

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
)
SOUTHERN CALIFORNIA EDISON) DOCKET NOS. 50-361 OL
COMPANY, et al.) 50-362 OL
)
(San Onofre Nuclear Generating)
Station, Units 2 and 3))
_____)

ANSWER TO PETITION FOR REVIEW
OF SEISMIC ISSUES

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Dated: April 11, 1983.

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ANSWER TO PETITION FOR REVIEW
OF SEISMIC ISSUES

TO THE NUCLEAR REGULATORY COMMISSION:

On March 25, 1983, Intervenors Carstens, et al. filed "Petition for Review Pursuant to 10 CFR § 2.786 ("Intervenors' Petition"). Pursuant to 10 CFR § 2.786(b)(3), Southern California Edison Company, San Diego Gas & Electric Company, City of Anaheim, California and City of Riverside, California ("Applicants") hereby submit their "Answer to Petition for Review of Seismic Issues" and oppose the Intervenors' Petition.

I

SUMMARY OF PROCEEDING
AND APPLICANTS' POSITION.

Intervenors Carstens, et al. request Commission review of Atomic Safety and Licensing Appeal Board ("Appeal Board") Decision (ALAB-717) served March 7, 1983 in the above-captioned proceeding (herein referred to as "ALAB-717, Slip Opinion"). The Appeal Board Decision denied appeals from decisions of the Atomic Safety and Licensing Board ("Licensing Board"), Initial Decision, LBP-82-3, 15 NRC 61, and Initial Decision, LBP-82-39, 15 NRC 1163. The Appeal Board relied in part on its decision denying Intervenors Carstens, et al. Petition for a Stay. (Decision, ALAB-673, 15 NRC 688.)

Applicants construe the language of 10 CFR § 2.786 to provide a procedure whereby an aggrieved party may seek

review by this Commission of important policy or safety matters or correction of egregious factual errors by the Boards below. In the present instance, Intervenor Carstens, et al. devote much of their energy toward requesting review of factual issues previously and consistently decided. Applicants do not consider such factual matters to be within the proper scope of this Petition for Review. Applicants also consider Intervenor's attempted incorporation by reference of all points raised in the various briefs filed during the course of the proceeding (Appendix A to Intervenor's Petition) as contrary to the requirements of 10 CFR § 2.786 respecting page limitations and the character of the Petition for Review and should be disregarded by the Commission.

II

INTERVENORS WERE GRANTED A FAIR HEARING.

Intervenor has construed their lack of success on specific issues to reflect a prejudice on behalf of the Licensing Board. Intervenor's allegations are totally without merit.

Intervenor argues that the Licensing Board's admission of the FSAR into evidence and the Licensing Board's adverse ruling with respect to the proposed evidence relative to the Cristianitos fault indicate an unfair proceeding and constitute a denial of due process. (Intervenor's Petition, pp. 2-3.) Applicants submit that the Board's rulings were

correct and cannot be construed to indicate an unfair attitude by the Licensing Board toward Intervenor.

Intervenors' reliance on Office of Communication of the United Church of Christ v. Federal Communications Commission, 425 F.2d 543 (D.C. Cir. 1969), is misplaced. In that case, the FCC had issued applicant radio station a "probationary" license and the matter had been remanded for further hearing. On rehearing, the FCC Examiner conducted the proceeding without regard to the probationary nature of the applicant's license and the fact the FCC had already made adverse findings against the applicant. In that context, the Examiner improperly placed on the intervenor a higher burden of proof than was warranted. No such special circumstances are present in this proceeding. As will be discussed further, a portion of Intervenor's evidence was struck and Applicants' FSAR was properly allowed into evidence. The Board acted according to law and at all times in an appropriate manner.

III

THE LICENSING BOARD'S EXCLUSION OF INTERVENORS' PROPOSED EVIDENCE CONCERNING THE CRISTIANITOS FAULT WAS CORRECT.

Applicants have responded at length to Intervenor's contention that the evidence offered by Intervenor with respect to the Cristianitos fault was properly excluded. (Applicants' Brief in Opposition to Intervenor's Carstens, et al. Brief on Exceptions, dated April 2, 1981, pp. 2-27.) It

is important to note that the capability of the Cristianitos fault was never an admitted contention in the Operating License proceeding for San Onofre Units 2 and 3. 1/ It is further important to note that Intervenors never formally attempted to articulate an issue with respect to the Cristianitos fault at any time during the proceeding. Intervenors simply attempted to inject the issue into the proceedings by attempting to introduce evidence which they felt indicated that the Cristianitos is an active fault. 2/ The proposed testimony was heard and its sponsor cross-examined subject to a motion to strike.

(Tr. 4778-4859) The Licensing Board, after having considered the evidence and cross-examination excluded it on grounds of lack of probative value. (15 NRC 61, 76-78.) The Licensing Board also ruled, as an alternative ground, that Intervenors were foreclosed from raising the issue in the Operating

1/ Issue No. 1 allowed Intervenors the opportunity to show that seismic activity since issuance of the Construction Permit indicated that the approved seismic criteria was inadequate. (15 NRC 61, 73) This issue provided Intervenors an opportunity to contest the capability of the Cristianitos based on seismic events subsequent to 1973. Intervenors' evidence was "foreclosed" only to the extent it attempted a reconsideration based on events occurring prior to issuance of the Construction Permit. At the time the issues were formed, Intervenors professed no interest in the Cristianitos fault. (Tr. 23-25)

2/ The Cristianitos fault is an important geographic feature in the site area and has been the subject of investigation since the site was first considered. LBP-82-3, 15 N.R.C. 61, 68, 78.

License proceedings, inasmuch as the Cristianitos fault had been considered in two prior proceedings. (15 NRC 61, 78-82.)

The Appeal Board disagreed with the Licensing Board's determination that the issue was "foreclosed." (Decision, ALAB-717, Slip Opinion, pp. 7-10.) However, upon review of the evidence proposed by Intervenor and a review of the testimony and evidence submitted with respect to the geology and seismicity of the area, the Appeal Board determined that the Intervenor was not prejudiced by the Licensing Board's exclusion of the subject testimony on grounds of foreclosure and noted that Intervenor had never attempted to add further evidence. (Decision, ALAB-717, Slip Opinion, pp. 10-11.)

Both the Licensing Board and the Appeal Board determined that Intervenor did not have sufficient information to show that the question of capability of the Cristianitos fault should be raised. Applicants submit that no basis has been shown on which to grant a Petition for Review.

IV

THE BOARDS' DETERMINATION OF THE GEOLOGIC
AND SEISMIC CHARACTERISTICS OF THE OZD DID
NOT DEPRIVE INTERVENORS OF A FAIR HEARING.

Intervenor argues that the Boards' findings that the Offshore Zone of Deformation ("OZD") is a structure composed of three segments that cannot be disassociated for purposes of determining its potential for generating

earthquakes violated Intervenor's rights to a fair hearing. (Intervenor's Petition, pp. 4-5.) Applicants submit that Intervenor's contention has been raised and determined consistently by both the Licensing Board (LBP-82-3, 15 NRC 61, 105-106) and the Appeal Board (ALAB-717, Slip Opinion, p. 4, cf. ALAB-673, 15 NRC 688, 702-707). On either an evidentiary or substantive basis, Intervenor's have shown no merit to their argument.

Intervenor's allegation of lack of a fair hearing is a transparent attempt to mischaracterize the entire licensing process as adverse to its position. Intervenor's argument is without merit.

V

THE LICENSING BOARD AND THE APPEAL BOARD
WERE CORRECT IN THEIR RULINGS THAT AN Ms 7
EARTHQUAKE IS AN APPROPRIATE MAXIMUM MAGNITUDE
EARTHQUAKE, AND CONSIDERED IN AN APPROPRIATE
MANNER THE TESTIMONY OF DRS. BOORE, LUCCO AND SLEMMONS.

Intervenor's contend that both the Licensing Board and the Appeal Board committed error with respect to certain specific factual findings. (Intervenor's Petition, pp.5-8.) In each instance, both the Licensing Board and the Appeal Board ruled in a consistent manner. Applicants submit that given the history of the issues, a Petition for Review is not appropriate.

The Licensing Board determined that an Ms 7 earthquake is an appropriately conservative maximum magnitude earthquake to be assigned to the OZD. (LBP 82-3, 15 NRC 61,

99-119.) The Appeal Board confirmed that conclusion.
(ALAB-717, Slip Decision, p. 33.)

Both the Licensing Board and the Appeal Board considered the testimony of Dr. Slemmons, witness for the NRC Staff, and specifically rejected Intervenor's interpretation of his testimony. (LBP 82-3, 15 NRC 61, 115-119; ALAB-717, Slip Decision, p. 4; ALAB-673, 15 NRC 688, 707-709.)

The Licensing Board thoroughly considered the testimony of Dr. Boore, of the United States Geological Survey. (LBP 82-3, 15 NRC 61, 131-134.) The Appeal Board concurred in the Licensing Board's interpretation of Dr. Boore's testimony. (ALAB-717, Slip Opinion, p. 6; ALAB-673, 15 NRC 688, 711-712.)

The Licensing Board considered the testimony of Dr. Luco and did not find it inconsistent with its ultimate conclusion. (LBP 82-3, 15 NRC 61, 138.) The Appeal Board agreed with the Licensing Board's interpretation of Dr. Luco's testimony. (ALAB-717, Slip Opinion, p. 6; ALAB-673, 15 NRC 688, 712-713.)

VI

ADMITTING THE FSAR INTO EVIDENCE WAS NOT ERROR AND THE MANNER IN WHICH THE FSAR WAS USED DID NOT DEPRIVE INTERVENORS OF A FAIR HEARING.

Intervenors argue that admission of the FSAR into evidence deprived them of a fair hearing. The basis of their argument is that they were entitled to cross-examine its

authors prior to it being admitted. (Intervenors' Petition, pp. 8-9.) Applicants submit that admission of the FSAR into evidence in an Operating License proceeding is virtually required. Both the Licensing Board and the Appeal Board agreed that the subject FSAR was appropriately identified and authenticated. (TR 946-947; ALAB-717, Slip Opinion, pp. 35-36.) Further, the Appeal Board specifically recognized that the FSAR was not relied upon by the Licensing Board in arriving at the conclusions stated in the Initial Decisions. (ALAB-717, Slip Opinion, pp. 34-35.) In the present case, where Applicants did not rely upon the FSAR to support its testimony on the contentions before the Licensing Board, and, where the Licensing Board, except as secondary authority on two very minor points did not rely on the FSAR to support its findings, the requirement of witness sponsors for portions of the FSAR discussing the areas of contention as precondition to its admission is both unnecessary and inappropriate. The document should be admitted, but the weight to be accorded the document depends on the extent to which it is specifically controverted or relied upon. In this instance, Intervenors did not attempt to impeach any specific portion of the document, but simply wanted it excluded to the extent it addressed contested issues. The Licensing Board was correct in its admission and subsequent use of the FSAR.

Intervenors' argument that the Board may have relied upon some undisclosed portion of the FSAR is without merit where, as here, the Board clearly identified the direct probative evidence on which it relied in reaching its position on each contested issue. Thus, even assuming the Appeal Board is correct in its analysis of the conditional admissibility of the FSAR, Intervenors have been in no way prejudiced and have not submitted a basis for a Petition for Review.

VII

THE NUCLEAR REGULATORY COMMISSION IS THE CORRECT AGENCY TO ISSUE A LICENSE FOR OPERATION OF A COMMERCIAL NUCLEAR POWER PLANT.

Intervenors argue that the NRC, its Staff and the various hearing Boards are so inundated by conflicts of interest that they are disqualified from issuing the licenses sought in this proceeding. Applicants submit that the Intervenors' position is not only without merit, it is ludicrous.

Section 101 of the Atomic Energy Act makes it unlawful to operate a nuclear power plant in the absence of a license issued pursuant to § 103 of that same Act. (42 U.S.C. § 2131.) Section 103 of the Atomic Energy Act authorize the Nuclear Regulatory Commission to issue the licenses sought in this proceeding. (42 U.S.C. § 2133.) The Congress of the United States has delegated the issuance of the subject licenses to the Nuclear Regulatory Commission and

it thus is under a duty to regulate the issuance of such licenses. The Licensing and Appeal Boards have lawfully discharged the statutory responsibility of the Nuclear Regulatory Commission.

VIII

CONCLUSION

It is submitted that the Petition for Review should be denied.

April 11, 1983.

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to the above-entitled cause. My business address is 600 Montgomery Street, 12th Floor, San Francisco, California 94111.

I served the foregoing ANSWER TO PETITION FOR REVIEW OF SEISMIC ISSUES, dated April 11, 1983, by depositing a true copy thereof enclosed in the United States mail, first class, at San Francisco, California, on April 11, 1983, enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows:

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Executed on April 11, 1983, in the City and County
of San Francisco, State of California.

I declare under penalty of perjury that the
foregoing is true and correct.

KAREN ANDRESEN