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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	No: 50-361-OL
	)	50-362 OL
SOUTHERN CALIFORNIA EDISON	)	
COMPANY, <u>et al</u>	)	
	)	
(San Onofre Nuclear Generating	)	
Station, Units 2 and 3.)	)	
	)	

PETITION FOR REVIEW OF EMERGENCY PLANNING ISSUES

To: THE HONORABLE NUCLEAR REGULATORY COMMISSION OF THE  
UNITED STATES OF AMERICA:

INTRODUCTION

The Atomic Safety & Licensing Appeal Board issued a decision March 4, 1983 (ALAB-717) generally affirming the Licensing Board's initial decision of May 14, 1982 (LBP-82-39) authorizing the issuance of a full power operating license for the San Onofre Nuclear Generating Stations, Units 2 and 3

1 ("SONGS"). That decision was served on March 7, 1983. Inter-  
2 venors, Guard and A.S. Carstens, et al. hereby submit their  
3 Petition for Review of Emergency Planning Issues pursuant to 10  
4 CFR Section 2.786(b).

5  
6 I

7 BACKGROUND

8  
9 On the second day of the hearing in this matter  
10 Intervenors raised the issue of the status of the Federal  
11 Emergency Management Agency ("FEMA") by an oral motion (Tr. 7420,  
12 et seq.). If FEMA was going to be an agent for the Staff in  
13 these proceedings it would be performing a quasi-judicial  
14 function for the NRC in reviewing the emergency plans because its  
15 determination would be considered as a rebuttable presumption  
16 under 10 CFR §50.47(a). Any communications directly or indir-  
17 ectly between the Applicants and the national level policy making  
18 body issuing those findings could only be done on notice to the  
19 Intervenors because the ex-parte communications provisions of 10  
20 CFR 2.780 should apply (Tr. 7422). The motion requested such  
21 notice.<sup>1</sup> No ruling was made at that time on the Motion despite  
22 the fact that Intervenors protested that they would later have to  
23 move to exclude any testimony or conclusions purporting to come  
24 from FEMA which would rebut FEMA's formal findings. The Licens-  
25 ing Board ultimately ruled that the provisions of the ex-parte  
26  
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1. There is no doubt Intervenors would receive Staff/Applicant  
correspondence, or notice of meetings. Carolina Power and Light  
Company, (Sharon Harris Nuclear Power Plant, Units 1,2,3 and 4),  
ALAB-184 7 AEC 229 (1974); Vermont Yankee Nuclear Power Cor-  
poration, ALAB-179 7 AEC 159 (1974)

1 communications ban did not apply to any conversations or writing  
2 to FEMA and overruled the Motion. This ruling was upheld by the  
3 Appeal Board (ALAB-717 at 62).

4  
5           Intervenors and Staff submitted FEMA findings of June  
6 3rd ("Interim Findings") as an exhibit in this proceeding  
7 (Intervenors' Exhibit #15). The Licensing Board found that for  
8 purposes of this proceeding those findings were to be given the  
9 effect of the rebuttable presumption provided in 10 CFR  
10 §50.47(a). The Interim Findings formed the basis of many of the  
11 Intervenors contentions in this case and many of the deficiencies  
12 pointed out in those findings were not corrected at the time of  
13 the hearing (LBE-82-39 at 71 et seq.).

14  
15           Applicants and Staff in order to deflate and devalue  
16 Intervenor's evidence based on the FEMA documents, sought to show  
17 that the relevance of the Interim Findings was generally minimal  
18 because ongoing work was being done to correct the deficiencies  
19 outlined in the FEMA documents.

20  
21           This line of reasoning goes, that because work is being  
22 done to correct the deficiencies and because this work is of a  
23 specified "doable" nature a finding of adequacy can generally be  
24 made with respect to most of the significant contentions in issue  
25 without specifically addressing the Intervenors' objections.

26  
27           In this regard Applicants introduced Exhibit #144 which  
28 is a letter from their office to FEMA proposing certain correc-

1 tive measures to be taken to remedy the major concerns identified  
2 in the Interim Findings. This document was allowed in evidence  
3 by Intervenors simply as showing some evidence that work is being  
4 done, but not for the purpose of showing FEMA had agreed that if  
5 those actions were done, a favorable finding of adequacy would be  
6 given (Tr. 9147).

7  
8 The distinction is important because it simply indic-  
9 ates what the Applicants are and will be doing in emergency  
10 planning area. It does not prove that a finding of adequacy will  
11 be issued by FEMA under precise conditions.

12  
13 When the Staff presented a FEMA Staff person, Mr.  
14 Nauman, as a witness in this proceeding the Intervenors did not  
15 object to his first hand personal knowledge testimony as to the  
16 adequacy of the plans and as to the Intervenors' contentions and  
17 that evidence was admitted without objection.

18  
19 But the Staff went further with Mr. Nauman and asked  
20 him to admit a piece of testimony purporting to state the "FEMA  
21 national view" (see; LBP-82-39 at 75). This additional testimony  
22 simply asked Mr. Nauman whether he was familiar with the  
23 "national view" with respect to emergency planning at San Onofre  
24 to which he replied, "yes". He then states that "view", viz., if  
25 the Applicants complete adequately the corrective actions  
26 proposed in Applicants' Exhibit #144, FEMA will be in a position  
27 to issue a finding that there is reasonable assurance that the  
28 health and safety of the public can be protected.

1           This line of testimony was vehemently objected to by  
2           Intervenors both at the onset and through subsequent motions to  
3           strike. (Tr. 10,377, 10,439.)  
4

5           This testimony violates the letter in the spirit of the  
6           regulations and the Memorandum of Understanding ("MOU"). The MOU  
7           provides for and contemplates testimony by FEMA Staff as to their  
8           personal knowledge of the emergency plan and contemplates the use  
9           of FEMA findings as a rebuttable presumption in the hearing  
10          process. But it does not contemplate a use of the Staff witness  
11          to rebut the FEMA findings by making a prediction of future FEMA  
12          findings. 45 Fed.Reg. 82713 (December 16, 1980).  
13

14          Under cross-examination Mr. Nauman stated that he could  
15          discuss this general conclusion but he could not evaluate "the  
16          FEMA national view" on each of the corrective measures. (Tr.  
17          10,437) The Licensing Board refused to allow the Intervenors to  
18          probe the nature and extent of Mr. Nauman's personal knowledge  
19          with respect to this general statement. (Tr. 10,431) The Appeal  
20          Board agreed that this testimony was inadmissible but determined  
21          that the error was not prejudicial.  
22

23          The prejudicial character of the Licensing Board's  
24          error in this regard is clear. The admission of this FEMA  
25          evidence provides the basis for the Licensing Board's deter-  
26          mination that an adequate FEMA finding will come in the future.  
27          This served as a basis for the Licensing Board's decision that  
28          the corrective actions which are left to be taken were essen-

1 tially simple, verifiable and easy. This allowed the Licensing  
2 Board to side-step actual decisions on these areas of potential  
3 inadequacy and leave them for future confirmation by the Staff or  
4 to the Applicants alone.

5  
6 II

7 COMPLIANCE WITH 10 CFR §2.786

8 1. Issues tendered for Review.

9  
10 Intervenor respectfully request that the Commission  
11 review the decision of the Atomic Safety and Licensing Appeal  
12 Board in this matter dated March 4, 1983 (ALAB-717) as regards  
13 the status of FEMA in contested licensing cases. Intervenor  
14 specifically request that this Commission review the Appeal  
15 Board's decisions that:

16 ISSUE ONE:

17 Intervenor are not entitled to notice of  
18 any kind of meetings or correspondence  
19 between any of the Applicants personnel  
20 and any of FEMA's personnel; and

21 ISSUE TWO:

22 The Appeal Board's decision that it was  
23 not prejudicial error for the Licensing  
24 Board to admit into evidence the hearsay  
25 statement by a FEMA witness used to rebut  
26 the prior FEMA findings.

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1     2. The Issues were raised previously.

2  
3             These issues were raised in the Licensing Board hearing  
4 and before the Appeal Board. See ALAB-717 at 61 et seq;  
5 LBP-82-39 at 67 et seq.

6  
7     3. The Appeal Board erred.

8  
9             The decision that no notice is required of Appli-  
10 cant/FEMA communications puts the FEMA decision makers out of  
11 reach of the scrutiny of Intervenors in an unfair way. The FEMA  
12 staff review when formulated into findings will serve as a  
13 rebuttable presumption in the hearing process. This makes the  
14 testimony of the FEMA witness stronger and more important than  
15 that of a normal expert witness - for example, the testimony of  
16 the U.S. Geological Survey on seismic issues. The NRC Staff  
17 itself performs very little, if any, review of the FEMA findings  
18 and determinations. Hence, the NRC has essentially delegated the  
19 function of review of emergency plans to FEMA. Yet when FEMA  
20 exercises this quasi judicial function, there is no possible  
21 review by the Intervenors because there are no rules in FEMA  
22 which prohibit ex-parte communications with decision makers or  
23 which require distribution of documents or notice of meetings  
24 between the decision makers at FEMA and the Applicants.

25  
26             Unfortunately what this produces is a typical closed  
27 door decision-making process in which important safety concerns  
28 are omitted from FEMA review or are placated by under the table

1 promises from the Applicants. The policy reasons why the NRC  
2 serves notice of meetings between the Applicants and NRC Staff  
3 and prohibits ex-parte communication with decision makers should  
4 apply to the FEMA Staff and the FEMA decision makers respect-  
5 ively.

6  
7 The record in this case indicates that certain high  
8 level officials of the Applicants met with certain high level  
9 officials of FEMA in June 1981 within weeks after the initial  
10 unfavorable FEMA findings were issued in this matter. Within  
11 days following that meeting another meeting was held between  
12 Applicants and FEMA during which a corrective program was arrived  
13 at for resolving the various deficiencies. The Intervenors were  
14 neither advised of or notified of either of these meetings until  
15 long after the fact. It is Intervenors position that numerous  
16 contested issues in the case could have been resolved if Inter-  
17 venors had been invited or notified of these meetings. Numerous  
18 potential safety problems were swept under the rug so that they  
19 would not hold up the licensing.

20  
21 The second decision of the Appeal Board holding that  
22 the admission of Mr. Nauman's hearsay prediction of future FEMA  
23 findings is erroneous for much the same reasons. A quick review  
24 of the Licensing Board's decision in this matter will serve to  
25 show that the Licensing Board was strongly influenced by FEMA's  
26 apparent nonchalance regarding the corrective actions which  
27 needed to be taken at SONGS.

28 ////



1           The series of corrective actions which were arrived at at  
2 the "ex-parte" meetings discussed in the paragraphs above were  
3 taken to be simple and "doable". The final testimony proposed by  
4 the Staff through the FEMA witness was to the effect that if the  
5 Applicants do what they say they will then FEMA will find the  
6 plans adequate. The admission of this evidence was extremely  
7 persuasive to the Licensing Board. It allowed the Board to find  
8 that there was reasonable assurance that emergency planning would  
9 be taken care of in the future. For instance, the Licensing  
10 Board allowed the licensing of the plant despite the fact that  
11 there was no siren capability in a large portion of the emergency  
12 planning zone. The Licensing Board allowed the continued oper-  
13 ation of the plant despite the fact that emergency medical  
14 facilities were not in place for the general public. The  
15 Licensing Board allowed the operation of the plant despite the  
16 fact that the training programs had not been developed or  
17 implemented for emergency planning officials and workers. The  
18 Licensing Board allowed the operation of the plant despite the  
19 fact that no plans existed for the evacuation of the housebound,  
20 the handicapped and the school children. The Licensing Board  
21 allowed the plant to operate despite the fact that there were no  
22 plans in place for the evacuation of the ocean EPZ surrounding  
23 the plant.

24  
25           Obviously, this piece of testimony was more than simply  
26 a hearsay statement correctly ruled to be inadmissible by the  
27 Appeal Board. It was a statement which challenged the very  
28 fundamentals of the Memorandum of Understanding by allowing a

1 FEMA witness to go beyond the testimony as to the adequacy of the  
2 plans to rebut the findings and conclusions that had already been  
3 formally adopted by the Washington Office of FEMA regarding the  
4 plant. Intervenors had no objection to the FEMA witness testi-  
5 fying from his own personal knowledge as to the status of the  
6 emergency planning. What they objected to was his testimony  
7 offered to rebut the prior findings.

8  
9 4. Commission Review should be exercised.

10  
11 Intervenors respectfully request that the Commission  
12 review the emergency planning issues in this case with an eye  
13 toward resolving the scope and nature of the participation of  
14 FEMA in the licensing process. The Commission should establish  
15 policy guidelines regarding communications between Applicants and  
16 FEMA in contested cases and the use of FEMA findings and testi-  
17 mony. These are important policy issues which can be addressed  
18 in the context of this decision and which should be addressed in  
19 the interests of the health and safety of public surrounding  
20 SONGS and nuclear power plants in general. It is Intervenors  
21 position that FEMA is an important player in the process but that  
22 the Intervenors too are important players in the process and that  
23 their input can be made more helpful to the Licensing Board, the  
24 Commission and the general public if they are allowed access to  
25 the FEMA witnesses and if the FEMA testimony and findings are

26 ////

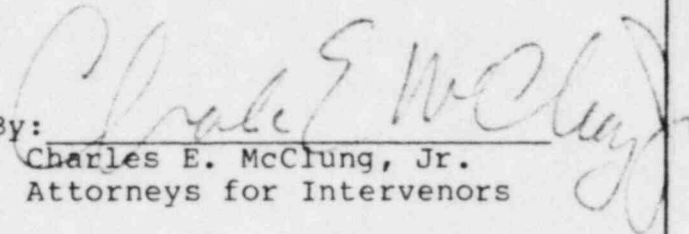
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1 used in a legal, logical and fair way in the hearings.

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Respectfully submitted,

By:   
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I certify pursuant to 10 CFR, Section 2.712(e)(2) that on March 21, 1983 I served the attached "PETITION FOR REVIEW OF EMERGENCY PLANNING ISSUES" in the above entitled action by placing a true copy thereof enclosed in the United States mail, first class (or by Express Mail or other expedited service where asterisked) at Laguna Hills, California, addressed as follows:

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