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RELATED CORRESPONDENCE

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AUGUST S. CARSTENS,
FRIENDS OF THE EARTH, et al
Petitioners,

v.

NUCLEAR REGULATORY COMMISSION,
THE UNITED STATES OF AMERICA,
Respondents.

No. _____

PETITION FOR REVIEW

Docket No. 50-361,362

August S. Carstens, an individual residing in the City of San Diego, State of California and Friends of the Earth, a California non-profit corporation, as Intervenor under 10 CFR §714 in The Matter of Southern California Edison Company (San Onofre Nuclear Generating Station Units Two and Three), Docket No. 50-361-06 and 50-362-06 before the United States Nuclear Regulatory Commission, hereby petition this court for review of the final order of the United States Nuclear Regulatory Commission entered on June 21, 1983 by such agency which order denied Intervenor (Petitioners herein) Petition for Review and affirmed the decisions of the Atomic Safety and Licensing Board dated January 11, 1982 and the Atomic Safety and Licensing Appeal Board dated March 4, 1983 to grant an operating license to Southern California Edison,

San Diego Gas & Electric and the Cities of Anaheim and Riverside to operate two nuclear power plants located in San Diego County known as San Onofre Nuclear Generating Stations Units Two and Three.

2. There are no further administrative remedies available to the Petitioners and Petitioners have exhausted all administrative remedies available to them by filing a timely appeal of the Licensing Boards decision of January 11, 1982 with the Atomic Safety and Licensing Appeal Board and by filing a timely Petition for Review of the Appeals Board decision of March 4, 1983 with the Nuclear Regulatory Commission. The failure to rule on the Petition to review by June 21, 1983 constitutes a denial of the petition and is a final ruling under 10 CFR 2.786.

3. Such a final order is made reviewable in the Court of Appeal by 42 USC 2239. The Court of Appeals has jurisdiction to enjoin, set aside or to determine the validity of all final orders of the Nuclear Regulatory Commission pursuant to 28 U.S.C.S. 2342.

4. Pursuant to 28 U.S.C.S. 2343, the United States Court of Appeals for the District of Columbia Circuit is a proper venue for an action seeking review of a final order of the Nuclear Regulatory Commission.

5. This petition is filed by August S. Carstens and Friends of the Earth jointly for the reason that both were Intervenor in the matter before the Nuclear Regulatory Commission and they are both entitled to review of the order of the Nuclear Regulatory Commission and their interests in such order and in this proceeding are such as to make joinder proper.

6. Petitioner asserts that the issuance of the low power and full power license to Southern California Edison is unlawful and an abuse of discretion because of the failure of the Commission to comply with the Atomic Energy Act, the Administrative Procedure Act, and its own regulations. Further, the N.R.C. decision is not supported by substantial evidence and the N.R.C. failed to provide Intervenor with a fair hearing in that they deprived Intervenor of procedural and substantive due process and the hearing board's decision was strongly influenced by bias. Among other grounds, Petitioner asserts that:

a. The Licensing Board erred in "foreclosing" from litigation the issue of the activity or capability of the fault closest to the plant, to wit, the Cristianitos fault.

b. The Appeals Board and N.R.C. erred in finding that while such foreclosure was error it was harmless error.

c. The Appeals Board and N.R.C. erred in finding that Intervenor had no fundamental right to cross examine witnesses.

d. The Licensing Board erred in striking all of Intervenor's testimony regarding the activity of the Cristianitos Fault.

e. The Licensing Board erred in relitigating and redeciding an issue that was previously litigated by the same parties and in redeciding such issue against the Intervenor in this action without notice to the Intervenor that the issue was subject to a redecision.

f. The Board's ruling that a magnitude $M_s 7$ earthquake is an appropriately conservative maximum magnitude earthquake that could occur on the Offshore Zone of Deformation is not supported

by substantial evidence.

g. The Board erred in misconstruing the testimony of the principal witness regarding the maximum magnitude earthquake that could occur on the O.Z.D.

h. The Board erred in giving insufficient weight to the testimony of the only truly independent witnesses to testify regarding maximum ground acceleration.

i. The Board erred in relying on untested numerical modeling studies to predict peak ground accelerations.

j. The Board erred in not requiring the applicants to conduct the investigation required by 10 CFR Part 100, Appendix A.

k. The Board erred in admitting into evidence an 11,000 page document for the truth of the matters contained therein under circumstances where the document was unidentified, and unauthenticated, and the Licensing Board erred in not allowing Intervenor to obtain identification of the authors of the document and Intervenor were prevented from cross-examining any of the authors of the document regarding the document.

l. The Appeals Board erred in ruling that the admission of the 11,000 page unauthenticated document without giving Intervenor the opportunity to cross exam the authors of the document was harmless error.

m. The N.R.C. erred in ruling that the Intervenor were not prejudiced by not being allowed to file proposed findings of fact regarding the capability of the Cristianitos Fault.

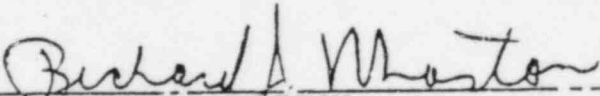
n. The Licensing Board and the Appeals Board erred in improperly defining the meaning of the word "conservative" as used in 10 CFR Part 100, Appendix "A", and that the term conservative

was used in a totally arbitrary manner.

o. The entire record in this matter demonstrates that the N.R.C. Licensing Board was biased against the Intervenors; was improperly influenced by the Nuclear Regulatory Commission order to speed up the licensing of San Onofre Units Two and Three, so that Intervenors were not accorded sufficient time to prepare their case, and treated Intervenors as interlopers and opponents rather than interested members of the public concerned with nuclear safety. Such conduct of the N.R.C., the Licensing Board and the Appeal Board was in violation of the Atomic Energy Act, the Administrative Procedures Act, 10 CFR et. seq. and violates the basic principles of procedural and substantive due process.

WHEREFORE, Petitioners request the Court to review and set aside the order of the Nuclear Regulatory Commission granting an operating license to Southern California Edison et al to operate San Onofre Nuclear Generating Stations Two and Three.

DATED August 16, 1983



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Appendix to Petition for Review

- A. Notice from N.R.C. of final agency order dated June 21, 1983.
- B. Atomic Safety and Licensing Appeal Board decision dated March 4, 1983.
- C. Atomic Safety and Licensing Appeal Board decision dated April 26, 1982.
ALAB-673
- D. Partial Initial Decision
re: seismic issues of Atomic Safety and Licensing Board dated January 11, 1982.

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CERTIFICATE OF SERVICE

I certify that on August 18, 1983 I served the attached
"PETITION FOR REVIEW" in the above entitled action by placing
a true copy thereof enclosed in the United States mail, first
class at San Diego, California, addressed as follows:

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Secretary
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Aug 18, 1983



RICHARD J. WHARTON