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WRITER'S DIRECT DIAL
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July 22, 1985

Mr. Samuel J. Chilk
Secretary
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Subject: Comments on Petition for Rulemaking of Southern California Edison Company Regarding 10 C.F.R. § 50.47(b)(12)

Dear Mr. Chilk:

On Monday, May 20, 1985, the NRC published for public comment a notice of receipt of a petition for rulemaking filed by Southern California Edison Company. See 50 Fed. Reg. 20799 (1985) (Petition for Rulemaking). This petition was prompted by the D.C. Circuit's decision in GUARD v. NRC, 735 F.2d 1144 (1985), which invalidated the Commission's San Onofre decision interpreting the emergency medical services requirements of 10 C.F.R. § 50.47(b)(12) (CLI-83-10, 17 NRC 528 (1983)). The petitioner asks the Commission to amend its emergency planning regulations to specifically adopt the Appeal Board's San Onofre position (ALAB-680, 16 NRC 127 (1982)) that emergency plans need include medical arrangements only for people who are both contaminated with radioactive material and physically injured. Id. at col. 1. The petition is based on studies underlying current § 50.47(b)(12) as well as the San Onofre evidentiary record. Id. at cols. 2-3.

On behalf of Duke Power Company, Mississippi Power & Light Co., New York Power Authority, Northeast Utilities, and Washington Public Power Supply System, we respectfully submit the following comments. In sum, we believe the

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petition is supported by the technical and legislative record, presents an appropriate response to the GUARD decision, and should be adopted by the Commission through rulemaking.

1. The Petition Advocates a Proper Interpretation of the Original 10 C.F.R. §50.47(b)(12).

Section 50.47(b)(12), as currently drafted, requires that onsite and offsite emergency plans include:

> [a]rrangements. . .for medical services for contaminated injured individuals.

As interpreted by the Appeal Board in ALAB-680, this planning standard required arrangements for medical services for persons both onsite and offsite who were both contaminated and physically injured. See ALAB-680, 17 NRC at 135-139. This interpretation of the scope of the planning standard was a proper interpretation. Southern California Edison Company's petition would restore that interpretation by explicitly clarifying the rule to require that:

> [a]rrangements are made for emergency medical services for persons who are both (i) contaminated with radioactive material and (ii) physically injured such that immediate treatment in a medical facility is required.

50 Fed. Reg. 20799, 20800

Neither the original rule nor the legislative history for that rule ever distinguished between individuals onsite and the general public offsite. Such a distinction is therefore unwarranted. However, the original rule did distinguish between the various types of medical services that could be required by those individuals through the explicit choice of the phrase "contaminated injured individuals." This distinction was based upon the premise that public safety necessitates pre-arrangement of emergency medical treatment for contaminated persons who have also suffered physical injury requiring immediate treatment in a medical facility. Adequate medical services for other individuals may be arranged during or after an emergency on an ad hoc basis. The current petition for rulemaking is thus entirely consistent with the original intent of planning standard (b)(12).

Moreover, the premise underlying the original rule and the petition for rulemaking remains technically valid. As noted by the Appeal Board in ALAB-680, three factors affect the types of medical services required during and after an emergency: (1) radiation exposure, (2) physical injury, and (3) contamination. See ALAB-680, 16 NRC at 136, fn. 11. For the reasons amply explained in ALAB-680 and in the petition for rulemaking, special advanced planning for an accident at a nuclear power plant need be required under planning standard (b)(12) only for individuals suffering both contamination and physical injury, i.e., "contaminated injured individuals." The special concern in these cases is that hospitals be prepared to treat such individuals immediately for their physical injuries, without spreading the contamination and without unnecessary exposure to hospital personnel. It is very unlikely that individuals only exposed to radiation as a result of a nuclear reactor accident would require immediate hospital treatment or special arrangements. Individuals contaminated but not physically injured can be decontaminated at designated relocation centers or other available facilities. See Petition for Rulemaking at 7-11. The planning standard should require only arrangements for the unique problem of individuals requiring hospital treatment of injuries but who are also contaminated.

The petition for rulemaking also rightfully rejects the Commission's interpretation of the existing §50.47(b)(12), CLI-83-10, 17 NRC 528 (1983).1/ The Commission there attempted to read new pre-arrangement requirements into the planning standard never intended by the original regulation. The Commission held that arrangements (albeit, arrangements which do not go beyond resource identification) were required for individuals onsite and offsite exposed to dangerous levels of radiation but not necessarily contaminated. CLI-83-10, 17 NRC at 535-36. Such an interpretation is not consistent with the plain language of the planning standard or the technical record. With respect to the latter, even the Commission was willing to recognize that in the cases of radiation exposure (but no contamination and physical injury), immediate treatment is not likely to be necessary and any treatment required can be provided later by almost all local and regional medical facilities. Id. The Commission's interpretation thus improperly attempted to "have it both ways" by requiring pre-arrangements for the broad class of individuals, but

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1/ That interpretation was of course also vacated by the D.C. Circuit in the GUARD decision.

then arguing for minimal arrangements for the merely radiation exposed. A return to the ALAB-680 interpretation represents a logical position, consistent with the original intent of the regulation and the technical record.

2. The Petition Represents an Appropriate Commission Response to the GUARD Decision

On May 21, 1985, the NRC published in the Federal Register, a "Statement of Policy on Emergency Planning Standard 10 C.F.R. §50.47(b)(12)." 50 Fed. Reg. 20892 (1985) (Statement of Policy). In the Statement of Policy, the Commission provided its licensing boards and appeal boards with interim guidance on interpreting §50.47(b)(12) while the Commission considers its final response to the D.C. Circuit's GUARD decision.2/ We agree with the interim guidance. However, irrespective of that guidance, we believe the Southern California Edison Company petition for rulemaking represents an appropriate final Commission response to the GUARD decision.

As recognized in the interim Statement of Policy, the GUARD decision "leaves open the possibility that modification or reinterpretation of planning standard (b)(12) could result in a determination that no prior arrangements need to be made for offsite individuals for whom the consequences of a hypothetical accident are limited to exposure to radiation." Id. at 20893, col. 3. Specifically, in GUARD, the Court wrote that:

> [w]e impose no tight restraint on the NRC's regulatory authority. The Commission, on remand, may concentrate on the SONGS records; it may revisit the question, not now before us for review, of the scope of the section 50.47(b)(12) phrase "contaminated injured individual"; it may describe genuine "arrangements" for medical services for dangerously

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2/ Essentially, the Commission in the Statement of Policy, indicates that boards "may find that applicants who have met the requirements of §50.47(b)(12) as interpreted by the Commission before the GUARD decision and who commit to full compliance with the Commission's response to GUARD" are entitled to a conditional full power license. Similarly, licensees in compliance with the previous interpretation need only commit to compliance with the final position. Id. at 20893, col. 3.

> exposed members of the general public; or
> it may pursue any other rational course.

GUARD, 753 F.2d at 1146 (emphasis added); see also 753 F.2d at 1149.

The petition of Southern California Edison Company proposes to follow exactly this option left to the NRC by GUARD - to modify the rule to re-define the scope of the phrase "contaminated injured individuals" (at least as that phrase was interpreted in CLI-83-10). This reinterpretation will eliminate the irrationality perceived by the Court in the Commission's prior interpretation of the planning standard,3/ but is entirely consistent with GUARD, and therefore should not be susceptible to successful legal challenge.

3. Conclusion

We support Southern California Edison Company's petition for rulemaking. The proposed amended §50.47(b)(12) should be adopted.

We also greatly appreciate this opportunity to provide our input on this issue.

Sincerely,

Nicholas S. Reynolds
J. Michael McGarry, III
Joseph B. Knotts, Jr.

3/ Essentially, the Guard Court found CLI-83-10 irrational because, with one hand it interpreted the scope of the phrase broadly to include individuals exposed to radiation, and with the other removed the substantive requirements for arrangements for those individuals. Guard, 753 F.2d at 1150.

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JOEL O. PATTERSON
MANAGER, ENVIRONMENTAL AFFAIRS

July 19, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Notice of receipt of petition for rulemaking from Southern California Edison Company (50 FR 20799; May 20, 1985)

Dear Sir:

Middle South Services, Inc. (MSS) is a technical service and support company functioning on behalf of the Middle South Utilities System (MSU System) which serves the electrical requirements for 1,600,000 customers in portions of Arkansas, Louisiana, Mississippi and Missouri. Our System companies have one nuclear unit nearing its commercial operation date as well as three units already operating and therefore we are interested in any changes which the NRC may make to its emergency response plan requirements.

MSS has reviewed the petition submitted by Southern California Edison Company and believes that the petition merits approval by the NRC. On February 12, 1985, the U.S. Court of Appeals for the District of Columbia held that the NRC's generic interpretation of 10 CFR 50.47(b)(12) was not reasonable and the Court remanded the matter to the Commission. Guard v. Nuclear Regulatory Commission, 753 F.2d 1144, 1150 (D.C. Cir. 1985). 10 CFR 50.47 (b)(12) reads, "Arrangements are made for medical services for contaminated injured individuals." Prior to the remand, the Commission had interpreted this section to require the submittal of a list of treatment facilities already in place. Southern California Edison's position is that section 50.47(b)(12) should only apply to those persons who are both contaminated and need treatment according to hospital accreditation procedures. MSS agrees with those positions. The nature of radiation injury is such that immediate care is not necessary except for those persons who are also otherwise physically injured. There is ample opportunity to obtain treatment at other facilities for those persons who may be contaminated but not physically injured.

The Southern California Edison petition provides extensive references to the fact that individuals only contaminated and not injured do not need immediate treatment and the recognition of this fact by both the Licensing

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add: John Phillips, 4000 MNBB
E. Podolak, EWW 359

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Board and Appeal Board (pages 3,5-9 of the petition). It is also apparent that the lack of immediacy for treatment of individuals only contaminated was recognized during the preparation of NUREG-0396 and NUREG-0654. We therefore believe that the Commission at this time should do no more than clarify section 50.47(b)(12) to indicate that arrangements need only be made for those individuals who are both contaminated and injured.

In summary, MSS supports the petition submitted to the NRC by Southern California Edison Company. We believe that the NRC should take this opportunity to clarify that emergency response plans need only include arrangements to treat individuals who are both contaminated and injured. MSS also believes that this clarification would fulfill the requirements of the remand of Guard v. Nuclear Regulatory Commission.

Sincerely,

Joel D. Patterson /HJF

Joel D. Patterson

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