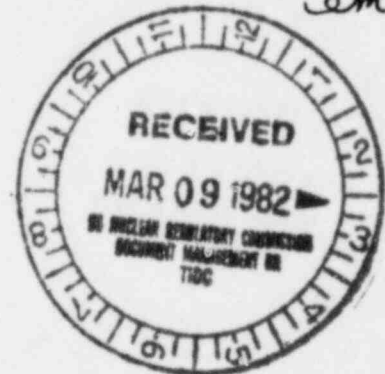


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10 UNITED STATES OF AMERICA
11 NUCLEAR REGULATORY COMMISSION
12 BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL

13 BOARD

14 In the Matter of)	Docket Nos. 50-361 OL
)	50-362 OL
15 SOUTHERN CALIFORNIA)	
16 EDISON COMPANY, et al.,)	INTERVENORS' BRIEF IN SUPPORT
)	OF EXCEPTIONS TO PARTIAL
17 (San Onofre Nuclear Generating)	INITIAL DECISION WITH RESPECT
18 Station, Units 2 and 3))	TO THE LOW POWER MOTION
)	
)	
)	

19 INTRODUCTION

20 The Intervenors respectfully submit that the Atomic Safety
21 and Licensing Board ("ASLB") erred when it held in its Partial
22 Initial Decision dated January 11, 1982 that there exists suffi-
23 cient emergency preparedness surrounding the San Onofre Nuclear
24 Generating Station (SONGS) to protect public health and safety
25 during a low power operation at Unit 2. Ex. 8. Neither the Ap-
26 plicants nor the NRC staff presented any evidence as to actual

27 1
28 References to Intervenors' Exceptions and the Partial Initial De-
cision will be cited "Ex. 1." and "PID at _____" respectively.

1 risk of the low power operation of Unit 2. The only evidence pre-
2 sented in this proceeding has been what the relative risk of
3 operating a pressurized water reactor ("PWR") like San Onofre Unit
4 2 would be at low power as compared to its operation at full power.
5 The evidence shows that absolutely no consideration was made of
6 any factors pertaining to the actual operation of Unit 2 at the
7 site. Intervenor submit that evidence must be presented which
8 will demonstrate that the actual risk of operation of Unit 2
9 during low power testing will be low enough to justify the delayed
10 implementation of the emergency planning standards set forth in
11 10 CFR Section 50.47(b)(1) through (16). This has not been done
12 and therefore the alternative license for fuel loading and low
13 power testing should be denied.

14 ARGUMENT

15 I

16 IN ORDER TO JUSTIFY REDUCED EMERGENCY PLANNING
17 THE RECORD MUST DEMONSTRATE THAT THE ACTUAL
18 OPERATION OF THE SAN ONOFRE UNIT 2 AT LOW POWER
19 GIVEN SITE SPECIFIC FACTORS SUCH AS A CONTINUED
20 OPERATION OF UNIT 1 AND CONTINUED CONSTRUCTION
21 AT UNIT 3 WILL ACTUALLY BE OF LOW RISK TO THE
22 SURROUNDING COMMUNITY.

23 The issue posed in the low power portion of this proceeding
24 is a simple one. It is whether or not there exists sufficient
25 emergency preparedness to protect the public health and safety
26 during fuel loading and low power testing at SONGS Unit 2. What
27 standard is to be applied to determine what sort of emergency
28 preparedness is necessary? Three standards have been proposed.

1 The first standard was proposed by the Applicants. Their
2 standard is emergency preparedness under low power operation of
3 any PWR would require an operational on-site emergency plan plus
4 the ability to communicate with the off-site surrounding juris-
5 dictions. Pilmer at 7.

6 The Federal Emergency Management Agency (FEMA) testifying
7 as part of the Staff's case proposed a second standard. The
8 standard of FEMA is simply that the state in which the nuclear
9 power plant exists has an emergency plan which has received con-
10 currence under the voluntary program where the Nuclear Regulatory
11 Commission (NRC) reviewed the state plans prior to the Three Mile
12 Island (TMI) accident and prior to the upgraded emergency planning
13 requirements. The on-site plan must also meet the pre-TMI require-
14 ments. Tr. 11,310 (Nauman).³

15 The third standard was that proposed by the Staff in the
16 testimony of Mr. Lauben and Dr. O'Reilly. That standard is essen-
17 tially that no off-site plans are necessary at all so long as the
18 on-site capability to respond to emergency meets the pre-TMI plan-
19 ning standards. Lauben at 9. These standards are similar in that
20 none requires any emergency preplanning by off-site jurisdictions
21 during low power operation. The ASLB adopted this view. Ex. 7.

22
23 ² The issue reads:

24 "Whether there is reasonable assurance of adequate protection
25 to the health and safety of the public during fuel loading and low
26 power testing, considering the risk to the public presented by
those activities and the level of emergency preparedness during
those activities." PID at 217.

27
28 ³ Written testimony will be cited "Sears at _____," "Nauman at
_____, " etc. Oral testimony will be cited to the tran-
script with the notation of the person making the statement.

1 None of these standards ("low power standards") proposed by
2 the Applicants and FEMA and the Staff and accepted by the ASLB
3 for determining what sort of emergency planning is necessary in
4 the low power situation require that the applicant demonstrate
5 compliance with 10 CFR Section 50.47(b)(1) through (16), the
6 upgraded emergency planning regulations which arose out of the
7 TMI incident (the "New Rules"). The assumption which underlies
8 the low power standards is that the New Rules of emergency pre-
9 paredness are not required under low power operation because/low^{during}
10 power operation there is a substantial reduction in the risk of
11 accidents and the consequences of any accidents that might occur.

12 It is argued that emergency plans will have to meet the New
13 Rules before full power operation of a plant is allowed but it is
14 not necessary that upgraded emergency plans be in place at the
15 time of the low power operation of the plant. Thus, the plans
16 must meet the New Rules but the New Rules are timed to take effect
17 before full power operation and not before. The decreased risk
18 of low power operation is said to justify the delay in the timing
19 of the application of the New Rules.

20 No separate standard for the emergency planning required at
21 low power operation is set forth in the regulations. Therefore,
22 the low power standards proposed by Applicant, FEMA and the Staff
23 and accepted by the ASLB must arise out of the flexible section
24 10 CFR Section 50.47(c)(1). See In the Matter of Pacific Gas &
25 Electric (Diablo Canyon Nuclear Power Plant Units 1 and 2) CLI-81-
26 22, September 21, 1981 (Additional Views of Commissioner Ahearne
27 at 2). Section 50.47(c)(1) provides that an applicant need not
28 meet the planning standards set forth in 10 CFR Section 50.47(b)

1 (1) through (16) if it can demonstrate "to the satisfaction of the
2 Commission that deficiencies in the plans are not significant for
3 the plant in question, that adequate interim compensating actions
4 have been or will be taken promptly, or that there are other com-
5 pelling reasons to permit plant operation." The low power opera-
6 tion of a plant presents an obvious case where deficiencies in the
7 plans might not be "significant" as provided in this section be-
8 cause the risks of accidents may be reduced. It must be shown,
9 however, that the risk is actually low for the plant in question.

10 It is long settled NRC law that there is an evidentiary bur-
11 den on the Applicants to prove their case for any such exemption
12 by "preponderance of the evidence". See e.g. Consolidated Edison
13 Company of New York (Indian Point Nuclear Generating Station, Unit
14 3), CCH Nuc Reg Rptr. Page 30,027 (NRC 1975); Duke Power Company,
15 (Catawba Nuclear Stations, Units 1 and 2), ALAB-355, CCH Nuc Reg
16 Rptr Page 30,116 (1976); Consumers Power Company (Midland Plant,
17 Units 1 and 2), ALAB-315, 3 NRC 101 (1976). The magnitude of
18 this burden is influenced by the gravity of the matter in contro-
19 versy. Virginia Electric and Power Company, (North Anna Power
20 Station, Units 1 - 4), ALAB-256, 1 NRC 101 (1975). In this pro-
21 ceeding where the matter in controversy is the readiness of ef-
22 fective emergency response action to protect public health and
23 safety the applicants have the burden of making the most conclu-
24 sive showing for an exemption from the regulation. There is a
25 burden on the applicant to demonstrate by preponderance of evidence
26 that an exemption is warranted and there is a mandate for the
27 ASLB to deny the Applicants' requested license unless the letter
28 and spirit of the law are met. See, Vermont Yankee Nuclear Power

1 Corporation (Vermont Yankee Nuclear Power Station) ALAB-138 (1973)
2 ("reactors may not be licensed unless they comply with all appli-
3 cable standards").

4 The basis for the low power standards accepted by the ASLB
5 in this case is a generic study of the risk of low power operation
6 of any given plant versus the risk at full power. Accordingly,
7 the NRC staff and the Applicants in this proceeding have put on
8 expert testimony to show why in a generic sense operation of a
9 PWR at low power will have less risk than operating a PWR at full
10 power. Intervenor submit that this relative risk assessment,
11 while important, is not sufficient to guarantee the public health
12 and safety is protected around a given plant. Ex. 5. In addition
13 to this relative risk assessment an analysis must be made of the
14 site in question to decide actual risks. A determination must be
15 made whether or not there are other factors which might increase
16 the risk such that the New Rules should come into effect. The
17 Intervenor believe that this requires a review of not only the
18 plant in question, but the site in question to see whether the
19 delayed timing of new standards makes sense from a regulatory point
20 of view in any given case.

21 SONGS Unit 2 is surrounded by two other plants, Unit 1
22 which is a licensed reactor which has been operating since the
23 early 70's, and Unit 3 which is as yet unlicensed and which is
24 still under construction. Staff Exhibit 1 at 2-1. The Inter-
25 venors assert that any study of the risk of operation of Unit 2
26 at low power must address whether or not those risks would be
27 increased by (1) the continued construction of Unit 3 and (2) the
28 ongoing operation of Unit 1.

1 It is clear that there are certain interrelationships between
2 Unit 1 and Unit 2 which could multiply the risk of operation of
3 Unit 2 at low power. This Board can take judicial notice of the
4 fact that Unit 1 is on the same site as Unit 3 and that in fact
5 the same fire water system and switching system are used for both
6 plants. In addition the testimony of Mr. David F. Pilmer demon-
7 strates that Unit 1 and Unit 2 have essentially the same emergency
8 plan. Indeed the exhibit attached to Mr. Pilmer's testimony which
9 is found after Transcript Page 11,243 is an NRC review of the Unit
10 1 emergency plan which is taken as evidence that Unit 2 emergency
11 plan on-site meets NRC criteria. In addition the emergency per-
12 sonnel and operating personnel for the two Units are the same.
13 Tr. 11,256 (Pilmer). The overlapping geography and personnel
14 between Unit 1 and Unit 2 provide a narrowed margin of safety in
15 that the possibilities for dealing with any complications that were
16 to arise at Unit 2 during low power would be limited because of the
17 ongoing operation of Unit 1. This might well entail shutting down
18 Unit 1 and other matters. Tr. 11,256 (Pilmer).

19 The Board can take judicial notice of the fact that con-
20 struction of Unit 3 is ongoing. Indeed there are numerous inter-
21 connected systems including control room between Unit 2 and Unit
22 3. Ex. 4. It is therefore clear that the issue of whether or not
23 the ongoing construction or unfinished character of Unit 3 could
24 increase the risk of an accident at Unit 2 during the low power
25 operation thereof must be addressed in order to provide reasonable
26 assurance of public safety.

27 ////////

28 ////////

II

THERE IS NO EVIDENCE IN THIS PROCEEDING TO
DEMONSTRATE THAT THE OPERATION OF UNIT 2
AT LOW POWER IS ACTUALLY LOW RISK. SITE
SPECIFIC FACTORS WHICH MIGHT MULTIPLY THAT
RISK WERE NOT CONSIDERED. ACCORDINGLY THE
APPEAL BOARD SHOULD REVERSE THE FINDING BY THE
ASLB THAT THE PUBLIC HEALTH AND SAFETY WILL BE
PROTECTED DURING THE OPERATION AT LOW POWER OF
UNIT 2.

An analysis of the record in this case indicates that
neither the Applicants, FEMA nor the NRC staff addressed any site
specific factors which may have increased either the risk of an
accident during the low power operation of Unit 2 or the possible
consequences of any such accident. In some cases the ASLB did not
allow questions into these issues. In retrospect these were errors
which must be rectified in order to issue a license as requested
by the Applicants in this alternative proceeding. Intervenor
were concerned that because of the ongoing operation of Unit 1 at
the site during the low power operation of Unit 2 there might be
significant enough risk so that the NRC should require that the
New Rules be complied with. It did not seem to make sense to
apply a standard of decreased emergency planning in a situation
where a nuclear plant already existed at the site. If the new
plant to be operated at low power is the only plant at the site,
then perhaps the delayed implementation of the emergency planning
New Rules would make sense. This is not the case at San Onofre.
Unit 1 is and has been an operating nuclear plant for over ten

1 years. Intervenor submit that the Applicants should be required
2 to comply with emergency planning regulations currently in effect
3 before they are allowed to put a new plant on line at the site.
4 It is for this reason that the Intervenor submitted their proposed
5 contention in the low power hearing:

6 "Whether Applicants have sufficiently demonstrated that a
7 radiological emergency at SONGS 2 and 3 could not cause a radio-
8 logical emergency at SONGS 1". PID at 218. This contention was
9 rejected by the Board essentially on the grounds that it lacks
10 specificity. But the issue was clear, simply does the low power
11 operation of the Unit 2 increase the risk of operation of Unit 1
12 and conversely does the operation of Unit 1 increase the risk
13 during low power operation of Unit 2. All involved in the hearing
14 understood the questions being posed by the Intervenor. Feigned
15 ignorance of the Intervenor's intent allowed the ASLB to dismiss
16 the contention as vague. This was error. Ex. 1. This error was
17 continued throughout the hearing process as the ASLB excluded
18 questions which seemed to relate to the Intervenor's concern with
19 respect to the ongoing construction of Unit 3 and the ongoing
20 operation of Unit 1.

21 Intervenor first addressed the issue of whether or not the
22 ongoing construction at Unit 3 would increase the risk of an acci-
23 dent at Unit 2 during low power. This question was put by Mr.
24 McClung to the Applicants' witness, Mr. Buttemer, at Transcript
25 page 11,213. This line of questions was objected to by the Appli-
26 cants and the objection was sustained on the basis that it was
27 beyond the scope of the issue. The issue was whether there was
28 reasonable assurance that there would be adequate protection to the

1 health and safety of the public during fuel loading and low
2 power testing. The question of whether or not the ongoing con-
3 struction at Unit 3 would increase the risk was properly within
4 this issue. It was foreclosed because it was confused with the
5 Intervenor's contention which was rejected earlier. Intervenor
6 feel that this question must be addressed in order to determine
7 the actual risk of operation of Unit 2 at low power. Ex. 2.

8 Mr. Grimes testifying for the Staff indicated (Tr. 11,343)
9 that the NRC position was essentially a generic comparison of the
10 risk of low power operation of a plant versus the risk at full
11 power. Intervenor attempted to question whether Mr. Grimes thought
12 it would be necessary to consider the additional risks which
13 might be posed by the operation of an operating reactor at the
14 same site as the low power testing of Unit 2. Tr. 11,345. That
15 line of questioning was objected to by the staff and the Appli-
16 cants and the objection was sustained on the basis that it was
17 beyond the scope of the issue. Tr. 11,346. Ex. 3.

18 With respect to the consideration of other site specific
19 factors, including the ongoing operation of Unit 1, none of the
20 witnesses made any study of either the possible increase in pro-
21 bability of accident or the possible increase of consequences
22 which may be caused by the ongoing operation of Unit 1 during the
23 low power testing of Unit 2.

24 Mr. Buttemer, Applicants' expert witness on the risk of low
25 power operation, indicated that he made no site specific analysis
26 of the probability of accidents at San Onofre plant (Tr. 11,208)
27 and he made no site specific analysis of the consequences of any
28 particular sequence which might be postulated for the plant

1 (Tr. 11,215 (Buttemer)).

2 The Applicants' witness, Mr. Pilmer, who was to testify about
3 the need for emergency planning during low power also did not
4 make any site specific analysis of the probability of accidents at
5 the plant. Tr. 11,249 (Pilmer). Although Mr. Pilmer indicates
6 in his testimony that he did think about the possible site specific
7 consequences of accident sequences he did not take into considera-
8 tion the possible fission releases at Unit 1. Tr. 11,264, 11,273
9 (Pilmer).

10 The staff witnesses also did not take into account these
11 considerations. Mr. Nauman from FEMA testifying as part of the
12 staff's case indicated that the FEMA review consisted simply of
13 determining whether or not there was a State of California plan
14 which had received NRC concurrence. He indicated that this was
15 essentially a file checking procedure. Tr. 11,311 (Nauman);
16 see also Tr. 11,356 (Grimes).

17 The NRC's expert witnesses in risk analysis, Mr. Lauben and
18 Dr. O'Reilly, indicated that they did not consider any site specific
19 aspects with respect to their assessment of the risk, (both pro-
20 bability wise and consequence wise) of the low power operation of
21 Unit 2. Tr. 11,326. They testified additionally that they did
22 not consider the operation of Unit 1. Id. The NRC team indicated
23 they just performed a relative risk analysis and that it was not
24 necessary to do any site specific analysis because they were not
25 looking for actual risks. Tr. 1,327 (Lauben).

26 It is clear from a record in this proceeding that the various
27 expert witnesses for the Applicants, the NRC staff and FEMA did
28 not consider any site specific aspects which would either increase

1 the risk of an accident at San Onofre Unit 2 during low power or
2 which might increase the consequences of an accident at San Onofre
3 Unit 2 during low power operation. Intervenors' questions in this
4 regard were wrongfully excluded by the Board. Intervenors would
5 therefore submit that it is impossible for this Board to make a
6 finding that there is reasonable assurance that the public health
7 and safety will be adequately protected at San Onofre and sur-
8 rounding San Onofre site. Ex. 8.

9 III

10 THE EMERGENCY PREPAREDNESS SURROUNDING THE
11 SAN ONOFRE NUCLEAR GENERATING STATIONS DOES
12 NOT MEET THE STANDARDS SET FORTH IN 10 CFR
13 50.47(a). THERE IS NOT REASONABLE ASSURANCE
14 THAT THE PUBLIC HEALTH AND SAFETY WILL BE PRO-
15 TECTED IN THE EVENT OF A RADIOLOGICAL RELEASE
16 WITH OFF-SITE CONSEQUENCES.

17 The ASLB did not consider the status of the off-site emer-
18 gency preparedness pursuant to the low power motion because it
19 was deemed unnecessary. Ex. 7. Intervenors will therefore only
20 briefly point out that at the present time the status of emergency
21 preparedness off-site does not meet the standards of the New Rules.
22 As determined by the FEMA findings (NRC Staff Exhibit 11), the
23 status of off-site emergency preparedness is not capable of being
24 implemented. The Applicants have proposed an action plan to
25 remedy these deficiencies but that action plan has not been com-
26 pleted in significant respects. Intervenors are particularly con-
27 cerned about the capability of off-site agencies to monitor radio-
28 active release and to assess the consequences thereof and to take

1 coordinated and effective protective action response. This capa-
2 bility has not yet been demonstrated and it is crucial to effective
3 emergency planning. See Updated FEMA evaluation added to the
4 record by motion of the Staff, December 2, 1981, IV A.F.,G,H. H
5 Indeed the Applicants admit this on the record by proposing to meet
6 these standards through the exemption provided in 10 CFR 50.47(c)
7 (1). Tr. 11,039. They have attempted to show in their brief and
8 findings of fact in the full power case that these regulatory
9 standards are satisfied by the on-site capacity (Applicants'
10 Findings, 213-214). Intervenors submit that this has not been
11 done and thus there are significant deficiencies in the plans
12 which impact upon the public health and safety such that the ASLB
13 erred when it made a finding of adequacy at this time. Ex. 8.

14 CONCLUSION

15 In conclusion the Intervenors respectfully submit that the
16 rationale which underlies postponing of the timing of the com-
17 pliance with the upgraded emergency planning standards contained
18 in the regulations 10 CFR Section 50.47 et seq. from the low
19 power stage to the full power licensing stage does not apply in
20 the San Onofre case because there is an existing and ongoing
21 reactor at the site. Accordingly, it is clear that the upgraded
22 emergency standards should be complied with before a new reactor
23 is licensed at this particular site. The Applicants and the ASLB
24 have not even attempted to demonstrate such compliance. The ASLB

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27 //

1 order granting the low power license should therefore be reversed.

2
3 Respectfully submitted,

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7 By 

8 Charles E. McClung, Jr.
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL

BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the INTERVENORS BRIEF IN SUPPORT OF EXCEPTIONS TO PARTIAL INITIAL DECISION WITH RESPECT TO THE LOW POWER MOTION dated February 26, 1982 in the above captioned proceedings were served on the following parties by deposit in the United States Mail on March 1, 1982.

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