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

23 In the Matter of )

24 SOUTHERN CALIFORNIA )  
25 EDISON COMPANY, ET AL. )

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

Docket Nos. 50-361 OL  
50-362 OL

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF REQUEST FOR CERTIFICATION  
TO THE NUCLEAR REGULATORY COMMISSION

1 Applicants Southern California Edison Company and  
2 San Diego Gas & Electric Company ("Applicants") hereby submit  
3 this memorandum of points and authorities in support of their  
4 request for certification to the Nuclear Regulatory  
5 Commission ("Commission").

6  
7 I.

8 THE COMMISSION HAS REQUESTED CERTIFICATION OF  
9 ISSUES PRESENTING SIGNIFICANT LEGAL OR  
POLICY QUESTIONS SUCH AS THOSE RAISED  
BY THE BOARD'S CONTENTION.

10 10 C.F.R. § 2.718(i) states that the presiding  
11 officer has the power to "certify questions to the Commission  
12 for its determination, either in his discretion or on  
13 direction of the Commission." Commission and Appeal Board  
14 decisions have fleshed out the considerations for exercise  
15 of this discretion, making clear that certification is  
16 appropriate in a case such as this where the underlying  
17 issues are of great importance and the affected interests of  
18 the parties are sufficiently great. In Re Kansas Gas and  
19 Electric Co. (Wolf Creek Nuclear Generating Station, No. 1),  
20 ALAB-327, CCH ¶30,067 (April 27, 1976). Just two months ago  
21 the Commission stated that: "If a significant legal or  
22 policy question is presented on which Commission guidance is  
23 needed, a board should promptly refer or certify the matter  
24 to the Atomic Safety and Licensing Appeal Board or the  
25 Commission." Statement of Policy on Conduct of Licensing  
26 Proceedings, 46 Fed. Reg. 28533, 35 (May 27, 1981).

1 Moreover, emergency planning is a TMI-related requirement  
2 embodied in NUREG-0737 and related regulations, and the  
3 Commission has stated that "certifications are encouraged  
4 where Boards are in doubt as to the Commission's intentions  
5 in approving NUREG-0737." 45 Fed. Reg. 85738 (December 24,  
6 1980).

7 The importance of the question presented by the  
8 Board's proposed contention is clear. Apart from the delay  
9 that will result from this new assignment, implementation of  
10 emergency planning measures invulnerable to an earthquake  
11 more severe than the SSE will clearly require massive  
12 expenditures without any connection to safety benefits. A  
13 requirement of this magnitude should only be initiated by the  
14 Commission upon certification.

15 II.

16 CERTIFICATION WILL EXPEDITE THIS PROCEEDING  
17 AND MINIMIZE HARM TO THE PUBLIC INTEREST.

18 Certification should be granted where a prompt  
19 decision is necessary to prevent detriment to the public  
20 interest or to avoid unnecessary expense or delay. In Re  
21 Toledo Edison Co., et al. (Davis-Besse Nuclear Power Station)  
22 ALAB-300, CCH ¶130,028 (November 26, 1975). Applicants have  
23 proceeded for years on the basis of a given earthquake  
24 magnitude. On this basis, Applicants have prepared an  
25 emergency plan, to say nothing of extensive testimony  
26 relating to that plan. The Board's proposed contention will

1 require the development of a new emergency plan and the  
2 presentation of testimony on that plan. Such is hardly  
3 consistent with the Commission's goal "to complete operating  
4 license proceedings, conducted in a thorough and fair manner,  
5 before the end of construction." 46 Fed. Reg. 78535. Even  
6 without the added burdens of a new evidentiary showing, the  
7 Board's current hearing schedule will leave SONGS 2 completed  
8 and ready to operate months before an operating license  
9 issues. This Board is well aware that Applicants are  
10 threatened with serious irreparable harm if these proceedings  
11 are delayed. Interest and alternative power costs for each  
12 day of delay will be extensive.

13 Admission of this new issue will pervasively affect  
14 the basic structure of this proceeding, requiring a  
15 restructuring of the hearing schedule and a burdensome  
16 expansion of the scope of required evidence. Cf. In Re  
17 Public Service Electric and Gas Co. (Salem Nuclear Generating  
18 Station, Unit 1), ALAB-588, CCH ¶30,470 (April 1, 1980); In  
19 Re Offshore Power Systems (Floating Nuclear Power Plants),  
20 ALAB-517, CCH ¶30,354 (January 4, 1979). Substantial harm to  
21 Applicants' interests will occur that cannot be alleviated by  
22 an appeal at the conclusion of the proceeding, since  
23 additional fuel and interest costs resulting from delay will  
24 already have been incurred at that time. See In Re Public  
25 Service Company of Indiana, Inc. (Marble Hill Nuclear

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1 Generating Station, Units 1 and 2), ALAB-405, CCH ¶30,192  
2 (May 31, 1977).

3 This case involves none of the features present  
4 where certification previously has been denied. Applicant  
5 is not requesting certification of a question involving  
6 application of guidelines to the specific facts of a case.  
7 See In Re Pacific Gas and Electric Co. (Diablo Canyon Nuclear  
8 Power Plant, Units 1 and 2), ALAB-514, CCH ¶30,352  
9 (December 22, 1978). This is not a case where the  
10 Commission's position is clear on the issue involved. See In  
11 Re Vermont Yankee Power Corp., et al. (Vermont Yankee Nuclear  
12 Generating Station and Seabrook Station, Units 1 and 2),  
13 ALAB-421, CCH ¶30,215 (July 18, 1977).

14 This certification request is properly directed  
15 first to the Licensing Board. In Re Toledo-Edison Co., et  
16 al. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-297,  
17 CCH ¶30,023 (November 5, 1975). Despite the additional time  
18 required, if this request for certification is denied,  
19 Applicants will to seek directed certification by the  
20 Commission itself.

21 III.

22 CONCLUSION.

23  
24 Where, as here, a significant question of law and  
25 policy is presented that will cause delay and irreparable  
26 injury that cannot be remedied upon appeal, certification is

1 clearly appropriate. Accordingly, the Board should certify  
2 the questions raised by its proposed contention to the  
3 Commission for its determination.

4 Dated: August 17, 1981

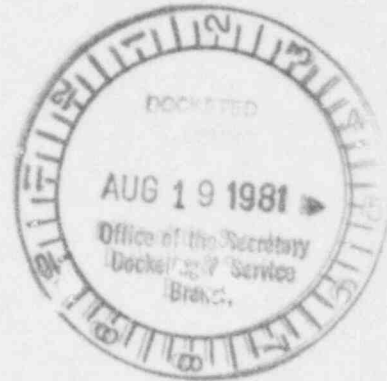
5 Respectfully submitted,

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22 Electric Company  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

SOUTHERN CALIFORNIA  
EDISON COMPANY, ET AL.,

(San Onofre Nuclear  
Generating Station,  
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ORDER CERTIFYING  
EMERGENCY PLANNING CONTENTION TO  
THE NUCLEAR REGULATORY COMMISSION



1           On August 7, 1981, this Atomic Safety and  
2       Licensing Board ("Board") raised the following issue on its  
3       own motion:

4           Assume a major earthquake in the SONGS area.  
5       This assumed earthquake causes extensive  
6       structural damage to the facility, to  
7       communications, to highways designated as  
8       evacuation routes, and is accompanied by  
9       radiological releases requiring evacuation in  
10      the plume exposure pathway of the EPZ. In  
11      these circumstances what steps could be taken  
12      by the applicants and responding jurisdictions  
13      to carry out evacuation in a timely manner  
14      and/or protect those in the EPZ pending  
15      evacuation? What federal resources, including  
16      military resources, could be brought in to  
17      assist in this situation, and how would  
18      federal assistance be accomplished?

19           On good cause being shown therefor:

20           IT IS HEREBY ORDERED, pursuant to 10 C.F.R.  
21       §2.718(i) that the following questions be certified to the  
22       Nuclear Regulatory Commission for its determination:

23           Whether the Board has improperly exceeded NRC  
24       regulations and its sua sponte powers (10 C.F.R. §2.760a) by  
25       requiring, without factual basis, consideration of emergency  
26       planning features following:

- 27           (1) An earthquake in excess of the Safe Shutdown  
28       Earthquake ("SSE") which is assumed, without  
29       factual basis, to cause a major radiological  
30       release and evacuation in the plume exposure  
31       pathway of the Emergency Planning Zone  
32       ("EPZ"), and/or

33       ///



1           (2) An earthquake in excess of the SSE which is  
2           assumed to occur coincident with a  
3           non-earthquake related radiological release  
4           requiring evacuation in the plume exposure  
5           pathway of the EPZ.

6           Preparation for presentation of evidence on this  
7           new contention shall not be stayed pending final Commission  
8           determination of this certification.

9           Dated: \_\_\_\_\_, 1981.

10                           ATOMIC SAFETY & LICENSING BOARD

11  
12                           By \_\_\_\_\_

CERTIFICATE OF SERVICE BY MAIL

I certify that:

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

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

On August 17, 1981, I served the attached "REQUEST FOR CERTIFICATION TO THE NUCLEAR REGULATORY COMMISSION" and the accompanying papers in said cause, by placing a true copy thereof enclosed in the United States mail, first class, or where indicated by an asterisk by Express Mail, or other expedited delivery, at San Francisco, California, addressed as follows:

\*James L. Kelley, Chairman  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Washington, D.C. 20555

\*Dr. Cadet H. Hand, Jr.  
Administrative Judge  
c/o Bodega Marine Laboratory  
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1	*Mrs. Elizabeth Johnson Administrative Judge Oak Ridge National Laboratory P.O. Box X, Building 3500 Oak Ridge, Tennessee 37830	Alan R. Watts, Esq. Rourke & Woodruff California First Bank Building 10555 North Main Street Santa Ana, California 92701
4	Chairman Palladino Nuclear Regulatory Commission 1717 H Street N. W. Washington, DC 20555	Janice E. Kerr, Esq. J. Calvin Simpson, Esq. Lawrence Q. Garcia, Esq. California Public Utilities Commission 5066 State Building San Francisco, California 94102
6	Commissioner Gilinsky Nuclear Regulatory Commission 1717 H. Street N.W. Washington, DC 20555	Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
7	Commissioner Bradford Nuclear Regulatory Commission 1717 H Street N.W. Washington, DC 20555	Docketing and Service Section Office of Secretary U.S. Nuclear Regulatory Commission Washington, DC 20555
8	Commissioner Ahearne Nuclear Regulatory Commission 1717 H Street N.W. Washington, D.C. 20555	
9	Commissioner Roberts Nuclear Regulatory Commission 1717 H Street N.W. Washington, D.C. 20555	*Richard J. Wharton, Esq. University of San Diego School of Law Alcala Park San Diego, California 92110
10	Mr. Leonard Bickwit, Jr. GC Nuclear Regulatory Commission 1717 H Street N.W. Washington, DC 20555	*Richard K. Hoefling, Esq. U.S. Nuclear Regulatory Commission Office of the Executive Legal Director Washington, D.C. 20555
11	*Lawrence J. Chandler, Esq. Office of Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555	*Charles E. McClung, Jr., Esq. 23521 Paseo de Valencia Suite 308 Laguna Hills, California 92653
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13	///	
14	///	

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Mrs. Lyn Harris Hicks  
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6 I declare under penalty of perjury that the  
7 foregoing is true and correct and executed at San Francisco,  
8 California on August 17, 1981.  
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