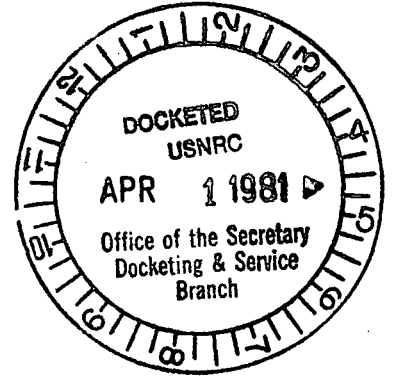


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James L. Kelley, Chairman
Elizabeth B. Johnson
Cadet H. Hand



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In the Matter of:

SOUTHERN CALIFORNIA EDISON
COMPANY, ET AL.

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

Docket Nos. 50-361 OL
50-362 OL

March 31, 1981

MEMORANDUM AND ORDER

On March 25, 1981, the Board* held a telephone conference call with counsel for the parties primarily for the purpose of discussing a pending motion for a final prehearing conference and several pending discovery motions. This Memorandum and Order will summarize the matters discussed and rule on the prehearing conference motion and on one of the discovery motions. The other pending discovery motions were settled informally by the parties.

Prehearing Conference. The Applicants have moved the Board to set a final prehearing conference under 10 CFR 2.752 for April 7 in Los Angeles. In support of their motion, they note that the major documents necessary for the hearing (e.g., the Staff's SER, the ACRS letter, and the final environmental statement) are available, or about to become available.

* Chairman Kelley and Member Johnson participated. Member Hand was out of the country.

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They contend that the other parties have had ample time for discovery. The Applicants advise that they expect construction to be completed about mid-July.

The other parties opposed setting a final prehearing conference, at least on emergency planning, at this time. Intervenor GUARD contended that the final conference should not be scheduled before the FEMA evaluation of emergency plans becomes available. Intervenor Friends of the Earth (FOE) urged that scheduling of a final conference be deferred until revised plans from the State and the County of San Diego become available. They stated, however, that a special prehearing conference under 10 CFR 2.751a for further specification of the issues would be useful.

As for the Staff's position, the Applicants state in their motion papers that they have "conferred with the NRC Staff and they do not object either to the setting of the final prehearing conference or the proposed date for said prehearing conference." However, during the conference call the Staff essentially agreed with the Intervenors that a final prehearing conference on emergency planning would be premature. The Staff's present estimate for completion of construction is some two months later than the Applicants', in the September-to-October range.

The Board believes that it would be appropriate to schedule a prehearing conference at this time. The conference will be a final conference under Section 2.752 with respect to seismic issues. The Board understands that discovery is substantially complete on seismic issues. And the Applicant

is understandably concerned that this operating license proceeding, including review procedures (see 10 CFR Part 2, Appendix B), may not be completed before the facility is fully constructed and otherwise ready to operate.

The Board also believes, however, that a final prehearing conference would be premature with respect to emergency planning issues, because several significant documents, including the FEMA evaluation, are not yet available. But it would be helpful to schedule a special prehearing conference under Section 751a to recast and refine contentions and take whatever other steps may move these issues closer to hearing.

The discussion of a time and place for a conference indicated that the last week in April would be satisfactory to all parties, and that place was not a critical consideration.

Accordingly, the Board is scheduling a prehearing conference in San Clemente, California on Wednesday, April 29, 1981. The exact time and place will be specified at a later date. The prehearing conference will be a final conference under 10 CFR 2.752 with respect to seismic issues; it will be a special conference under 10 CFR 2.751a with respect to emergency planning issues.

The Board wishes to accomplish as much as possible at this conference. Guided by the referenced rules, the parties are directed to submit to the Board proposed agenda items. Where appropriate, e.g., in the area of revised contentions, specific proposed language should accompany the agenda item. Proposed agenda items should be mailed to the Board and the other parties by April 17, 1981.

Discovery Motions. Three motions from the Applicants to compel answers to various interrogatories are pending before the Board. Informal agreements were reached with respect to two of these motions, as follows: "Motion to Compel Answers to Applicants' Second Set of Interrogatories to GUARD" dated March 16, 1981; "Motion to Compel Answers to Applicants' Fourth Set of Interrogatories to FOE" dated March 19, 1981. Counsel for Applicants and Intervenors GUARD and FOE agreed to service of answers by April 1, 1981.

Counsel for FOE referred to answers due from it to Applicants' fifth set of interrogatories and offered to provide those answers by April 3, 1981; this was acceptable to counsel for the Applicants. Counsel for FOE and the Applicants also agreed that updated answers due from FOE could be supplied by April 10.

The Board appreciates counsels' willingness to settle these discovery disputes informally. Their continued willingness to do so can expedite this proceeding considerably.

That leaves for formal disposition by the Board Applicants' motion of February 17, 1981 to compel further answers to its second set of interrogatories to FOE. FOE has not filed an answer to this motion and during the telephone conference expressed its desire for a Board ruling. The motion seeks to compel answers to subparts of nine interrogatories-- numbers 10, 14, 17, 24, 25, 26, 27, 29, and 31. Each of these interrogatories asks a question in the seismic area and then poses the following subpart questions:

"... (b) Identify each and every document or communication upon which you base this contention;

(c) Identify each and every person with knowledge of the factual basis or bases for this contention, or on whose writings, opinions, or testimony you base this contention; and

(d) Identify each and every person, expert or otherwise, whom you expect to call as a witness at the hearing before the Atomic Safety and Licensing Board in support of this contention, and as to each potential witness so identified provide the following information:

(i) State the substance of the facts and opinions to which you expect the witness to testify;

(ii) Summarize the factual and theoretical basis, as well as any other grounds, for each opinion to which the witness is expected to testify."

As to two interrogatories, 14 and 24, FOE has failed to provide any answer at all to subparts (c) and (d) and, in addition, in the case of 14 no answer to subpart (b) is provided. In its answers to the other seven interrogatories, FOE has answered subparts (b) and (c), but has not provided a sufficiently responsive answer to subpart (d) specifying the witnesses it expects to call at the hearing. Although FOE's verbal formulations vary somewhat from answer to answer, the effect of each answer is to leave the reader guessing about who of many people might be called as witnesses. For example, the answer to interrogatory 26(d) references as potential witnesses "the authors of the reports listed in

24 (b) and 25 (b)" which in turn list the names of scores of experts in the seismic area.

The Applicants contend that FOE should be ordered to answer its interrogatories in a manner that does not require them "to speculate as to who may be a witness." The Board agrees. Intervenor FOE is directed to provide responsive answers to subpart (d) of interrogatories 10, 14, 17, 24, 25, 26, 27, 29, and 31, except as noted below. FOE's answers should effectively apprise the Applicants of the persons it now expects to call as witnesses. And in the future, pursuant to subsection (e) (1) (ii) of 10 CFR 2.740, FOE (and the other parties) will be under a duty "seasonably to supplement" their responses with respect to--

"...the identity of each person expected to be called as an expert at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony."

FOE is also directed to provide responsive answers to subparts (b) and (c) of interrogatory 14 and to subpart (c) of interrogatory 24.

The Applicants have not specifically asked us to enforce subpart (d) (ii) of their standard question. We raise the matter to make it clear that our order directing answers to subpart (d) does not extend to subpart (d) (ii). That subpart asks FOE to "summarize the factual and theoretical basis, as well as any other grounds, for each opinion to which the witness is expected to testify." In response to this broad, and at least in some cases, difficult question, FOE has developed a standard brief and

uninformative response. See e.g., Answer to Interrogatory 25(d)(ii), pp. 57-58 of FOE Responses. We believe, however, that to require very much more than this would be unreasonable, at least in the case of an intervenor group with limited financial resources.

Generally speaking, technical experts are not readily available to intervenor groups, particularly at the discovery stage. And it would be difficult accurately to "summarize the factual and theoretical basis" for an expert's opinion without the expert's active participation. But this practical limitation need not leave the other parties in the dark. The thrust of an expert's views can often be derived from published sources. The expert's deposition can be taken, a method that would usually elicit more information than an interrogatory. And furthermore, the expert's direct testimony will be filed in advance of the hearing, enabling the other parties to prepare their cross-examination in advance.

The Applicants object to Intervenor FOE's answer to Interrogatory 34, which concerns the identity of the particular experts contributing to particular FOE answers. They ask the Board to "...order Intervenors to identify in a more specific manner which person or persons identified in Intervenor's response to Interrogatory No. 34 provided the actual substantive answer to each Interrogatory (Nos. 1 through 34), in whole or in part."

The Board believes that the interrogatory is reasonable and that FOE's answer is unresponsive. Intervenor FOE is directed to provide a responsive answer.

The answers to interrogatories required of Intervenor FOE in this order shall be served by April 15, 1981.

We note in conclusion that Intervenor FOE did not state its reasons for objecting to these interrogatories by any of the means available to it. The rule (10 CFR 2.740) authorizes objecting parties to apply for a protective order (subsection (c) and separately contemplates that a party declining to answer an interrogatory will state its objections in its response (subsection (f)). In addition, although arguably not contemplated under the rule, the Board would entertain a pleading in opposition to a motion to compel, if timely filed. Obviously, the recipient of the interrogatories is in the best position to know why, in the words of the rule, he needs protection from "annoyance, embarrassment, oppression, or undue burden or expense...." But where, as here, we are left to speculate about a party's possible objections to an interrogatory, we might well overlook a valid but less than obvious objection.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 31st day of March 1981.