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September 16, 1980

50-275/323

The Honorable James F. Davey
Clerk
U.S. District Court for the
District of Columbia
U.S. Courthouse, Room 1825
Washington, D.C. 20001

Re: San Luis Obispo Mothers for Peace,
et al., v. Joseph M. Hendrie, et al.

Dear Mr. Davey:

Enclosed please find one (1) original and three (3) copies
of plaintiffs' COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF
AND MANDAMUS, for filing in the civil docket. Please return two (2)
stamped copies to my office.

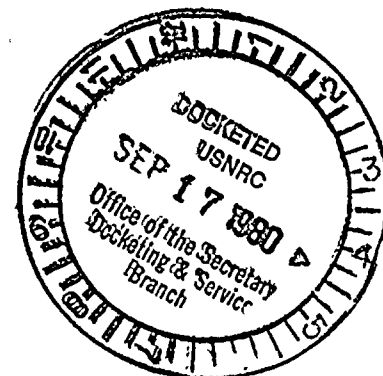
Very truly yours,

David S. Fleischaker

David S. Fleischaker, Esq

Enclosures

cc: Charles F.C. Ruff, Esq.
U.S. Attorney
Benjamin Civiletti, Esq.
U.S. Attorney General
Dr. Joseph M. Hendrie
U.S. Nuclear Regulatory
Commission
Office of General Counsel
U.S. Nuclear Regulatory
Commission



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UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF COLUMBIA

SAN LUIS OBISPO MOTHERS FOR PEACE)
114 Del Norte Way)
San Luis Obispo, Ca. 93401)
(805) 541-1844;)

SCENIC SHORELINE PRESERVATION)
CONFERENCE, INC.)
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EDMUND G. BROWN, JR.)
Governor of the State of California)
State Capitol Building)
Sacramento, Ca. 95814)
(916) 445-1915;)

Plaintiffs,

v.

JOSEPH M. HENDRIE, Commissioner)
Nuclear Regulatory Commission)
1717 H Street, N.W.)
Washington, D.C. 20555)
(202) 634-1459;)

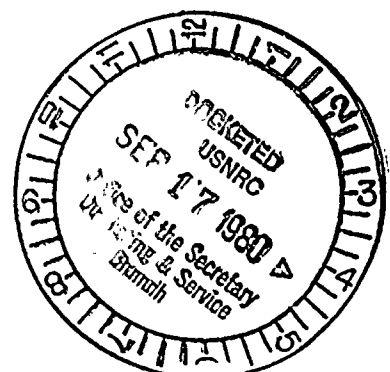
NUCLEAR REGULATORY COMMISSION)
1717 H Street, N.W.)
Washington, D.C. 20555)
(202) 492-7000;)

Defendants.

Civil Action

No. _____

(Review of Administrative
Action)



COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF AND MANDAMUS

INTRODUCTION

1. This suit seeks to disqualify Commissioner Joseph M. Hendrie from further participation in proceedings on the operating license application of Pacific Gas and Electric Company ("PG&E") for the Diablo Canyon Nuclear Plant ("Diablo Canyon") now pending before the Nuclear Regulatory Commission ("NRC" or "Commission"). Commissioner Hendrie has violated regulations of the NRC, 10 CFR §2.780(a) and §2.719(d), the Administrative Procedure Act, ("APA") 5 U.S.C. §557(d), and the due process guarantees of the Fifth Amendment to the federal Constitution in that:

- (a) He entertained improper ex parte discussions with top executives of PG&E on the Diablo Canyon license application.
- (b) Subsequent to the ex parte discussions, he telephoned a member of the NRC staff to present PG&E's "concerns" over the status of the license application.
- (c) He previously served on the staff of the NRC as a supervisor and investigator of the Diablo Canyon license application. The staff is now a party to the adjudicatory licensing proceedings.
- (d) At the time he served on the staff of the NRC, the staff had begun to formulate its position, as a party, on substantive issues relating to the licensing proceedings.
- (e) As a Commissioner of the NRC, he sits as a judge in review of the granting or denying of the license application for Diablo Canyon.

2. Despite formal motions filed with the NRC, the Commission has refused to disqualify Commissioner Hendrie. Accordingly,

Plaintiffs have exhausted their administrative remedies before the NRC.

3. Commissioner Hendrie's actions, in violation of regulations, statutes and due process, taint the Diablo Canyon licensing proceedings and undermine his role as judge in those proceedings. His continued participation in the licensing proceedings gives the appearance of impropriety and thus compromises Plaintiffs' right to a fair hearing.

4. Plaintiffs seek declaratory judgment, injunctive relief and mandamus from this Court:

- (a) declaring that Commissioner Hendrie violated NRC regulations, the APA and the due process provisions of the federal Constitution and is therefore disqualified from continuing to participate in the Diablo Canyon licensing proceeding;
- (b) enjoining Commissioner Hendrie (or directing him by mandamus to refrain) from taking any further action with respect to the Diablo Canyon license application or participating in any future proceedings before the NRC pertaining to the Diablo Canyon license application;
- (c) enjoining the NRC and the Commissioners of the NRC from taking any further action in which Commissioner Hendrie participates with respect to the Diablo Canyon license application;
- (d) providing such further equitable relief as the Court deems just and proper.

JURISDICTION

5. This Court has jurisdiction under: (a) 28 U.S.C. §1331 which grants original jurisdiction over civil actions arising under the laws of the United States; (b) 5 U.S.C. §§702-703 which establish the right to judicial review of agency action; (c) 28 U.S.C. §1361 which vests original jurisdiction over any action to

compel an officer of the United States to perform a duty owed;
(d) 28 U.S.C. §1337 which grants jurisdiction over any civil action arising under any Act of Congress regulating commerce; and
(e) 28 U.S.C. §§2201-02 which grants jurisdiction to issue declaratory judgments.

VENUE

6. Venue in this Court is proper under 28 U.S.C. §1391(b) and (e).

PARTIES

Individual Plaintiffs

7. Sandra Silver, Gordon Silver, and Elizabeth Apfelberg own property and reside in San Luis Obispo, California, which lies approximately twelve (12) miles from Diablo Canyon. For more than five years, they have taken part as party-intervenors in the Diablo Canyon license proceedings. 10 C.F.R. §2.714. Along with the organizational plaintiffs identified below, they are collectively known as "Joint Intervenors" in the Diablo Canyon license proceedings.

8. Edmund G. Brown, Jr. is Governor of the State of California and an intervenor in the Diablo Canyon license proceedings. 10 C.F.R. §2.715(c). As Governor, he has responsibility for assuring the safety and well-being of the citizens who reside or who engage in recreational activities in the areas surrounding Diablo Canyon.

Organizational Plaintiffs

9. Each of the organizational Plaintiffs has been admitted as a full party-intervenor in the license proceedings for Diablo Canyon. 10 C.F.R. §2.714. Each sues on behalf of itself and its members alike.

10. San Luis Obispo Mothers for Peace is a non-profit organization incorporated in California. Its membership includes a large number of educators, lawyers, homemakers, scientists,

doctors, and other concerned citizens from the communities of San Luis Obispo, Pismo Beach, Atascadero, Los Osos, Avila Beach, and Morro Bay, all of which are in close proximity to the Diablo Canyon site. San Luis Obispo Mothers for Peace has taken part in the license proceedings for Diablo Canyon to insure that all laws and administrative guidelines designed to protect the safety and environment of those communities are followed.

11. Scenic Shoreline Preservation Conference, Inc. is a non-profit association incorporated in California, with headquarters in Santa Barbara, California. Its statewide contributors and supporters include residents of the neighboring San Luis Obispo County. Founded in 1967 to participate in siting and construction permit hearings for Diablo Canyon, the organization has since become involved in a variety of energy-related matters that affect California's coastal and watershed areas.

12. Ecology Action Club is a student organization at California Polytechnic State University in San Luis Obispo, California. Its members number approximately twenty (20) students. The organization engages in activities to educate the community and promote environmental concerns.

Defendants

13. Joseph M. Hendrie is a Commissioner and former Chairman of the NRC. He is one of five Commissioners jointly responsible for directing and supervising the NRC. 42 U.S.C. §5841.

14. The NRC is a federal administrative agency established under the Energy Reorganization Act of 1974, 42 U.S.C. §§5801 et seq. and the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq. It is responsible, inter alia, for licensing and regulating commercial nuclear reactors, including Diablo Canyon.

STATEMENT OF FACTS

A. Diablo Canyon

15. Diablo Canyon is a commercial nuclear power reactor owned by PG&E, an investor-owned public utility incorporated in California with headquarters in San Francisco, California.

16. Diablo Canyon is located on the Pacific coastline, in the County of San Luis Obispo, approximately midway between Los Angeles and San Francisco, California.

17. Construction permits were issued by the Atomic Energy Commission ("AEC") (predecessor to the NRC) for Unit 1 of Diablo Canyon on April 23, 1968 (CPPR-39) and for Unit 2 on December 9, 1970 (CPPR-69).

18. On July 10, 1973 PG&E applied to the AEC for operating licenses for the two nuclear power reactors at Diablo Canyon.

19. On October 2, 1973 the Diablo Canyon operating license application was formally accepted and docketed for full review by the licensing staff of the AEC.

B. The Hosgri Fault

20. In July 1973, PG&E reported to the AEC licensing staff the possible existence of an offshore fault near Diablo Canyon. In its filing PG&E concluded that the newly discovered fault -- the Hosgri fault -- did not create a significant risk to Diablo Canyon and did not require any modification of the plant's original seismic design.

21. Shortly after receiving the information regarding the newly discovered Hosgri fault, the licensing staff requested PG&E to conduct further investigations of the Hosgri fault. In addition, the staff requested the United States Geological Survey ("USGS") to assess the fault.

22. By letter dated January 28, 1975, the USGS informed the licensing staff that the Hosgri fault should be considered capable of producing an earthquake of magnitude 7.3+ and that, upon that basis, the original seismic design criteria for Diablo Canyon were "inadequate."

23. By letter dated April 29, 1976, the USGS reconfirmed its position.

24. In the Safety Evaluation Report ("SER"), Supplement 4 (May 1976), the NRC staff accepted the USGS conclusion that the Hosgri fault was capable of a magnitude 7.3+ earthquake.

25. In that same SER Supplement the NRC staff published the seismic design criteria to be used in a new engineering evaluation of Diablo Canyon for a postulated 7.5 magnitude earthquake three miles from the site on the Hosgri fault ("Hosgri seismic reanalysis").

26. The seismic design criteria for the Hosgri seismic reanalysis were reviewed over the course of two years by the Advisory Committee on Reactor Safeguards ("ACRS"), the expert advisory board to the NRC (and its predecessor AEC) established by Congress. While the ACRS eventually approved the new criteria, two seismic engineering consultants to the ACRS filed extensive written comments questioning the validity of the new design criteria and criticizing the engineering method used to derive the criteria.

27. The seismic design criteria for the Hosgri seismic reanalysis were the subject of contested hearings before the Atomic Safety and Licensing Board ("Licensing Board") of the NRC on December 4-23, 1978; January 3-16, 1979; and February 7-15, 1979. Testimony was presented by expert witnesses for the NRC staff, PG&E, and intervening parties. Additionally, the ACRS consultants critical of the NRC staff and PG&E reanalysis were subpoenaed to testify.

28. The Licensing Board issued a partial initial decision on the contested matters related to seismic safety and the security plan of Diablo Canyon on September 27, 1979. That decision upheld the views of PG&E and the NRC staff that the security plan was adequate and that the facilities could function safely if subjected to a 7.5 magnitude earthquake three miles from the site on the Hosgri fault.

29. The partial initial decision was appealed on October 15, 1979, when Joint Intervenors filed more than seventy (70) exceptions to the Licensing Board's findings.

30. On June 24, 1980, the Atomic Safety and Licensing Appeal Board ("Appeal Board") of the NRC reopened hearings for the receipt of new evidence relating to the seismic issues contested by Joint Intervenors. (ALAB-598, _____ NRC _____).

31. Despite discovery of the Hosgri fault and receipt in January 1975 of the USGS view that the original seismic design criteria were "inadequate," the NRC staff has never ordered PG&E to halt construction at Diablo Canyon.

32. The power generators at Diablo Canyon are virtually complete. Nuclear fuel is at the site and ready to be loaded. However, Diablo Canyon has not been licensed to operate because the Commission has yet to make a definitive finding, required by law, that the reactors can be operated without undue risk to the public health and safety.

C. Ex Parte Communications

33. "[S]everal days prior to" October 19, 1979, Commissioner Hendrie was contacted by a PG&E employee, requesting a meeting on October 19 among several PG&E officials and Commissioner Hendrie.

34. Commissioner Hendrie agreed to the requested meeting, which included the Chairman of the Board of Directors, the President, and an employee of PG&E. The meeting took place as scheduled and lasted for more than half an hour.

35. Commissioner Hendrie and the General Counsel of the NRC, Mr. Leonard Bickwit, Jr., have determined that "the communications [during the October 19, 1979 meeting] should be treated as ex parte communications."

36. In the afternoon of October 19, 1979, Commissioner Hendrie contacted the office of Nuclear Reactor Regulation at the NRC, as a result of the ex parte conversation, and "inquired as

to the status of the Diablo Canyon case." In addition, he communicated the PG&E "concerns" expressed during the ex parte meetings about the status of Diablo Canyon's application.

37. Also that afternoon, the same PG&E officials met with NRC Commissioner Richard T. Kennedy to discuss the Diablo Canyon operating license application. Commissioner Kennedy subsequently recused himself from the Diablo Canyon licensing proceedings, although he maintained he was not required to do so by law.

38. Joint Intervenors filed the following pleadings with the NRC in response to the October 19, 1979 ex parte meeting, which requested that the NRC institute proceedings on the qualification of Commissioner Hendrie and demanding that Commissioner Hendrie recuse himself from the Diablo Canyon license proceedings.

- (a) Joint Intervenors' Request to Institute Proceedings on the Qualification of Chairman Joseph M. Hendrie to Consider the Operating License Application for the Diablo Canyon Nuclear Power Plant; October 24, 1979;
- (b) Points and Authorities to Joint Intervenors' Request to Institute Proceedings on the Qualification of Chairman Joseph M. Hendrie to Consider the Operating License Application for the Diablo Canyon Nuclear Power Plan (with Attachments 1(A), 1(B), 1(C), 2, 2(A)), October 24, 1979;
- (c) Supplement to the Joint Intervenors' Request to Institute Disqualification Proceedings, October 25, 1979;
- (d) Joint Intervenors' Request to Respond to Staff and Applicant's Filings, November 16, 1979;
- (e) Joint Intervenors' Reply to the Staff's and Applicant's Responses to the Motions to Institute Proceedings on the Qualifications of Chairman Joseph

M. Hendrie and Commissioner Richard T. Kennedy,
November 23, 1979;

(f) Joint Intervenors' Response to the Memorandum of
Commissioner Hendrie to Counsel for the Parties,
March 26, 1980.

39. Joint Intervenors also filed a request under the Freedom of Information Act, as amended, 5 U.S.C. §552, for information regarding the ex parte meeting and Commissioner Hendrie's other involvement with the Diablo Canyon license proceedings.

40. On March 6, 1980, the Commission issued an order stating " . . . that consistent with its past practice, disqualification decisions reside exclusively with the challenged Commissioner and are not reviewable by the Commission."

41. On April 9, 1980, Commissioner Hendrie issued a final memorandum in which he declared his decision not to disqualify himself.

D. Prior Involvement as Staff Employee
and Consultant

42. Joseph M. Hendrie was a member of the ACRS (Advisory Committee on Reactor Safeguards) from September, 1966 to May, 1972.

43. Joseph M. Hendrie was Deputy Director for Technical Review in the licensing division of the AEC from May 15, 1972 to July 23, 1974.

44. As Deputy Director for Technical Review, he "administered the [AEC's] program for review of power reactor license applications with respect to technical, safety and site suitability issues."

45. After his division conducted a "mini" review of the Diablo Canyon license application for completeness, Commissioner Hendrie participated in the decision to docket the operating license application in October 1973, despite the fact that the application "was incomplete because of the lack of information on the [Hosgri] fault"

46. While he served as Deputy Director for Technical Review, Commissioner Hendrie supervised the review of the Diablo Canyon license application from July, 1973 until July, 1974.

47. The former AEC employees who worked with Commissioner Hendrie and who remain with the NRC staff, working in support of the Diablo Canyon license application, include: Harold Denton, Richard De Young, Dennis Allison, Thomas Hiron, Frank Schroeder, and William Gammill.

48. While Commissioner Hendrie served as Deputy Director for Technical Review, the AEC staff opposed a motion to halt construction at Diablo Canyon, filed with the NRC Licensing Board by Plaintiff Scenic Shoreline Preservation Conference, Inc., and argued that "any potential earthquake activity resulting from the newly discovered evidence can be accounted for in the seismic design to which the facilities are being constructed. . . ."

49. This staff response on the seismic design of Diablo Canyon was coordinated with Commissioner Hendrie and members of his staff.

50. Commissioner Hendrie was present at a high-level meeting between the AEC staff and PG&E on June 4, 1974 held to discuss the Hosgri fault. That meeting was preceded by two others among PG&E officials, the AEC and the USGS regarding the Hosgri fault.

51. After leaving the AEC licensing staff as Deputy Director for Technical Review, Commissioner Hendrie continued to serve as consultant to the NRC staff.

52. On May 5, 1980 Joint Intervenors responded to Commissioner Hendrie's invitation to the parties for further briefing on the issue of whether he should be disqualified because of his "prior AEC involvement in the review of the Diablo Canyon operating license. . . ." Joint Intervenors memorandum called on Commissioner Hendrie to recuse himself because of his violation of NRC regulations and the federal Constitutional guarantees of procedural due process.

53. Commissioner Hendrie issued a final decision on June 16, 1980 denying the request of Joint Intervenors that he recuse himself because of his previous AEC staff activities concerning the Diablo Canyon license application.

E. Actions While A Commissioner
In This Proceeding

54. On April 11, 1980, the Appeal Board reversed the 1979 Partial Initial Decision of the Licensing Board with regard to the Diablo Canyon security plan and ordered trial de novo.

55. On June 11, 1980, with Commissioner Hendrie participating, the Commissioners handed down a divided decision (2-2) granting counsel for Joint Intervenors access to the sanitized version of the Diablo Canyon security plan but remanding for further consideration the issue of whether counsel should be required to apply to the Appeal Board for permission to speak publicly on those plans.

CAUSES OF ACTION

First Claim -- Ex Parte Communications
(Agency Regulations)

56. Paragraphs 5-55 are incorporated herein by reference.

57. The Commission's regulations prohibit ex parte communications. 10 C.F.R. §2.780(a). The relevant provision states, in part:

(a) . . . [N]either (1) Commissioners . . . will request or entertain off the record . . . , nor (2) any party to a proceeding for the issuance . . . of a license . . . shall submit off the record to Commissioners . . . , any evidence, explanation, analysis, or advice, whether written or oral, regarding any substantive matter at issue in a proceeding on the record then pending before the NRC for the issuance . . . of a license

58. Commissioner Hendrie entertained, and high level PG&E officials made, an off-the-record presentation during a private meeting closed to Joint Intervenors. No verbatim transcript of the meeting was kept. Commissioner Hendrie, however, subsequently telephoned the Deputy Director of Nuclear Reactor Regulation of the NRC staff to communicate PG&E's concerns.

59. Commissioner Hendrie has conceded that the discussions between himself and PG&E officers were relevant to the merits of the Diablo Canyon proceedings and therefore should be treated as ex parte communications.

60. The memoranda filed in the NRC Public Documents room by Commissioner Hendrie describe ex parte communications which are specifically relevant to substantive matters at issue in the Diablo Canyon license proceedings. These issues include:

- (a) whether resolution of important safety issues should be considered a prerequisite for licensing, as Joint Intervenors have contended, or whether those issues can be addressed following the issuance of a license to the facility;
- (b) whether special review should be accorded Diablo Canyon because of its unique location near a major earthquake fault, or whether, as PG&E contends, Diablo Canyon should be treated the same as reactors at sites with less earthquake potential;
- (c) whether requiring PG&E to respond to new safety questions posed by the ACRS was creating delay and whether that constituted unequal treatment;
- (d) whether the safety review of Diablo Canyon was proceeding as fast as possible, given an electrical power generating capacity shortage in California, alleged by PG&E.

61. Commissioner Hendrie violated a duly adopted agency regulation when he entertained ex parte communications from top PG&E executives on substantive matters relating to the ongoing Diablo Canyon proceedings. Commissioner Hendrie's failure to recuse himself from those proceedings and the Commission's refusal to disqualify him therefore constitute a disregard of the Commission's obligation to abide by its own regulations and compromise Plaintiffs' right to a fair hearing.

Second Claim -- Ex Parte Communications
(Administrative Procedure Act)

62. Paragraphs 5-55 and 58-60 are incorporated herein by reference.

63. The Administrative Procedure Act, 5 U.S.C. §§551 et seq., contains provisions governing ex parte communications. Section 557(d)(1) states:

* * * *

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency . . . who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding[.]

64. Commissioner Hendrie violated the statutory requirements of the Administrative Procedure Act when he entertained ex parte communications from top PG&E executive on substantive matters relating to the ongoing Diablo Canyon proceedings. Commissioner Hendrie's failure to recuse himself from those proceedings and the Commission's refusal to disqualify him therefore constitute a disregard of the Commission's obligation to abide by the federal statute governing agency operations and compromise Plaintiffs' right to a fair hearing.

Third Claim -- Ex Parte Communications
(Due Process)

65. Paragraphs 5-64 are incorporated herein by reference.

66. The due process clause of the Fifth Amendment to the Constitution states that: "No person shall . . . be deprived of life, liberty, or property, without due process of law" That guarantee applies in full to federal agencies and requires fair hearings in adjudicatory proceedings.

67. Commissioner Hendrie violated the Fifth Amendment provisions requiring due process in agency adjudicatory hearings

when he entertained ex parte communications from top PG&E executives on substantive matters relating to the ongoing Diablo Canyon proceedings. Commissioner Hendrie's failure to recuse himself from those proceedings and the Commission's refusal to disqualify him therefore constitute a disregard of the Commission's obligation to abide by the federal Constitution and compromise Plaintiffs' right to a fair hearing.

Fourth Claim -- Investigatory and Adjudicatory Participation
(Agency Regulations)

68. Paragraphs 5-55 are incorporated herein by reference.

69. The Commission's regulations require the separation of functions between the adjudicatory and investigatory staff of the agency. The relevant provision is now codified as 10 C.F.R.

§2.719(d). It states in part:

. . . [I]n any case of adjudication, no officer or employee of the Commission who has engaged in the performance of any investigative or prosecuting function in the case of [sic 'or'] a factually related case may participate in or advise in the initial or final decision, except as a witness or counsel in the proceedings.

70. Under the Atomic Energy Act, 42 U.S.C. §2239, review of the license to operate Diablo Canyon must be conducted as a formal adjudication on the record.

71. Commissioner Hendrie, now an officer of the NRC, was previously employed by the agency for two years as Deputy Director for Technical Review.

72. As a staff employee, Commissioner Hendrie participated for more than a year in the review of the Diablo Canyon license application. In particular, he approved the application for docketing, and attended at least one meeting with PG&E officials to discuss the seismic design considerations raised by the newly discovered Hosgri fault.

73. During Commissioner Hendrie's tenure as licensing staff supervisor, the staff supported the position, in direct opposition to Plaintiff Scenic Shoreline Preservation Conference, Inc.,

that Diablo Canyon basically as-built could withstand any earthquake that might occur on the newly discovered Hosgri fault.

74. The participation of Commissioner Hendrie in judging any licensing decision for Diablo Canyon is therefore in violation of the strict agency prohibition against an officer performing the dual duties of investigator and adjudicator. Commissioner Hendrie's refusal to disqualify himself and the acquiescence of the Commission in that decision constitute a disregard of the Commission's obligation to abide by its own regulations and compromise Plaintiffs' right to a fair hearing.

Fifth Claim -- Investigatory and Adjudicatory Participation
(Due Process)

75. Paragraphs 5-55, and 68-74 are incorporated herein by reference.

76. The due process clause of the Fifth Amendment to the Constitution states that: "No person shall . . . be deprived of life, liberty, or property, without due process of law" That guarantee prohibits an individual from acting as a judge in a matter in which he has an interest in the outcome.

77. The participation of Commissioner Hendrie in judging any licensing decision for Diablo Canyon is therefore in violation of the due process guarantees of the Constitution against an officer performing the dual duties of investigator and adjudicator. Commissioner Hendrie's refusal to disqualify himself and the acquiescence of the Commission in that decision constitute a disregard of the Commission's obligation to abide by the federal Constitution and compromise Plaintiffs' right to a fair hearing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

1. A declaratory judgment that Commissioner Hendrie violated the regulation of the NRC (10 CFR §2.780(a)) regarding ex parte communications and that the violation requires that

Commissioner Hendrie be disqualified from the Diablo Canyon license proceedings.

2. A declaratory judgment that Commissioner Hendrie violated the Administrative Procedure Act (5 U.S.C. §557(d)) provisions regarding ex parte communications and that the violation requires that Commissioner Hendrie be disqualified from the Diablo Canyon license proceedings.

3. A declaratory judgment that Commissioner Hendrie violated the regulation of the NRC (10 CFR §2.719(d)) regarding the separation of investigatory and adjudicative functions and that the violation requires that Commissioner Hendrie be disqualified from the Diablo Canyon license proceedings.

4. A declaratory judgment that Commissioner Hendrie violated Plaintiffs' Fifth Amendment Constitutional right to a fair hearing and that the violation requires that Commissioner Hendrie be disqualified from the Diablo Canyon license proceedings.

5. A permanent injunction prohibiting Commissioner Hendrie from taking any further action with respect to the Diablo Canyon license application and enjoining him from participating in any future proceedings before the Commission regarding Diablo Canyon licensee.

6. A permanent injunction prohibiting the NRC and the Commissioner's of the NRC from taking any further action in which Commissioner Hendrie participates with respect to the Diablo Canyon license application.

7. A writ of mandamus directing Commissioner Hendrie to disqualify himself from taking any further action or participating in any further proceedings regarding the Diablo Canyon license application.

8. An award to Plaintiffs' of their costs in this lawsuit; including reasonable attorneys' fees.

9. Such other relief as this Court finds just and proper.

Dated: September 16, 1980

Respectfully submitted,

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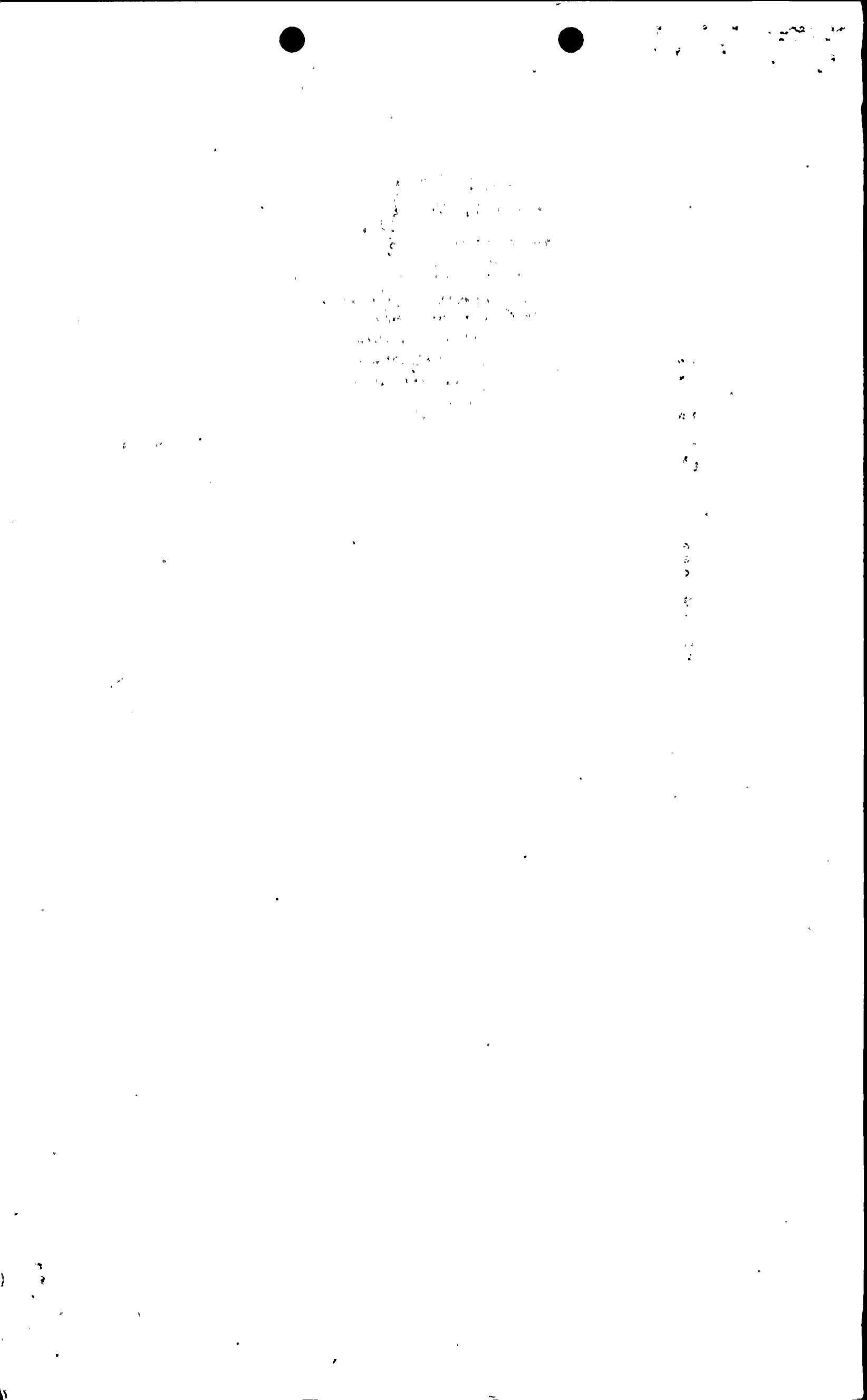
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAN LUIS OBISPO. MOTHERS FOR PEACE,
et al.,

Plaintiffs,

v.

JOSEPH M. HENDRIE, et al.,

Defendants.

Civil Action No.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 16th day of September, 1980, served copies of the foregoing COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND MANDAMUS in the above captioned case to Charles F.C. Ruff, Esq., United States Attorney for the District of Columbia, by delivering copies to the United States Marshal and to those listed below by certified mail.

Benjamin Civiletti, Esq.
Attorney General
U.S. Department of Justice
Washington, D. C. 20530

Nuclear Regulatory Commission
Washington, D. C. 20555
Attn: Office of General Counsel

Dr. Joseph M. Hendrie
Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

September 16, 1980



David S. Fleischaker, Esq.

September 15, 1980

Richard S. Salzman, Esq., Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. John H. Buck
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Washington, D.C. 20555

Dr. W. Reed Johnson
Atomic Safety and Licensing Appeal Board
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Washington, D.C. 20555

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.

Gentlemen:

Enclosed is a copy of "Maps [Map 1 and Map 2] Showing Seismotectonic Setting of the Santa Barbara Channel Area, California" (1980) that are part of the report entitled, "Seismotectonic setting of Santa Barbara Channel area, southern California," by Yerkes, Greene, Tinsley, and Lajoie (February, 1980). The February, 1980 U.S.G.S. Report was served with the "Combined Testimony of James F. Devine and Robert F. Yerkes" under NRC Staff cover letter dated August 12, 1980. The maps were not served because sufficient copies were not available.

Sincerely,

Edward G. Ketchen
Counsel for NRC Staff

Enclosure: As stated

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