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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '81 NOV -9 PM2:09

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

APPLICANTS' RESPONSE TO INTERVENORS'
PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE ALTERNATIVE MOTION FOR AN OPERATING
LICENSE FOR FUEL LOADING AND LOW POWER TESTING

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Dated: November 4, 1981.

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I.

INTRODUCTION

On or about October 21, 1981, Intervenors GUARD and
Carstens, et al. filed their "Brief of Proposed Findings of

Fact and Conclusions of Law in Opposition to Applicant's [sic] Alternative Motion for Operating License for Fuel Loading and Low Power Testing" ("Intervenors' Findings"). Pursuant to stipulation of the parties confirmed by Order of the Atomic Safety and Licensing Board ("Board"), Applicants Southern California Edison Company, San Diego Gas & Electric Company and the Cities of Anaheim and Riverside, California ("Applicants") hereby submit their response to Intervenors Findings. (TR. 11,357-11,359.)

II.

INTERVENORS HAVE MISPERCEIVED THE
EVIDENTIARY SHOWING NECESSARY TO
SUPPORT A FUEL LOADING AND LOW
POWER OPERATING LICENSE APPLICATION

Intervenors' primary complaint is with respect to the evidentiary showing by both Applicants and NRC Staff. Applicants interpret Intervenors' position to be that because there has been no showing of precise risk levels to be associated with fuel loading and low power operation at SONGS 2, the Board lacks any basis for a finding that the proposed activities can be conducted with reasonable assurance that the public health and safety will be protected. Applicants consider such argument to reflect a misconception of the manner by which "risk" may be evaluated.

It should be noted that Intervenors cite no authority for the proposition that a site-specific risk assessment is required in connection with issuance of either

a fuel loading and low power operating license or a full power operating license. The absence of such authority is not surprising since such a risk assessment is not required for licensing purposes. Applicants understand the Commission's position to be that a nuclear power plant that is designed, constructed and operated in conformity with the NRC's regulations provides adequate assurance that the public health and safety is protected. Given the above premises, it is entirely appropriate that the evaluation of risk for fuel loading and low power operation be on a relative risk basis. There is no requirement either in the regulations or case history that a site specific probabilistic risk assessment be performed as a condition to fuel loading and low power operation.

Once the underlying fallacy of Intervenors' position is identified, the arguments which follow that premise are easily dispelled.

III.

CONTINUED OPERATION OF UNIT 1 AND CONSTRUCTION OF UNIT 3 ARE IRRELEVANT TO FUEL LOADING AND LOW POWER OPERATION OF UNIT 2

Intervenors' argue that Applicants must demonstrate that ". . . the risk is actually low . . ." for the low power operation of Unit No. 2 before such license may issue. (Intervenors' Findings, p. 5.) A review of the discussion on Intervenors' Findings, pages 2-5, leads Applicants to

conclude that Intervenors do not contest the general proposition that risks to the public from fuel loading and low power operation are lower than for full power operation. Further, Intervenors concede that the sixteen planning standards of 10 C.F.R. § 50.47(b) need not be met in order to conclude that low power operation will not constitute an unreasonable risk to the public health and safety:

"The low power operation of a plant obviously is an obvious case where deficiencies in the plans are not significant as provided in this section because of the low risk." (Intervenors' Findings, page 5.)

Intervenors proceed to challenge the sufficiency of the evidence presented on the grounds: (1) that there has been no risk assessment for fuel loading and low power operation at Unit 2; (2) that full power operation of Unit 1, adjacent to Unit 2, may result in an increased and unacceptable risk for low power testing at Unit 2; and (3) the continued construction of Unit 3 may result in an increased and unacceptable risk for low power testing at Unit 2.

Applicants have previously addressed the appropriate handling of the general question of probabilistic risk assessment and will not repeat that discussion.

With respect to the postulated question of the effect of operation of Unit 2, and the risks of low power operation at Unit 2, that issue was proposed by Intervenors to be a part of the hearings on the low power application.

The Board denied Intervenors' proposed contention. (TR. 10,099-10,102.)

Applicants testified that the key personnel who would respond to an emergency at Unit 2 are now in place and to a certain extent are the same persons who would respond to an emergency at Unit 1. Intervenors do not contest the propriety of such staffing. Intervenors complain only that a probabilistic risk assessment, considering the proposed staffing, should have been provided.

In much the same manner, Intervenors ask the Board to take judicial notice of the continuing construction at Unit 3. With respect to construction of Unit 3, Intervenors did not attempt to raise such an issue at the time fuel loading and low power issues were formulated. Intervenors attempt to raise a new issue with respect to the ongoing construction of Unit 3 at this stage of the proceeding, in the absence of any factual showing must be disregarded. If Intervenors desire to attempt to raise new issues, they must follow the appropriate procedures.

IV.

APPLICANTS HAVE EVALUATED THE POTENTIAL RISKS OF LOW POWER OPERATION AT SONGS 2

Intervenors infer that Applicants' evaluation of the risks and consequences of accidents during fuel load and low power operation at Unit 2 were on a "hypothetical" basis and unrelated to actual risks at Unit 2. (Intervenors'

Findings, pp. 8-9.) Intervenors' argument is without merit.

Applicants' case commenced with a specific description of the actual startup tests and procedures proposed for Unit 2. (Rosenblum, written testimony, TR. 11,136, et seq.; Applicants' Exhibit 160.) Such proposed tests and procedures formed part of the basis for Mr. Buttemer's testimony (Applicants' Exhibit 161, pp. 1-3.) Additionally, Mr. Buttemer's analysis was based on the specific design of SONGS 2. (Applicants' Exhibit 161, pp. 4-7.) Intervenors' objection that Mr. Buttemer's analysis is not site specific is factually wrong.

It is also clear, contrary to Intervenors' argument, that Applicants considered potential increases in the risk of accident during fuel loading and low power operation. Mr. Buttemer specifically considered whether there are factors peculiar to low power testing which would increase the potential accident consequences relative to full power operation and whether there are factors that would increase the likelihood of accident initiation. (Buttemer, written testimony, pp. 6-8.) The NRC Staff's evaluation of risks of low power testing was also directed specifically to SONGS 2 and was not a generic review. (Lauben and O'Reilly, written testimony, pp. 2-4.)

Intervenors' arguments that Applicants' and NRC Staff's evaluations were not site specific are incorrect and must be rejected.

V.

NRC REGULATIONS ALLOW FOR ISSUANCE
OF A FUEL LOADING AND LOW POWER
OPERATING LICENSE AT SONGS 2

Intervenors complain that Applicants have made no attempt to argue the status of off-site emergency preparedness in the context of the low power application. Such statement is incorrect. Applicants' witness Pilmer discussed the level of off-site preparedness necessary for low power testing. (Pilmer, written testimony, pp. 5-7.) An even more detailed discussion of the need for off-site preparedness was included in the testimony of NRC witnesses Sears and Grimes. (Sears, written testimony, pp. 4-8; Grimes, TR. 11,342-11,343.)

Applicants do not consider it necessary to have met the sixteen requirements of 10 C.F.R. § 50.47(b). If that were necessary, there would be no distinction between full power and low power requirements and a motion for fuel loading and low power testing would be of no value. Applicants full legal position is set forth in its "Memorandum of Points and Authorities in Support of Alternative Motion for an Operating License for Fuel Loading and Low Power Testing" lodged with the Board August 31, 1981. The validity of Applicants' position is reflected in the subsequent issuance of the Commission's "Memorandum and Order (CLI-81-22)" of September 21, 1981 granting fuel

loading and low power testing authority for Diablo Canyon Nuclear Power Plant Unit 1.

In a separate concurring opinion in the Diablo Canyon case, Commissioner Gilinsky appears to contend: (1) that in the absence of meeting the sixteen requirements of 10 C.F.R. § 50.47(b), there must be a showing that the deficiencies are not significant or that interim compensating actions can or have been taken, and (2) that FEMA has concurred on the adequacy of off-site emergency preparedness. Without arguing the merits of Commissioner Gilinsky's position, Applicants would note that in this case FEMA has opined on the adequacy of off-site emergency preparedness at SONGS 2. (Staff Exhibit 13.) With respect to meeting the sixteen requirements of 10 C.F.R. § 50.47(b), Applicants have not attempted to show compliance with such requirements for purposes of obtaining a fuel loading and low power operating license. Applicants submit that the current level of on-site emergency preparedness, plus the record of off-site capabilities reflected in the overall record on emergency planning in support of the full power license application, support a finding that adequate actions have been taken such that under the flexibility section, 10 C.F.R. § 50.47(c), there is reasonable assurance that the public health and safety will be protected during fuel loading and low power testing at SONGS 2.

VI.

CONCLUSION

It is respectfully submitted that Intervenors have not proposed any finding of fact or conclusion of law that precludes issuance of the requested fuel loading and low power operating license. An operating license for fuel loading and low power testing should issue as requested by Applicants.

Dated: November 4, 1981.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action; my business address is 600 Montgomery Street, 11th Floor, San Francisco, California 94111.

On November 4, 1981, I served the attached APPLICANTS' RESPONSE TO INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RE ALTERNATIVE MOTION FOR AN OPERATING LICENSE FOR FUEL LOADING AND LOW POWER TESTING in said cause, by placing a true copy thereof enclosed in the United States mail at San Francisco, California, addressed as follows:

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