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19 UNITED STATES OF AMERICA

20 NUCLEAR REGULATORY COMMISSION

21 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

22 In the Matter of	)	Docket Nos. 50-361 OL
	)	50-362 OL
23 SOUTHERN CALIFORNIA	)	
24 EDISON COMPANY, <u>ET AL.</u>	)	APPLICANTS' MEMORANDUM
	)	IN OPPOSITION TO MOTION
	)	<u>FOR CONTINUANCE.</u>
25 (San Onofre Nuclear Generating	)	
26 Station, Units 2 and 3).	)	

27 I  
28 Introduction

29 On August 20, 1981, Applicants were advised by  
30 telephone by Charles E. McClung, Jr., an attorney for Inter-  
31 venor GUARD, that GUARD would be requesting a continuance of  
32 the hearings scheduled for August 25, 1981 to September 8,  
33 1981. On August 21, 1981, Applicants received a copy of

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1 "Motion for Continuance and Memorandum in Support Thereof"  
2 dated August 20, 1981. For the reasons stated below,  
3 Applicants oppose GUARD's motion for continuance.

4 II.

5 PREPARATION OF TESTIMONY IN SUPPORT  
6 OF THE EPZ ISSUE DOES NOT EFFECT  
7 HEARING ON THE OTHER ISSUES.

8 Intervenors are partially correct in their  
9 representation of the history of the EPZ issue. The final  
10 wording of that issue was set forth in the transcript of  
11 these proceedings dated August 4, 1981. That issue is as  
12 follows:

13 The emergency response plans fail to meet the  
14 requirements of 10 C.F.R. § 50.47(c)(2) because local  
15 emergency planning officials have arbitrarily established the  
16 boundaries of the Plume Exposure EPZ in that they have  
17 mechanically applied a 10 mile boundary and that the  
18 Interagency Agreement (IAEP) among all local jurisdictions  
19 defines the EPZ by drawing compass lines on a map of the  
20 area. In determining the exact size of the EPZ, emergency  
21 planning officials have failed to consider the following  
22 local conditions:

- 23 1. topography
- 24 2. meteorology
- 25 3. evacuation routes
- 26 4. demography
5. jurisdictional boundaries
6. SAI report
7. land characteristics

27 However, it must be recognized that the history of  
28 the EPZ issue well precedes August 4, 1981. By written  
29 proposal of June 17, 1981, Intervenor Carstens, et al.  
30 proposed an issue questioning the size of the Emergency  
31 Planning Zones. Applicants opposed said contention in

1 "Applicants' Memorandum of Law on Appropriate Means for  
2 Determining Size of Plume Exposures and Ingestion Pathway  
3 Emergency Planning Zones for SONGS 2 and 3 Under 10 C.F.R.  
4 50.47 (c)(2)," dated June 22, 1981. By document entitled  
5 "Intervenor GUARD's Comments Concerning the Issue of the Size  
6 of the Emergency Planning Zones," dated June 24, 1981, GUARD  
7 supported the position of Intervenor Carstens, et al.

8 By oral Order of July 10, 1981, the Board rejected  
9 the proposed EPZ contention as raised by Intervenor, but  
10 allowed submission of a contention questioning how the 10  
11 mile EPZ was determined. Intervenor Carstens, et al.  
12 submitted such a proposed issue on July 23, 1981 and on  
13 August 4, 1981, after some minor word changes, the above  
14 contention was admitted.

15 The filing dates for testimony related to emergency  
16 planning initially were set according to whether a particular  
17 contention was to be presented by GUARD or Carstens, et al.  
18 With the exception of the EPZ Contention and the Seismic/  
19 Emergency Planning Contention, which is the subject of  
20 Applicants' pending request for certification, all issues  
21 were subsequently determined between Intervenor GUARD and  
22 Carstens, et al. to be presented by GUARD. As to those  
23 contentions, no reason has been presented justifying a  
24 continuance. The filing date for such contentions is  
25 August 24, 1981 and such filing is totally separate from the  
26 EPZ Contention. Applicants have already submitted their

1 direct testimony on the EPZ Contention. (Testimony of Messrs.  
2 Murri, Brothers, Pilmer and Woodard.)

3 III.

4 INTERVENORS WILL HAVE SUFFICIENT TIME  
5 TO PREPARE AND FILE THEIR EPZ TESTIMONY.

6 As previously stated, Applicants have filed their  
7 direct testimony on the EPZ Contention. A date was never  
8 formally set for Intervenor's filing of EPZ testimony, but  
9 Applicants had expected Intervenor Carstens, et al. to file  
10 such testimony by August 24, 1981. Based on the Motion for  
11 Continuance, Applicants do not anticipate such a filing.

12 Applicants consider that at most, Intervenor's GUARD  
13 and Carstens, et al. should be given a date certain for the  
14 filing of their EPZ testimony. Applicants suggest September  
15 14, 1981 for filing of the EPZ testimony. Such date should  
16 not cause any delay in the present hearings.

17 The Commission has articulated its goal of  
18 completing operating license proceedings prior to completion  
19 of construction. Statement of Policy on Conduct of Licensing  
20 Proceedings, May 20, 1981. 46 Fed. Reg. 28533. It is clearly  
21 recognized that this proceeding will not achieve the above  
22 goal. Delays should not be allowed that will unnecessarily  
23 delay issuance of an operating license.

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1 IV.

2 A CHANGE IN REPRESENTATION SHOULD NOT  
3 CAUSE A DELAY IN THE PROCEEDINGS.

4 It would appear that Carstens, et al. have changed  
5 counsel. Applicants have not received formal notice of any  
6 such change, but the caption of the "Motion for Continuance  
7 and Memorandum in Support Thereof" notes Ms. Gallagher and  
8 Mr. McClung as "Attorneys for GUARD, CARSTENS, ET AL. "  
9 Further, at page 2, lines 7-8 of that same document, it is  
10 stated that "The formulation of this contention on the EPZ is  
11 not known to the attorneys for Intervenor GUARD, CARSTENS,  
12 ET AL." 1/ Intervenor Carstens et al. should not be allowed  
13 to complain of lack of knowledge of the issue since their  
14 attorney, Mr. Wharton, proposed and obtained the issue  
15 initially. Attorneys for GUARD have known of the develop-  
16 ment of the issue since its inception. Any failure to obtain  
17 the final language of the issue reflects their own level of  
18 interest in the emergency planning portion of this  
19 proceeding. In the present instance, a change of attorneys  
20 does not warrant delay.

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22 \_\_\_\_\_  
23 1/ It would appear Mr. Carstens has undergone a change of  
24 heart concerning representation by anyone other than Mr.  
25 Wharton. See, the Declaration of August S. Carstens,  
26 dated June 18, 1981, filed herein in opposition to  
Applicants' motion for consolidation and designation of  
GUARD as lead counsel for emergency planning contentions.

1           At all times during this proceeding, Intervenor  
2 Carstens, et al. have been represented by Richard J.  
3 Wharton. Intervenor GUARD was represented by counsel at all  
4 times. The procedure followed in arriving at the subject  
5 issues was never opposed. [Cf. Motion for Continuance and  
6 Memorandum in Support Thereof, August 20, 1981, page 2, lines  
7 22-25.] The GUARD attorneys are familiar with this case,  
8 including the EPZ issue involved, and have even submitted  
9 argument in favor of that issue. The fact they may now have  
10 to prepare a direct case on this issue is not so burdensome  
11 as to warrant a continuance.

12                           V.

13                   CERTIFICATION OF THE EMERGENCY PLANNING/  
14                   SEISMIC ISSUE DOES NOT WARRANT A DELAY  
                    IN THE PROCEEDINGS.

15           Intervenors contend that a continuance should be  
16 granted pending resolution of the issue proposed for  
17 certification to the Commission. Applicants oppose such a  
18 continuance. It is the clear intent of the regulations that  
19 the certification of a question to the Commission is not  
20 expected to stay any portion of the proceedings (10 C.F.R.  
21 § 2.730(g)). The argument of lesser resources is not a valid  
22 reason for delay. The Commission has stated:

23  
24                   "While a board should endeavor to conduct the  
25                   proceeding in a manner that takes account of  
26                   the special circumstances faced by any  
                    participant, the fact that a party may have  
                    personal or other obligations or possess



1 fewer resources than others to direct to the  
2 proceeding does not relieve that party of its  
3 hearing obligations." (Statement of Policy  
on Conduct of Licensing Proceedings, May 20,  
1981 46 Fed. Reg. 28533, 28534.)

4 The presence of Applicants' Request for  
5 Certification on a separate issue does not justify any delay  
6 and certainly not the delay of the entire proceeding. R

7 VI.

8 INTERVENORS HAVE HAD SUFFICIENT  
9 TIME TO PREPARE THEIR CASE.

10 Intervenor apparently seeks a continuance simply to  
11 prepare their case. They allege a continuance would allow  
12 them time to confer with FEMA and obtain "vital information."  
13 (Motion for Continuance and Memorandum in Support Thereof,  
14 August 20, 1981, p.3.) Applicants find it incredible that  
15 Intervenor would pose such an argument a mere five (5) days

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1 prior to the commencement of hearings. GUARD has had ample  
2 time and opportunity to consult with FEMA and to otherwise  
3 prepare its case. It is Intervenor's obligation to meet the  
4 schedules they have previously agreed upon.

5 Dated: August 24, 1981.

6 Respectfully submitted,

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15 By /s/ David R. Pigott  
16 David R. Pigott  
17 One of Counsel for Applicants  
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