered, the dynamic properties will not be substantially different from static properties. However, in order to be conservative for the unusually large earthquake accelerations specified for this site, it is recommended that more detailed information on the dynamic soil properties be obtained by tests.

The results of the static analyses are consistent with our estimates of the stability of similar slopes, and we feel that the calculations have been made properly and are dependable. The dynamic analyses were made in two different ways with results in general agreement between the two methods, which involve highly different assumptions and procedures. These also are consistent with our estimates of stability and with the results of approximate calculations which we have made using the specified soil properties.

Although it is not clear from the analyses how the vertical and horizontal accelerations were combined in the analyses, and whether the most serious direction of vertical earthquake acceleration was considered in combination with the horizontal earthquake acceleration, we do not feel that there is any reason to question the conclusion that the so-called 2:1 slopes are stable both statically and dynamically. The actual effective slope, taking into account the wide benches, is about 3.25:1, with an effective angle for this slope of about 17 degrees. Hence, the stability of this embankment can be compared with the stability, for example, of the Los Angeles Dam in the San Fernando earthquake, which is made of weaker material (hydraulic fill), well-saturated with water and with water behind it, and which had a steeper slope. Although this dam did show some evidences of sliding, it did not fail. Our feeling is that the slopes at the San Onofre site are much more stable, have higher strength, and will therefore

be adequate under both static and dynamic conditions. Incidentally, in general, for angles of internal friction greater than about 5 or 6 degrees, it is not at all likely that a deep failure surface will develop. This is another indication of the adequacy of the analyses reported in Appendix 2H.

In our view, possibly a lower factor of safety would be obtained in the analyses if the vertical earthquake forces were assumed upward rather than downward, simultaneously with the horizontal earthquake forces. We are not sure from the description of the calculations whether the vertical earthquake forces were taken upward or downward. Clarification on this point is desired in order to delineate the results of the analyses unequivocally.

It might be desirable to have an assured factor of safety of a minimum of 1.2 under the most extreme conditions, in view of the unusually large earthquake motions to which the site might be subjected. However, one should keep in mind that the possible movements that might be expected are not likely to be more than an inch or so, even under the worst conditions, with the design as made, and we are in agreement with the observations made in Appendix 2H that only local and minor sloughing will be obtained, which would not produce a problem, even under the most extreme conditions.

However, the situation with the 1/2:1 slopes is completely different. In our view, these slopes can fail in a Design Basis Earthquake. As a matter of fact, the most serious portion of these slopes is in the upper terrace sand deposit, which might fail independently of the lower portion. However, attention was called to the possibility of this failure in Appendix 2H, and we believe that the distance to which the failure might extend behind the top of the slope, of 65 ft, is a reasonable estimate. If this can introduce safety related problems in the switchyard, or in any other part of the plant, then adequate account of

this should be taken and the slopes modified to provide a greater factor of safety. However, this does not appear to be a situation in which Class I structures or elements are involved.

To summarize, we believe the analyses presented are credible and reasonable. However, it would be helpful to have more definitive data on the dynamic material properties, and a clarification of the direction in which the vertical earthquake forces were assumed when the dynamic analyses were made.

Very truly yours,

N. M. Newmark

N. M. Newmark

pg

cc: W. J. Hall
A. J. Hendron, Jr.