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Office of the Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555



In the Matter of
Pacific Gas and Electric Company
(Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2)
Docket Nos. 50-275/323-O.L.

Members of the Commission:

We herein tender a petition to the Commission for its consideration.

This petition flows from the San Luis Obispo Mothers for Peace (MFP) Motion of April 10, 1975 and its elaborating brief of May 27, 1975 wherein MFP urges the presiding Atomic Safety and Licensing Board (Board) to prevent Pacific Gas and Electric Co. (PG&E) from receiving fresh uranium fuel assemblies within the County of San Luis Obispo, California, until a valid operating license has been issued and becomes effective for Diablo Canyon Units 1 and 2.

Although Licensing Boards have not previously dealt with 10 CFR 70 storage licenses, a result of the MFP motion was that the Board effectively assumed Part 70 jurisdiction. Commencing on December 9, 1975 an evidenciary hearing was held, and by its Order of December 23, 1975 the Board denied the motion of MFP.

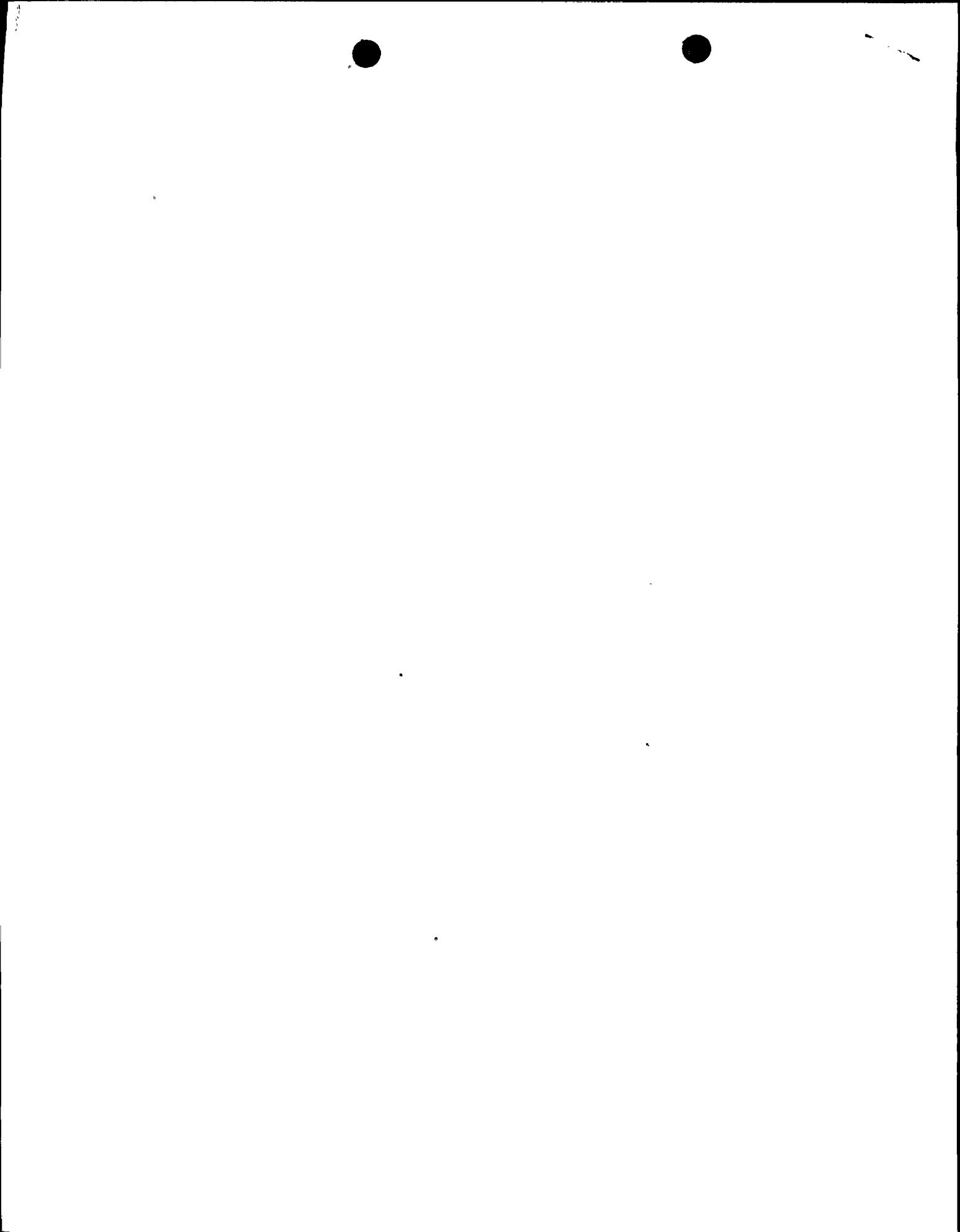
Notwithstanding the Board's denial, we are convinced that the record demonstrates we have a valid cause of action and therefore bring this appeal.

Although such an appeal might appear interlocutory, we contend that an examination of the MFP Motion and Brief of April 10, 1975 and May 27, 1975 respectively, demonstrates that our rights will be abrogated unless the Commission allows some mechanism whereby a formal appeal can be brought prior to PG&E's receipt of the fuel.

While 10 CFR 2 does not, to our knowledge, explicitly provide for such an opportunity, 10 CFR 2.714a does allow an interlocutory recourse for the denied intervenor.

Thus it can arguably be said that in 10 CFR Part 2, the legislative organs and the Commission contemplated extending appeal remedies to the citizen subjected to a denial at the Licensing Board level.

Furthermore, in support of our petition, we refer the Commission to page 4 of NRC STAFF'S RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE MOTION PERTAINING TO SPECIAL NUCLEAR MATERIALS dated May 5, 1975 which provides in pertinent part as follows:



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"Certainly, if treated as an entirely separate matter, the application for the storage only special nuclear material license would be subject to a petition for leave to intervene and a request for a hearing."
(emphasis added)

It thus appears that if MFP had approached the Part 70 license directly with a petition for leave to intervene, although possibly introducing a considerable delay, it would have been allowed an appeal remedy. Instead we chose to urge the Board to consider our motion within the context of the Diablo O.L. proceedings, and, in so doing, we avoided introducing a substantial delay but lost our rights to appeal.

As observed above, an appeal of the Board's December 23, 1975 Order appears interlocutory. But the MFP Motion pertains to actions existing within a time frame which precedes the issuance of the Initial Decision. The time frame in question does in fact terminate when and if the Diablo O.L. becomes effective.

Thus any appeal remedy instituted after the Initial Decision issues would be moot and our rights would have been deformed.

For reasons stated above we urge the Commission to designate an appropriate board or panel to receive and to hear our formal appeal motion.

For the reasons outlined below, MFP requests that if the Commission rules in our favor, MFP's time to file a formal appeal be extended to two weeks after receipt of the Commission's response to this appeal.

1. Diablo Prospective Decision Date (PDD) is currently estimated by NRC Staff to be June 30, 1976. But fuel assemblies need not be on site for a period greater than two months prior to fuel loading. Thus a two week delay could hardly be considered detrimental to PG&E.
2. We need the additional time to write a productive appeal.

Respectfully submitted,

For SAN LUIS OBISPO MOTHERS FOR PEACE

By Sandra A. Silver
Sandra A. Silver

and

For JOHN J. FORSTER

By Gordon Silver
Gordon Silver

Dated: Jan. 7, 1976

Xc: Board Members
All Parties
Atomic Safety and
Licensing Appeal Board
Secretary, NRC

