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April 8, 1976

Elizabeth S. Bowers, Esq.  
Atomic Safety and Licensing Board  
U. S. 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 O.L. and 50-323 O.L.

Dear Mrs. Bowers:

At a prehearing conference held on March 4, 1976, Counsel for the Mothers for Peace (MFP) asked the Atomic Safety and Licensing Board to delete from the public docket, certain news releases sent to the parties and the Board by the Applicant under a cover letter dated February 27, 1976. The following information is submitted in response to the Board's inquiry as to the Staff position on the legality of pursuing such a course of action.

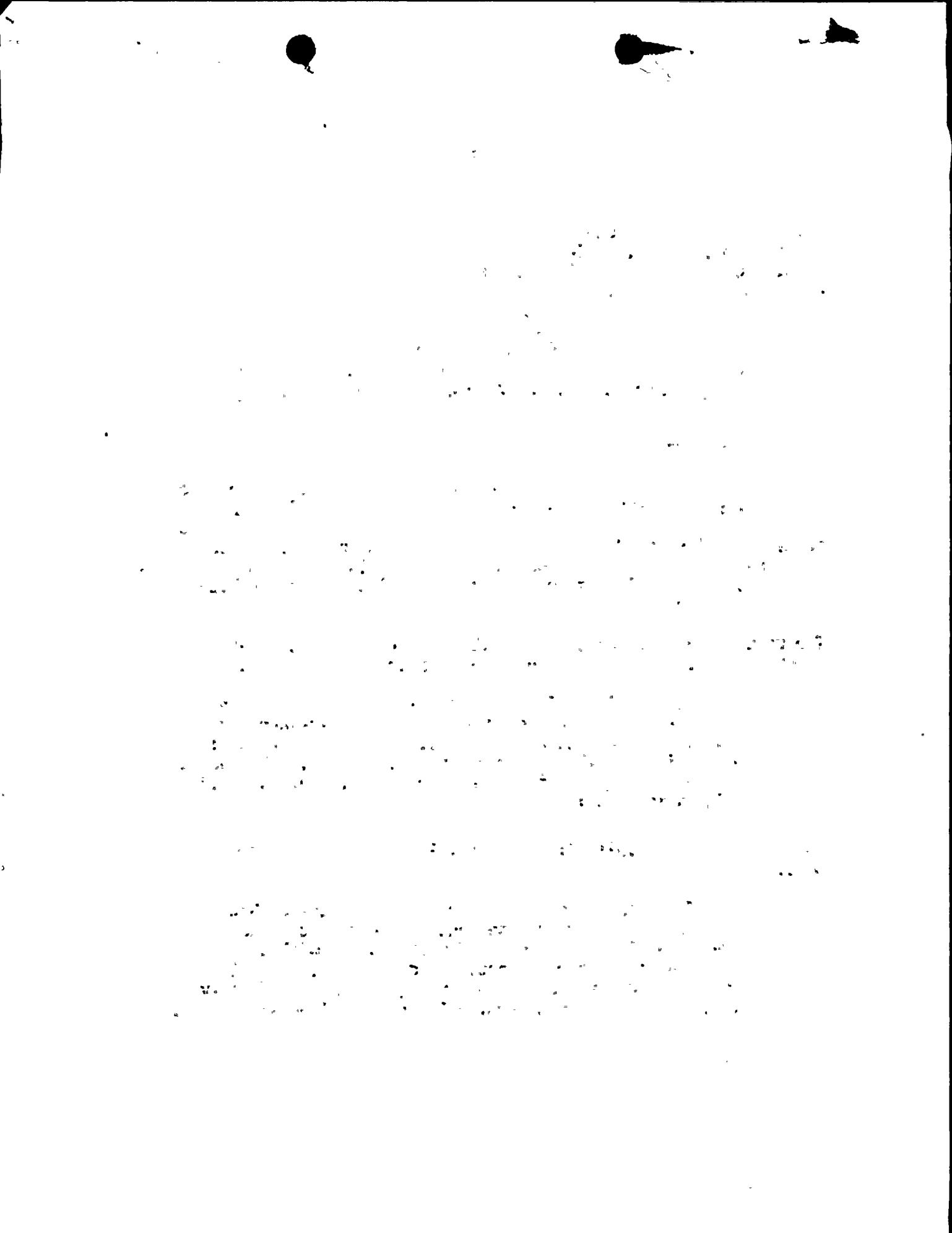
The requirement for maintaining a docket for each case originates in 10 CFR §2.702. That section provides, inter alia, that the

"Secretary will maintain a docket for each proceeding subject to this part commencing with the issuance of the initial notice of hearing.... The Secretary will maintain all files and records, including... all papers, correspondence, decisions and orders filed or issued."  
(Emphasis added).

In the context of availability of Official Records, 10 CFR §2.790(a) provides that:

"...final AEC records and documents, including that not limited to, correspondence to and from the AEC, regarding the issuance... of a license... will be made available for inspection and copying in the AEC Public Document Room, except for [certain specifically exempted records not pertinent here]." (Emphasis added).

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Thus the Commission's regulations impose a mandatory duty upon the Secretary to maintain a docket containing, among other things, all of the correspondence in a given licensing proceeding. Because of this requirement, it is the Staff's opinion that the Applicant's letter of February 27, 1976 was properly included in the Diablo Canyon docket.

The Staff is of the opinion that no useful purpose is served by deletion of material from agency records. In this case, the matter sought to be excluded consists of only newspaper clippings relative to an occurrence at the Diablo Canyon nuclear site. Those news clippings would have absolutely no evidentiary value if offered into evidence and, in fact, they have not been offered. The Licensing Board should make it clear to all the parties that it will not consider the news clippings in making its determination for these proceedings. This would obviate the necessity for considering the matter further and would make it unnecessary for the Board to reach the question of whether it has jurisdiction to order the Secretary of the Commission to remove information from the Commission files.

Assuming arguendo that the Licensing Board would entertain the question of jurisdiction, Staff is of the opinion that such jurisdiction should not be exercised except in extreme cases of compelling circumstances. Such a showing has not been made in this case. Moreover, the mere exercise of jurisdiction in this case would establish a bad precedent because once the precedent is established the remedy would be available to all parties and the Licensing Board would need to devote a major portion of its time to acting as official censor of agency records relating to adjudicatory proceedings. This additional burden on Licensing Boards would be both unnecessary and overwhelming.

Sincerely,

James R. Tourtellotte  
Assistant Chief Hearing Counsel

cc:  
Mr. Glenn O. Bright  
Dr. William E. Martin  
Philip A. Crane, Jr., Esq.  
Elizabeth Apfelberg  
Andrew J. Skaff, Esq.  
Raye Fleming  
Mr. Frederick Eissler  
Mrs. Sandra A. Silver

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Mr. Gordon Silver

Mr. William P. Cornwell

Atomic Safety and Licensing Appeal Board

Atomic Safety and Licensing Board Panel

Docketing and Service Section

OFFICE	Mr. William P. Cornwell			
SURNAME	Atomic Safety and Licensing Appeal Board			
DATE	Atomic Safety and Licensing Board Panel			
	Docketing and Service Section			

THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is a citizen of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the United States of America at [City], [State], this [Date] day of [Month], 19[Year].

Signature of the official  
[Signature]

Official Title  
[Title]

Official Seal  
[Seal]

Official Seal  
[Seal]

April 6, 1976

Mrs. Raye Fleming  
1746 Chorro Street  
San Luis Obispo, California 93401

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

Dear Mrs. Fleming:

In accordance with our informal discovery agreement, enclosed are loan copies of the following documents you have requested:

- J1 The effects on Populations of Exposure to Low Levels of Ionizing Radiation (Beir Report)
- J2 Virginia Petroleum Jobbers Decision, 259 F.2d 921 (1958)
- J3 Point Beach Decision - ALAB-58, 4 AEC 951 (June 20, 1972).

Sincerely,

L. Dow Davis  
Counsel for NRC Staff

cc: Sandra Silver (w/encl. J2, J3 only)	Distribution
Richard S. Salzman, Esq. (w/out encl.)	Formal Files
Dr. Lawrence R. Quarles	LDDavis
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Mr. Gordon Silver	JGill-EPM
Mr. William P. Cornwell	
Atomic Safety and Licensing	
Appeal Board	

OFFICE >	Atomic Safety and Licensing Board Panel	"	OELD <i>[Signature]</i>	
SURNAME >	Docketing and Service Section	"	LDDavis:djt	
DATE >	Paul C. Valentine	"	JTourtellotte	
	Val T. Jones, Esq.	"	04/05/76	



The page contains several paragraphs of text that are extremely faint and illegible due to low contrast and significant noise. The text appears to be organized into multiple sections, but the specific content cannot be discerned.

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