

July 20, 1976

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

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Dr. William E. Martin
Senior Ecologist
Battelle Memorial Institute
Columbus, Ohio 43201

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

Dear Members of the Board:

Pursuant to the oral argument reached by the parties at the prehearing conference held on July 13, 1976, I am enclosing a copy of what I recorded to be the consensus as to the environmental contentions at issue in this case. The Staff suggests that the parties scrutinize the contentions listed on pages 1 and 2 of attachment A of the enclosed stipulation. If the contentions are correctly formulated in that attachment, the parties should indicate their agreement by signing the stipulation and mailing it to the Board.

You will recall that the Applicant contested the admissibility of four of the contentions as they were originally presented at the conference. I have separated the agreed-upon issues in the stipulation from those which the Applicant has contested. The four issues for which admissibility is questioned are listed separately under the heading of "Controverted Contentions" on page 3 of attachment A of the stipulation. It is my understanding that the parties will submit briefs on the admissibility of these four controverted contentions on a schedule to be set up by the Board.

Since the prehearing conference was attended by only the Staff, the Mothers for Peace, the Applicant, the representative of John J. Forster, and William Cornwell, the Board does not have any indication of the views of Scenic Shoreline or the State of California (who were absent from the conference) on the proposed contentions. To this end, the Staff has

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sent a copy of the enclosed stipulation and the revised contentions to Scenic Shoreline and the State, with a request that they respond in writing as to the adequacy of those contentions.

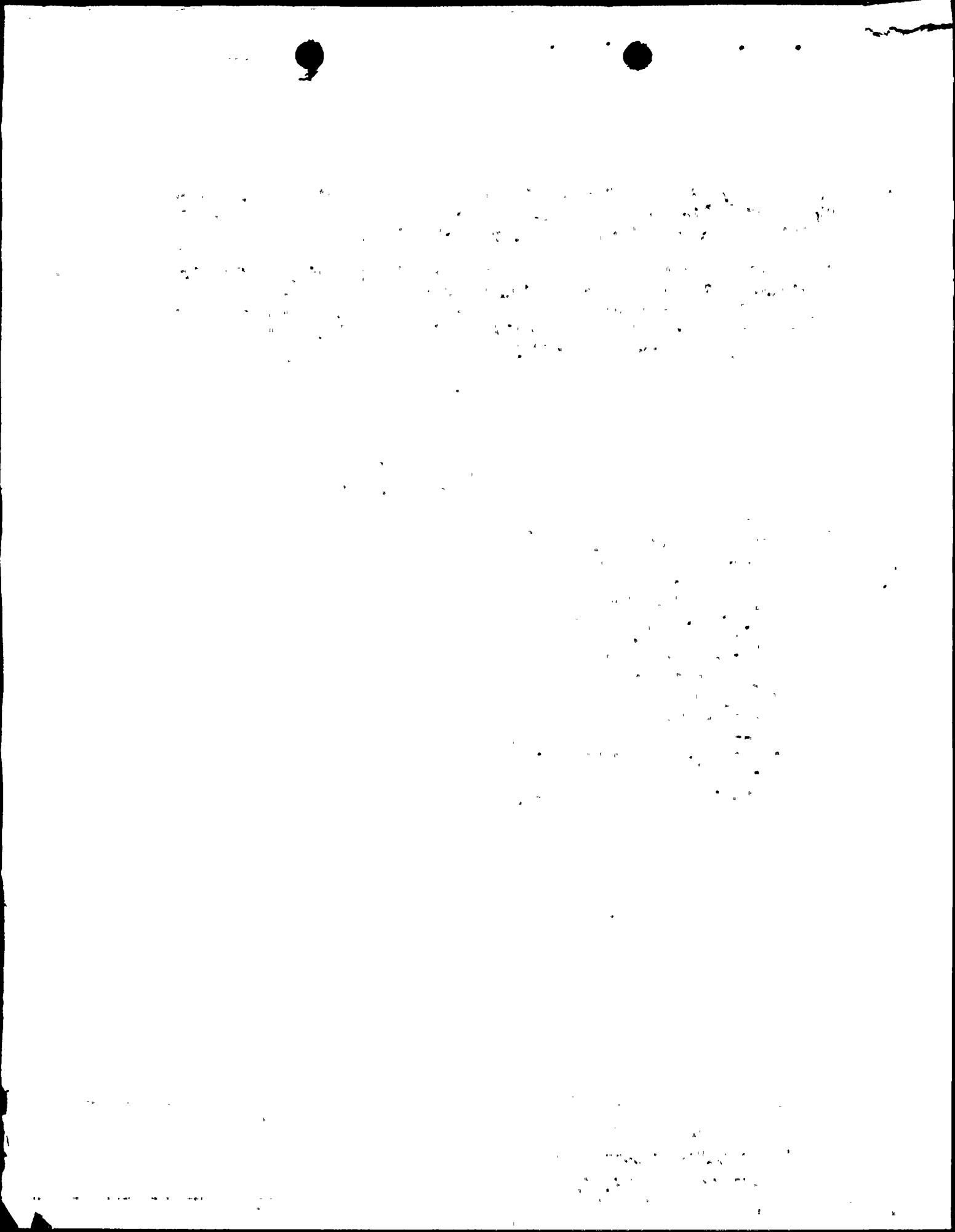
The Staff notes that the order of presentation of evidence for the environmental hearing was not discussed at the prehearing conference. The Staff would suggest that the Applicant, having the burden of proof in the case, proceed with its evidence first, followed by the Intervenor next, and the NRC Staff last.

Sincerely,

L. Dow Davis
Counsel for NRC Staff

cc: Philip A. Crane, Jr., Esq.
Elizabeth Apfelberg
Andrew J. Skaff, Esq.
Raye Fleming
Mr. Frederick Eissler
Mrs. Sandra A. Silver
Mr. Gordon Silver
William P. Cornwell
Paul C. Valentine
Yale I. Jones, Esq.
Atomic Safety and Licensing
Board
Atomic Safety and Licensing
Appeal Board
Docketing and Service Section

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant,
Units Nos. 1 and 2)

}
Docket Nos. 50-275 O.L.
50-323 O.L.

STIPULATION

On October 19, 1973, the Nuclear Regulatory Commission (NRC) published a notice of hearing on the application for operating license permits from the Pacific Gas and Electric Company (Applicant) for the Diablo Canyon Plant, Units 1 and 2. That notice provided, inter alia, that any person whose interest might be affected by this proceeding could file a petition to intervene. 38 Fed. Reg. 29105. Timely Petitions were filed by John J. Forster, Lonnie Valentine, Elizabeth Apfelberg and Sandra Siver for the Mothers' for Peace and Scenic Shoreline Preservation Conference, Inc. (jointly referred to as Intervenors). Subsequently, the parties, as well as the State of California, were admitted as parties to the proceeding by the Atomic Safety and Licensing Board (Board) Order dated January 25, 1974.

After numerous discussions among the parties, the United States Nuclear Regulatory Commission Staff (Staff), the Applicant and the Intervenors hereby stipulate that the following environmental contentions (enclosed

as attachment A to this stipulation) should be admitted by the Licensing Board as issues in controversy for the purposes of the environmental hearings.

The parties realize that this stipulation must ultimately be accepted by the Licensing Board before the issues listed are formally admitted to the proceeding. The parties also realize that this stipulation in no way waives the right of any party under 10 C.F.R. §2.714 to raise additional issues upon a showing of good cause for not having done so at an earlier date, nor does it preclude any party from asking for summary disposition of any of the issues listed.

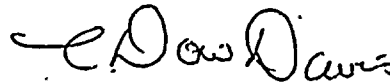
The parties agree that the NRC Staff will introduce its FES Addendum into evidence at the environmental hearing if approval to do so is granted by the Licensing Board. It is also agreed that the Applicant will introduce into evidence at the environmental hearing its Environmental Report and all supplements to date. The parties realize that the introduction of such documents into evidence will in no way be conclusive as to the information contained therein, it being the sole province of the Atomic Safety and Licensing Board to admit and weigh the evidence.

The parties to this stipulation also agree to the following understanding as to alternative cooling and asks that the Licensing Board adopt it at the hearing:

AGREEMENT ON ALTERNATE COOLING

The NRC Staff and Intervenors stipulate that to the best of their knowledge, based on the Second Memorandum of Understanding between the Environmental Protection Agency and the Nuclear Regulatory Commission and interpretations of the Federal Water Pollution Control Act, that exclusive jurisdiction resides in the EPA and the State of California to determine the issue of alternative cooling devices. Thus, the issue of selection of alternative cooling devices is outside the jurisdiction of the Atomic Safety and Licensing Board and is not a proper subject for this proceeding except as it effects the environmental assessment under NEPA. Intervenors reserve the right to reopen the issue upon a showing that such jurisdiction is not in fact vested in the EPA and the State of California.

Respectfully submitted,



L. Dow Davis, Esq.
for the United States
Nuclear Regulatory Commission

William Cornwell

Sandra Silver for
the Mothers for Peace

Gordon A. Silver for
John J. Forster

Frederick Eissler for
Scenic Shoreline Preservation Conference, Inc.

Andrew Skaff, Esq. for
the State of California

Date

Phil Crane, Esq. for
Pacific Gas and Electric Company

ENVIRONMENTAL CONTENTIONSOnce-through Cooling. (EC, SS, Cornwell).

1. Whether information developed subsequent to the Commission hearing in September 1973 demonstrates that the Staff's Final Environmental Statement (FES) adequately considers the extent or effect of the facilities' thermal plume on the environment, as to:
 - A. Whether the mouth of Diablo Canyon is the point of discharge.
 - B. Modeling of heat transfer to the atmosphere.
 - C. Quantitative data on turbidity.
 - D. Quantitative data on sublethal thermal effects.
 - E. Winds and currents causing recirculation.
 - F. Impingement and entrainment of organisms.
 - G. Species losses and regeneration of significant marine breeding areas including larval abalone.
 - H. Size of the 4 degree isotherm.
 - I. Procedures to ensure that the plume will not exceed predicted values.
 - J. Growth and concentration of bull kelp, as affected by heat, chlorine and foam emitted from the Diablo Canyon discharge structures, and its effect on abalone which feed on it.

Cost/Benefit (SS, EC)

2. Whether the NEPA cost benefit analysis improperly assesses the benefits to the plant by improper assumptions on:
 - B. Plant malfunctions, breakdowns, downtime, or reduced operational efficiency causing a low reliability factor.

Copper Discharge (Cornwell)

3. Whether adverse environmental effects are being or will be experienced by abalone due to residual particulate copper from previously-installed condenser tubing.

Low-level Radiation (EC, MFP)

4. Whether the FES and amendment inadequately consider as environmental costs the doses and effects of low level radiation as to:
 - C. Somatic effects, including incidences of human cancers, leukemias and infant mortalities and genetic effects of routine releases on the population within a 50 miles radius of the plant.
 - D. Somatic and genetic effects on plant personnel including inadvertent ingestion of radioactive materials.

The following contentions will be dropped as being outside the scope of the NRC's jurisdiction.

Cornwell (EC, SS)

5. The alternatives to once-through cooling of cooling towers or inland sites.

CONTROVERTED CONTENTIONS

The parties agree that they were not able to stipulate to the following contentions and propose that they be ruled upon after briefing by the parties in accordance with a schedule to be promulgated by the Board.

Cost/Benefit (SS, EC)

3. Whether the NEPA cost benefit analysis improperly assesses the benefits to the plant by improper assumptions on:
 - A. Nuclear fuel shortages.
 - C. ECCS deficiencies causing added expenditures.

Low-level Radiation (EC, MFP)

4. Whether the FES and amendments inadequately consider as environmental costs the doses and effects of low level radiation as to:
 - A. Build-up of concentration of radioisotopes in the food chain.
 - B. Number of nuclear reactors planned for the state.

