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 Southern California Edison Co.

SUBJECT: Order establishing discovery schedule. Discovery re geology, seismology & emergency planning shall end 30 days following NRC safety evaluation & svc of emergency plan. Depositions shall be completed 40 days after such svcs.

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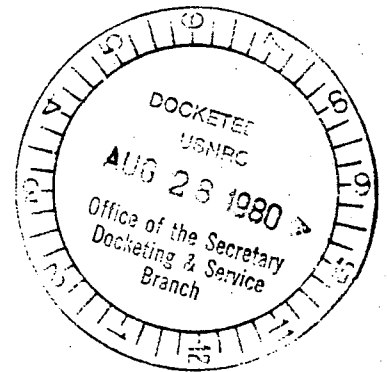
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman  
Dr. Cadet H. Hand  
Dr. Emmeth A. Luebke



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

SERVED  
AUG 28 1980

MEMORANDUM AND ORDER

(August 27, 1980)

The purpose of this order is to establish a schedule for the closing of discovery.

Seismic

Intervenor, Friends of the Earth (FOE), in its July 28 Memorandum regarding Timetable for Discovery requests a schedule which would permit an unrestricted discovery program on seismic issues until 30 days following approval and acceptance by the ACRS of the staff's final supplement to its SER on seismic matters. Id. p. 3-8. The applicant would terminate discovery on seismic issues on September 30, except for discovery based upon new information contained in the SER or other papers, as to which discovery would be commenced within 30 days after issuance.<sup>1/</sup>

<sup>1/</sup> Applicant's Brief on Appropriate Discovery Timetable, August 11, 1980.

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The staff recommends that discovery on seismic issues be permitted until 30 days after the issuance of any staff SER or SER supplement containing new information on seismology.<sup>2/</sup>

The staff estimates that its SER will issue early in October 1980. Tr. 186.

FOE's recommendation is unacceptable because the close of discovery depends upon an uncertain event and because it would permit unrestricted discovery on seismology to take place too late in the proceeding.

Considering the timetable for the issuance of the SER, the applicant's proposal, which would bring about a brief hiatus in discovery on seismology following September 30, is unnecessarily complicated. The staff's proposal could leave in doubt the status of discovery based upon previously available information. and it too depends upon the happening of uncertain events.

In addition to requiring the parties to prepare timely for hearing, there are two practical advantages in setting a reasonably early cut-off date for discovery. First, by limiting the time available for discovery, excessive discovery demands are curtailed. Second, as the hearing approaches, parties should not be distracted from their trial preparations by late and burdensome discovery demands.

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<sup>2/</sup> Staff Memorandum In Response to Intervenors' Memorandum Regarding Timetable for Discovery, August 11, 1980, p. 4-5.

We have seen no indication that FOE, or any party, has used the very long discovery opportunity in this proceeding to make unreasonable discovery demands. Nor do we have any basis to conclude that FOE is seeking an extended discovery period for the purpose of placing its adversaries at a litigative disadvantage. However, FOE indicates in its schedule recommendations that it anticipates a rather late and extensive discovery program on seismology. FOE Memorandum, pp. 6-7. Some specific cutoff date for discovery should be set which balances the need for diligence against FOE's important discovery rights. The board has already directed the parties to proceed immediately with the remaining discovery in this proceeding. Tr. 235.

With this in mind the parties may proceed with discovery demands on seismology and geology until thirty days following the issuance of the staff's SER. During this period the discovery requests, including notices of taking deposition, shall be served. Depositions shall be noticed in time to assure their completion within forty days following the service of the SER.

Thereafter discovery on seismic issues may be had on a similar thirty-day and forty-day schedule following the service of SER supplements or the availability of other information. Such late discovery shall be allowed only on information contained in the later papers which could not with reasonable diligence have been known earlier to the discovering party. Later discovery requests shall identify the newly available

information upon which they are based and demonstrate why the late discovery is justified.

The board is aware that this order does not by its express terms prohibit discovery on previously available information after the issuance of the SER in that it does not limit discovery after the SER to information contained in the SER. However we expect that the parties will make a strong effort to serve discovery demands on previously available information before the issuance of the SER. In considering motions to compel discovery on seismic issues the board will consider the moving party's diligence in pursuing discovery with this admonition in mind.

#### Emergency Planning

FOE recommends that discovery on emergency planning remain open until thirty days after applicant's emergency plans satisfy Commission criteria. FOE Memorandum, p. 1. The staff points out that FOE's proposal would require a determination of the legal sufficiency of applicant's emergency plans during discovery in advance of the hearing. Staff Memorandum, p. 5. Staff and applicant both observe that the emergency plan criteria may depend upon whether the plan must meet the standards for a low-power license or a full-term operating license.<sup>3/</sup>

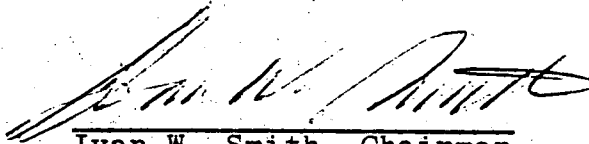
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<sup>3/</sup> Applicant's Memorandum on Discovery Schedule on Emergency Planning, August 21, 1980, citing NUREG-0694, pp. 19, 25.

Applicant's proposal is more practical. The relevance of discovery requests may depend upon whether applicant seeks to satisfy low-power requirements or full-term operating license requirements.

The board will permit discovery on emergency planning following the service of applicant's emergency plan on the same thirty-day/forty-day basis provided above on seismic issues, both with respect to discovery following the service of applicant's emergency plan and with respect to information made available after the service of the emergency plan.

THE ATOMIC SAFETY AND  
LICENSING BOARD



Ivan W. Smith, Chairman

Bethesda, Maryland

August 27, 1980