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12 UNITED STATES OF AMERICA

13 NUCLEAR REGULATORY COMMISSION

14 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

15
 16 In the Matter of) Docket Nos. 50-361 OL
) 50-362 OL
 17 SOUTHERN CALIFORNIA)
 EDISON COMPANY, ET AL.)
 18)
 (San Onofre Nuclear Generating)
 19 Station, Units 2 and 3))
 20)

21 MEMORANDUM OF POINTS AND AUTHORITIES
 22 IN SUPPORT OF JOINT APPLICATION FOR
 23 ISSUANCE OF SUBPOENAS TO TESTIFY TO
 SPECIFIED REPRESENTATIVES OF SAN
 DIEGO AND ORANGE COUNTIES, THE
 24 CITIES OF SAN CLEMENTE AND SAN JUAN
 CAPISTRANO, THE CALIFORNIA DEPARTMENT
 25 OF PARKS AND RECREATION - PENDLETON COAST
 OFFICE, THE U. S. MARINE CORPS - CAMP
 26 PENDLETON, AND THE AMERICAN RED
CROSS (Orange County Chapter).

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I.

THE PRESIDING OFFICER IS AUTHORIZED
TO ISSUE A SUBPOENA TO TESTIFY UPON A
SHOWING OF GENERAL RELEVANCY.

Section 161(c) of the Atomic Energy Act of 1954, as amended, in pertinent part authorizes the Nuclear Regulatory Commission "by subpoena to require any person to appear and testify . . . at any designated place." 42 U.S.C. § 2201(c). The only limitation on this authority contained in the Commission's regulations, is the discretion of the presiding officer to "require a showing of general relevance of the testimony or evidence sought." 10 C.F.R. § 2.720(a). The presiding officer may "withhold the subpoena if such a showing is not made, but he shall not attempt to determine the admissibility of the evidence." 10 C.F.R. § 2.720(a). In fact, "the Commission's Rules of Practice preclude a [presiding officer] from declining to issue a subpoena on any basis other than that of a lack of 'general relevance' of the testimony sought." Public Service Co. of New Hampshire (Seabrook), ALAB-422, 6 NRC 33, 93 (1977). The general relevancy standard is satisfied unless it is "palpable that the evidence sought can have no possible bearing upon the issues." Commonwealth Edison Company (Zion), ALAB-196, 7 AEC 457, 462 (1974).

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1 II.

2 OFFSITE ASSISTANCE AGENCY TESTIMONY IS
3 RELEVANT TO THE ISSUES IN CONTENTION

4 The two emergency planning contentions currently
5 admitted for purposes of the hearing herein generally require
6 Applicants to put forth evidence on the capability of
7 involved offsite assistance agencies to adequately respond to
8 a radiological emergency at SONGS 2 and 3 with potential or
9 actual offsite consequences.

10 In this regard, the testimony of the persons
11 representing the involved offsite assistance agencies listed
12 in the accompanying "Joint Application for Issuance of
13 Subpoenas etc." is particularly relevant to the issues in
14 contention in that each of these persons is directly
15 responsible for emergency preparedness and can be expected to
16 present testimony on the current status and ongoing plans for
17 improvement of the offsite emergency response planning and
18 preparedness for SONGS 2 and 3, as it relates to the issues
19 currently in contention. This testimony will significantly
20 aid and assist this Board in the development of a sound
21 decisional record on the capability of the involved offsite
22 assistance agencies to protect the public health and safety
23 in the event of an emergency at SONGS 2 and 3.

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III.

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

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

Applicants have attached nine proposed subpoenas which satisfy these formal requirements. Notice requirements are timely met by service of the accompanying joint application on the persons listed therein and notice of and issuance of the subpoena to said persons. Upon issuance of the subpoenas, Applicants will take all necessary steps to have the subpoenas duly served upon said persons, along with the required statutory fees, and thereafter returned with proof or acknowledgment of service to the Secretary of the Commission. 10 C.F.R. § 2.270(e).

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When the exact location of the hearing is confirmed, Applicants will add this information to the subpoenas in the place provided thereon for such information.

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By