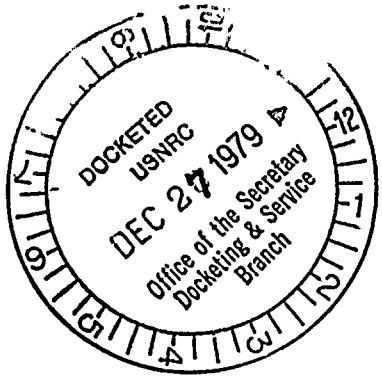

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2)	Docket Nos. 50-275 O.L. 50-323 O.L.

APPLICANT PACIFIC GAS AND ELECTRIC COMPANY'S BRIEF IN RESPONSE TO INTERVENOR'S BRIEF IN SUPPORT OF EXCEPTIONS TO PART IV OF INITIAL DECISION DEALING WITH SECURITY MATTERS

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I. FACTS

This appeal by Intervenor San Luis Obispo Mothers for Peace (hereinafter "Intervenor") marks the fourth occasion this Board has been asked to review rulings of the Licensing Board as respects Applicant Pacific Gas and Electric Company's (hereinafter "Applicant") security plan. The three previous rulings of this Board are: Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (June 9, 1977); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-504, 8 NRC 406 (October 27, 1978); and Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-514, 8 NRC 697 (December 22, 1978). In ALAB-410 this Board set forth in some detail the requirements it felt should be met in "qualifying" an "expert" to review a nuclear security plan. In ALAB-504 this Board remanded to the Licensing Board that board's decision of September 5, 1978 (which found Intervenor's putative expert unqualified) for reconsideration and a full explication of the reasons underlying whatever result that Board might reach upon reconsideration. On November 3, 1978, the Licensing Board again found Mr. Comey to be unqualified to meaningfully review the security plan. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 NRC 567 (November 3,1978). In ALAB-514 this Board denied certification of the question of Mr. Comey's qualifications as brought by Intervenor.

On January 5, 1979, Mr. Comey died as a result of an automobile accident. On January 26, 1979 the Commission rendered the following Memorandum Decision:

> "The Commission does not review ALAB-514 because the death of the Intervenor's witness has rendered moot the question of his qualifications for access to the facility security plan. No inference may be drawn with regard to our view of either the correctness of the Licensing or Appeal Board decisions or the importance of the issues involved." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-79-1, 9 NRC 1 (January 26, 1979).

Preceding the holding of mootness by the Commission, Intervenor submitted "Intervenor's Response as to Participation In Hearing on Security Plan" on January 19, 1979. (Hereinafter "Response", attached in full as Exhibit D to Intervenor's Brief filed herein). The January 19 filing of Intervenor is mystifying only in its entitlement. Applicant is unable to determine what the document is in "response" to and the Licensing Board has treated it as a "letter". Whatever the exact nature of the document, it was addressed to the Licensing Board, properly captioned, signed by Intervenor's counsel and mailed to all parties of record. In pertinent part, Intervenor stated:

> "This Intervenor has been denied access to the security plan and has been denied qualification of expert witnesses to review the plan, either for preparation for cross-examination or the presentation of affirmative evidence as to the inadequacy of the applicant's security plan. Without the qualification of an expert witness to inspect the plan and advise Intervenor's attorney, it is impossible for this Intervenor to prepare, either for signi-

> ficant cross-examination on the inadequacies of the applicant's security plan or to present affirmative evidence to support Intervenor's contentions.
>
> "Therefore, this Intervenor will not be able to participate in the hearings now scheduled for the first week of February as to the adequacy of applicant's security plan." (Emphasis added.)

Nothing more was heard from Intervenor or any of its counsel regarding the in camera hearings on the security plan scheduled for Monday, February 12, 1979, until Thursday afternoon the 8th of February. At that time a telegram was delivered from a theretofore unheard-of attorney entering an appearance on behalf of the Intervenor and announcing his intention "to participate in the Diablo Canyon security systems tour" on Monday. Following receipt of the telegram the parties were asked to comment regarding same. (Tr. at 9080-9099). It was the position of Applicant that Intervenor's new counsel would not be allowed to inspect the physical security systems on Monday the 12th absent an order of the Commission. (Tr. at 9086, 9087). The Licensing Board took the matter under consideration and on Friday the 9th ruled that Intervenor's new counsel had not established a right to participate in the in camera evidentiary hearing on Monday. (Tr. at 9107). On Monday the 12th Intervenor's new counsel came to the hearing and pleaded his case. (Tr. at 9356-9377). The Licensing Board ruled that the filing of January 19 was a voluntary default under 10 C.F.R. §2.707 and that they had heard nothing from Intervenor that day that would change that opinion.

(Tr. at 9367-9368). The security hearings were held without Intervenors' being present. The transcript of proceedings of that in camera session are of course in possession of the Commission.

Intervenor has subsequently filed exceptions to the Licensing Board's findings regarding the security plan for Diablo Canyon. The Brief of Intervenor in justification of those exceptions argues that Mr. Comey was qualified, the Board "erred" in finding Intervenor in voluntary default and finally, that Intervenor's new counsel should have been allowed to participate in the security proceedings.

The entire tone of Intervenor's brief seems to be cast in the shadow of the downtrodden; taken advantage of by Applicant, Staff and Licensing Board. Applicant would respectfully submit that both the tone and content of Interventor's Brief are misleading. Intervenor complains that it has attempted to qualify four individuals and that "[T]he Board's continued arbitrary and unlawful procedural obstruction . . . to qualify an expert . . ." has prejudiced them. What Intervenor conveniently omits are the following facts:

> 1. The first "expert" offered by Intervenor, Dr. DeNike, was ruled qualified by the Licensing Board until the Applicant appealed that decision and this Board held that there was not sufficient information to demonstrate that Dr. DeNike was qualified. (5 N.R.C. 1406, n.19.) (No additional information was ever submitted regarding Dr. DeNike but Intervenor asked the Licensing Board on two more occasions to "qualify" him).

2. On May 6, 1977, an NRC Staff Attorney furnished to Intervenor the names of four persons who were qualified to act as experts for Intervenor and to whom Applicant had no objection. These persons had no connection with either Applicant or Staff but were, for one reason or another, unacceptable to Intervenor.

3. Upon the death of Mr. Comey Intervenor had several choices:

(a) It could have participated thru its then counsel in the security proceedings.

(b) It could have requested a delay to attempt to find a qualified expert to assist in light of Mr. Comey's death (a request which may or may not have been granted).

(c) It could have withdrawn (as it did) from the security portion of the ongoing proceedings.

Applicant would submit that Intervenor has been far more interested in creating an appealable issue than in deriving a benefit from "independent scrutiny of the security plan."

II. THE QUESTION OF THE QUALIFICATIONS OF INTERVENOR'S PROPOSED EXPERT IS MOOT

Intervenor's spend ten of twenty-four pages of their brief and three of four exhibits to that brief in once more attempting to establish the qualifications of Mr. Comey. As previously stated by the Commission itself, the death of Mr. Comey has rendered moot the question of his qualifications. CLI-79-1, supra, 9 NRC at 1. The speciousness of Intervenor's position is highlighted by a careful review of Intervenor's

argument regarding Mr. Comey. Nowhere does Intervenor ever state, as they allege in the caption to their argument (Brief at 2), how they have been prejudiced. An allegation of prejudice must be supported by a showing of same before even real error is grounds for reversal. Applicant does not concede any error, however, and submits that Mr. Comey was not qualified. Both Applicant and Staff have presented their views to this Board on prior occasions[1/] and, as the question is moot, there would be nothing gained by setting forth those positions yet another time. Intervenor has offered nothing new in this respect and indeed Mr. Comey was not qualified to review the security plan in question.

III. THE LICENSING BOARD PROPERLY RULED THAT INTERVENOR SAN LUIS OBISPO MOTHERS FOR PEACE HAD WITHDRAWN FROM THE PROCEEDING AS RESPECTS THE SECURITY PLAN

On January 18, 1978, Intervenor filed amended contentions to support allegations that the security plan for Diablo Canyon does not comply with existing NRC regulations. Prior and subsequent to that filing, Intervenor petitioned the Licensing Board on four separate occasions to certify four different individuals as expert witnesses for purposes of

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[1/] "Pacific Gas and Electric Company's Response to Intervenor's Petition for Direct Certification and Appeal from Licensing Board Order of September 5, 1978" (October 13, 1978). "NRC Staff Response to Intervenor's Petition to Establish Qualifications of David Comey as Security Expert for Discovery." (August 14, 1978). These documents are attached hereto as Exhibits A and B, respectively, and are incorporated herein by reference.

discovery. Following the Licensing Board's several rulings that the proffered prospective witnesses were unqualified to review the security plan on behalf of Intervenor, and the January 5, 1979 death of Mr. Comey, one of the prospective witnesses, Intervenor filed its Response on January 19, 1979. The Licensing Board interpreted the Response as a withdrawal from the proceeding by Intervenor as respects the security plan contentions, (Tr. at 9106); (Partial Initial Decision at 93), and so accepted the Response as a voluntary default under 10 C.F.R. §2.707, (Tr. at 9367-68), (Partial Initial Decision at 93).

Intervenor now states that the Licensing Board erroneously inferred a default from Intervenor's Response. (Brief at 12). Intervenor argues first, that the Response served only to give notice that Intervenor would not be able to participate in the in camera hearing on the security plan, and did not constitute a withdrawal of Intervenor's security plan contentions, and second, even if the Response "was a request to withdraw its security contentions, that request was never granted." Id.

It is first clear that Intervenor is misrepresenting the action of the Licensing Board. Nowhere did the Board rule that Intervenor had withdrawn its security plan contentions. What the Board did rule, as already stated, was that Intervenor gave notice in a filing dated January 19, 1979, that it was withdrawing from the security plan proceeding, and the Board

accepted the filing as a voluntary default under 10 C.F.R. §2.707 as respects the security plan proceeding. (Partial Initial Decision at 93).

Even if the Licensing Board had ruled that Intervenor had withdrawn its security plan contentions, however, the effect in this particular case would have been the same as the effect resulting from the ruling which the Board did make. That is, by withdrawing from the security plan proceeding, Intervenor chose not to exercise its right of cross-examination of witnesses. Since Intervenor was still a party to the Diablo Canyon proceeding respecting other safety contentions, however, Intervenor was and is free to appeal the findings by the Board respecting the adequacy of the security plan. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, RAI-74-11 857, 863 (November 21, 1974). The same effect would result from a ruling that Intervenor had not only withdrawn from the security plan proceeding, but also had withdrawn its security plan contentions. That is, Intervenor would have forfeited its right to cross-examination, but would still have been able to appeal the Board's findings on the security plan by virtue of its status as a party to the proceeding on other safety contentions.

Applicant submits, based on the plain language of Intervenor's Response and Commission precedent, that the Licensing Board was correct in concluding that Intervenor had withdrawn from the security plan proceeding. It is well

established that a party to a Commission proceeding advancing a particular contention carries the burden of going forward to buttress that contention. Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, RAI-74-9 381, 388 (September 5, 1974); Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-123, RAI-73-5 331, 345 (May 18, 1973). Failure on the part of a party to meet the responsibilities of his participation constitutes grounds for dismissal of the party and his contention. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-288, NRCI-75/9 390, 390-94 (September 17, 1975). In Boston Edison Company (Pilgrim Nuclear Generating Station, Unit No. 2), LBP-76-7, NRCI-76/2 156 (February 20, 1976), the Licensing Board had granted a petition to intervene and admitted several of the contentions set forth in the petition. After participation in some prehearing activities, the intervenor "advised the Board tha he did not intend to participate in the evidentiary hearing, but stated a reservation of the 'right to seek administrative and judicial review'." Id. at 156. The NRC Staff moved that the intervenor show cause why he should not be held in default and his contentions dismissed. In considering the Staff's motion the Licensing Board stated:

> "The failure of a party to carry out the responsibilities imposed upon him by the fact of his participation in a proceeding has been commented upon by the Appeal Board: See Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1) ALAB-224, 8 AEC 244, 250; Consumers Power Company

> (Midland Plant, Units 1 and 2) ALAB-123, 6 AEC 331, 332; Northern States Power Company (Prairie Island Nuclear Generating Plan, Units 1 and 2) ALAB-288, NRCI 75/9 390. For the reasons stated in those cases, there is authority for dismissal of stated but abandoned contentions. Caution dictates however that the contentions be reviewed to determine if the questions raised may be ignored." Id. at 157.

Following consideration of the intervenor's contentions, the Board ruled that the intervenor and his contentions were dismissed from the proceeding.

Based on Boston Edison Company and cases cited therein, it is appropriate for a Licensing Board to dismiss an intervenor and his contentions where such intervenor states that he will not be participating in the evidentiary hearing. In this case Intervenor informed the Licensing Board that it would not be participating in the in camera proceeding on the security plan since it did not have an expert witness whom the Licensing Board had determined to be qualified to inspect the security plan. Although not dismissing, as it could have, Intervenor's security plan contentions, the Licensing Board treated the notice of non-participation as a voluntary default under 10 C.F.R. §2.707. (Tr. at 9367). Section 2.707 provides in pertinent part:

> "On failure of a party . . . to appear at a hearing . . . the Commission or the presiding officer may make such orders in regard to the failure as are just, including, among others, the following:

"a) . . . enter such order as may be appropriate; or

"b) Proceed without further notice to take proof on the issues specified."

It is clear that if a party fails to appear at a hearing, then under subparagraph (b) the Licensing Board may proceed without any obligation to give such party notice respecting the issue specified. No order is required. In this case, Intervenor had advised the Licensing Board that it would be unable to participate in the hearing on the security plan, and had stated specific reasons why this was so. The Licensing Board was entitled to rely on Intervenor's statement, and so could conclude that Intervenor would not appear at the hearing, and, therefore, no further obligation was owed Intervenor.

The Licensing Board's ultimate ruling on the question of withdrawal is buttressed by the fact that from the filing of the Response to the receipt of a telegram by the Licensing Board on February 8, 1979, Intervenor had done nothing which would have suggested that it had not withdrawn from the security plan proceeding. On the basis of the foregoing, the Licensing Board was under no duty to issue an order dismissing Intervenor's security plan contentions. Intervenor's filing on January 19 was adequate notice that it no longer wished to participate.

Intervenor states that following receipt of its Response, the Licensing Board "should have made inquiry into the security issues raised by Intervenor's contentions." (Brief at 13). The simple response to Intervenor's argument is that the

Licensing Board did make such inquiry. See section V, infra.

IV. THE LICENSING BOARD PROPERLY REFUSED INTERVENOR'S LAST MINUTE REQUEST TO PARTICIPATE IN THE IN CAMERA PROCEEDINGS REGARDING THE SECURITY PLAN

The factual circumstances respecting the attempt by Intervenor's counsel to participate in the security plan proceeding are discussed at pages 4 and 5, supra. Intervenor argues that it was error for the Licensing Board not to permit Intervenor's counsel to participate. Intervenor states:

> "Even assuming (incorrectly) that Intervenor's January 19, 1979, "RESPONSE" was a request to withdraw its security contentions, and assuming (again incorrectly) that the Licensing Board had ordered the security contention withdrawn, it was still a violation of the Administrative Procedure Act and NRC case law and regulations to bar Intervenor's counsel from the hearing and tour of the plant security system." (Brief at 18). (Emphasis in original.)

Intervenor then continues that in denying its request to participate, the Licensing Board deprived Intervenor of the opportunity (1) to cross-examine witnesses and (2) to file proposed findings of fact and conclusions of law and to seek appellate redress of Licensing Board error. Id. at 18-19. In support of its argument, Intervenor cites Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, RAI-74-11 857 (November 21, 1974). That decision sets forth general principles respecting the opportunity for an intervenor to cross-examine witnesses and to appeal from adverse findings.

Applicant submits, based on the special circumstances surrounding the in camera proceeding on the Diablo Canyon

security plan, that the general principles set forth by the Appeal Board in Northern States are not controlling here. The special circumstances to which Applicant is referring are first, the fact that Intervenor had withdrawn from the security plan proceeding without indicating, until it filed a telegram on February 8, 1979, that it wished to jump back into the proceeding, and second, the fact that the attorney appearing on behalf of Intervenor on the eve of the hearing was someone other than the two attorneys who had been representing Intervenor on its security plan contentions for approximately two years, and about whom neither the Licensing Board, the Staff nor the Applicant knew anything.

Intervenor argues that it should have been permitted to participate through its new attorney even assuming that its January 19, 1979, filing did constitute a withdrawal of its security contentions. Intervenor's understanding respecting this matter is contrary to the Appeal Board's memorandum and order issued in the Northern States proceeding subsequent to the decision cited by Intervenor. In Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-288, NRCI-75/9 390 (September 17, 1975), the Appeal Board considered the request of an intervenor to participate in a remanded hearing on the single issue of steam generator tube integrity even though the intervenor had not taken an appeal from a supplemental initial decision of the Licensing Board on that issue, nor filed a memorandum of his views on the correctness of that supplemental initial decision as requested

by the Appeal Board. Based on this inactivity, the Appeal Board previously had stated: "[W]e deem Mr. Gadler to be no longer an active participant in this proceeding." Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-284, NRCI-75/8 197, 198 n.2 (August 11, 1975). The Appeal Board denied the intervenor's request, and in doing so set forth the following principle:

> "Contrary to Mr. Gadler's apparent assumption, intervention in an NRC adjudicatory proceeding does not carry with it a license to step into and out of the consideration of a particular issue at will. True enough, we have held that an intervenor does have certain participational rights even on those issues (such as the one here-involved) which have been placed into controversy by some other party. See n. 6, supra. And, indeed, when we returned this proceeding to the Licensing Board a year ago in ALAB-230 for further exploration of the tube integrity issue, we explicitly determined that Mr. Gadler was to be allowed a still broader role in the hearing on remand. But neither our generic ruling on intervenor participation contained in ALAB-244 - nor what we decreed in ALAB-230 to be the permissible scope of Mr. Gadler's involvement on the remand of the tube integrity issue here - carried with it the message that he was being accorded the option of waiting on the sidelines until such time as he might choose to enter the contest." NRCI-75/9 at 393 (empasis added).

In attempting to jump back into the security plan proceeding at the twelfth hour, Intervenor here attempted in essence to do the same thing as did the intervenor in Northern States. As the subsequent decision in Northern States makes clear, the general principle respecting the opportunity to cross-examine witnesses is not controlling where an intervenor

previously has served notice that it was withdrawing from the proceeding. ALAB-288, NRCI-75/9 at 393. Thus Intervenor's argument is insufficient to support its allegation of Licensing Board error.

The Appeal Board in Northern States, ALAB-288, did not address whether an Intervenor may under certain circumstances be permitted to reinstitute its participation. However, in Mississippi Power and Light (Grand Gulf Nuclear Station, Units 1 and 2), LBP-73-41, RAI-73-11 1057 (November 23, 1973), the Licensing Board ruled that in a situation where an intervenor who has voluntarily withdrawn wishes to reinstitute his intervention, the factors set out in 10 C.F.R. §2.714(a)(1) respecting untimely petitions to intervene should be considered. Included among these factors is "[g]ood cause, if any, for failure to file on time." 10 C.F.R. §2.714(a)(1)(i). Intervenor made no showing of good cause respecting the untimeless of Intervenor's request. Another factor to be considered is "[t]he extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record." Id. §2.714(a)(1)(iii). It is noted that Intervenor had withdrawn from the security plan proceeding because it had not been able to qualify an expert witness as required by this Board in ALAB-410 and thus could neither prepare for significant cross-examination nor present affirmative evidence to support its contention. (Response at 4). In other words, Intervenor acknowledged that it would be unable

to make a meaningful contribution to the development of a sound record. When new consel made his twelfth hour appearance, he failed to make any showing that Intervenor's situation had changed and that Intervenor was now in a position to make a meaningful contribution. Since Intervenor failed to make any showing whatsoever that Intervenor should have been permitted to participate in the proceeding based on a consideration of the factors in 10 C.F.R. §2.714(a)(1), the Licensing Board acted correctly in denying Intervenor's untimely request to resume participation in the security plan proceeding.

The second part of Intervenor's argument, which is that the Board's ruling deprived Intervenor of the opportunity to appeal adverse findings, is also without merit. First, under the very case cited by Intervenor, Northern States Power Company, ALAB-244, it is clear that a party to a proceeding may appeal any adverse finding of the Licensing Board, regardless of whether such party had advanced a particular contention on the matter encompassed by such finding. Since Intervenor remained a party to the Diablo Canyon proceeding even though it had withdrawn from that portion dealing with the security plan, it was not barred by the Board's ruling from appealing the Board's finding respecting the security plan.

Even if Intervenor's argument is interpreted to say that Intervenor is not able to make a meaningful appeal from the Board's finding because Intervenor did not participate in the security plan hearing, it suffices to note that Intervenor had

chosen for its own reasons not to participate. It was Intervenor who failed to produce an expert witness suitably qualified to review Applicant's security plan. And it was Intervenor who notified the Licensing Board that it would not be able to participate in the security plan proceeding. Once it had chosen to withdraw, Intervenor forfeited the opportunity to participate in the in camera proceeding. Therfore, it was not the Board which deprived Intervenor of the opportunity to make a meaningful appeal -- Intervenor deprived itself of that opportunity.

A second reason supporting the Licensing Board's action is that it would have been highly imprudent to have permitted Intervenor's new counsel to participate in the in camera security plan hearing when neither the Licensing Board, the Staff, nor the Applicant knew anything about him. This fact is particularly important in view of the sensitive nature of a security plan. As stated by the Appeal Board in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (June 9, 1977):

> "Nevertheless, as we have indicated, security plans are indeed sensitive. Moreover, in recent years they appear to have become more so; the Commission's clearance proposal . . . is representative of that development. Under 10 CFR §2.790, they are clearly not to be made available to the public at large. And while they must be released to interested parties under appropriate conditions, that does not mean that in all cases they need be released in their entirety or to anyone selected by the intervenors or without protective safeguards." 5 NRC at 1404.

For approximately two years Intervenor had been represented by Messrs. Paul C. Valentine and Yale I. Jones. It was in fact Mr. Valentine who signed the January 19, 1979 Response by which Intervenor notified the Licensing Board that it would not be participating in the security plan hearing. Then on February 8, 1979, less than a day and a half before the in camera session on the security plan was to commence, the Licensing Board received a telegram from a new attorney stating an intention to participate in the tour at the Diablo Canyon site. The telegram did not provide any notice to the Applicant or the Staff of his intentions; nor did it mention Intervenor's Response or define the new attorney's relationship with Messrs. Valentine and Jones. All that was stated in the telegram was that he was making an appearance on behalf of Intervenor and was a member of the California Bar. These facts do not carry with them an automatic entitlement to participate in the plant tour of security systems or to have access to Applicant's security plan. A security plan is too sensitive to permit someone about whom nothing is known to make an appearance at the twelfth hour and be granted access to a security plan or a nuclear power plant site. For this reason as well, the Licensing Board acted properly in denying the last minute request to participate.

V. THE LICENSING BOARD, AS A MATTER OF LAW, CONSIDERED EACH AND EVERY OF INTERVENOR'S CONTENTIONS AS RESPECTS THE SECURITY PLAN

Intervenor incorrectly asserts that its contentions regarding the Applicant's security plan were dismissed. (Brief at

14-15). In fact, the contentions were not dismissed but rather, considered by the Licensing Board as a matter of law. Each and every of Intervenor's contentions track, in very abbreviated languge, 10 C.F.R. §73.55.

Contention	Regulation
1. That Pacific Gas and Electric Company has failed to adequately meet and comply with Federal Nuclear Power Plant Security Regulations to provide protection against sabotage, terrorism, and paramilitary attacks which could result in catastrophic release of radioactivity from the Diablo Canyon nuclear power reactors or spent-fuel pools.	10 CFR §73.55
2. That Pacific Gas and Electric Company has failed to devise and enforce a security plan which would meet the general performance requirements of Nuclear Regulatory Commission rules as provided in 10 CFR §73.55.	10 CFR §73.55(a)
3. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, and in violation of 10 CFR §73.55 relative to the organization, structure, leadership, duties and qualifications of its security force.	10 CFR §73.55(b)
4. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, and in violation of 10 CFR §73.55 relative to the location of vital areas, vehicle parking restrictions, size of isolation zones, penetration detection devices and arrangements, and illumination relative to physical barriers.	10 CFR §73.55(c)
5. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, and in violation of, 10 CFR §73.55 relating to identification and	

search of individuals entering a protected area, search of packages and other handcarried items for things which could be used for industrial sabotage, identification and authorization of packages, designation, control and search of vehicles, badging and escort requirements for individuals, access to vital areas, alarms, locks, and positive access control over reactor containment and other equipment in protected and vital areas. 10 CFR §73.55(d)

6. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, and in violation of, 10 CFR §73.55 relative to alarm annunciation, central alarm stations, required features, types and locations of alarms. 10 CFR §73.55(e)

7. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, and in violation of, 10 CFR §73.55 relative to guard communications capabilities, alarm station communications capabilities, communication links to local law enforcement authorities, and independent power sources for nonportable communications equipment. 10 CFR §73.55(f)

8. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, or in violation of, 10 CFR §73.55 relative to testing and maintenance of security equipment. 10 CFR §73.55(g)

9. That Pacific Gas and Electric Company has deficiencies in its Diablo Canyon security arrangements in noncompliance with, and in violation of, 10 CFR §73.55 relative to guard response to abnormal activity and security emergencies. 10 CFR §73.55(h)

The Licensing Board, as a matter of law, must have found that the security plan complied with 10 C.F.R. §73.55 in its entirety in order to find, as it did, that the plan "complies with all applicable NRC regulations". (Partial Initial Decision at 93). Because of the sensitive nature of the evidence, the details of the Board's reasoning were not further elucidated in the Partial Initial Decision. In essence, the Licensing Board considered each of the contentions of Intervenor and found them to be without merit. That Intervenor was not privy to that examination is of Intervenor's own making. Counsel for Intervenor could have participated in the in camera proceedings had not Intervenor withdrawn from same in its Response of January 19, 1979. The Licensing Board comported itself fairly and according to the law and regulations under which it must operate. That Intervenor now finds itself appealing findings of which it knows nothing is Intervenor's fault, not the Licensing Board's.

VI. CONCLUSION

The Licensing Board herein has committed no prejudicial error. The question of Mr. Comey's qualifications is simply moot. Intervenor's, as of January 19, 1979, had withdrawn from further participation in the security matter proceedings. The abortive attempt by Intervenor's new counsel to insert himself into the in camera hearings was without any showing of good cause. Any disadvantage Intervenor may now suffer is of its own making.

It is respectfully submitted that the Licensing Board's partial initial decision as respects the security contentions be sustained.

Respectfully submitted,

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