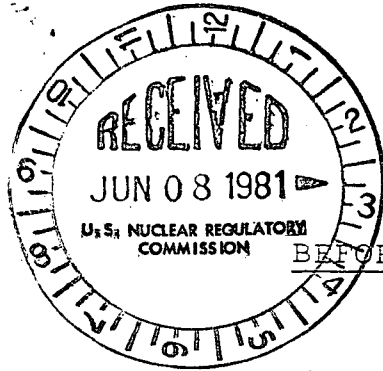
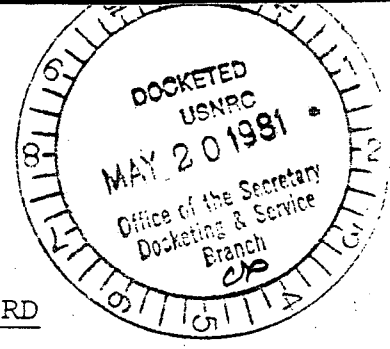


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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
SOUTHERN CALIFORNIA EDISON COMPANY, ) Docket Nos. 50-361 OL  
ET AL. ) 50-362 OL  
(San Onofre Nuclear Generating Station, )  
Units 2 and 3) )

OBJECTIONS TO PREHEARING  
CONFERENCE ORDER

Intervenors FOE et al. respectfully submit the following objections to the Prehearing Conference received by Intervenors FOE et al. on May 12, 1981.

On May 15, 1981, Richard J. Wharton, attorney for Intervenors FOE et al. confirmed with Board Chairman Kelly that these objections may be served by express mail on May 18, 1981.

I

OBJECTION TO RULING ON FINALITY  
OF PREHEARING CONFERENCE

Intervenor FOE objected to the holding of the prehearing conference as a final conference under 10 C.F.R. 2.752. Intervenors argued that no final conference can be held until after discovery is completed. Intervenors rely on §2.752(a) which states in relevant part "A prehearing conference held under this section...shall be held within sixty (60) days after discovery has been completed."

The Board in rejecting this argument relied on that part which states "or such other time as the presiding officer may specify." It was the Board's determination that this language gives the Board

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substantial discretion. The Board in its ruling also states that the sixty-day time period is an outside limit on possible delay not a minimum period for preparation after close of discovery.

Intervenors object to this ruling on the following grounds.

1. The controlling language in the section is "after discovery has been completed".

This sentence clearly establishes the controlling date after which the final prehearing conference may be held. While it is agreed that it establishes an outside limit on possible delay, it clearly establishes a date before which a final prehearing conference should not be held.

In absence of a showing of special circumstances, the clear intent of the regulation should be followed by this Board. That intent is that the prehearing conference should not be held before discovery has been completed.

2. The Board's ruling establishing the final prehearing conference prior to discovery being completed and setting the hearing date for June 15, 1981 violates the spirit and intent of 10 C.F.R. §2.752 and does not allow Intervenors to properly prepare contentions or adequately prepare this case.

It would appear that the intent of 10 C.F.R. §2.752 is to set a date before which the final prehearing conference should not be held and to establish a time limit to prevent delay.

It would appear obvious that discovery should be complete at the time of the final prehearing conference so that the purposes of a final prehearing conference may be fulfilled. At the final prehearing conference the Board is required to consider:

(1) Simplification, clarification and specification of

the issues.

- (2) The necessity or desirability fo amending the pleadings.
- (3) The obtaining of stipulations and admissions of fact and the contents and authenticity of documents to avoid unnecessary proof.
- (4) Identification of witnesses and the limitation of the number of expert witnesses...
- (5) The setting of a hearing schedule..."

A review of the incomplete discovery in this matter reveals that the answers to Interrogatories still unanswered by the N.R.C. staff are essential to the holding of a final prehearing conference.

The unanswered Interrogatories to the N.R.C. staff dated February 19, 1981 requests information regarding the following:

1. Specification of documents
2. Persons with knowledge of facts whom Intervenors could subpoena as witnesses.
3. Persons the staff expects to call as witnesses with regard to various questions.
4. Information about U.S.G.S. studies performed on San Onofre including names of U.S.G.S. scientists performing such studies. Intervenors are entitled to know this information since such scientists are potential witnesses.
5. Names of U.S.G.S. scientists who reviewed Applicant's consultants reports. Such scientists are potential witnesses.
6. Staff's position on the possibility of ground displacement and the basis for their position.
7. Information regarding that document known as the Bolsa Island Report.

8. Studies regarding plant personnel reactions to an earthquake.
9. Names and qualifications of Staff geologists, seismologists and geophysicists in any way involved in the analysis of the siting of SONGS 2 and 3. The information requested is for purposes of identifying possible witnesses.
10. Requests for admissions of fact regarding the Cristianitos Zone of Deformation.
11. The extent of studies performed on the onshore projection of the CZD and the OZD.
12. The adequacy of the studies performed on the CZD.
13. Information regarding the establishment of design criteria of .67g horizontal and .44g vertical accelerations.

It is submitted that the answers to these interrogatories are essential for Intervenors to properly address the issues that are to be considered at a final prehearing conference. Specifically the unanswered interrogatories as set forth above are essential to final consideration of:

1. Simplification and clarification of the Issues. While the Board has indicated they will consider admitting new contentions after receipt of the answers this still works to the prejudice of the Intervenors. As of this writing, Intervenors have not received the order of the Board as the Motion to Compel. It is not known when Intervenors will receive supplemental answers from the N.R.C. staff. It would appear that if a new contention is proposed and accepted that such would happen a few days before the hearing is to begin. It would certainly not be in adequate time for Intervenors

to prepare their full case on the new contention. This is an example of what happens when the final prehearing conference is held before discovery is complete. Final specification of the issues should be made at the Final Prehearing Conference and not at some unknown time after the Prehearing Conference and shortly before the hearing itself.

2. The obtaining of stipulations and admissions of facts and of the contents and authenticity of documents. Intervenors Interrogatories request certain admissions of fact and agreements as to authenticity and contents of documents (e.g. Bolsa Island Report). If discovery were complete at the time of the Prehearing Conference such admissions and agreements could be considered. Since discovery was not complete these issues couldn't be addressed and one of the purposes of a Final Prehearing Conference was not fulfilled.
3. Identification of witnesses. Intervenors requested the names of many potential witnesses from the N.R.C. Intervenors have still not received such information and do not know when they will receive it. It can be foreseen that the names of such potential witnesses will not be known until a short time before the hearing. This does not give Intervenors sufficient time to locate such witnesses, interview such witnesses and prepare written testimony of such witnesses.

It must be pointed out that such information was requested on February 19, and 20, 1981. Intervenors still don't have the information requested. This information is essential to holding a final prehearing conference since Intervenors

cannot identify their witnesses without such information. It is clearly prejudicial to Intervenors to set a hearing date before it is known who should be called as a witness.

4. The setting of a hearing schedule.

It does not appear proper or in accordance with basic principles of procedural due process for the Board to set a hearing date at a final prehearing conference where discovery is not complete and where facts necessary for clarification of the issues have been withheld and where Intervenors have been denied information essential to identify witnesses.

In summary, the Board should follow the clear intent of §2.742 that the prehearing conference should not be held before discovery is complete. They should exercise their discretion only on a showing of special circumstances. No such circumstances exist. In fact, the circumstances are that another final prehearing conference will be held regarding Emergency Planning. It would appear appropriate to hold one final prehearing conference after discovery is complete to fully discuss all issues with finality.

II

OBJECTIONS TO COMMENCING THE  
HEARINGS ON JUNE 15, 1981

At the Prehearing Conference Intervenors requested, that, due to witness availability problems beyond their control, the hearings should not commence until the last week in July.

The Board stated that their guiding principle in determining the hearing date "should be consistent with the rights of all

parties".

The Board after hearing all sides decided to set the hearings for June 15, 1981. Intervenors FOE et al. respectfully objects to the setting of this hearing date for the following reasons.

1. The setting of such date does not allow Intervenors sufficient time to adequately prepare their case in light of non-availability of academic witnesses, scheduling conflicts of Intervenors consultants, and inadequate time to complete discovery on N.R.C. staff and to integrate the results of that discovery in the presentation of their case.

As pointed out in the Prehearing Conference, some of Intervenors expert witnesses are highly respected geologists and seismologists who are employed in the academic field or are graduate students. They are not employed by Intervenors in the sense that they have a contractual obligation to appear at the request of Intervenors. They have volunteered to assist Intervenors (and the Licensing Board) out of a sense of civic duty and in the interests of furthering their science.

Dr. James Brune is a highly respected seismologist and a Professor at Scripps Institute. Dr. Brune's ability to do the research and review necessary to testify and to prepare the written testimony is subject to his academic duties and responsibilities. His academic duties do not allow him to devote the time necessary to adequately prepare his testimony until the middle of June.

In light of the fact that Dr. Brune's testimony will be extremely valuable in assisting the Board in making its decision and whereas it does not appear that the hearings are Emergency Planning can start until September and whereas Dr. Brune cannot adequately

prepare for hearings in June but can adequately prepare for hearings in July, it does appear proper to schedule the hearings in July to allow Dr. Brune to fully participate.

The Intervenors also plan to rely on the testimony of Mark Legg as an expert witness. Mr. Legg has even more severe schedule restrictions. He does not finish his Ph.D exams until June 8, 1981 and is scheduled to be out of town from June 27 until the end of July. As set forth in Mr. Legg's declaration (copy attached) the scheduling of the hearings for June 15, 1981 makes it almost impossible for him to prepare written testimony or to testify.

Most significantly, Mr. Legg has compiled cruise data studying the possible connection of the Rose Canyon Fault with the Agua Blanca Fault. Because of his exam schedule he will not have time to review and analyze this data to determine if there are any connections between the Rose Canyon Fault zone and faults in Baja California. This is a critical area of inquiry and the Board should allow time for this study to be completed and testimony presented based on the latest data available.

Intervenors also plan to call Richard Simons of Scripps Institute as an expert witness. Dr. Simons has the same scheduling problem as Dr. Brune in that his academic duties prevent him from doing the research required and preparing written testimony by June 15, 1981. He can prepare and testify if the hearings were held in July.

Most importantly, Intervenor's technical advisor and witness coordinator, Glen Barlow is required to participate in the N.R.C. hearings on Vallecitos. These hearings were set in February 1981. This places a serious hardship on Intervenors, since Intervenors have been relying on Mr. Barlow to help prepare their case and had



counted on Mr. Barlow's availability to help prepare written testimony and to assist in preparation for trial. The scheduling of the hearings for June 15, 1981 makes it impossible for Intervenors to utilize the services of the one person who has been working on this case for 3 years at the most critical phase of the case.

The Board should realize and take into account the lack of financial resources of Intervenors FOE et al. Unlike the applicant or N.R.C. staff, Intervenor's expert witnesses are volunteers. There is only so much that Intervenors can ask of them.

The Board, by denying Intervenor's request to hold the hearing in July has severely limited Intervenor's ability to prepare their case by limiting the preparation for and testimony of its expert witnesses and by making it impossible for Intervenors adviser and coordinator, Glenn Barlow, to participate in preparing for the hearings.

One would imagine that if Mr. Chandler of N.R.C. staff informed the Board that he had to appear at another N.R.C. proceeding from May 27 until June 15, 1981, that the Board would not schedule this hearing for June 15, 1981.

Mr. Barlow is as important to Intervenors presenting their case as is Mr. Chandler in presenting the N.R.C.'s case.

The Board's decision severely prejudices the ability of Intervenors to adequately prepare their case and the decision is contrary to Chairman Kelley's stated intention that the decision as to date should be "consistent with the rights of all parties."

2. Applicants will suffer no detriment as a result of the hearings being commenced in July.

In light of the prejudice to Intervenors ability to present their case, there does not appear to be any compelling reason to

commence the seismic hearings in June.

It cannot be said with any certainty when the hearings on the Emergency Planning issues will be held. The Board order states that a final prehearing conference on emergency planning will be scheduled after the FEMA review and discovery is complete. It is not known when that will be. The Applicant has stated they do not want to apply for a low power license. Therefore, they propose to meet all FEMA and new N.R.C. requirements. It can be estimated that the hearings for a full power license on emergency planning could not be held until late Spetember.

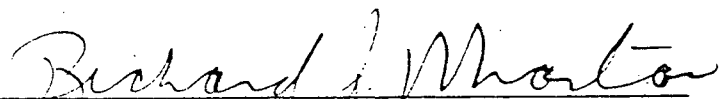
Based on the time estimates given by the parties, the seismic licensing hearings should last about 5 weeks. Given those time estimates, if the hearings on seismic were to commence in late July, they would be completed in time to go right into the Emergency Planning issues with no dely in the time required for licensing.

It does not appear that there will be any delay in the overall licensing hearings by commencing the seismic hearings in the last week of July.

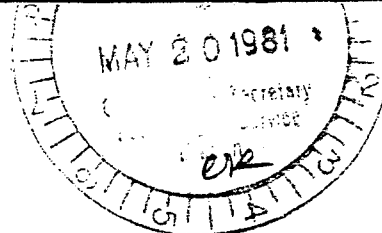
Intervenors respectfully request that the hearings be scheduled for the last week of July so that Intervenors may present their expert witnesses and have time to adequately prepare their case.

Respectfully submitted,

March 18, 1981

  
RICHARD J. WHARTON  
Attorney for Intervenors  
FOE ET AL.

CERTIFICATE OF SERVICE



I hereby certify that copies of "OBJECTIONS TO PREHEARING CONFERENCE ORDER" dated May 18, 1981, in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, or as indicated by a asterisk by Express Mail, this 18th day of May, 1981:

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