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7
8 UNITED STATES OF AMERICA
9 NUCLEAR REGULATORY COMMISSION

10 BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL
11 BOARD

12 In the Matter of

13 SOUTHERN CALIFORNIA EDISON COMPANY,
14 ET AL.

15 (San Onofre Nuclear Generating Station,
16 Units 2 and 3)

17 } Docket Nos. 50-361 OL
18 } 50-362 OL

19 APPLICATION FOR STAY OF FULL POWER LICENSE

20 -oOo-

21 TO THE HONORABLE ATOMIC SAFETY AND LICENSING APPEAL BOARD (ASLAB):

22 The Atomic Safety and Licensing Board (ASLB) issued its
23 Initial Decision (ID) authorizing full power operation of the San
24 Onofre Nuclear Generating Stations (SONGS) Units 2 and 3 subject
25 to certain conditions on May 14, 1982. The ID dealt with the
26 contested emergency planning issues and found generally that
27 there was reasonable assurance that the health and safety of the
28 public surrounding SONGS would be reasonably protected in the
event of a radiological emergency. The Intervenors are appealing
this decision and hereby request a stay of the full power license

1 pending a decision on appeal.

2
3 INTRODUCTION

4 The ASLB found numerous deficiencies in the emergency plan-
5 ning upon which it conditioned the license. These conditions were
6 deemed to be applicable after six months of plant operation. In-
7 tervenors submit that this use of "post license" conditions is an
8 error. The Applicants should correct these deficiencies before
9 the full power license is made effective.

10 The Intervenors take issue with the ID on two additional
11 grounds. First, the Intervenors submit that the standard of
12 adequacy applied was improper. The Board essentially said that if
13 planning exists, it is adequate. There was no balancing of the
14 amount of planning necessary versus the potential health conse-
15 quences. There was no discussion of potential dose savings. It
16 was impossible for the Board to make standard and objective deter-
17 mination of what was appropriate or reasonable. Second, there
18 were serious procedural errors committed when the Applicants and
19 staff were allowed to rebut the findings of the Federal Emergency
20 Management Agency (FEMA) with evidence that was not available to
21 the Intervenors, not subject to discovery, and with an expedited hear-
22 ings schedule, all of which denied the Intervenors due process
23 and a fair hearing with respect to these issues.

24 Additionally, the ID incorporated by reference in its Order
25 at page 219 its Partial Initial Decision (PID) of January 11,
26 1982 in which it found in favor of Applicants on all the seismic
27 contentions. An Application to Stay the low power license
28 based on the PID was denied April 26, 1982.

1 in the off site jurisdictions as a backup to the Applicants' pro-
2 jection models in order to provide a reasonable basis for protec-
3 tive action response.

4 The bases for a stay are met:

5 1. Whether the moving parties made a strong showing that
6 they are likely to prevail on the merits.

7 Intervenors submit that they have prevailed on the merits
8 pursuant to the ASLB's conditions and that they will be likely
9 to overturn the delayed implementation of those conditions.

10 2. Whether the party will be irreparably injured unless a
11 stay is granted.

12 The demonstrated inadequacy of the emergency plans shows
13 that if a potential accident were to occur during the initial
14 testing period at full power, there would be undue risk to the
15 public.

16 3. Whether granting a stay would harm other parties.

17 The Applicants will submit that the granting of a stay will
18 harm them by millions of dollars a month because of the tradition-
19 al construction finance costs and alternative fuel costs, etc.
20 This expense is part of the expense of the nuclear business and
21 does not result from the stay. The costs are fixed and the allo-
22 cation of them is not an issue in this proceeding. The Applicants
23 may well be able to satisfy these conditions in a sufficiently
24 short time, without substantial slippage in their schedule.

25 4. Where the public interest lies.

26 The public interest clearly lies in having adequate assur-
27 ance and public confidence in the emergency planning surrounding
28 the San Onofre Nuclear Generating Stations before those plants

1 go into operation.

2
3 II

4 THE ASLB'S FINDING THAT THE EMERGENCY PRE-
5 PAREDNESS IS ADEQUATE IS WITHOUT BASIS BE-
6 CAUSE THE BOARD FAILED TO CONSIDER A PROPER
7 STANDARD OF ADEQUACY, VIZ. THE ACTUAL
8 POTENTIAL DOSE SAVINGS TO INDIVIDUALS IN
9 AN EMERGENCY.

10 While the regulations and NUREG guidance do not contemplate
11 the study of a particular accident scenario to determine whether
12 emergency planning is adequate, they do propose that a range of
13 accidents should be considered. In this case no accident sequences
14 were considered, no potential radiation was considered, no dis-
15 cussion was allowed of actual dose savings. The Intervenor's
16 Contention No. 1 asks in pertinent part whether there was reason-
17 able assurance that adequate protective measures could be taken
18 in the event of a radiological emergency. Put another way the
19 question asks whether or not dose savings could be affected in
20 the emergency planning zone (EPZ) given the emergency planning in
21 place, the geography, topography and demography of the area. This
22 is a balancing test: the added increment of safety, i.e. health
23 benefits, versus the cost of said increments, i. e. money. The
24 ASLB did not allow Intervenor's to submit testimony of the potential
25 radiation health effects and doses to people within the plume
26 should there be a range of accidents as predicted by staff docu-
27 ments, such as the Environmental Impact Statement, and therefore
28 left off one side of the balance.

The ASLB essentially adopts a standard that what there is,
is adequate. If there are plans which address the various plan-

1 ning standards and guidelines mentioned in NUREG 0654, it is
2 assumed that this will take care of the problem.

3 The witness for the NRC, Mr. Grimes, testified for example
4 that no standard evacuation time is necessary or reasonable. Upon
5 further questioning he indicated that so long as the plant com-
6 plied with the site criteria regarding population that the emer-
7 gency plan timing would be adequate. Intervenors submit that this
8 is ludicrous reasoning because any emergency planning would then
9 become reasonable if there were planning that the people could get
10 out no matter how long, no matter what the consequences.

11 It is not difficult to imagine methods to test adequacy.*
12 For instance, public information and knowledge of the emergency
13 planning can be tested with public opinion polls. Just as a com-
14 puter model can be devised for predicting the time of evacuation,
15 similar models can be used, including already usable models, the
16 CRAC Code, etc., to determine the actual effects of an evacuation
17 at a given time on the health of people in the area. The techno-
18 logy exists, the experts are there to determine whether or not
19 these methods are going to be adequate.

20 Intervenors respectfully submit that the numerous deficiencies
21 exist in the plans and that the decision of the ASLB based on a
22 showing that plans exist without demonstration that they can be
23 implemented to save lives is defective.

24
25 * Please refer to the attached declaration of Jack Stowe,
26 Pendleton Coast State Parks Area Director which demonstrates
27 objective evidence of inadequacy: Mr. Stowe was one of the
28 Applicants' witnesses in this proceeding.

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III

THE ASLB ERRED IN RELYING ON IMPROVEMENTS
PROFERRED AT TRIAL TO REBUT THE PRESUMPTION
OF EARLIER FEMA FINDINGS, WITHOUT ALLOWING
INTERVENORS ACCESS TO THAT INFORMATION OR TO
FEMA RESULTING IN A DENIAL OF DUE PROCESS
TO INTERVENORS.

The regulations provide that FEMA will issue a finding as to the off site emergency preparedness to aid the NRC in its licensing proceedings of nuclear power plants. FEMA did so in this case on May 18, 1981. These findings serve to create a presumption on the issues they address. This finding came after many months of study and a comprehensive drill of the emergency plans. It was FEMA's determination that there were serious deficiencies in the emergency planning and implementation. (Intervenors' Exhibit 15). Intervenors' contentions were substantially supported by the FEMA findings. The Applicants quickly pushed for closing of discovery and hearings on these issues despite the negative findings of FEMA. The Applicants then based a substantial portion of their case on rebutting the findings of FEMA by showing that everyone was working to correct each of the findings.

The staff presented a FEMA witness as part of its case to rebut the FEMA findings. He testified that after consultation between the Applicants and FEMA an "action plan" to remedy the FEMA deficiencies was developed by the Applicants. Intervenors were not notified of any meetings between the Applicants and the upper level staff of FEMA to discuss the FEMA findings.

The ASLB quite appropriately places substantial reliance on the FEMA findings, especially where they support the Applicants' or NRC staff position, and therefore the fact that the earlier

1 deficiencies were being corrected had a substantial weight in
2 the Board's decision that the plans were adequate in the final
3 analysis. Intervenors were not allowed to discover or determine
4 whether this was the case because the hearings were held before
5 there was a resolution and because they were precluded from parti-
6 cipation in discussions with these parties in violation of the
7 rule against ex parte communication with decision makers.

8 The hearings were conducted on a rush basis (6 days a week)
9 and each day new evidence was being created, by the Applicants.

10 The rush basis of the hearings, the rebuttal of the FEMA
11 findings by FEMA itself, the cut off of discovery, the discussions
12 between the Applicants and the FEMA decision makers served to
13 deny the Intervenors due process of law and a fair hearing of
14 their contentions.

15 IV

16 THE APPEALS BOARD SHOULD STAY FULL POWER
17 OPERATION OF THE PLANT PENDING THEIR
18 DECISION ON THE SEISMIC APPEAL.

19 The ID makes the earlier PID a final decision with respect
20 to full power operation. Accordingly this ID should be stayed on
21 the grounds that the ASLB erred in its determination in its PID
22 that the seismic design basis of the SONGS was adequate. Inter-
23 venors incorporate herein by reference their Application for Stay
24 of Low Power License and Appeal from Denial of the ASLAB dated
25 May 10, 1982.

26 Intervenors resubmit their motion for stay based on the
27 fact that this is now a full power license and they would request
28 a stay of the full power license. Intervenors submit that this

1 would be less harm to the Applicants because further testing is
2 required which can be done at low power without substantial cost
3 to the Applicants, during which time the ASLAB can make its full
4 and complete decision on the seismic issues. As it stated in its
5 ruling dated April 26, 1982, the ASLAB had almost completed its
6 review in that regard. Therefore, little harm will be done to
7 the Applicants.

8 There is a potential greater harm to the public in that the
9 plant will be operating at full power and if there were to be an
10 accident, the increased power levels would provide more danger to
11 the public.

12 Additionally, the cost of seismic upgrading should there be
13 an redefinition of the seismic basis would increase after the
14 plant has been operated at full power because of the increased
15 radioactivity of the systems and radioactive inventory.

16 The public interest lies in having the resolution of the
17 design basis question before the plant is operated at full power
18 to illeviate public distrust for the nuclear power industry.

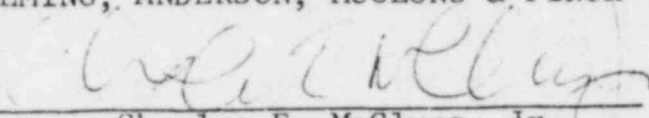
19
20 CONCLUSION

21 The Intervenors respectfully submit that the full power opera-
22 tion of the SONGS should be stayed until a resolution of the appeal
23 of this emergency planning initial decision and the partial initial
24 decision on seismic issues or alternatively that full power should
25 be stayed until there is adequate demonstration that the conditions

26 ///////////////
27 ///////////////
28 ///////////////

1 set forth in the initial decision have been complied with.

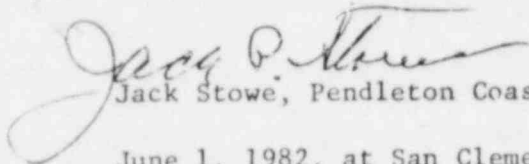
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Respectfully submitted,
FLEMING, ANDERSON, McCLUNG & FINCH
By 
Charles E. McClung, Jr.

DECLARATION OF JACK STOWE

I, Jack Stowe, state that the attached documents detail the basis of my concern that the May 1981, April 15, 1982 emergency drills and our timeline estimates of evacuation timing show an excess of an hour and forty minutes would be required to complete the entire alert and notify procedure to instruct our State Parks populations in the nearest five milesto tae San Onofre Generating Station, San Onofre and San Clemente State Beaches. If we were able to cut the time in half in an actual emergency we would still be almost four times the 15 minute criteria of NUREG 0654.

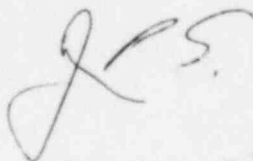
The risk of populations involved is , on a usual summer day, between 5,000 and 7000 persons.



Jack Stowe, Pendleton Coast State Parks Area Director

June 1, 1982, at San Clemente, California

The above signed awaiting
Confirmation of Definition
of the 15 minute Training by
Calif. Office of Emergency Service
FEMA and MRC.



Memorandum

Date : May 28, 1982

To : Herbert L. Heinze
Regional Director
Southern Region

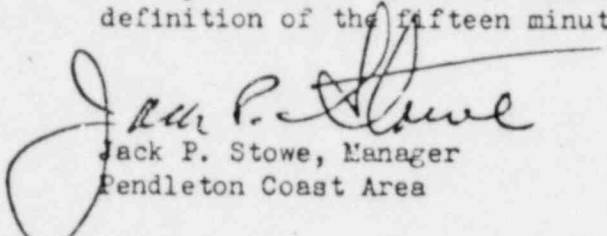
From : Department of Parks and Recreation
Pendleton Coast Area

Subject : San Onofre Evacuation Criteria

Attached are the San Onofre Citizen's Advisory Committee's recommendations regarding public notifications, should an accident occur at the nuclear generating stations near San Onofre State Beach.

As you and I have previously discussed, there is concern by the committee that all state beach visitors could not be notified within fifteen minutes should a site or general nuclear plant emergency be declared. I share this concern if the fifteen minute time is "sacred" as timings indicate it will take longer than fifteen minutes to notify all visitors. How much longer is uncertain, but would depend upon staff availability at the time of an incident, should it occur.

James Watkins, our representative from the State Office of Emergency Services (OES), will be at Pendleton during June to go over our evacuation plan. During Mr. Watkins' visit I will discuss this matter and obtain a ruling, and interpretation. At this time there seems to be some grey area as to total definition of the fifteen minute notification time.


Jack P. Stowe, Manager
Pendleton Coast Area

JPS:ls
Attachments

State of California:
Director of Parks and Recreation, Peter Dangermond
Governor Edmund Brown Jr.
Office of Emergency Services
c/o So. Region Parks Director Herber Heinze

May 27, 1982

Dear Governing Officials:

The enclosed advisory committee summary of analysis of the April 15, 1981 State Parks nuclear accident drill in Pendleton Coast area, details our lack of capacity to meet the NUREG 0654 Federal Government 15 minute alert and notify requirement.

Federal Emergency Management Agency representative Kenneth Nauman, in a meeting with Pendleton Coast Parks emergency response officials, discussed the Federal requirement for "reasonable assurance of protection" of the public. He interpreted the "reasonable" to pertain to economic feasibility. Nauman advanced the contention that the provision of helicopter to evacuate park populations would not be "reasonable", because it would be too costly.

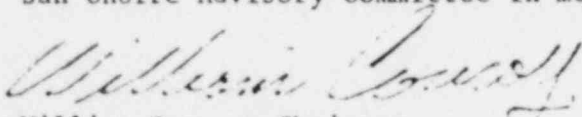
Nauman also interpreted "reasonable" to restrict Federal Government expectations of emergency response to the level of capability of the response agency. He said he did not consider it "reasonable" to require the parks staff to achieve the alert and notify in 15 minutes, if it is unable to do so, and he assured us that, "If you do your best, that will be acceptable."

The emergency and evacuation planning committee has proposed, and the San Onofre State Park Advisory Committee has adopted, the interpretation of "reasonable assurance" as follows: "Every park visitor has the right to assurance that if he complies with the instructions which are given to him by the park authorities, he will be protected from injury or death from a nuclear accident at San Onofre.

The Emergency Planning Committee further, now advances the conviction that the United States Government has the responsibility stated in its regulations, to guarantee each citizen that reasonable assurance, and that either the equipment and staff necessary to provide it must be judged economically feasible, and must be provided, or the nuclear power reactors must not be licensed to operate.

The committee requests our State governing officials to ask the Nuclear Regulatory Commission to determine whether the 15 minute alert and notification is feasible in our parks, and if it is, to detail and to require (San Onofre site-specific) additions to staff, equipment and procedural changes to provide the 15 minute alert and notification capability which we do not now have.

I attest that the above statement and request were approved unanimously by the San Onofre Advisory Committee in meeting May 27, 1982.



William Conroy, Chairman
State of California San Onofre State Park Citizen Advisory Committee

STATE PARK NUCLEAR DISASTER DRILL ANALYSIS
PENDLETON COAST PARKS

San Onofre State Park Citizen Advisory Committee's emergency and evacuation planning analysis and monitoring of the April 15, 1982 nuclear plant disaster drill has concluded that although our park staff worked quickly and efficiently, we still cannot comply with the 15 minute alert and notify time requirement for the 10 mile emergency planning zone, not even for the first 3+ miles.

Inter-agency communications and parks personnel mobilization times were reduced throughout the 1982 drill (in comparison with May 13, 1981 drill). Mobilization times (time required for park personnel to assume position) was 25 minutes. This includes Emergency Coordinator Doerksen's determination of action to be taken, notification of personnel, and their time to prepare, i.e.: obtain and don protective garb and equipment, check instruments such as public address, monitoring equipment and vehicle gas gauge, report to their assigned positions ready to communicate the evacuation notification message issued by the coordinator. The preparation procedure was not included in this drill, and would add approximately 3-4 minutes to the 25 minute mobilization time logged.

The alert and notify time for the 3+ miles nearest the reactors was reduced from 3hour, 50 minutes in the May 1981 drill, to one hour 48 minutes on April 15. This time should not be interpreted as the entire time needed to alert and notify in the 3+ miles, because the entire park was not covered. Because of size and terrain of the beach bluff canyons and myriad paths of Parcel 2, these were not included in the drill, nor was Parcel 1 (extending six miles inland).

Our emergency plan calls for helicopter assignment to the confirmation task, to assure all areas have been evacuated. The Emergency Planning Committee now concludes that these two areas can only be alerted and notified by helicopter stationed nearby, with trained pilot ready. The committee recommends that planning and standard operating procedures for helicopter be developed, drilled and tested to determine how many helicopters are needed to meet time requirements. Helicopters for actual evacuation of park visitors in some areas should also be considered.

Mitigation measures such as fixed PA system, which could provide different messages to each area of each park, are in our emergency plan, but have not been accepted by Edison as economically feasible...are necessary.

Since NUREG 0654 mandates alert and notify of 100% of the population in the nearest five miles, and 80% in the 10 miles, within 15 minutes, as the reasonable protection of the population...protection from a hazardous plume which might be released as early as 30 minutes from the onset of accident at San Onofre...The State Office of Emergency Services, the Federal Emergency Management Agency, the Nuclear Regulatory Commission must adequately address this serious response capability deficiency.

TO: Appropriate governing officials c/o Herbert Heinze, Southern Region Director
Department of Parks and Recreation, State of California
FROM: State of California San Onofre State Park Citizen Advisory Committee

February 9, 1982

The State of California's San Onofre State Park Citizen Advisory Committee is aware of the statement by Federal Emergency Management Agency official Kenneth Nauman Jr. Transcript page 10520 and 21 in the recent licensing hearings on San Onofre Nuclear Generating Station Unit II and III, in which Nauman in talking about the City of San Juan Capistrano and the State Parks in the Emergency Planning Zone, referred to those two response agencies as the "two jurisdictions having the least capability to respond" and said of them that "they failed in many cases to meet the majority of the 0654 standards", and proposed "we have suggested inclusion of those plans, if you will, into other documents to avoid the very issues of meeting the criteria of 0654..."

This suggestion that the inability of our State Parks officials to comply with the requirements of NUREG 0654 to protect the public in the event of a serious accident at San Onofre be officially condoned by hiding it in other plans is viewed by us as deserving the condemnation of all persons of moral integrity.

If the suggestion were to transfer the responsibilities to another response agency more capable of performing them, we would not protest this issue.

The fact is that there is not another response agency which could more quickly or more adequately meet the requirements, because the cause of our inadequacy is not lack of competent staff, but rather conditions of geography, terrain, proximity to the nuclear plant, and of transient populations.

The fact is that THE CAUSES OF THE INADEQUACY ARE NOT ERASABLE NOR IGNORABLE:

1. steep bluffs and long trails which must be hiked in and out of the
2. myriad of beaches spread over 13 miles of oceanfront both sides of the reactors,
3. thousands of acres of inland area which has not been planned for in our evacuation considerations
4. immediate proximity to the San Onofre Plant site, which cuts the response time available to us to the ½ hour to several hours which NUREG 0654 page 11 specifies as "the range of times between the onset of accident conditions and the start of a major release"
5. open-beach policy which means lack of controlled access to many beaches where there are not check-in stations or even lifeguards, preventing pre-accident instruction for populations who are from all sectors of the state and nation, with little understanding of nuclear plant hazards
6. physical constraints on our attempts to notify these beachgoers and others in our beach area
7. dependency of the planning on radio contact following sirens, when the fact is that people on bike trails, hiking trails and out in the surf seldom have radios, and the messages projected to be broadcast talk of sheltering, when there is no shelter for our populations
8. inadequate evacuation routes due to the area of ocean on one side and the mountainous Cleveland National Forest on the other, so that a one-way-out condition exists, in which our escapees might have to flee under a plume for 17-20 miles in either direction before encountering intersecting alternate accessways out of the northwesterly or southeasterly wind sectors.

We call upon our governing officials to repudiate Mr. Nauman's suggestion as unconscionable evasion of responsibility to provide reasonable assurance of protection for the public.

APPROVED BY UNANIMOUS VOTE OF THE Citizen Advisory Committee in meeting November 18, 1981

SAMPLE "ALERT AND NOTIFY" TIME LINE

FOR SAN ONOFRE NUCLEAR ACCIDENT

BEST TIME, BEST WEATHER CONDITIONS

In approving the enclosed letter re: Federal Emergency Management Agency official's willingness to ignore the inability of our Parks Staff to meet the NUREG 0654 requirement that 100% of our public be alerted and notified within 15 minutes, the Advisory Committee for San Onofre State Park suggested that a sample time-line be included, to illustrate our dilemma.

The line was developed by San Onofre State Park Emergency and Evacuation Planning Committee and by Parks Staff Emergency Coordinator Hal Doerksen, as a sample BEST TIME BEST WEATHER alert and notify estimate as required by the NUREG 0654 Evacuation Planning Criteria. This segment of the sample is our most difficult beach, the 3½+ miles south of the reactor site, the plus...about a mile of beach south of the park, on Marine Corps beach to which our parks public walk after parking in our southernmost day-use parking area.

TIME	ACTION	BEST-TIME CONDITIONS
2:45 p.m.	Accident at San Onofre, followed by discovery and assessment (radiological and meteorological) and determination of message to be communicated.	Plant operator orders notification without consultation with officials of Edison. (Immed. action)
3:00	Alert-notify message to Parks Coordinator from Edison, received.	Parks Emergency Coordinator is at headquarters to receive message.
3:01	Decision made and selection of notification instruction message for communication to public.	First call is Site-Emergency with potential for acceleration to General Emergency. No consultation required for decision-making.
3:04	Mobilization of on grounds personnel and their instruction completed, i.e.: issue of prepared message to be communicated to beachgoers.	Assumes six persons on duty at headquarters who can immediately be assigned to south beach...Basilone Control staffed by Marines.
3:06::10-20sec.	Protective equipment issued, checked, donned, iodide tablets taken.	Assumes all equipment operational.
3:07::10-20	Jeeps mounted, Pa and gas checked.	Assumes all vehicles and PAs oper.
3:13	First team of two arrives at south beach entrance station (to notify camp)	(No campground notification times have been gathered)
3:13::10	Second team at first trail.	Assumes 50 m/hr av. speed, with slowing intersections & curves, no blockage of travel. Duty officer remains at entrance control station.
3:16::10	Third team at Trail 4	
3:13::55 Team 2	Jeeps stopped, trail chain unlock,	
3:16::45 Team 3	jeep thru, re-lock, mount jeep	
3:15::45 Team 2	Arrive at beach, first group of	No stopping or slowing to answer questions or give aid.
3:18::35 Team 3	persons, after driving trail and issuing message thrice enroute.	
3:47::30 Team 2	beach notification completed, 2 & 6/10 mi beach, plus ½ mi. return from plant boundary to 1st trail, message delivered maximum 30 times.	Assumes scant beach attendance allowing message to be read from moving vehicle, lull wind condition, lapping wave action (best condition, allowing 150 yd. PA audibility)
3:47::20 Team 3	beach notification complete, 2 mi. 24 messages max. plus 1 mi. return to Trail 6.	First message from stationary position on beach. Lifeguards on duty at beaches perform roll-thru of beaches north of reactor, on way out
3:52	All teams drive up trails to parking area and exit south gate.	No problem situations, no need to stop to answer questions. Assumes people on Trails 2, 3 and 5 & feeder trails notified by evacuating people from beaches.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DECLASTED
USNRC

'82 JUN -4 AIO:36

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of the Intervenors' Application for Stay of Initial Decision dated May 14, 1982 dated June 1, 1982 and Intervenors' Notice of Appeal, in the above captioned proceeding have been served on the following interested parties by deposit in the United States first class mail on this 1st day of June, 1982.

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James L. Kelley, Esq., Chairman
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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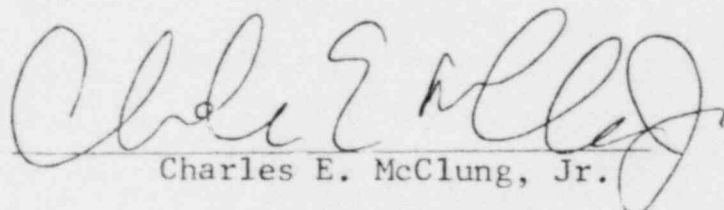
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Secretary
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