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Atomic Safety and Licensing Board Panel

SUBJECT: Comments re application for & issuance of low power license. Applicants should either await more favorable finding by FEMA on state of preparedness or meet burdens imposed by 10CFR50.47.Certificate of Svc encl.

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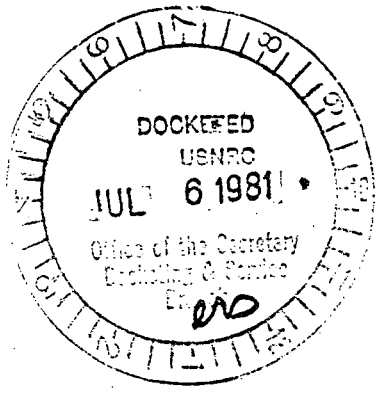

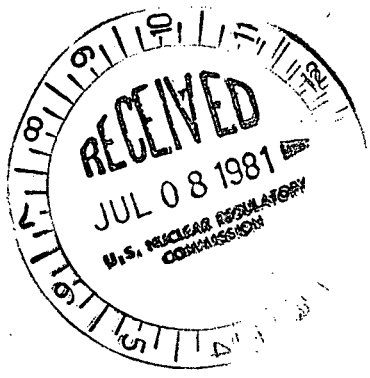

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of SOUTHERN CALIFORNIA EDISON COMPANY, ET AL. (San Onofre Nuclear Generating Station, Units 2 and 3)	INTERVENOR GUARD's COMMENTS REGARDING APPLICATION FOR AND ISSUANCE OF A LOW-POWER LICENSE FOR SAN ONOFRE UNITS 2 AND 3 Docket Nos. 50-361 OL 50-362 OL

I. Background

At the pre-hearing conference held in San Diego on June 18, 1981, the Board requested written comments from the parties concerning the legal questions surrounding the issue of an applicant's application for a low power license pursuant to 10 CFR § 50.57 c prior to a determination by the Board that the applicant has satisfied the requirements of 10 CFR § 50.47 regarding emergency preparedness. GUARD

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submits the following comments:

II. Facts

Following the FEMA review of the State and Local Emergency Plans and the Interim Findings issued by FEMA on June 5, 1981, Applicants took the position that, although the plans had been termed "minimally adequate" and their implementation "not adequate," Applicants were prepared to go forward to hearing within the previously planned timeframe to try the issue of emergency preparedness. The Board thereafter posed the question which is the subject of these comments, to explore alternative approaches to these licensing proceedings, in light of the impact which the FEMA findings might have on the scheduling of the hearings on emergency preparedness.

III. Intervenor GUARD's Position

For the reasons that follow, GUARD takes the position that a full hearing on the issue of emergency preparedness is required in this proceeding, in order to carry out the intent and purpose of the Nuclear Regulatory Commission's Regulations, especially 10 CFR § 50.47.

A. Applicant has not received a favorable finding from FEMA in regard to the off-site emergency plans, and thus is not entitled to a favorable finding from NRC staff which could serve as a rebuttable presumption of the adequacy of the off-site plans. Such a finding would have given Applicant a procedural advantage, which it does not now enjoy, in that the burden of proof would have shifted to the intervenors

to prove that the plans are inadequate. Since the burden has not shifted as it would have under a favorable FEMA review, 10 CFR § 50.47 (a) (2), the burden of proof remains with Applicants, pursuant to 10 CFR § 2.732. Thus, Applicants must prepare to litigate the issues now, or delay the hearings pending a favorable determination by FEMA.

B. A proper reading of the Commission's Regulations does not result in an interpretation which makes 10 CFR § 50.47 (b) and 10 CFR § 50.47 (c)(1) alternative approaches to licensing. Such an interpretation ignores the "lessons learned" from TMI-2. The planning standards are intended to be met in the ordinary case. In the unusual case, in which Applicant can demonstrate by a factual showing that "deficiencies in the plan are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation," (10 CFR § 50.47 (c)(1)) an operating license may issue, provided that the applicant can prove that it meets the criteria quoted above. This cannot be an easier burden than the burden imposed by 10 CFR 50.47 b. To treat it so would be to invite every applicant to make desultory attempts at complying with the planning standards, and then to switch to the less demanding "alternative," (c)(1). Surely the Commission did not intend that these different sections be treated as alternative options, but merely to give relief to an applicant who, because of some peculiarity of the site, perhaps, met all essential emergency preparedness

standards but one or two, which could be demonstrated to have no over-all effect on emergency preparedness. This is not the case in this proceeding. The deficiencies which have been found in the plans of the off-site agencies are not insubstantial. Nor has Applicant yet demonstrated that its failure to meet the planning standards will not be significant for the plant in question, etc. This can only be done in the context of a full hearing, with Applicant bearing its burden as the regulations contemplate.

C. Unless Applicant meets its burden, the regulations which mandate the Commission to find "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency," (10 CFR § 50.47 (a) (1)) will not be carried out. This is the Commission's most important duty, and one which it is charged to carry out in these proceedings. Public health and safety must be protected through full hearings of the issues concerning emergency preparedness.

D. Application for a low power license does not relieve Applicant of its burden of proof regarding emergency preparedness. Even if it were conceded, for the sake of argument, that there is somewhat less risk involved in low power testing and operation, the Applicant must still demonstrate that adequate emergency preparedness is in place, or no license will issue. Low probability of occurrence is not an excuse for failure to plan for accidents. The argument that low probability accidents need not be planned for constitutes an impermissible attack on the regulations, which

require, through the planning standards, planning for a range of accidents which may not be very likely, but which could have severe consequences. Applicant must prove that the emergency preparedness in question is adequate, or be refused a license of any kind.

E. Even if Applicant chooses to move for a low power license pursuant to 10 CFR § 50.57, it will have to meet its burden, since intervenor GUARD will oppose the motion. It is notable that this section also addresses the duty of the Commission to find that the operating license will not have an adverse effect on the public health and safety.

In summary, GUARD takes the position that Applicants in this proceeding should either await a more favorable finding by FEMA on the state of off-site emergency preparedness, or, under a proper reading of the regulations, meet the burdens imposed by the planning standards of 10 CFR § 50.47(b).

Respectfully submitted,

Dated June 30, 1981

Phyllis M. Gallagher

Phyllis M. Gallagher
Attorney for GUARD

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CERTIFICATE OF SERVICE

I hereby certify that I served the above entitled documents on the following by deposit by United States mail, first class, this 30th day of June, 1981:

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