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October 25, 1976

Chairman
Atomic Safety & Licensing Appeal Board Panel
U. S. Nuclear Regulatory Commission, Landow Building
Room 1209 - Washington, D.C. 20555

RE: Diablo Canyon Units 1 and 2
Dockets 50-275-OL and
50-323-OL

Dear Sir:

Herewith is the Response to Request for Certification of San Luis Obispo Mothers for Peace. Copies have been distributed as per the Certificate of Service.

Very truly yours,

Yale I. Jones

YIJ:mg
Encl.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	
	)	DOCKETS 50-275-OL
Units 1 and 2	)	50-323-OL
	)	
Diablo Canyon Site	)	
	)	

RESPONSE OF SAN LUIS OBISPO MOTHERS FOR PEACE TO P.G. & E. REQUEST FOR CERTIFICATION

COMES NOW SAN LUIS OBISPO MOTHERS FOR PEACE (hereinafter "SLOMFP") and requests summary denial of applicant PACIFIC GAS & ELECTRIC COMPANY'S "Request for Certification" filed on or about October 8, 1976. This Request for Certification merely reiterates the contentions raised in P.G. & E's Motion For Reconsideration Of Order On Discovery Relative To Security Plan And Request For Certification which was filed on or about June 29, 1976 and denied by the Atomic Safety And Licensing Board on August 16, 1976.

Your intervenor attaches hereto, and incorporates herein by reference, its response of July 8, 1976, to P.G. & E.'s identical Motion filed June 29, 1976, and denied as above set forth. Further, your intervenor respectfully directs the Appeal Board's attention to the NRC staff reply to the earlier Motion, filed approximately July 12, 1976.

Your intervenor responds to the contentions raised by P.G. & E. as follows:

1. The first point raised by P.G. & E. in its current Motion is essentially the same as it raised in its earlier Motion for Reconsideration, i.e., that "the more individuals who know the details of the plan, the greater the risk that its contents will be disclosed to the detriment of the public interests". Please see Paragraph 1 your intervenor's response to that earlier Motion, attached hereto, which directs itself to that argument. P.G. & E. now additionally contends that a threat to the public is created even under the in camera arrangements ordered by the Licensing Board because of the preparations of photographs, notes, etc. This argument is simply specious because the only notes taken would be by the expert witness who has already been approved by the Licensing Board or by counsel for your intervenors. The only photographs taken would be by persons under the control and direction of P.G. & E.

In the first paragraph of its argument, P.G. & E. also contends that it has not had the opportunity to make "even the minimum background check". P.G. & E. has known since at least March 4, 1976, that Dr. L. Douglas DeNike was proposed by this intervenor as its security expert. Certainly eight months is sufficient time for P.G. & E. to have commenced a background check. Nevertheless, your intervenor has no objection to postponing the requested discovery of security information, and hence the hearing on security issues, for a reasonable length of time in order that P.G. & E. may conduct a

background check.

With regard to P.G. & E.'s final contention in this paragraph, namely that the sanctions contained in N.R.C. regulations are not sufficient to prevent violations of protective orders, this is improperly raised in a proceeding of the present sort. P.G. & E.'s proper remedy is under 10 CFR 2.758 or a request to the Commission to commence a rule making proceeding.

2. P.G. & E.'s second current contention is that information gathered by this discovery procedure might be used by a supporter of a ballot proposition concerning nuclear power in some other state. This contention is entirely speculative and frivolous. P.G. & E. has advanced no evidence whatsoever of the untrustworthiness of Dr. DeNike or counsel for this intervenor, who are the only people who will have access to the information to be discovered.

3. P.G. & E's third current argument is that the requested discovery is unnecessary. It contends that site security plans should be treated "generically". Your intervenor points out that the issue in this application, as in all nuclear power plant applications, is whether the site security plans are adequate. Adequacy is determined by the Licensing Board, and the generic standards are standards of evidence. Whether the Diablo Canyon facility complies with regulations and guidelines and whether the security measures are adequate are matters of ultimate fact to be determined by the Board.

4. P.G. & E's fourth current contention is that the normal appeal procedure is not adequate. Your intervenor refers the Appeal Board to the final paragraph of the Licensing Board's order of August 16, 1976, which fully answers this contention.

5. P.G. & E's fifth contention is a rambling reference to and citation of a "Security Agency Study". Again P.G. & E. would have the Licensing Board yield its fact finding power with reference to a new facility merely because one study concludes "that nuclear power plants can be adequately safeguarded through the existing regulatory structure as it may be upgraded from time to time by the N.R.C." This argument ignores the fact that "the existing regulatory structure" includes the making of ultimate findings of fact with regard to security issues by the Licensing Board.

Also in its fifth current argument P.G. & E. again contends that because the Staff Safety Evaluation dated October 16, 1974 suggests that the security arrangements are adequate, no additional inquiries should be made. Again P.G. & E. mistakenly would have the staff usurp the ultimate fact finding authority of the Licensing Board.

6. Finally, P.G. & E. in its current argument refers to a concern on the part of the Criminal Justice Administrators Association of San Luis Obispo County. However, nothing in the record indicates that P.G. & E. was unable to present similar evidence before the Licensing Board originally ruled on security discovery.

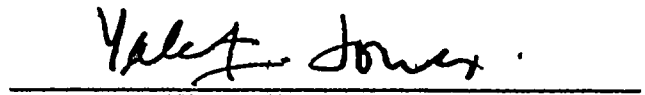
CONCLUSION

To reduce P.G. & E.'s argument to its essence is to see its circularity and lack of logic. In short, it contends that security matters are not a fit subject for scrutiny through the

the process of intervention and litigation before the Atomic Safety & Licensing Board. The reason for this specious contention is the false assumption that anybody seeking to represent the public interest in this regard automatically poses a threat to the safety of the plant. However, at no stage in these proceedings has P.G. & E. advanced one shred of evidence bearing upon the untrustworthiness of the only expert who has been granted access to the security plans or counsel. Hence, it is respectfully requested that his totally unmeritorious request for certification be summarily denied.

DATED: October 25, 1976.

Respectfully submitted,



YALE I. JONES
Attorney for San Luis Obispo
Mothers for Peace

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PACIFIC GAS AND ELECTRIC COMPANY	)	
	)	DOCKET NOS. 50-275-OL
Units 1 and 2	)	50-323-OL
	)	
DIABLO CANYON SITE	)	
	)	

CERTIFICATE OF SERVICE

The foregoing document of San Luis Obispo Mothers for Peace has been served today on the following by deposit in the United States mail, properly stamped and addressed:

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DATED: October 25, 1976.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	
PACIFIC GAS AND ELECTRIC COMPANY	Dockets 50-275-OL
Units 1 and 2	50-323-OL
Diablo Canyon Site	

RESPONSE OF SAN LUIS OBISPO MOTHERS FOR PEACE TO P.G.& E. MOTION FOR RECONSIDERATION OF ORDER ON DISCOVERY RELATIVE TO SECURITY PLAN AND REQUEST FOR CERTIFICATION

Comes now, SAN LUIS OBISPO MOTHERS FOR PEACE (hereinafter "SLOMFP") and requests summary denial of applicant P.G.& E.'s Motion for Reconsideration of Order on Discovery Relative to Security Plan and Request for Certification, contending for the following reasons that each and every point raised by applicant is without merit:

1. The first point raised by P.G.& E. is that "the more individuals who know the details of the plan, the greater the risk that its contents will be disclosed to the detriment of the public interest." SLOMFP submits that this argument is fallacious for two reasons:

a. This argument assumes that any individual seeing the plan is an unreliable and untrustworthy individual. While SLOMFP recognizes the right of P.G.& E. to challenge the trustworthiness of any particular expert, we point out that it has not done so thus far.

b. That the miniscule risk entailed by having a qualified and security-cleared expert review the security

arrangements in the course of discovery is outweighed by public interest which is advanced by having all matters, including security matters, reviewed by way of intervention.

Your Intervenor's position remains that the public interest that is served by subjecting the security plan to review by a qualified individual external to the applicant greatly outweighs any minimal or imagined threat to the integrity of the plan itself.

2. P.G.& E.'s second contention, that the NRC Staff has stated that the plan complies with regulations and guidelines, and hence is adequate as a matter of law, would usurp the fact-finding authority of your Board. The fact that the Staff believes the plan to comply with applicable guides and regulations is evidence which should be presented to your Board at the time of hearing. Whether guides and regulations are complied with, and whether the plan in toto is adequate is an issue to be ultimately resolved by the Board.

3. P.G.& E.'s third contention is irrelevant and immaterial. The fact that there has been an alleged lack of litigation on security matters at other facilities would have no bearing on whether or not the arrangements at Diablo Canyon Units 1 and 2 are adequate.

4. P.G.& E. now for the first time challenges the qualifications of Dr. DeNike. Insofar as discovery is concerned, this challenge is untimely, P.G.& E. having already agreed to Dr. DeNike's

participation. More significantly, however, unless any given person reviewing the security plans by way of discovery is disqualified for security reasons, his participation would be proper. His qualifications are properly attacked at the time of hearing when his evidence is offered into the record. Only at that time would it be proper for your honorable Board to determine that he is not qualified as an expert or to allow his expert testimony in evidence and to consider his qualifications in weighing the evidence.

5. P.G.& E. is now concerned by the further threat to the security plan posed by the fact that Intervenors are represented by counsel. Again, this miniscule risk is outweighed by the public interest which is served by having the adequacy of the security plan fully litigated. P.G.& E. has raised no question of the trustworthiness of either of Intervenors' counsel. Both counsel will secure any details of site security plans from review by any other person having access to their office.

6. P.G.& E. expresses concern about what it believes to be a lack of adquate sanctions in the NRC regulations for violation of a protective order. If the provisions of 10 CFR 2.707 are believed to be inadequate by P.G.& E., it should proceed under 10 CFR 2.758 or request the Commission to commence a rule-making procedure. In any event, the alleged inadequacy of sanctions for violation of a protective order is irrelevant to the matter now at issue.

7. Every matter involving the safety and/or security of a nuclear power plant is one that involves the public interest. P.G.& E. has not shown in any affirmative way a likelihood of detriment to the public interest that would occur if discovery of the

site security plan proceeds. All of its allegations are speculative.

In fact, the risk to the public involved in legitimate and proper discovery of a security plan in no way exceeds that involved in other interlocutory orders. Interlocutory appeal is not justified in this matter.

Finally, both P.G.& E.'s revised motion for a protective order dated April 8, 1976, and its current Motion for Reconsideration, are untimely. For many months in advance of the in camera conference of March 4, 1976, P.G.& E. was aware that security issues were among the contentions raised by Intervenors and admitted by the Board. P.G.& E. has shown no good reason for failing to raise these contentions prior to or at the in camera conference. In fact, it is not an unreasonable inference that P.G.& E. has in fact discovered since that conference an area of inadequacy of the security plan which it does not wish to expose to your honorable Board's scrutiny. Hence, all the more reason that the public interest will be served by proceeding as previously ordered.

Dated: July 6, 1976 at San Francisco, California.

YALE I. JONES, attorney for
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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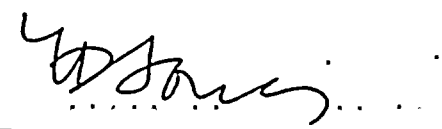

Yale I. Jones, Attorney for
San Luis Obispo Mothers for Peace

Dated: July 8, 1976