

September 2, 1982



SECY-82-364

**ADJUDICATORY ISSUE**  
(Affirmation)

For: The Commissioners  
From: Leonard Bickwit, Jr., General Counsel  
Subject: ALAB-680, DENIAL OF STAY MOTION ON SAN ONOFRE INITIAL DECISION  
Purpose: To recommend that

50-361,362

EX-5

Discussion:

On July 16, 1982, the Appeal Board denied intervenors Guard, et al's motion for a stay of the Licensing Board's Initial Decision resolving contested emergency planning issues and authorizing full-power operation for San Onofre 2 and 3. (ALAB-680, Attachment 1) The intervenors had argued, among other things, that a number of deficiencies in the applicants' emergency plan identified by the Licensing Board should be corrected before the plant's operating license

Contact:  
Marian E. Moe, GC  
X-41493

95  
Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA- 92-436

9403080095 930525  
PDR FOIA  
GILINSK92-436 PDR

5/28

goes into effect. 1/ The Appeal Board found that the intervenors had not made a strong showing that they were likely to prevail on the merits, nor had they shown that they would suffer irreparable injury as a result of full-power operation, and rejected the stay motion.

---

1/ The intervenors' primary concern was that the Licensing Board authorized full power operation for San Onofre without making a finding that the emergency plans met the Commission's regulations. In particular, the intervenors alleged that under the current plan, in the event of an accident individuals living in the "extended" EPZ would receive inadequate notice, medical arrangements for the offsite injured would not be sufficient, and the local jurisdictions' radiation monitoring capability would be inadequate.

Intervenors also argued that the Licensing Board should have weighed the potential dose savings to be gained by certain measures in deciding whether additional emergency planning was needed. In addition, the intervenors claimed that meetings between the NRC staff and FEMA staff were ex parte communications. In their view, these meetings and the lack of an opportunity for discovery on FEMA findings offered late in the proceeding precluded them a fair hearing. See Notice of Appeal (Attachment 2).

EX. 5

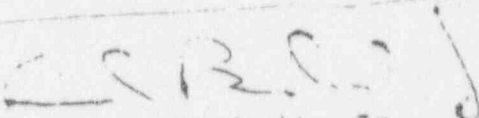
7

---

4/ See August 6, 1982 Memorandum and Order.  
(Attachment 3)

7

EX. 5

  
 Leonard Bickwit, Jr.  
 General Counsel

Attachments:

1. ALAB-680
2. Notice of Appeal
3. ASLBP Memo & Order dtd 8/6/82
4. Draft Order

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, September 20, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, September 13, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of September 20, 1982. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:  
 Commissioners  
 OGC  
 OPE  
 OIA  
 SECY

ATTACHMENT 1

Release

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD <sup>102</sup> JUL 16 10:33

Administrative Judges:

- Stephen F. Eilperin, Chairman
- Dr. W. Reed Johnson
- Dr. Reginald L. Gotchy

OFFICE OF REGULATORY  
DOCKETING SERVICE  
BRANCH

SERVED JUL 16 1982

\_\_\_\_\_)  
 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

Mr. Charles E. McClung, Jr., Laguna Hills, California,  
for the intervenors, GUARD and Carstens, et al.

Mr. Edward B. Rogin, San Francisco, California (with  
whom Messrs. David R. Pigott, Samuel B. Casey, John  
A. Mendez, Charles R. Kocher, and James A. Beoletto  
were on the brief) for the applicants Southern  
California Edison Company, et al.

Mr. Lawrence J. Chandler for the Nuclear Regulatory  
Commission staff.

DECISION

July 16, 1982

(ALAB-680)

Intervenors Guard and Carstens, et al., have asked us to stay the Licensing Board's May 14, 1982 initial decision which authorizes the issuance of a full power operating license for the San Onofre Nuclear Generating Station, Units 2 and 3. LBP-82-39, 15 NRC \_\_\_\_\_. Their principal argument is that the deficiencies the Licensing Board found in San

Onofre's emergency plan should preclude full power operation. More particularly, we are told that (1) the applicants' failure to provide a siren warning for some 30,000 people who live in the Dana Point and San Juan Capistrano areas, (2) the failure to make medical arrangements for the general public that might suffer radiation injury in a serious nuclear accident, and (3) the inadequate radiation monitoring capability of the localities near San Onofre should have resulted in the denial of a license until the deficiencies are corrected. A number of other arguments, mostly procedural in nature, are also urged in support of the stay motion. For the reasons given in this opinion, we deny the stay motion.

#### I. Legal Principles

In determining whether a stay should be granted we apply 10 CFR 2.788(e), which calls upon us to consider:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.

The first of those determinations -- the merits of the emergency planning issues -- has a decided influence on the issues of irreparable injury and the public interest: for in deciding whether to allow operation of a plant during our

appellate review we look to whether "operation of the plant over the period required to complete the additional proceedings [is] consistent with the requirement that there be reasonable assurance that the public health and safety not be endangered." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 46 (1978). That standard, we have said, does not call upon intervenors to show that a serious nuclear accident is likely during the pendency of the appeal. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC \_\_, \_\_ (slip opinion at 18). To paraphrase our earlier San Onofre opinion, it would be enough if apparent inadequacies in emergency planning "were sufficient to raise the question whether plant operation would present an undue risk to the public in the event of [a serious nuclear accident]." Id. at \_\_ (footnote omitted) (slip opinion at 18-19).

In considering the merits, however, we do not take the text of the emergency planning requirements in isolation. Recognizing that those requirements are new, and that they necessitate extensive coordination among licensees and local and state governments (and thus are not wholly within the power of its licensees to satisfy), <sup>1/</sup> the Commission

---

<sup>1/</sup> See generally 45 Fed. Reg. 55403-04, 55406-07 (August 19, 1980).



has provided that, even if there are deficiencies,

the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans 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). <sup>2/</sup> Thus, when determining the merits of an emergency planning issue, the Commission's regulations call upon us not only to look to the requirements that have been imposed, but also to exercise judgment as to the significance of whatever deficiencies there may be and the adequacy of interim measures to rectify them.

## II. The Merits

We now turn to a consideration of the merits of intervenors' arguments for a stay of the full power license authorization for San Onofre.

### A. Siren Coverage

#### 1. Background

Basic to emergency planning is the requirement for a notification system so that protective action can be taken by the public. The Commission's regulations require that,

---

<sup>2/</sup> Another part of the emergency planning regulations, 10 CFR 50.54(s)(2)(ii), provides as well a four-month grace period for already-operating plants to correct emergency planning deficiencies. If deficiencies remain after that time the Commission then determines what enforcement action to take, guided by the same considerations we have already quoted.

within 15 minutes of declaring an emergency, a licensee must have the means to notify government officials of the seriousness and nature of the accident. In turn, should those officials decide that protective measures such as sheltering or evacuation are required, in about another 15 minutes they must be able to alert the general public who reside in the plume emergency planning zone (EPZ). The plume EPZ is an area within approximately 10 miles of the plant, the precise bounds of which are to be determined by local conditions and needs. 10 CFR Part 50, Appendix E, Section IV.D.3; 10 CFR 50.47(b)(5), (c)(2). <sup>3/</sup>

The means of prompt notification proposed by the applicants was a network of 41 sirens to cover the plume EPZ. The precise configuration for that zone was a contested issue in the proceeding. The Licensing Board concluded that the applicants' 10-mile zone was too constricted because it did not afford siren coverage to the 30,000 people who reside across San Juan Creek in the

---

<sup>3/</sup> After specifying that the plume EPZ shall consist of an area "about 10 miles (16 km) in radius," 10 CFR 50.47(c)(2) further provides that:

The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.

community of Dana Point and the northern half of the town of San Juan Capistrano. In all other respects these areas were fully included in the emergency plan. Tr. 7371-72, 8910-11; 15 NRC at \_\_\_ (slip opinion at 18-19). Accordingly, the Board extended the EPZ two to three miles to encompass those areas. In its view, this extension (1) falls well within the dictates of 10 CFR 50.47(c)(2) that the plume EPZ be "about 10 miles," (2) is supported by the requirement in that regulation to pay heed to local characteristics such as jurisdictional boundaries, (3) will eliminate the confusion that could be caused by applicants' bifurcated EPZ, and (4) has the benefit of giving full coverage to a populated area at little additional cost. Id. at \_\_\_ (slip opinion at 18-19).

The Licensing Board ruled further, however, that the current absence of siren coverage for the populated areas across San Juan Creek was not grounds for denying the applicants a license for full power operation. The Board's conclusion was based on its finding that alternative means (such as loudspeakers from helicopters and police cars) exist to provide a prompt alert to this public in the event of an emergency. Id. at \_\_\_, \_\_\_ (slip opinion at 55, 172). Hence, in the words of 50.47(c)(1), there was reasonable assurance that "adequate interim compensating actions have been or will be taken." The Board imposed a license condition, which it clarified in a subsequent order

(LBP-82-40, 15 NRC \_\_\_ (1982), that requires the applicants to remedy the siren warning deficiency within six months of the commencement of full power operation.

Intervenors do not quarrel with the Board's reliance on the alternatives to sirens in deciding whether the warning system can function adequately until full siren coverage is in place. They do contest, however, the Board's factual conclusion that helicopter and police car loudspeakers will be adequate for the job. Intervenors argue that the record is devoid of factual support for the conclusion that helicopters and emergency vehicles can be diverted to notify 30,000 people within an adequate period of time. App. Tr. 22-23.

## 2. Analysis

On factual issues that arise in the context of a stay motion we are very hesitant to substitute our judgment for that of the Licensing Board. The Board has, after all, presided over the entire proceeding. Our familiarity with the facts in the limited time we have had for review is perforce much less. The normal deference that an appellate body owes to the trier of the facts when reviewing a decision on the merits is thus even more compelling at this preliminary stage of review. See Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-385, 5 NRC 621, 629 (1977).

Here, while the record on the issue is sparse, there is enough to support the Licensing Board's conclusion as to the adequacy of interim alerting measures. The 30,000 people who live across San Juan Creek in the Dana Point and San Juan Capistrano areas are clustered in a densely populated area of a relatively few square miles. See Applicants' Exhibit 132, fig. 10 and Appendix A-2. To alert these people, Orange County could call upon some of its 2,000 emergency vehicles, practically all of which have either loudspeakers or sirens. Tr. 8763, 8916. The marine base at nearby Camp Pendleton has helicopters equipped with loudspeakers that could also be pressed into emergency service. Tr. 9342-43, 9373. California Highway patrol cars equipped with loudspeakers may also be of assistance. Tr. 8268-72.

While the record does not indicate how many emergency vehicles or helicopters can be deployed to cover the Dana Point and San Juan Capistrano areas on short notice, it was the opinion of Mr. Egbert S. Turner, Manager of the Emergency Management Division, Orange County General Services Agency, that with existing siren coverage and county resources he could get notice out to all people within his jurisdiction (including those in Dana Point and San Juan Capistrano) within 30 minutes. Tr. 9003-05,

9021-22. <sup>4/</sup> Moreover, siren coverage would not be wholly absent because two of the 41 sirens already in place are outside the 10-mile radius near those populated areas, and would provide an adequate level of alerting sound to at least some limited part of that region. See Applicants' Exhibit 135; Tr. 6931, 7372.

Mr. Turner's 30-minute alert estimate suffices to support the Board's conclusion that adequate compensating measures to address the siren deficiency will be undertaken. The emergency planning regulations provide as a "design objective" that local officials must be able to alert essentially all of the public initially "within about 15 minutes" from the time the officials themselves are notified of the emergency by the licensee. 10 CFR Part 50, Appendix E, Section IV.D.3. The guidance that implements the Commission's regulations reiterates the objective of an

---

<sup>4/</sup> This is the only time estimate we have been able to discover in the record on this point. See also Applicants' Exhibit 53 at V-6, which indicates that Orange County believed it could notify all people in the plume EP2 within one hour, even before the applicants' siren warning system was installed. We note also that the Orange County emergency procedures still include the idea that mobile units would be used in areas to be evacuated even when there is siren coverage. Tr. 9021-22.

alert signal on an area-wide basis throughout the 10-mile EPZ within 15 minutes. <sup>5/</sup> It goes on to provide that the objective of the initial notification shall be to assure coverage of essentially 100 percent of the population within five miles of the site. As to those who are more distant, or those who did not receive the initial notification, the guidance provides that "[s]pecial arrangements will be made to assure 100% coverage within 45 minutes of the population who may not have received the initial notification within the entire plume exposure EPZ." <sup>6/</sup>

As we read that implementing guidance, it calls for those nearest the nuclear power plant to be assured of the most prompt warning, while those farther away -- in the remaining portion of the plume EPZ -- are to be notified in all circumstances within 45 minutes. The allowance of additional time to notify people farther from the nuclear power plant site is in recognition of not only the

---

<sup>5/</sup> NUREG-0654, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, Rev. 1 (November 1980), Appendix 3 at 3-3. This document was jointly prepared by the NRC staff and the staff of the Federal Emergency Management Agency.

<sup>6/</sup> Ibid.

potentially more difficult notification problem but, more importantly, the lesser risk to those farther away. Thus, the report that provided much of the technical basis for the Commission's choice of a 10-mile plume EPZ <sup>7/</sup> explained that

although protective actions may be required for individuals located in areas further than 10 miles from the reactor for an "atmospheric" release, the actual measures used and how rapidly or efficiently they are implemented, will not strongly influence the number of projected early health effects. <sup>8/</sup>

So too, in discussing the time factors associated with releases, the guidance document implementing the Commission's regulations stated:

The range of times between the onset of accident conditions and the start of a major release is of

---

<sup>7/</sup> See 44 Fed. Reg. 61123 (October 23, 1979); 45 Fed. Reg. 55406 (August 19, 1980).

<sup>8/</sup> NUREG-0396, Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants (December 1978), at I-52. The report explained further (id. at I-50):

In the intervals beyond 10 miles, there is little apparent distinction between the effectiveness of evacuation and sheltering strategies in terms of projected early fatalities or injuries. The mean number of early fatalities is 0 in both of these intervals, and projected early injuries, although not 0, are greatly reduced for each of the protective strategies investigated.



the order of one-half hour to several hours. The subsequent time period over which radioactive material may be expected to be released is of the order of one-half hour (short-term release) to a few days (continuous release).

NUREG-0654, note 5 supra, at 13. The time for a radioactive release to travel to a point 10 miles from the plant is typically another one to four hours. Id. at 17. <sup>9/</sup>

In short, time is not of the essence for people living more than 10 miles from the site of a potential accident at San Onofre. The technical analysis underlying the Commission's regulations recognizes this, and the implementing guidance of NUREG-0654, which requires less immediate notification to those persons farther away from the accident (45 minutes for essentially 100 percent notification), is to the same effect. See generally NUREG-0396, note 8 supra, at I-44 through I-52. While it is prudent to provide as much alerting time as possible, we conclude that the 30 minutes Mr. Turner thought it would

---

<sup>9/</sup> If the travel time were shorter, the expected doses would be correspondingly lower. As observed in NUREG-0396, note 8 supra, at 18:

[U]nder poor dispersion conditions associated with low windspeeds, two hours or more might be required for the plume to travel a distance of five miles. Higher windspeeds would result in shorter travel times but would provide more dispersion, making high exposures at long distances much less likely.

take to notify the people in his area provides an adequate interim compensating measure to an area-wide siren alert. Intervenors have not made a strong showing that they are likely to prevail on the merits of their argument to the contrary.

B. Medical Assistance for the Radiation-Injured in the General Public

1. Background

The Licensing Board ruled that 10 CFR 50.47 requires the emergency response plans of the applicant and the surrounding area jurisdictions to provide for medical arrangements for members of the general public who might suffer radiation injury in a serious nuclear accident. 15 NRC at \_\_\_ (slip opinion at 43-44). <sup>10/</sup> The Board also

---

<sup>10/</sup> The applicants and staff disputed the Board's interpretation. When the meaning of the regulation was debated before the Licensing Board the applicants took the position that the requirement in 10 CFR 50.47(b)(12) to make medical arrangements for "contaminated injured individuals" referred to contaminated persons who had been traumatically injured. Tr. 9637-40.

The staff's position has been less than clear. Before the Licensing Board the staff argued that the term contaminated injured was "broad enough to include an injury with a contaminated wound or just an excessive (FOOTNOTE CONTINUED ON NEXT PAGE)

concluded that the absence of such medical arrangements for a period of six months should not preclude full power operation. The Board based this latter conclusion on several factors: (1) the remote possibility of a nuclear accident in the six months the Board allowed for the

---

10/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)  
 radiation dose without a wound." Tr. 9650. Nevertheless, despite this position that "injury" could mean either traumatic injury or radiation injury, the staff went on to argue that the regulations require no specific medical arrangements for the general public who might be injured in the most serious and improbable of nuclear accidents. Tr. 9651-52. On appeal, the staff termed its disagreement with the Licensing Board a disagreement over whether "planning" or "pre-planning" was required, the Board calling for the former and the staff arguing only for the latter. App. Tr. 69-70. This distinction, we are told, is the difference between requiring specific medical arrangements and merely identifying general medical resources. App. Tr. 69-72.

While neither the applicants nor the staff has appealed the Board's ruling, we nevertheless are free to disagree with the Board's interpretation even if no party presses an appeal on the issue. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247 (1978).

applicants and local officials to plan for medical arrangements; (2) the capability of the applicants' emergency medical plan for its own employees to care for some persons injured offsite as well; (3) the extant ability to provide medical services for the general public on an ad hoc basis; and (4) the good faith efforts of the applicants and local officials to meet a "sometimes less than completely clear" emergency planning requirement. Id. at \_\_\_ (slip opinion at 44-46, 216).

Intervenors challenge the Board's decision to allow full power operation in the face of this emergency planning deficiency. Their challenge is said to be more than a factual dispute about whether alternative measures will compensate for the deficiency in medical arrangements. Here, intervenors argue, the Licensing Board has provided the applicants a six-month grace period without making any finding that interim compensating actions will be taken. Moreover, in their view, the Board afforded the grace period only because of the unlikelihood of an accident, a factor intervenors contend the emergency planning regulations do not allow the Board to consider. App. Tr. 9-11. See 10 CFR 50.47(c)(1).

## 2. Analysis

Despite the Licensing Board's detailed examination of the history of the medical services regulation, we entertain

serious doubts that the Board's reading is accurate. The text of 50.47(b)(12) is as follows (emphasis added):

(b) The onsite and offsite emergency response plans for nuclear power reactors must meet the following standards: \* \* \* (12) Arrangements are made for medical services for contaminated injured individuals.

On its face, the regulation requires arrangements for medical services only for "contaminated injured" individuals, not for members of the general public who may have suffered radiation exposure or injury in a nuclear accident. The distinction between the two classes of people is not inadvertent. <sup>11/</sup> It is based upon a judg-

---

<sup>11/</sup> For present purposes, the primary distinction is between those persons who have been contaminated and traumatically injured (i.e., persons who have radionuclides on or in their bodies and also are physically injured) as opposed to persons who have been exposed to radiation. In actuality, there could be additional categories, based on the factors of (1) radiation exposure, (2) traumatic injury, and (3) contamination.

For persons who suffer radiation injury (i.e., approximately a 200 rem radiation dose) and are contaminated, generally 90 percent of their surface contamination can be removed simply through bathing or showering. This reduces the contamination to levels that are medically quite small so that whatever residual contamination may remain does not interfere with the treatment for radiation injury. Tr. 7743-45.

Persons who are contaminated but have not received substantial radiation doses would not need any hospital treatment. Decontamination would be a matter of washing with soap and water. Tr. 7720. See also Tr. 7087-88, 10,822, 10,850-51.

ment as to their anticipated needs for emergency treatment. And it is an emergency planning regulation we are construing.

"Contaminated injured" is a distinct category encompassing potential patients whose traumatic (i.e., physical) injuries are complicated by radioactive contamination. As Dr. Roger E. Linnemann explained:

A patient who has been exposed to radiation does not, in turn, give off radiation any more than a burn[ed] patient gives off heat. There has been damage and . . . the clinical course unfolds over a period of time.

This means that we do have time to react and time to plan.

\* \* \*

[T]he problem arises if the person is injured and contaminated. This requires special facilities at a hospital. It requires special facilities because we would rather not admit those persons to our normal emergency room because contamination is loose. It can fall on the floor . . . in the emergency rooms, where people move in and out quite quickly, and the first thing you know you could cause contamination in the hallways of the hospital. . . . [T]herefore we have designed facilities where a patient can be treated for his traumatic injury while you control the contamination.

Tr. 7719-21. See also Tr. 7082-84, 7727-29, 7745-48. Dr. Linnemann further explained that because the clinical course of radiation injury unfolds over time and "is seldom, if ever, life threatening[,] . . . in all cases [treatment of] the traumatic injury takes precedence." Tr. 7721.

In short, the contaminated injured need emergency care for their traumatic injuries. Plans must be in place to provide that care without contaminating the persons or facilities providing it. People who suffer radiation injury, on the other hand, are unlikely to need emergency treatment.

The record is clear that relatively few people are expected to be both contaminated and traumatically injured in a nuclear accident. The estimate was from one to perhaps 25 or so. Tr. 11,060-61. See also Tr. 7747. These people would be principally workers onsite who become contaminated and injured during the course of the accident. The contaminated injured could also include members of the general public, such as emergency workers, who might be involved in monitoring a contaminated area onsite and are then injured (for example) in a traffic accident. Tr. 11,059-61. See also Tr. 7746-48. The applicants' present emergency plan is fully adequate to cope with these eventualities. The applicants have specific arrangements with three hospitals to provide medical services to contaminated injured individuals, and Orange County's emergency response plan identifies 13 area hospitals that have the capability of handling patients with radioactive contamination. Applicants' Exhibit 53 at IV-2, V-39; Tr. 7107-09, 11,059-61. See also Testimony of John R. Sears, fol. Tr. 10,644, at 7-8. See generally Applicants' Exhibits

85-99. These existing plans can be built upon and expanded on an ad hoc basis should the need arise. Tr. 10,830-33.

Both Dr. Linnemann for the applicants and Dr. Mary Reed for the intervenors agreed it was not likely that large numbers of the general public would receive such high doses of radiation in a nuclear accident as to warrant hospitalization or emergency treatment. Tr. 7087, 7727, 10,276-78. <sup>12/</sup> Hospitalization would be recommended for persons who had received an exposure of 150 to 200 rem or upwards over the course of a few hours. Tr. 7728, 7767. Under the emergency response plans, it is envisioned that protective action (for example, sheltering or evacuation) would be initiated when projected doses to the general public are in the range of one rem. Tr. 7210-11. See NUREG-0654, note supra, at 60-61, Criteria J.7, J.9. Thus, for a serious nuclear accident to result in the hospitalization of large

---

<sup>12/</sup> Dr. Linnemann foresees the possibility that in a serious nuclear accident there would be large numbers of people slightly exposed to radiation and exceedingly anxious. He thinks that they would require monitoring attention at reception centers and information by persons knowledgeable about the effects of radiation, as are currently provided for by local emergency plans. See generally Applicants' Exhibit 53 at IV-11-12, V-39-42 through 43-44. Dr. Linnemann believes, however, that hospitalization would be undesirable for such persons. Tr. 7087.



numbers of people, not only must an already unlikely accident be severe, 13/ but also the emergency response to protect the public must be ineffectual. Even then, intervenors' witness Dr. Rex Ehling agreed with Drs. Reed and Linnemann that hospitalization would not be an emergency matter. Tr. 7087, 7109, 7718-19, 9979, 10,277-78. Moreover, Dr. Ehling testified that there are several thousand hospital beds immediately available in Orange County that could care for people who require hospitalization for radiation injury.

---

13/ The Licensing Board's initial decision reproduces Table 7.4 from NUREG-0490, Final Environmental Statement (April 1981). 15 NRC at \_\_\_ (slip opinion fol. p. 41). It shows, for example, that the probability of an accident at San Onofre that would deliver doses of over 200 rem to 2,000 people is one in one million in any one year of reactor operation. The staff thinks this calculation is conservative -- perhaps unrealistically so -- because (1) it assumes that the general public will be evacuated in the direction of the radioactive plume; (2) the probability of the most severe accident is now thought to be lower than calculated in the FES; (3) it assumes that people who would not be evacuated would simply go about their usual business; and (4) no timely protective action was assumed for people beyond the EPZ during a severe accident that might threaten them. Tr. 10,330, 10,335-36, 10,339-41. The staff concluded that Table 7.4 "should not be used for emergency planning purposes due to the degree of conservatism in the assumptions used in the calculations on which the table is based." Tr. 10,341.

Tr. 9979-80, 9991-92. 14/

The foregoing discussion indicates that intervenors have failed to make a strong showing that they are likely to prevail on their claim that San Onofre should not operate at full power until plans are in place for medical arrangements for those members of the general public who may suffer radiation exposure in a serious nuclear accident. As we have explained (see pp. 15-18, supra), there is serious doubt that the Commission's regulations require arrangements of that kind. Assuming that such arrangements are required, however, the standard of 10 CFR 50.47(c)(1) allowing for plant operation in the face of emergency planning deficiencies has nonetheless been met. This is so for two reasons. First, given the expert medical testimony that immediate hospitalization would not be necessary for radiation injury, the asserted planning deficiency is "not significant." Second, in view of the immediate availability of hospital beds and trained people to care for those who have received substantial radiation doses, there is reason to conclude that "adequate interim compensating actions have

---

14/ Dr. Linnemann noted that it is not at all unusual for hospitals to be capable of treating patients with radiation injury. Tr. 7728-29.

been or will be taken promptly." <sup>15/</sup>

C. Ability of Offsite Jurisdictions to Monitor and Assess Radiological Emergencies

1. Background

The governing regulation, 10 CFR 50.47(b)(9), requires the applicants and local jurisdictions to have "[a]dequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency . . . ." <sup>16/</sup> The Licensing Board explained the

---

<sup>15/</sup> In view of our disposition of this point, we need not decide whether the Licensing Board erred in considering as one of the bases for allowing full power operation that the probability of any nuclear accident during the first six months of operation was remote.

<sup>16/</sup> This requirement is generally broken down to cover two distinct types of radiological hazard -- that associated with exposure to the radioactive plume and that associated with the ingestion pathway. Plume exposure occurs when persons are (1) directly exposed to radiation emitted by the plume, (2) exposed to materials they may have inhaled from the plume, or (3) exposed to radiation from material deposited on the ground from the plume. Radiation exposure from the ingestion pathway occurs when persons eat or drink material that has become contaminated by the depositing of radioactive material from the plume onto the ground or into the water supply. The most important ingestion pathway is typically the grass-cow-milk-human chain. See generally NUREG-0654, note 5 supra, at 14-17; Applicants' Exhibit 53 at II-2-3.

Intervenors' argument is directed mainly to the plume EPZ monitoring and assessment requirement. See pp. 24, 29-32, infra.

importance of this requirement in its decision (15 NRC at \_\_\_ (slip opinion at 47)):

Should there be an actual or potential radiological release from San Onofre, the nature and magnitude of the release and the prevailing meteorological conditions must be established and kept current so that potential offsite doses can be projected. Such projections give decision-makers in the offsite response organizations the information they need to make correct decisions concerning the appropriate protective action -- sheltering or evacuation. Field monitoring confirms the accuracy of offsite dose projections made on the basis of onsite data.

The Board noted that all parties had acknowledged there were deficiencies in the radiation assessment capabilities of the local jurisdictions. Id. at \_\_\_ (slip opinion at 48). Accordingly, the Board focused its attention primarily on whether the applicants' capabilities could meet all needs for radiation monitoring and assessment in the plume EPZ. After reviewing those capabilities, the Board found that "the [a]pplicants, at least with the emergency support from other utilities, can carry out all of the necessary radiological assessment and monitoring, both onsite and in the plume EPZ." Id. at \_\_\_ (slip opinion at 49). In addition, the Board found that the offsite organizations possessed significant capabilities in this regard and would assist the applicants in an emergency. Ibid. The Licensing Board's ultimate finding was that

deficiencies in the offsite response organizations in meeting applicable standards for assessment and monitoring in the plume exposure pathway are not significant for San Onofre within the meaning of

10 CFR 50.47(c)(1). This means that such deficiencies are not an impediment to licensing.

Id. at \_\_\_ (slip opinion at 49-50). See also id. at \_\_\_ (slip opinion at 165-67. <sup>17/</sup> Intervenors challenge the factual basis for the Board's conclusion and contend that, as a matter of law, redundant monitoring and assessment capability must exist in offsite jurisdictions in order to provide a reasonable basis for protective action response. <sup>18/</sup>

## 2. Analysis

The NUREG-0654 guidance that implements the Commission's emergency planning requirements provides, among other things, that in an accident situation a licensee must have the capability to measure the radiation levels in the plant. It must also have an onsite Technical Support Center

---

<sup>17/</sup> These facts also led the Board to conclude that adequate interim compensating action to monitor and assess radiological releases would be taken within the meaning of 10 CFR 50.47(c)(1). <sup>15</sup> NRC at \_\_\_ (slip opinion at 213-14). The Board also imposed license conditions requiring the applicants to maintain their monitoring and assessment capabilities at no less a level of readiness than was described at the hearing, and to have installed and operating within six months after full power operation a second meteorological tower and a health physics computer to perform offsite dose calculations in the event of an accident.

<sup>18/</sup> Application for Stay of Full Power License (June 1, 1982) at 3-4.

(TSC) and an offsite Emergency Operations Facility (EOF) capable of taking radiological and meteorological data and making an assessment of actual and potential offsite radiation exposure. See NUREG-0654, note 5 supra, at 56-57, Criteria I.1-I.6. The offsite organizations (i.e., the local governments) are to be able to put equipped, trained monitoring teams into the field to make dose measurements, including the measurement of radioiodine in the air. Id. at 57-58, Criteria I.7-I.11. These localities should then be able to decide upon and implement protective actions, such as sheltering or evacuation, based upon and consistent with the radiological hazards information that has been provided Id. at 61-64, Criteria J.9-J.10.

a. It is plain from the record that the applicants have the ability to assess potential offsite radiological consequences and to provide local officials with the information necessary for their decisions. Two independent facilities are at the applicants' disposal for this purpose. The most important dose assessment capability is that provided by the applicants' Technical Support Center adjacent to the plant control room. This facility has immediate access to in-plant radiation and effluent monitoring information, as well as to meteorological information and data regarding the status of other crucial plant parameters that may govern the future course of an accident. See NUREG-0712, Safety Evaluation Report

(February 1981), at 13-8; Tr. 7165-67. The TSC is in direct communication with each of the surrounding jurisdictions through their emergency operations centers and can provide them directly with dose assessment information. Tr. 7377. The TSC also receives offsite dose monitoring results from field teams sent out by the applicants and by the offsite organizations. Tr. 7170-75.

In addition, the applicants have an offsite dose assessment center (ODAC) in the Emergency Operations Facility. <sup>19/</sup> In the event of an accident the ODAC will be manned by the applicants' trained technical personnel, a health physicist from Orange County, and representatives from other local organizations and the State. Tr. 7379-80. This facility is in direct communication with the TSC and would receive the results of offsite radiation monitoring activity. Consequently, the present facilities provide independent capabilities for radiological consequences assessment in which the offsite jurisdictions would participate directly in a technical role.

The ODAC is also capable of being used to provide local officials who are stationed at the various emergency

---

<sup>19/</sup> At present the EOF and ODAC are located in a fire station in San Clemente several miles from the plant. A new EOF is under construction on company land considerably closer to the plant. Completion is projected for October 1982.

operations centers with information upon which their protective action decisions can be based. While the ODAC does not have direct access to plant monitoring information, these data are accessible through the communications link with the TSC. See Tr. 7379-80. The Licensing Board's requirement that the applicants are to install a dedicated computer for the calculation of offsite dose information will strengthen this system further. Tr. 7176, 7607-08. See n.17 supra.

b. In terms of monitoring capability, each of the surrounding jurisdictions has the ability (as do the applicants) to send equipped and trained dose monitoring teams to the field. These jurisdictions include Orange County, the City of San Clemente, San Diego County, and Camp Pendleton. Tr. 8606-08, 8919, 9320-21, 9338. There has been significant improvement in this regard since the May 1981 emergency planning exercise, when the Federal Emergency Management Agency (FEMA) criticized the local jurisdictions' monitoring capabilities. 15 NRC at \_\_\_ and materials there



cited (slip opinion at 143-44). 20/

In sum, the applicants have two facilities, each capable of providing local officials with timely dose assessments from information generated at the nuclear power plant and obtained by offsite monitoring teams. 21/ Moreover, each of the offsite jurisdictions has substantial dose monitoring capability that can supplement that of the applicants. We conclude, therefore, that there exists redundant capability to gather and assess radiological consequences information and to provide that information in

---

20/ Another training exercise involving these jurisdictions was carried out on April 15, 1982 and evaluated by FEMA. Although FEMA's evaluation material is outside the record of these proceedings, no party objects to our looking at the evaluation for the specific purpose of confirming that the monitoring capabilities have not deteriorated since the time of the evidentiary hearing. App. Tr. 82. They have not deteriorated. We note this summary statement found on page ii of the evaluation: "Overall, our observations concluded that all jurisdictions reflected an adequate or better capability to respond to an offsite emergency at San Onofre N.G.S."

21/ We do not mean to suggest that both the Technical Support Center and the Emergency Operations Facility should provide this information to the emergency operations centers. The ODAC in the EOF is to be the primary source of information, once it is functioning. Tr. 7379-80, 8948-49.

a timely manner to those officials who must use it to make protective action decisions.

As to intervenors' other argument (offered without support), we are unpersuaded that as a matter of law deficiencies in the monitoring and assessment capabilities of offsite jurisdictions cannot be compensated for by the applicants' system. On its face, 10 CFR 50.47(c)(1) allows compensating measures to be undertaken for any emergency planning deficiency. There is no reason why one trained, equipped, and capable offsite radiation monitoring team can not be substituted for another, whether it is that of the applicants or that manned by local government personnel. Moreover, to the extent the requirement for local monitoring and assessment capability evinces a policy judgment that those who bear the responsibility for sheltering or evacuation decisions should be closely involved in the monitoring and assessment process, the record demonstrates that such is already the case. See pp. 26-27, supra. Intervenor's have not made a strong showing that the Licensing Board's decision on the adequacy of radiological assessment and monitoring capability is erroneous.

#### D. Other Issues

Intervenors also seek a stay of full power operation based upon the Board's refusal to find that emergency plans for radiological monitoring and assessment in the ingestion emergency planning zone are adequate. The Board termed the

record on this matter "decidedly equivocal" and (because of intervenors' failure to propose findings of fact) ruled that the issue was uncontested, to be resolved informally by the staff prior to full power operation. 15 NRC at \_\_\_ (slip opinion at 63-67). The Board's hesitancy on the question of adequacy stemmed from the fact that the lead role in emergency planning and implementation for the ingestion EPZ is given to the State. While the applicants had "done about all that might reasonably be expected of them in this area," the Board found that the State plan was still evolving. Id. at \_\_, \_\_ (slip opinion at 64, 65-66). 22/

---

22/ Applicants submitted an extensive study of potential radiological hazards in the ingestion pathway EPZ in the event of a serious accident, a study that included suggested protective response levels for food, milk, and water. Applicants' Exhibit 121. They also presented an emergency response plan for the ingestion pathway. Applicants' Exhibit 143. The latter document was reviewed by the State Health Department and was found to be "excellent, generally well organized, concise and consistent with the RHS [Radiological Health Services] planning procedures document." Applicants' Exhibit 159. See also Tr. 7388-89. Mr. David F. Pilmer, for the applicant, testified that the State had prepared a draft emergency plan for the ingestion pathway, which assigns responsibilities to the local jurisdictions and designates the State's supporting role. Tr. 11,115. He also indicated that the applicants' plan would guide the ODAC personnel in selecting appropriate pathway samples and evaluating them. Tr. 11,123. The Orange County Emergency plan includes provisions for taking samples of water and foodstuffs, and the County has an agreement with the University of California at Irvine to analyze such samples. Tr. 8982-83.

Intervenors have not made a strong showing that the Board's disposition of this issue was erroneous. Where a party has not pursued a contention before the Licensing Board through proposed findings of fact, we will not entertain it "for the first time on appeal -- absent a 'serious substantive issue.'" Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981). Here, a serious substantive issue is not presented by the Licensing Board's determination to leave the monitoring adequacy question for resolution by the staff. As we have previously remarked: "at the operating license stage, the staff generally has the final word on all safety matters not placed into controversy by the parties." South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1156 n.31 (1981). This does not work an unfairness or compromise safety. The NRC staff has a continuing responsibility to assure that all regulatory requirements are met by an applicant and continue to be met throughout

the operating life of a nuclear power plant. <sup>23/</sup>  
 We thus see no basis for a stay based upon the Board's  
 relegation of an uncontested issue to the staff for  
 resolution.

Lastly, intervenors argue that the Licensing Board  
 applied an erroneous standard in judging the adequacy of  
 applicants' emergency plan, violated intervenors' due  
 process rights by not allowing discovery directed to the  
 Federal Emergency Management Agency, and erroneously  
 countenanced ex parte communications among the NRC staff,  
 applicants, and FEMA.

These arguments can be disposed of quickly. As to the  
 first, intervenors claim that the Licensing Board adopted "a

---

<sup>23/</sup> As we said in South Carolina Electric and Gas Co.  
 (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642,  
 13 NRC 881, 895-96 (1981), affirmed sub. nom. Fairfield  
United Action v. Nuclear Regulatory Commission, No.  
 81-2042 (D.C. Cir., April 28, 1982):

[A]n operating license may not issue unless  
 and until this agency makes the findings  
 specified in 10 CFR 50.57 -- including the  
 ultimate finding that such issuance "will not  
 be inimical to \* \* \* the health and safety of  
 the public". As to those aspects of reactor  
 operation not considered in an adjudicatory  
 proceeding (if one is conducted), it is the  
 staff's duty to insure the existence of an  
 adequate basis for each of the requisite  
 Section 50.57 determinations [footnote  
 omitted].

standard that what there is, is adequate." <sup>24/</sup> The argument is offered without elaboration, and we can see no support for it. The Licensing Board's 220-page opinion provides the detailed factual basis and regulatory support for the Board's conclusion that the applicants' emergency plan passes muster. To the extent intervenors' mean to argue that the adequacy of the emergency plan must be tested by a cost/benefit analysis, again we are offered no supporting elaboration for such a requirement. In any event, we are of the view, at least preliminarily, that the emergency planning rule itself already accounts for whatever cost/benefit analysis might be necessary. As the applicants rightly remark, "[t]he emergency planning zone concept [in the Commission's rules already] takes into account the broad range of radiological accidents and dose consequences to the public from such accidents." <sup>25/</sup> It need not be reanalyzed in each individual proceeding.

The claimed violation of due process rights and ex parte irregularities also fall far short of a strong showing

---

<sup>24/</sup> Application for Stay of Full Power License (June 1, 1982) at 5.

<sup>25/</sup> Applicants' Response in Opposition to Application of Intervenor Guard et al. for a Stay of Full Power License (June 16, 1982) at 7.

on the merits. While intervenors now urge that they were denied discovery against FEMA, the record reveals that intervenors never sought to depose any FEMA witnesses. Tr. 643-49. So too, nothing in the Commission's ex parte rule (10 CFR 2.780) precludes conversations among parties, none of whom is a decisionmaker in the licensing proceeding. We doubt intervenors will persuade us in the pending appeal that it was improper for FEMA, the applicants, and the staff to confer about defects in the applicants' emergency plan and to suggest ways to correct them.

---


In sum, intervenors have not made a strong showing that they are likely to prevail on the merits of either the substantive or procedural issues they have raised. To the extent the Licensing Board identified deficiencies in applicants' emergency planning for San Onofre, those deficiencies are being compensated for by other measures now in place. We therefore conclude that intervenors are not threatened with irreparable injury by the prospect of a full power operating license being issued for San Onofre and that

the public interest favors denial of their stay application. 26/

For all the foregoing reasons, intervenors' motion for a stay pending appeal is denied.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Shoemaker  
Secretary to the  
Appeal Board

---

26/ We also note that before a full power license issues, the Commission must complete its immediate effectiveness review pursuant to 10 CFR 2.764(f)(2), and the staff must resolve certain open issues. See p. 30, supra.



ATTACHMENT 2

Release

1 CHARLES E. McCLUNG, JR.  
2 FLEMING, ANDERSON, McCLUNG & FINCH  
24012 Calle de la Plata, Suite 330  
3 Laguna Hills, CA 92653

62

DOCKETED  
U.S. NRC

4 (714) 768-3601

'82 JUN -4 AIO:36

5 Attorneys for Intervenors

CFR  
DOCKETING

6  
7  
8 UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
9 BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL  
10 BOARD

11 In the Matter of  
12 SOUTHERN CALIFORNIA EDISON COMPANY,  
13 ET AL.  
14 (San Onofre Nuclear Generating Station,  
Units 2 and 3)

Docket Nos. 50-361 OL  
50-362 OL

15  
16 NOTICE OF APPEAL

17  
18 -oOo-

19 NOTICE IS HEREBY GIVEN that Guard, Carstens, et al., Inter-  
20 venors in the above named action, hereby appeal to the Nuclear  
21 Regulatory Commission Atomic Safety and Licensing Appeal Board  
22 from the Initial Decision of the Atomic Safety and Licensing  
23 Board dated May 14, 1982.

24 DATED: June 1, 1982

25 FLEMING, ANDERSON, McCLUNG & FINCH

26 By Charles E. McClung, Jr.  
27 Charles E. McClung, Jr.  
28

1 CHARLES E. McCLUNG, JR.  
2 FLEMING, ANDERSON, McCLUNG & FINCH  
24012 Calle de la Plata, Suite 330  
3 Laguna Hills, CA 92653



DOCKETED  
USNRC

'82 JUL-4 10:36

4 (714) 768-3601

5 Attorneys for Intervenors

6  
7  
8 UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

9 BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL  
10 BOARD

11 In the Matter of

12 SOUTHERN CALIFORNIA EDISON COMPANY,  
13 ET AL.

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

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

15 APPLICATION FOR STAY OF FULL POWER LICENSE

16 -oOo-

17  
18 TO THE HONORABLE ATOMIC SAFETY AND LICENSING APPEAL BOARD (ASLAB):

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

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 hea-  
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           Because that Stay Application referred only to the low  
2 power license and because ID effectively incorporates the PID for  
3 full power license purposes, this Application also requests that  
4 the Appeal Board review its previous decision and grant a stay  
5 of the full power license.

6  
7   I

8           THE INITIAL DECISION POINTS OUT SEVERAL MAJOR  
9 DIFFICULTIES WITH THE EMERGENCY PLANNING AS  
10 IT EXISTS. ACCORDINGLY THE ASLB ERRED IN  
11 ALLOWING THE APPLICANTS SIX MONTHS OF COMMERCIAL  
12 OPERATION BEFORE THE DEFICIENCIES NEED TO BE  
13 CORRECTED.

14           As more fully set forth in Intervenors' Comments Regarding  
15 Immediate Effectiveness dated May 21, 1982, which comments are  
16 incorporated herein by reference, Intervenors take issue with the  
17 ASLB's "post license" implementation of the conditions imposed  
18 upon the Applicants regarding the size of the emergency planning  
19 zone and the planning for health related emergency services for  
20 the general public.

21           The Intervenors also respectfully submit that the inade-  
22 quacies discovered in the off site jurisdictions' ability to  
23 monitor and assess the radiological emergencies in both the plume  
24 exposure pathway EPZ and the ingestion pathway EPZ is a signifi-  
25 cant deficiency and is not adequately compensated for by the  
26 Applicants' ability to monitor on site. There is no such showing  
27 in the record for any accident sequence other than the testimony  
28 of NRC witness, John Sears. As a matter of law Intervenors feel  
that the radiation monitoring and assessment function must exist

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.



III

1 THE ASLB ERRED IN RELYING ON IMPROVEMENTS  
2 PROFFERED AT TRIAL TO REBUT THE PRESUMPTION  
3 OF EARLIER FEMA FINDINGS, WITHOUT ALLOWING  
4 INTERVENORS ACCESS TO THAT INFORMATION OR TO  
5 FEMA RESULTING IN A DENIAL OF DUE PROCESS  
6 TO INTERVENORS.

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

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

27 The ASLB quite appropriately places substantial reliance on  
28 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  
21  
22  
23  
24  
25  
26  
27  
28

CONCLUSION

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

///////// .

/////////

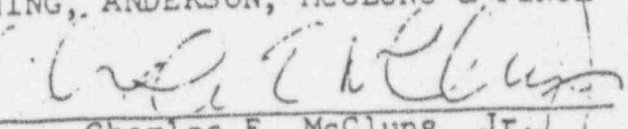
/////////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

set forth in the initial decision have been complied with.

Respectfully submitted,

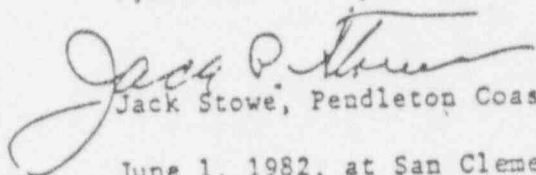
FLEMING, ANDERSON, McCLUNG & FINCH

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 miles to the 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 8654.

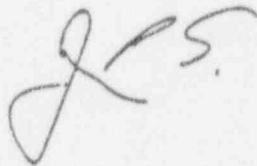
The risk of populations involved is , on a usual summer day, between 5,000 and 7000 persons.



Jack Stowe, Pendleton Coast State Parks Area Director

June 1, 1982, at San Clemente, California

The above signed writing  
Confirmation of Definition  
of the 15 minute timing by  
Calif. Office of Emergency Services  
FEMA and MRC.



# Memorandum

Date : May 28, 1982

To : Herbert L. Heinze  
Regional Director  
Southern Region

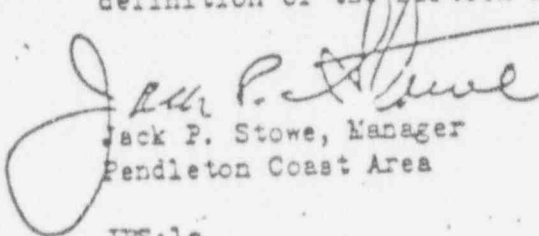
From : Department of Parks and Recreation  
Pendleton Coast Area

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

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 state 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 3 1/2 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 1/2 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
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.

TO: Appropriate governing officials c/o Herbert Heinz, 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  $\frac{1}{2}$  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 mountains of 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



May 27, 1982

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

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.

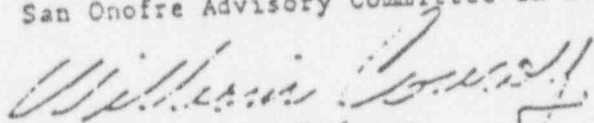
Nauman also interpreted "reasonable" to restrict Federal Government expectations of emergency response to the level of capability of the response agency. He said he did not consider it "reasonable" to require the parks staff to achieve the alert and notify in 15 minutes, if it is unable to do so, and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

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 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 U654 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 the population...protection from a hazardous plume which might be released as early as 30 minutes from the onset of accident San Onofre...the State Office of Emergency Services, the Federal Emergency Management Agency, the State Regulatory Commission must adequately address this serious response capability deficiency.

ATTACHMENT 3

Release

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD  
BEFORE ADMINISTRATIVE JUDGES

James L. Kelley, Chairman  
Dr. Cadet H. Hand, Jr.  
Mrs. Elizabeth B. Johnson

DOCKETED  
USNRC

'82 AUG -9 AJO:46

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED AUG 9 1982

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

August 6, 1982

MEMORANDUM AND ORDER  
(Concerning Whether Further Proceedings on the Adequacy  
of Offsite Planning for Medical Services Should Be Conducted)

Our Initial Decision of May 14, 1982, concluded that the Applicants had not met their burden of proof on Contention 2D concerning arrangements for medical services in the offsite emergency plans. We further concluded, however, that the deficiencies in medical arrangements did not preclude full power operations at this time, provided adequate remedial actions were completed within six months following issuance of a full power license. We retained jurisdiction over the adequacy of medical arrangements and provided that any party could request a further hearing on that question.

On July 16, 1982, the Commission issued an Order and the Appeal Board rendered a decision bearing on the medical arrangements question. The

DS02

Commission's Order announced completion of its "effectiveness" review pursuant to 10 CFR 2.764(f). The Commission allowed our January 11, 1982 Partial Initial Decision on seismic issues and our May 14, 1982 Initial Decision on emergency planning to go into effect, without prejudice to their subsequent appellate review. With regard to medical arrangements, the Commission noted that the license for Unit 2 would be --

... subject to the condition that for operation above 5% of rated power to continue beyond six months from the date of issuance of the full-power license, the offsite medical arrangements issue must be resolved or further operation above 5% of rated power justified under 10 CFR 50.47(c)(1).

The Commission also stated that --

The Commission will conduct an immediate effectiveness type review of the Licensing Board's decision on this issue pursuant to 10 CFR 2.764(f). The Board's subsequent order will be effective pending the Commission's review. The Licensing Board is to give the Commission a report on the status of the offsite medical arrangements question within four months of the date of issuance of the full-power operating license.

In ALAB-680, the Appeal Board denied a stay of our Initial Decision pending appeal, rejecting the contention, among others, that the Licensing Board should have required adequate offsite medical arrangements before any operations at full power, instead of allowing six months for remedial action. The Appeal Board concluded that a six-month grace period could be allowed, although the grounds they cited for that conclusion differed from ours. Slip. op. at 21-22. The Appeal Board's conclusions on this aspect of the stay application were influenced by the narrow view it took of the obligation under 10 CFR 50.47(b)(12) to make medical services arrangements. Expressing "serious doubts" that this Board's broader reading of that rule is "accurate," the Appeal Board expressed its tentative opinion that the

rule is only intended to protect people who have been both contaminated and physically injured on or near the site -- such as a contaminated worker with a broken leg. The number of people in this category presumably would be small. Slip op. at 16-18. Under the Appeal Board's view, and contrary to our conclusions in the Initial Decision, there would be no requirement to make advance medical arrangements for possibly much larger numbers of radiation victims among the offsite public.<sup>1/</sup>

These developments create an unusual situation. Before ALAB-680 came down, we had concluded that further proceedings (including a hearing, if requested) on the adequacy of offsite medical arrangements would be necessary. The Commission in its effectiveness review has given the green light to those proceedings, albeit without explicit endorsement of any particular scope of the medical arrangements requirement. Furthermore, all the Appeal Board did in ALAB-680, technically at least, was deny a stay based on tentative conclusions. Our holdings on the medical arrangements question have not been reversed, at least not yet. Thus we are presently authorized to commence further proceedings.

On the other hand, a realistic look at the Appeal Board's narrow interpretation of required medical arrangements makes us pause to consider

---

<sup>1/</sup> The Appeal Board's tentative view appeared to be based largely on its reading of a murky phrase in the rule -- "contaminated injured individuals" -- to mean that the same person had to be both contaminated and traumatically (physically) injured. We noted the ambiguity in the phrase at the hearing (Tr. 9636-37), but did not discuss the point separately in the Initial Decision. This Board's reading of the phrase was implicit in our Initial Decision -- that it should be read disjunctively to include people who have been contaminated or injured.

whether further proceedings are likely to be worthwhile. There is, of course, at least the theoretical possibility that, upon review of our Initial Decision, further legal analysis or study of the record may lead the Appeal Board to a broader interpretation. As to legal analysis, we devoted some twenty pages in our Initial Decision to the medical arrangements requirement. Slip op. at 26-45. The Appeal Board in ALAB-680 did not discuss the factors that we considered important.<sup>2/</sup> Therefore, the possibility that the Appeal Board might change its mind later based on those same factors seems remote.

We propose to consider, however, in the light of submissions from the parties, whether further proceedings may produce a better evidentiary record on the need, if any, for medical services arrangements for the offsite public. As we noted in our Initial Decision, the evidence in the record on that need was "rather scanty." This was primarily because the Applicants' witness, Dr. Linnemann, testified against the existence of such a need, the Staff agreed without presenting any medical witnesses, and the

---

<sup>2/</sup> The Appeal Board has on many occasions reversed Licensing Board rulings because they were not accompanied by an adequate statement of reasons. See Public Service Co. of New Hampshire (Seabrook Station), 6 NRC 33, 41 (1977). As a corollary of the burden of explanation that rests on a Licensing Board, we believe that when an Appeal Board rejects a considered Licensing Board ruling, even on a stay application, it should explain why it finds the Licensing Board's reasoning deficient.

testimony of the Intervenors' principal witness on the subject was excluded. Tr. 10,715-718. Such a record may afford an adequate basis for decision in the usual situation where an Applicant is seeking to demonstrate compliance with a rule of which at least the basic parameters are clear. Here, however, the rule is not well drafted and we face critical interpretative questions of first impression. As a result, the testimony of the expert witnesses must address not only compliance in this case, but also generic issues on the rule's basic scope. In such a situation, we believe that a more detailed and broadly-based record, possibly reflecting different viewpoints, would be beneficial, if one is available.

With these considerations in mind, the parties and FEMA (through the NRC Staff) are to respond to the following questions:

1. If further proceedings were directed, what additional evidence, if any, would you produce on the need for medical services arrangements offsite, beyond that recognized by the Appeal Board in ALAB-680? Describe briefly the thrust of that evidence and the qualifications of proposed expert witnesses.

2. Two witnesses, Drs. Linnemann and Ehling, testified that hospitalization was indicated for a person who has received a 150 to 200 rem whole body radiation dose. Tr. 7728, 9992. If that is so, and if it is prudent to assume that perhaps several hundred people offsite could receive such doses in a serious accident, then is it necessary, or at least



prudent, to make advance arrangements for medical services for such people.<sup>3/</sup>

3. If such arrangements were to be made, what would they consist of -- beds, decontamination and testing facilities, specially trained personnel, special medicines, what else? Would it be possible to make the necessary arrangements on an ad hoc basis? If so, how long would that take?

4. In assessing the need for medical services, should one assume that the emergency plans for evacuation and sheltering will be effective (as suggested at p. 20 of ALAB-680) or ineffective (as suggested in the FEMA letter quoted at p. 36 of the Initial Decision).

In addition, we pose the following legal and procedural questions:

1. Could further proceedings be conducted on the basis of affidavits and other written submissions, without a hearing?

2. Should the Licensing Board certify to the Appeal Board the question whether it should conduct any further proceedings and await an answer before doing so?

3. Question for FEMA only: Did the Board in its Initial Decision (at 35-37) correctly state the FEMA position?

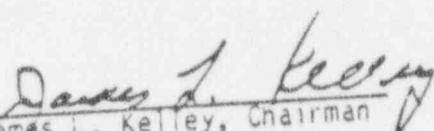
---

<sup>3/</sup> In this connection we recognize that we are dealing with "emergency" services as opposed to long term treatment. But we do not equate the emergency concept with the prospect of imminent serious injury or death unless immediate medical services are administered. Even assuming that hospitalization would be largely precautionary in the case of a few plant workers receiving high radiation doses, similar precautionary measures might be taken where many more members of the general public are involved.

4. Please give us any further comments or suggestions you may have on how we should proceed in these circumstances.

The full power operating license for Unit 2 may be issued later this month. If that happens, this means that, pursuant to the license condition on medical service arrangements, that issue should be resolved in February, 1983, and an interim report must be made to the Commission in December, 1982. Should further proceedings, including a hearing, be decided upon, it will be necessary to move those proceedings along expeditiously. Accordingly, the responses of the parties and FEMA to this Order are to be served by September 3, 1982.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
James L. Kelley, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,  
this 6th day of August, 1982.

ATTACHMENT 4