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12 UNITED STATES OF AMERICA

13 NUCLEAR REGULATORY COMMISSION

14 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

15 In the Matter of) Docket Nos. 50-361 OL
) 50-362 OL
16 SOUTHERN CALIFORNIA) MEMORANDUM OF POINTS AND
EDISON COMPANY, ET AL.) AUTHORITIES IN SUPPORT OF
17) MOTION FOR ORDER CONSOLIDATING
(San Onofre Nuclear Generating) INTERVENORS AND DESIGNATING
18 Station, Units 2 and 3) LEAD INTERVENOR WITH RESPECT TO
) EMERGENCY PLANNING CONTENTIONS

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20 I.

21 THE PRESIDING OFFICER HAS AUTHORITY TO
22 DIRECT CONSOLIDATION OF PARTIES
23 IN OPERATING LICENSE PROCEEDINGS

24 On motion or on his own initiative, the presiding
25 officer of the Atomic Safety and Licensing Board pursuant to
26 10 C.F.R. § 2.715a may order any parties

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1 "who have substantially the same interest
2 that may be affected by the proceeding and
3 who raise substantially the same questions,
4 to consolidate their presentation of
5 evidence, cross-examination, briefs, proposed
6 findings of fact and conclusions of law, and
7 argument."

8 10 C.R.R. § 2.175a; Detroit Edison Company (Greenwood Energy
9 Center, Units 2 and 3), ALAB-476, 7 NRC 759, 663 (1978).

10 Parties may be consolidated "with respect to any
11 one or more issues" in an operating license proceeding.
12 10 C.F.R. § 2.715a. The purpose to be achieved by such
13 consolidation is "an orderly, fair and expeditious conduct of
14 the hearing." Texas Utilities Generating Company (Comanche
15 Peak Steam Electric Station, Units 1 and 2), Memorandum and
16 Order, December 31, 1980, at p. 8.* / Such consolidation is
17 applicable where two intervenors have "sponsored in whole or
18 in part a particular contention." Id. In such a case the
19 requirement that the parties to be consolidated have raised
20 "substantially the same question" is met. Id. The more
21 general requirement that the parties have substantially the
22 same interest as may be affected by the proceeding is
23 satisfied where the parties were permitted to intervene based
24 on substantially the same interests. Id.

25 While the Board's authority to consolidate parties
26 is limited by a prohibition against any consolidation that

25 */ This case has not yet been published in the official
26 reports and, therefore, is attached as Exhibit A for the
reference and convenience of the Board and the parties hereto.

1 would prejudice the rights of any party, prejudice is not
2 shown by "a mere inconvenience or financial burden or a time
3 burden of limited consequence." Id; accord, Portland General
4: Electric Company, et al. (Trojan Nuclear Plant), ALAB-496,
5 8 NRC 308 (1978). "Nor does the possibility of failure of an
6 intervenor to cooperate or coordinate with other intervenors,
7 nor do differences of viewpoints among intervenors, nor does
8 additional effort required for pulling together spell out a
9 case of prejudice of a right." Id.

10 Where consolidation is otherwise appropriate, it is
11 well within the "discretion and good judgment" of the Board
12 after receiving the views of the parties to designate a lead
13 party for each contention presenting substantially the same
14 questions. Id.

15 The Commission has specifically directed
16 consolidation of intervenors and a designation of lead
17 intervenor in cases, such as presented here, where
18 construction of the facility will be completed prior to
19 completion of operating license proceedings, delay in
20 completion of operating license proceedings can be
21 effectively reduced by such consolidation procedure, and the
22 rights of any intervenor or the need for a balanced,
23 efficient, conduct of the hearing process is not thereby
24 prejudiced. "Statement of Policy of Conduct of Licensing
25 Proceedings," CL1-81-8, 46 Fed. Reg. 28533, 28534 (May 27,
26 1981) (hereafter the "Policy Statement").

1 II.

2 FACTUAL STATEMENT

3 By Memorandum and Order, dated January 27, 1978,
4 the Board admitted one FOE et al. emergency planning
5 contention (hereafter the "Original FOE contention") and two
6 GUARD emergency planning contentions (hereafter the "original
7 GUARD Contentions"). At the special prehearing conferences
8 on emergency planning contentions conducted on July 17, 1980
9 and April 29, 1981, Applicants proposed that these three
10 contentions be consolidated into one contention on evacuation
11 preparedness (hereafter "Applicants' Original Contention").*/

12 At the prehearing conference conducted on April 29,
13 1981, GUARD submitted two revised contentions (hereafter the
14 "Revised GUARD Contentions). At that same time FOE et al.
15 reasserted the Original FOE Contention on the ground that the
16 "main thrust" of the Original FOE Contention "is still
17 appropriate under the new regulations" and stated its
18 intention to "continue with the [Original FOE] contention as
19 it is stated, with the understanding of re-writing it to more
20 specifically state issues under the new regulation."

21 (TR. 424-425.)

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24 _____
25 */ A chronological listing of the admitted or proposed
26 revisions to admitted emergency planning contentions referred
to herein is attached hereto as Exhibit B for the reference
and convenience of the Board and the parties.

1 On May 8, 1981, the Board issued its Prehearing
2 Conference Order urging the parties to meet informally for
3 the purpose of formulating final emergency planning
4 contentions and resolving other matters as may aid in the
5 orderly disposition of the proceeding. Pursuant to the
6 Board's suggestion, Applicants arranged for such a meeting
7 between Counsel for GUARD and FOE et al. and Applicants. At
8 the last minute, Counsel for FOE et al. was not able to
9 attend the meeting due to conflicting responsibilities in an
10 unrelated State court proceeding. The meeting took place on
11 May 29, 1981 between Counsel for GUARD and Applicants. As a
12 consequence of the meeting, Applicants have proposed
13 revisions to the GUARD Revised Contentions which Applicants
14 believe reflect NRC's revised emergency planning regulations
15 and encompass GUARD's and FOE et al.'s significant concerns
16 in this area, as revealed in the FOE Original Contention and
17 the GUARD Revised Contentions.*/
18

19 On June 2, 1981, the Board conducted a telephone
20 conference with the parties to discuss procedures for
21 commencement of hearings on emergency planning contentions.
22 At that time Counsel for GUARD indicated a general readiness
23 to formulate final contentions and proceed to hearing in
24 latter part of July. Counsel for FOE et al. represented that
25 FOE et al. was "up to its neck" in seismic testimony

26 */ See Exhibit B, Paragraph E.

1 preparation and, as a consequence, "hadn't been able to pay
2 too much attention to emergency planning contentions." Thus,
3 it appears to Applicants that FOE, et al. is not prepared to
4 support commencement of hearings on emergency planning
5 contentions "shortly after" completion of seismic hearings as
6 consistently suggested by the Board.

7 By telephone order conveyed to the Applicants
8 through Counsel for the NRC Staff on June 1, 1981, the Board
9 has set June 18, 1981 as the date for a final prehearing
10 conference on emergency planning contentions. Seismic
11 hearings are scheduled to begin June 22, 1981. Applicants
12 understand that limited appearance sessions covering both
13 seismic and emergency planning contentions are scheduled to
14 take place on June 27 and July 11, 1981.

15 Given the foregoing circumstances, it is an
16 appropriate time to consider consolidating intervenors and
17 designating the lead intervenor on emergency planning
18 contentions in order to achieve the Commission's goal of
19 "expediting the hearings," consistent with fairness to all
20 parties and the need to produce a complete record. Policy
21 Statement, supra, 46 Fed. Reg. 28534.

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1 III.

2 CONSOLIDATION OF INTERVENORS
3 FOE, ET AL. AND GUARD ON
4 EMERGENCY PLANNING CONTENTIONS
5 WOULD PROMOTE AN ORDERLY, FAIR
6 AND EXPEDITIOUS CONDUCT OF THE HEARING

7 The Board has generally recognized that the
8 emergency planning contentions of GUARD and FOE, et al., as
9 admitted or proposed for revision by GUARD are "not
10 dramatically different" and "similar in many respects."
11 (TR. 430). Given the substantial similarity in the questions
12 raised on this subject by GUARD and FOE, et al., the Board in
13 its Prehearing Conference Order, dated May 8, 1981, has
14 encouraged the parties by way of informal discussions to
15 "resolve outstanding differences." Applicants agree with the
16 Board that with a modicum of cooperation the parties should
17 be able to agree upon acceptable contentions that encompass
18 the concerns of both FOE, et al. and GUARD and are within the
19 proper scope of this proceeding. Informal discussions
20 between the parties towards this end commenced at the meeting
21 of May 29, 1981. One of the topics of discussion was
22 consolidation of GUARD and FOE, et al. on emergency planning
23 contentions and selection of lead counsel for presentation of
24 these issues. Applicants anticipate the further discussions
25 on this topic with GUARD and FOE, et al. will be pursued
26 during the pendency of this motion.

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1 Applicants believe compelling reasons exist to
2 order such consolidation and designation of lead counsel.
3 The requirements of 10 C.F.R. § 2.715a are satisfied.
4 Intervenor were admitted to this proceeding based on
5 identical interests, proximity of their members to the site
6 and common use of recreational facilities in the vicinity of
7 the site. See Board Memorandum and Order, October 27, 1977.
8 Intervenor seek to raise substantially the same questions
9 regarding emergency planning and preparedness. No prejudice
10 to either party is perceived by Applicants. Any prejudice
11 alleged by FOE, et al. at the first prehearing conference
12 herein, has certainly been removed by the appearance of
13 counsel for GUARD, Ms. Gallagher and Mr. McClung. (See
14 TR. 148-160). The fact that Intervenor may have
15 "differences of viewpoints" does not mean any prejudice of
16 rights is presented. Texas Utilities Generating Company,
17 supra. To the contrary, GUARD's single-minded interest and
18 demonstrated devotion to emergency planning and preparedness
19 issues suggests GUARD can competently present and protect
20 FOE, et al.'s concerns. Moreover, assignment of GUARD as
21 lead counsel for Intervenor on emergency planning
22 contentions would greatly assist an orderly, expeditious
23 conduct of this proceeding insofar as it would avoid
24 duplicative direct and cross-examination testimony and permit
25 preparation and filing of direct testimony on emergency
26 planning contentions by GUARD while FOE, et al. is

1 principally involved with the preparation for and conduct of
2 seismic hearings. Such a procedure would certainly minimize
3 the time lag between the end of seismic hearings and
4 commencement of emergency planning hearings without undue
5 : prejudice to any of the parties.

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IV.

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THE PRESIDING OFFICER HAS THE DISCRETION TO
EXPEDITE THE PARTIES' RESPONSE TO THIS MOTION
IN THE INTEREST OF MITIGATING UNNECESSARY
DELAYS IN COMPLETION OF THIS OPERATING LICENSE
PROCEEDING.

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The presiding officer of the Atomic Safety and
Licensing Board has the duty under 10 C.F.R. § 2.718

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"to conduct a fair and impartial hearing
according to law, to take appropriate action
to avoid delay, and to maintain order. He
has all powers necessary to those ends,
including the power to:

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(f) Dispose of procedural requests or
similar matters." (Emphasis added).

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The presiding officer should use his power under 10 C.F.R.

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§ 2.718 to assure that "the hearing process for the resolu-

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tion of controverted matters is conducted as expeditiously as

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possible, consistent with the development of an adequate

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decisional record." 10 C.F.R., Part 2, Appendix A.V.

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Exercise of this duty to expedite proceedings and avoid

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unnecessary delay is especially important in proceedings,

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1 like the instant case, where construction will be complete
2 prior to completion of operating license proceedings. In
3 this case, the presiding officer has been directed by the
4 Commission to issue "timely rulings on all matters," in
5 particular "procedural matters to regulate the course of the
6 hearing." Policy Statement, supra, 46 Fed. Reg. 28535.

7 The Board has ordered that a final prehearing
8 conference on emergency planning contentions take place on
9 June 18, 1981. Applicants submit this motion at this time so
10 that the Board will be in a position to hear oral argument at
11 the time of the final prehearing conference, subject to any
12 further briefing the Board or the parties require.

13
14 V.

15 CONCLUSION

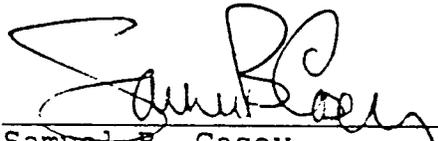
16 It is respectfully submitted that in order to
17 assure an orderly and timely completion of the licensing
18 process, consistent with fairness to all parties, Intervenors
19 FOE, et al. and GUARD should be consolidated for all purposes
20 with respect to emergency planning contentions. If such
21 consolidation cannot be arrived at by stipulation prior to
22 the final prehearing conference, it should be ordered by this
23 Board with GUARD being designated lead counsel for emergency
24 planning contentions. This motion is being filed at this
25 time with the hope that the Board will be in a position to
26 hear oral argument on this subject at the prehearing

1 conference now scheduled to take place in San Diego on
2 June 18, 1981.

3 DATED: June 9, 1981.

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13 By 
14 Samuel B. Casey
15 One of Counsel for Applicants
16 Southern California Edison
17 Company and San Diego Gas &
18 Electric Company

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12 UNITED STATES OF AMERICA

13 NUCLEAR REGULATORY COMMISSION

14 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

15	In the Matter of)	
)	Docket Nos. 50-361 OL
16	SOUTHERN CALIFORNIA)	50-362 OL
	EDISON COMPANY, <u>ET AL.</u>)	
17)	ORDER CONSOLIDATING
	(San Onofre Nuclear)	INTERVENORS AND DESIGNATING
18	Generating Station,)	GUARD AS LEAD INTERVENOR
	Units 2 and 3)	WITH RESPECT TO EMERGENCY
19)	<u>PLANNING CONTENTIONS</u>
20)	

21 It appearing that Intervenors FOE, et al. and GUARD
22 have substantially the same interest in the adequacy of
23 emergency planning and preparedness for San Onofre Nuclear
24 Generating Station, Units 2 and 3; and it further appearing
25 that Intervenors FOE, et al. and GUARD seek to raise
26 substantially the same emergency planning and preparedness

1 contentions, and it further appearing that these proceedings
2 would be expedited by avoiding duplicative briefs, argument,
3 presentations of direct and cross-examination testimony, and
4 proposed findings of fact and conclusions of law on these
5 : contentions by both FOE, et al. and GUARD, as well as delays
6 in emergency planning direct testimony preparation
7 necessitated by FOE, et al.'s participation in the seismic
8 hearings herein; and it further appearing that it would not
9 be prejudicial to FOE, et al. or GUARD to consolidate their
10 presentation on these contentions;

11 IT IS HEREBY ORDERED pursuant to 10 C.F.R. § 2.715a
12 that Intervenors FOE, et al. and GUARD consolidate their
13 presentation for evidence, cross-examination, briefs,
14 proposed findings of fact and conclusions of law, and
15 argument on emergency planning contentions, and that GUARD
16 act as lead counsel for these purposes.

17 DATED: _____, 1981.

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19 ATOMIC SAFETY AND LICENSING BOARD

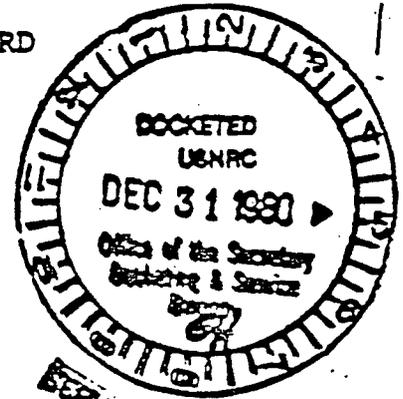
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21 By _____
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Valentine B. Deale, Chairman
Dr. Richard F. Cole
Dr. Forrest J. Remick



In the Matter of:

TEXAS UTILITIES GENERATING
COMPANY, et al.

(Comanche Peak Steam Electric
Station, Units 1 and 2)

Docket Nos.
50-445
50-446

December 31, 1980

RECEIVED
JAN 2 1981

MEMORANDUM AND ORDER

(Rulings on Consolidation of Parties, Appointments of Lead Party-Intervenors, Miscellaneous Motions and Other Matters)

1. On October 31, 1980, the Board filed "Announcement of Plans for Consolidation of Parties." In this filing, the Board invited each of the intervenors to submit its choice for the lead party among the intervenors for each contention and it welcomed comments by the Applicants and the NRC Staff with respect to the proposed consolidation.

2. On November 20, 1980, each of the parties filed its own response to the Board's announced plans for consolidation. Applicants presented reasons to show that the proposed consolidation of the intervenors was within the Board's authority, that CFUR, CASE and ACORN were granted intervenor status on the

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basis of the same interest that may be affected by the proceeding, that is, interest flowing from proximity to the Comanche Peak facility, and that consolidation would not prejudice the rights of any intervenor. Applicants identified contentions where two or more intervenors raised substantially the same issues and Applicants offered their recommendations for the lead parties for such contentions should the intervenors not agree on the lead parties among themselves. According to Applicants, the lead party to be designated by the Board should be the lead party for all purposes. With respect to any contention sponsored by only one intervenor, Applicants proposed that the Board should designate the single sponsor as the lead party for such contention. In addition, Applicants recommended that Contention 9 and Contention 23 be consolidated pursuant to 10 CFR §2.715a.

3. In its filing, entitled, "NRC Staff's Comments on Plans for Consolidation of Parties," NRC Staff favored the designation of a lead intervenor by the Board for certain limited purposes, namely, for purposes of conducting further discovery, presenting direct evidence and conducting cross-examination. NRC Staff suggested that the question of consolidating proposed findings of fact, conclusions of law and argument be deferred until later in the proceeding.

4. In "ACORN's Response to Plans for Consolidation of Parties," ACORN expressed the view that the Board's announcement of plans for consolidation is premature. According to ACORN, insufficient data have emerged to enable the Board to determine that the intervening parties have substantially the same interests.

ACORN requested that the Board defer any consideration of consolidation until after the completion of discovery and asserted that consolidation at this time would prejudice the rights of ACORN by forcing it to work with unwilling participants. Without waiving its objection to the proposed consolidation, ACORN requested that it be selected as lead party for each contention in which it has an interest.

5. In its filing, "Plans for Consolidation of Parties," CFUR argued that consolidation of the parties with respect to Contention 4 and Contention 5, in both which CFUR had manifested an interest, would be improper and prejudicial to CFUR. CFUR stated that CFUR does not have the same interest in the contentions as the other intervenors concerned with the two contentions and that consolidation would prejudice CFUR's rights as the other intervenors are unfamiliar with the technical basis of CFUR's interest and undue burden upon CFUR would result. CFUR also held that a clearer more concise record would be produced by separate representations of differing interests. If there is consolidation, CFUR believed it should be the lead party for Contention 4 and Contention 5 for the reasons, as CFUR maintained, that CFUR's could be protected only if it were the lead party, that CFUR is equidistant from the other two intervenors being 15 miles from each in opposite directions, and that CFUR has the assistance of attorneys.

6. Reflecting its opposition to the announced plans for consolidation, CASE filed two motions, namely, "Motion To Grant CASE Separate Intervenor Status" and "Motion To Appoint CASE as Lead Party for Consolidated Contentions." In its motion for

separate intervenor status, CASE listed seventeen reasons for its opposition to consolidation. They are generally classified as follows: burden, in terms of greater time and work and increased financial expenses expected to be placed upon CASE as a result of necessary coordination with other intervenors; concern about the adequacy of representation of its interests by others not familiar with CASE's positions, who, moreover, might be expected to favor their own viewpoints; lack of counterweighing benefits; personal safety factor affecting CASE's principal representative; and discrimination involved in a consolidation of CASE with its principal representative not being an attorney and any other intervenor with an attorney as its representative. In its alternative motion, CASE sought to be appointed the lead party for Contention 5, Contention 22, Contention 23 and Contention 24.

7. On December 5, 1980, Applicants filed "Applicants' Answer to CASE's Motions (1) for Separate Intervenor Status and (2) Alternatively for Appointment as Lead Party for Consolidated Contentions." Applicants opposed CASE's motion for separate intervenor status and opposed in part CASE's alternative motion for appointment as lead party for four named contentions, relying on the reasons set forth in their "Comments on Consolidation." From Applicant's standpoint, while CASE claimed some inconveniences involved in consolidation, CASE did not show that it would be impossible or even inordinately taxing for the intervenors to coordinate their consolidation. In support of their position, Applicants cited Portland General Electric Co. (Trojan

Nuclear Plant), ALAB-496, 8 NRC 308, 310 (1978). Further, according to Applicants, CASE did not demonstrate that consolidation would be improper under the tests at 10 CFR §2.715a. Applicants also noted that CASE has substantially the same interest as the other intervenors and has raised substantially the same questions in the four named contentions as had one or both of the other intervenors. Moreover, in the Applicants' thinking, consolidation should lead to considerable savings of resources of all parties and would promote efficient administrative proceedings.

8. On December 9, 1980, the NRC Staff filed "NRC Staff's Response to 'Motion To Grant CASE Separate Intervenors Status' and 'Motion To Appoint CASE as Lead Party for Consolidated Contentions'" (NRC Staff's Response). The NRC Staff opposed CASE's motion for separate intervenor status and consistent with its position commenting on the announced plans for consolidation, the NRC Staff took no position as to whom the Board should appoint lead intervenor for each of the contentions involving the sponsorship of two or more intervenors. Repeating the previously stated position in its comments on plans for consolidation of the parties, the NRC Staff expressed the view that consolidation of intervenors with respect to contentions involving two or more parties "is merely the additional step of consolidating the presentation of the intervenors' evidence and argument as permitted by 10 CFR §2.715a" and "will serve to reduce the presentation of duplicative and repetitive evidence and argument while, at the same time, it will preserve the rights of the intervening

parties to obtain full adjudication of their contentions." NRC Staff's Response, 2. In the NRC Staff's view, "such consolidation will serve the interests of all parties in that it will result in a more orderly and expeditious proceeding." Id., 2.

9. The NRC Staff maintained that CASE did not demonstrate the planned consolidation will result in any significant prejudice to its interests, that any extra effort on the part of intervenors occasioned by consolidation "will clearly result in a more orderly and expeditious proceeding, to the benefit of all the parties." Id., 4. Extra financial burden as a result of the coordination necessitated in consolidation is likely to be insignificant and is certainly outweighed by reduction in costs associated savings in time, according to the NRC Staff. CASE's expression of concern over time and risks associated with driving to meet others, particularly when the driving at night, is basically regarded by the NRC Staff as speculative. The NRC Staff compared the present case with the Trojan case, supra. In the latter case, the Appeal Board rejected an appeal from a consolidation order by an intervenor living 200 miles from the facility while the other two intervenors lived within 40 miles of the facility. The Appeal Board in the Trojan case turned down the intervenor's claim of prejudice founded on the fact that he did not live close to the other two intervenors. In the present case, all three intervenors evidently live

within a radius of 30 miles. Similarly, CASE's concerns over receiving poor quality of copies of documents and over risking trip accidents, in the judgment of the NRC Staff, fail to demonstrate any substantial risk of prejudice to CASE's interests.

10. On December 23, 1980, CASE filed a reply to NRC Staff's answer to CASE's motion for separate intervenor status and to CASE's motion for appointment as lead party. This reply was entitled, "CASE's Answer to NRC Staff's Response to 'Motion to Grant CASE Separate Intervenor Status' and 'Motion to Appoint CASE as Lead Party for Consolidated Contentions' and Clarifying Statements." CASE's filing was out of order, being a breach of the Commission's Rules of Practice at 10 CFR §2.730(c). There, after providing that a party may file an answer in support of or in opposition to a motion, it is expressly stated as follows: "The moving party shall have no right to reply, except as permitted by the presiding officer ..." Permission to reply to the NRC Staff's answers to CASE's two motions was neither sought nor granted. CASE's filing in reply to the NRC Staff's answer to CASE's above-noted motions is disregarded.

11. By its Order of June 16, 1980, the Board accepted 25 contentions of the three intervenors, ACORN, CASE and CFUR. By its Rulings of October 31, 1980, the Board struck down one of the 25 contentions, namely, Contention 11, placed a special construction upon Contention 5, and affirmed, in effect, its acceptance of all of the other contentions and of the Board's three questions to the Applicants and NRC Staff for their

consideration at the anticipated evidentiary hearing. Of the existing 24 accepted contentions,* the following five have sponsorships of more than one of the intervenors, as follows:

<u>Contentions</u>	<u>Sponsorship</u>
4	ACORN, CFUR
5	ACORN, CASE, CFUR
22	ACORN, CASE
23	ACORN, CASE
24	ACORN, CASE

12. The remaining 19 accepted contentions, for each of which there is only a single intervenor as sponsor, are listed below according to their respective sponsors:

ACORN Contentions 10, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21. Total: 11

CASE Contention 25. Total: 1

CFUR Contentions 1, 2, 3, 6, 7, 8 and 9.
Total: 7

13. In the interest of an orderly, fair and expeditious conduct of the hearing, the Board announced plans to consolidate the three intervening parties under 10 CFR §2.715a. Such consolidation would be applicable where two or three of the intervenors sponsored in whole or in part a particular contention. The regulatory requirements for consolidation that the parties had raised substantially the same question is thus met. The more general requirement that the parties have substantially the same interest as may be affected by the proceeding is satisfied by the fact that the interest by which ACORN, CASE

*The numbering of the accepted contentions follows the numbers used by the Board in its Order of June 16, 1980.

and CFUR were all admitted as intervenors was their proximity to the Comanche Peak facility.

14. The Commission's regulation on consolidation is limited by the prohibition that any consolidation that would prejudice the rights of any party may not be ordered. This prohibition raises the question of when is a right prejudiced. Clearly, prejudicing a right does not mean causing a mere inconvenience or a financial burden or a time burden of limited consequence. Nor does the possibility of failure of an intervenor to cooperate or coordinate with other intervenors nor do differences of viewpoints among intervenors nor does additional effort required for pulling together spell out a case of prejudice of a right. The objections by the intervenors to proposed consolidation in the main add up to a variety of inconveniences of no major account, speculative contingencies, lack of confidence in fellow intervenors by comparison to oneself, and disregard of the advantages of consolidation. CASE made the additional point that it is the only intervenor not represented by counsel and consolidation of CASE and another one or two intervenors which are represented by counsel "would be discriminatory and prejudicial in effect if not in intent." CASE's Motion To Grant CASE Separate Intervenor Status, 4. The Board is satisfied on the basis of filings to date that CASE has the capacity to represent an interest of either one or both of the other intervenors in a contention in which CASE has an interest, and similarly, either of the two

intervenors represented by lawyers has the capacity of representing CASE's interest in a contention where it and CASE have a mutual interest. The Board has concluded that a case of prejudice on account of consolidation has not been made and that consolidation is appropriate to the end of an orderly, fair and expeditious conduct of the hearing.

15. The Board regards the designation of a lead party for each contention sponsored by two or three of the intervenors as a matter of its discretion and good judgment. In the Board's view, none of the intervenors has any right to be so designated. Further, the Board invited the three intervenors to inform the Board of their choice of a lead party for each contention, and the Board received no replies that any agreement on a lead party for any contention had been reached. Applicants offered their suggestions of lead parties; NRC Staff refrained from offering any. Some of the considerations which the Board took into account in designating the lead party-intervenors among the consolidated parties for the following five contentions include:

CONTENTION 4: Both ACORN and CFUR contend that accident sequences such as occurred at TMI-2 should be considered "credible" or "probable" and thus should be evaluated in the Comanche Peak operating license proceeding. CFUR's concern includes a specific question about a hydrogen explosion accident, which is included in Contention 4. ACORN did not raise this particular matter.

CONTENTION 5: There is a similarity of questions about quality control and quality assurance raised by the intervenors. The Board decided to construe Contention 5 to include issues raised by NRC Inspection and Enforcement Reports submitted by ACORN in its August 29, 1980 Offer of Proof.

CONTENTION 22: Of parts (a) through (f) of this contention, CASE was involved in all of them. ACORN was concerned with (f) alone.

Contention 23: ACORN and CASE each recognized the key issue of Applicants' compliance with the Commission's ALARA standard. But CASE also associated with the contention an issue questioning the sufficiency of the ALARA standard -- an issue which the Board rejected and ACORN specifically avoided.

CONTENTION 24: CASE raised issues (a) through (d) of this contention. ACORN raised issue (a) only.

16. The Applicants suggested the appointment of the sole party which sponsored an individual contention as the lead party for such contention. In the Board's view, the suggestion is well-taken as parties which had not sponsored a contention would have a regular way through the lead party-intervenor for presenting to the Board whatever ideas or evidence they might later come upon with respect to such contention; the possibility of confusion or surprise at the hearing would tend to be minimized and the possibility of a better record would be expanded. Pertinent to the Board's authority to designate lead parties for particular contentions is the Commission's regulation at 10 CFR §2.718, "Power of presiding officer," especially at (e) thereof. The Commission's regulation in "Intervention" at 10 CFR §2.714(e) is also noted. These regulations are in addition, of course, to the Commission's regulation at 10 CFR §2.715a on consolidation of parties.

17. The Board is disposed to designate lead intervenors for all purposes rather than for limited purposes at this stage of the proceeding. An element of uncertainty about the future

agenda is removed. If unforeseen circumstances arise to nullify the advantages of lead party-intervenors for all purposes, such circumstances can be dealt with later.

ORDER

For the foregoing reasons and in consideration of the record in this matter, it is on this 31st day of December, 1980

ORDERED

That Case's motion for separate intervenor status is denied;

That CASE's motion for appointment as lead party for certain consolidated contentions is granted in part and denied in part as indicated below;

That CASE's reply of December 23, 1980 to the NRC Staff's response to CASE's motions for separate intervenor status and for appointment as lead party for certain consolidated contentions is disregarded;

That the parties for certain contentions are consolidated, with the lead party-intervenors as follows:

<u>Contentions</u>	<u>Lead Party-Intervenors</u>
4	CFUR
5	ACORN
22	CASE
23	ACORN
24	CASE

That sole sponsors of individual contentions are designated the lead party-intervenors as follows:

Lead party-intervenor ACORN for Contentions 10, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21,

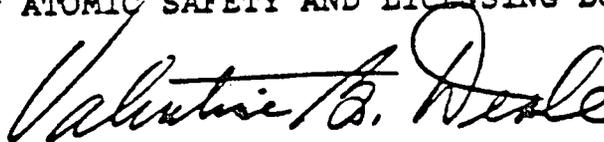
Lead party-intervenor CASE for Contention 25, and

Lead party-intervenor CFUR for Contentions 1, 2, 3, 6, 7, 8 and 9;

That the lead party-intervenor for a particular contention is for all purposes in this proceeding unless specifically provided otherwise by the Board; and

That consideration of Applicants' suggestion of consolidating Contention 9 and Contention 23 is deferred.

For ATOMIC SAFETY AND LICENSING BOARD



Valentine B. Deale, Chairman

APPLICANTS' CHRONOLOGICAL LISTING OF ADMITTED
OR PROPOSED REVISIONS TO ADMITTED EMERGENCY
PLANNING CONTENTIONS IN SUPPORT OF
APPLICANTS' MOTION FOR ORDER CONSOLIDATING
INTERVENORS AND DESIGNATING LEAD INTERVENOR
WITH RESPECT TO EMERGENCY PLANNING CONTENTIONS

June 9, 1981

A. GUARD's Original Contentions Admitted For Discovery
Purposes, By Board Order, January 27, 1978:

1. The applicants have not complied with 10 CFR, Part 50, Appendix E regarding emergency plans since, because of inadequate funding the staffing of the several state and local agencies involved, appropriate and coordinated emergency plans cannot be developed.
2. As a consequence of increases in freeway use in recent years and the influx of transient and resident individuals into the exclusion area and low population zone, there is no longer assurance that effective arrangements can be made to control traffic or that there is a reasonable probability protective measures could be taken on behalf of individuals in these areas; thus, applicants do not comply with 10 CFR §100.3(a) or (b).

B. FOE et al.'s Original Contention Admitted For Discovery
Purposes, By Board Order, January 27, 1978:

The Applicants have not complied with 10 CFR Part 50, Appendix E regarding emergency plans since because of the jurisdictional diversity of the several state and local agencies involved and their inadequate fundings and staffing, appropriate and coordinated emergency plans cannot be developed. An operating license should not be granted for SONGS 2 & 3 because the various emergency response plans are so complex, overlapping, and difficult to implement that in the event of a nuclear accident the safety of persons in the surrounding areas will be imperiled.

C. Applicants' Proposed Contention Submitted For Board Consideration, July 17, 1980 and April 29, 1981:

Whether adequate plans exist which provide reasonable assurance that the transient and permanent population within about ten miles of the site can be evacuated in the event of a serious radiological emergency with offsite consequences occurring at SONGS 2 and 3.

D. GUARD's Revised Contentions Submitted For Board Consideration, April 29, 1981:

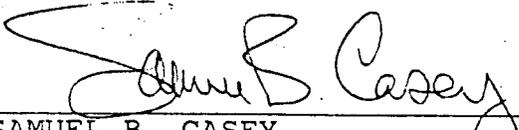
1. Applicants have not complied with 10 C.F.R. Part 50 Appendix E and 10 C.F.R. §50.47 regarding emergency plans because there is no reasonable assurance that the plans can be implemented, since they fail to meet the required standards for staffing response organizations, notification of response organizations and the public, communications among response organizations and between response organizations and the public, and dissemination of information to the public, all of which are necessary to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.
2. Applicants have not complied with 10 C.F.R. Part 50 Appendix E and 10 C.F.R. §50.47 regarding emergency plans since the plans fail to adequately address the problems of providing and maintaining adequate emergency facilities and equipment, developing a range of protective actions for the plume exposure pathway EPZ including measures to be taken in an accident complicated by an earthquake, arranging adequate medical services for injured contaminated individuals, and timely evacuation of various populations from the EPZ.

E. Applicants Proposed Revisions to GUARD's Revised Contentions Submitted by Applicants for Board Consideration, June 4, 1981:

1. Whether the state of emergency preparedness for SONGS 2 and 3 provides reasonable assurance that the offsite transient and permanent population within the plume exposure pathway Emergency Planning Zone, 10 C.F.R. §50.47(c)(2), for SONGS 2 and 3 can be evacuated or otherwise protected in the event of a radiological emergency with offsite consequences occurring at SONGS 2 and 3.

2. Whether there is reasonable assurance that the emergency response planning for SONGS 2 and 3, effecting the offsite transient and permanent population will comply with or provide adequate compensating measures for the following standards set forth in 10 C.F.R. §50.47(b) as regards:
- A. the procedures for notification by Applicants of state and local response organizations and for notification of emergency personnel by all involved organizations, 10 C.F.R. §50.47(b)(5);
 - B. the means for notification and instruction to the populace within the plume exposure pathway Emergency Planning Zone, 10 C.F.R. §50.47(b)(5);
 - C. the procedures for dissemination of information to the public within the plume exposure pathway Emergency Planning Zone on a periodic basis on how they will be notified and what their initial actions should be in the event of an emergency, 10 C.F.R. §50.47(b)(7); and
 - D. the arrangements for medical services for contaminated and injured individuals, 10 C.F.R. §50.47(b)(12).

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