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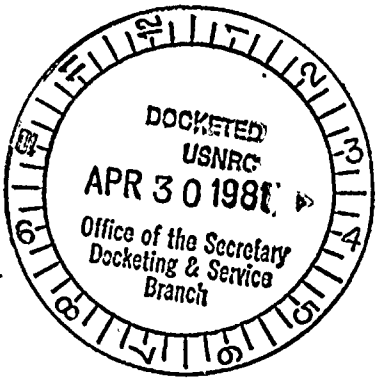

UNITED STATES OF AMERICA

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 1 and 2)	Docket Nos. 50-275 O.L. 50-323 O.L.

JOINT INTERVENORS' RESPONSE
IN OPPOSITION TO NRC STAFF AND
PACIFIC GAS AND ELECTRIC COMPANY
MOTIONS FOR SUMMARY DISPOSITION

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JOINT INTERVENORS' RESPONSE
IN OPPOSITION TO NRC STAFF AND
PACIFIC GAS AND ELECTRIC COMPANY
MOTIONS FOR SUMMARY DISPOSITION

The SAN LUIS OBISPO MOTHERS FOR PEACE, SCENIC SHORELINE PRESERVATION CONFERENCE, INC., ECOLOGY ACTION CLUB, SANDRA SILVER, GORDON SILVER, ELIZABETH APFELBERG, and JOHN J. FORSTER ("Joint Intervenors") hereby respond to the motions for summary disposition filed in this proceeding by the NRC Staff ("Staff") on April 1, 1981 and by Pacific Gas and Electric Company ("PGandE") on April 3, 1981. Both parties, through their respective motions, seek issuance of an order by the Atomic Safety and Licensing Board ("licensing board") denying as a matter of law each of the contentions submitted by Joint Intervenors on December 3, 1980 and admitted in this proceeding on February 13, 1981.

Joint Intervenors oppose the motions on a number of grounds discussed at length herein. First, PGandE's motion must be summarily denied because it fails to comply with the essential

requirements of 10 C.F.R. § 2.749. Subsection (a) of that section, which governs motions for summary disposition, requires that there be annexed to the motion a "separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." No such statement is annexed to PGandE's motion for summary disposition. Therefore, under the principles established in In the Matter of Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), Docket No. 50-564A, CCH Nucl.Reg.Rep. ¶ 30,211 (1977), discussed infra at Point I, PGandE's motion must be denied.

Second, both the Staff and PGandE have failed to meet their burden of proof under summary disposition rules analogous to Rule 56 of the Federal Rules of Civil Procedure. In other words, they have failed to demonstrate that, viewing the records and affidavits in the light most favorable to the party opposing the motion, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. As is apparent from the discussion infra at Point II, there are numerous issues of material fact yet to be resolved with respect to each of the issues which Joint Intervenors intend to litigate: emergency response planning, water level indication in the reactor vessel, and valve testing.[1/] To the extent that agreement exists between the parties on any issue of material fact, it is limited to the

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1/ Joint Intervenors' admitted contentions are attached hereto as Exhibit 1. Contention 11, regarding the addition of pressurizer heaters to the on-site power supply, is hereby withdrawn.

repeatedly acknowledged failure of the combined applicant, state, and local emergency plans for Diablo Canyon to comply with the Commission's revised emergency planning regulations, which became effective on November 3, 1980. The reliance by the Staff and PGandE upon existing emergency plans, despite their admitted noncompliance, is misplaced, as is evident from the numerous exhibits and affidavits referenced herein. Clear issues of material fact exist as well with respect to the vessel water level and valve testing contentions, both of which are issues important to the safe operation of Diablo Canyon.[2/]

Accordingly, for the reasons stated herein, Joint Intervenors submit that the NRC Staff and PGandE motions for summary disposition must be denied in their entirety.

I

PGandE'S MOTION IS PROCEDURALLY DEFECTIVE AND MUST BE SUMMARILY DENIED

The Commission's regulations regarding summary disposition are set forth at 10 C.F.R. § 2.749. Subsection (a) of that section provides as follows:

> (a) Any party to a proceeding may, at least forty-five (45) days before the time fixed for the hearing, move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in

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2/ Governor Brown's subjects focus on the same issues as Joint Intervenors' contentions. See Joint Intervenors' Statement of Material Facts, attached hereto as Exhibit U.

> the proceeding. There shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. There shall be annexed to such answer a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. (Emphasis added.)

PGandE has failed to comply with the explicit requirement that "a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard" be annexed to its motion for summary disposition. More so even than supporting affidavits, which may or may not be included as part of the motion, this statement of undisputed facts is an essential element of a legally sufficient summary disposition motion. PGandE's failure to include such a statement warrants summary denial of its motion.

That this is no mere procedural technicality which may be lightly overlooked was explained at length in In the Matter of Pacific Gas and Electric (Stanislaus Nuclear Project, Unit No. 1), No. 50-564A, CCH Nucl.Reg.Rep. ¶ 30,211 (1977), where, as here, PGandE submitted a lengthy summary disposition motion but omitted the requisite concise statement of undisputed facts. In ruling that PGandE's motion must be denied, the Atomic Safety and Licensing Board considered in detail the significance

of PGandE's omission:

> Subsection (a) clearly requires that "There shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." PGandE has failed to file this required statement of material facts. Such a requirement is not merely a procedural technicality, but it is of substantive significance. This statement is necessary in order to impose upon other parties a duty to file a statement of material facts as to which it is contended there exists a genuine issue to be heard, under penalty of having uncontroverted material facts deemed to be admitted. It is necessary for the Board to have this information in a readily available form in order to evaluate the merits of a motion for summary disposition. PGandE's lengthy (77 pages plus numerous exhibits) and argumentative motion for summary disposition wholly fails to comply with the requirement of a concise statement of material facts as to which there is no genuine issue.

Id. at 28,102 (emphasis added).

Notwithstanding the unmistakable import of this ruling denying PGandE's motion in the Stanislaus proceeding, PGandE has once again filed a motion for summary disposition without attaching a statement of undisputed facts. Such disregard of Commission regulations and administrative precedent should not be sanctioned by the licensing board in this proceeding. Because PGandE's motion for summary disposition of Joint Intervenors' admitted contentions fails to satisfy the minimum procedural requirements essential to such a motion, it is fatally defective and must be summarily denied.[3/]

3/ Joint Intervenors believe that the discussion infra at Point II is dispositive on the merits of both the Staff and PGandE motions. They continue to believe, however, that summary denial of PGandE's motion is warranted for the reasons stated at Point I.

II

THE NRC STAFF AND PGandE HAVE FAILED TO SATISFY THEIR BURDEN OF PROOF AND, ACCORDINGLY, THEIR MOTIONS FOR SUMMARY DISPOSITION MUST BE DENIED

A. Applicable Standard

The principles governing summary disposition or summary judgment are well settled.[4/] Such a motion may be granted only where the licensing board finds that, viewing the record and affidavits supporting and opposing the motion in the light most favorable to the party or parties opposing the motion, the moving party has demonstrated that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. In the Matter of Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 879-79 (1974); In the Matter of Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2, and 3), LBP-73-29, 6 AEC 682, 688 (1973); see also J. Moore, 6 Federal Practice ¶ 56.15[3] (2nd ed. 1966); Poller v. Columbia Broadcasting System, 368 U.S. 464, 467, 82 S.Ct. 487, 488 (1962) Sartor v. Arkansas National Gas Corp., 321 U.S. 620, 627 64 S.Ct. 724, 728 (1944). Thus, the burden of proof is upon the moving party, and the opposing parties need not show that they will prevail on the merits, but only that

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4/ Motions for summary disposition are analogous to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. In the Matter of Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-74-37, 7 AEC 877, 878-879 (1974).

there are genuine issues to be tried. See Poller v. Columbia Broadcasting System, 368 U.S. at 473; American Manufacturers Mutual Insurance Co. v. American Broadcasting - Paramount Theaters, Inc., 388 F.2d 272, 280 (2d Cir. 1967).

Contrary to the Staff's suggestion at page 3 of its motion, no significance may be attached, either for purposes of summary disposition or hearing, to an intervenor's decision not to present witnesses but to rely solely upon cross-examination of witnesses presented by other parties. There is certainly no requirement that to oppose a license application an intervenor must submit affirmative testimony; indeed, the law is clear that an intervenor may properly forego its right to submit testimony without prejudicing its standing to participate fully through cross-examination or otherwise. See In the Matter of Tennessee Valley Authority (Hartsville Nuclear Plant, ALAB-463, CCH Nucl. Reg.Rep. ¶ 30,2078 (1978).

Joint Intervenors have not yet determined what witnesses, if any, they will call at the May 19 hearing. This does not mean, however, as the Staff advises the board, that "the Joint Intervenors to date have only made mere allegations . . ."[5/] To the contrary, what course Joint Intervenors ultimately choose to follow at the hearing is irrelevant for purposes of summary disposition and has absolutely no bearing on the adequacy of the factual basis for any of their admitted contentions.

5/ Staff Motion for Summary Disposition, at 3.

The sole issue on the merits at this stage of the low power test proceeding is whether the NRC Staff and PGandE have shown that there is no genuine issue as to any material fact and, if so, whether they are entitled to judgment as a matter of law. For the reasons stated herein, Joint Intervenors submit that both the Staff and PGandE have failed to meet their burden of proof and, accordingly, that their motions for summary disposition must be denied.

B. Emergency Response Planning

1. Failure of NRC Staff and PGandE to Demonstrate Compliance with Commission's Revised Emergency Planning Regulations Mandates Denial of Low Power Testing License.

One of the fundamental lessons learned from the March 28, 1979 accident at Three Mile Island was that the emergency response planning previously required for issuance of an operating license was seriously deficient and that reforms were urgently needed to assure that the health and safety of the public would be protected in the event of an accident.[6/] As a direct consequence of these findings, the Commission issued a Notice of Proposed Rulemaking in December 1979[7/] for emergency planning and, on

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6/ See, e.g., "Report of the President's Commission on the Accident at Three Mile Island -- The Need for Change: The Legacy of TMI" (Kemeny Commission), at 38-42, 76-77; "Three Mile Island: A Report to the Commissioners and to the Public" (Rogovin Commission), v. 1, at 129-137; NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," at 13, A-57-58; NUREG-0660, "NRC Action Plan Developed as a Result of the TMI-2 Accident," at Chapter III.

7/ 44 Fed.Reg. 75167 (December 19, 1979).

November 3, 1980, the new regulations became effective.[8/]

Both PGandE and the Staff have acknowledged that the combined applicant, State and local emergency plans are not in full compliance with the Commission's revised regulations. As recently as March 12, 1981, PGandE stated in a letter from Phillip Crane to Frank Miraglia, Chief of the NRC Licensing Branch No. 3, that "state and local plans for the Diablo Canyon plant . . . do not meet current regulatory requirements." (Attached hereto as Exhibit B.) In a February 27, 1981 letter from Malcolm Furbush to Harold Denton, Director of the NRC Office of Nuclear Reactor Regulation, PGandE requested relief from applicable NUREG-0737 emergency planning requirements and assured the NRC that

> PGandE recognizes that for a full-power license NUREG-0737, 10 CFR Appendix E and NUREG-0654 must be substantially complied with, and PGandE is actively engaged in upgrading its site emergency plan and working with state and local authorities in upgrading their emergency plans. (Attached hereto as Exhibit C.)

In Supplement 12 to the Diablo Canyon SER, the Staff states that "FEMA findings on the adequacy of the State and local emergency plans have yet to be made since those plans are not yet completed and implemented." Id. at II-3. Finally, in answers to interrogatories filed in this proceeding by Joint Intervenors and Governor Brown, both PGandE and the Staff admitted the existing noncompliance of the combined applicant, State, and local plans. (Attached

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8/ Final Regulations on Emergency Planning, 45 Fed.Reg. 55402 (August 19, 1980).

hereto as Exhibits D, E, F, and G.) In response to Joint Intervenors' interrogatory 10.A regarding what revisions would be made in the relevant plans or actions taken by PGandE in an effort to eliminate deficiencies in compliance, PGandE responded simply "[n]one." (Attached hereto as Exhibit H.)

Instead, PGandE and the Staff contend, in essence, that the Commission's revised regulations are not relevant to a low power test application at Diablo Canyon because the lower level of decay heat reduces the risk to the public from an accident to insignificant levels. This view incorrectly implies, however, that the reduced risk is equivalent to virtually no risk at all. To the contrary, as is apparent from the affidavit of Richard B. Hubbard,[9/] the risks associated with a five percent power test program at Diablo Canyon may be significant, and hence they necessitate effective off-site emergency planning. Mr. Hubbard's conclusions include the following:

(1) No site specific probability analyses have been prepared for the Diablo Canyon low power test program. The numerical findings and conclusions developed in WASH-1400, and extrapolated by the Staff to Diablo Canyon in Supplement 10 to the SER, do not provide a documented scientific basis sufficient to justify the Staff's conclusions, particularly in view of the significant number of events which have occurred since 1975 suggesting that the WASH-1400 probability estimates

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9/ Attached hereto as Exhibit I. This affidavit was prepared and filed as part of Governor Brown's opposition to the pending motions for summary disposition.

of severe core damage may be too low. The Staff's extrapolations for Diablo Canyon are subject to numerous specific infirmities described in the affidavit.

(2) Significant radionuclide inventories will be developed during the Diablo Canyon low power test program, including the short-lived isotopes of iodine and tellurium, which are significant contributors to prompt public health consequences. Thus, should a release occur during the test program, the inventory of radionuclides poses a substantial public health hazard.

(3) There is clear NRC precedent for requiring detailed off-site emergency planning for reactors of a size comparable to Diablo Canyon at 5 percent power -- namely, a 54.2% megawatt-electrical or 166.9 megawatt-thermal power reactor. Even PGandE admits that a six-mile off-site planning zone for plume exposure and a ten-mile zone for ingestion pathways are appropriate at low power.[10/] Neither meteorological conditions nor waterborne transport of radionuclides was assessed or considered by the Staff.

(4) Effective off-site emergency planning by local authorities, including measures such as sheltering and evacuation, is both necessary and prudent to ensure the health and safety of the public.

10/ Affidavit of William K. Brunot, at 5 (April 2, 1981).

Furthermore, neither the revised regulations themselves nor NUREG-0737, adopted by the Commission in its December 18, 1980 Revised Statement of Policy,[11] provide any basis for the view that reduced risk automatically exempts an applicant from the obligations imposed by the regulations. Indeed, in an explanation of the rationale for the rule change contained in the Preamble to the December 1979 Notice of Proposed Rulemaking, the Commission noted explicitly the importance of and need for emergency planning reform even if the on-site conditions and actions do not cause significant off-site consequences:

> The Commission's perspective was severely altered by the unexpected sequence of events that occurred at Three Mile Island. The accident showed clearly that the protection provided by siting and engineered safety features must be bolstered by the ability to take protective measures during the course of an accident. The accident also showed clearly that on-site conditions and actions, even if they do not cause significant off-site radiological consequences, will affect the way the various State and local entities react to protect the public from dangers, real or imagined, associated with the accident. A conclusion the Commission draws from this is that in carrying out its statutory mandate to protect the public health and safety, the Commission must be in a position to know that off-site governmental plans have been reviewed and found adequate. 12/

No less stringent a standard should be applied at Diablo Canyon, where there is no assurance that the on-site conditions during the

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11/ Revised Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses, CLI-80-42, 45 Fed.Reg. 85236 (December 18, 1980).

12/ Notice of Proposed Rulemaking, Emergency Planning, 44 Fed.Reg. 75167, 75169 (December 19, 1979) (emphasis added).

low power test program would be free of significant off-site consequences.

When the regulations were finalized, no exemption was included for operation at less than full power. The revised regulations reflect the Commission's conclusion that "adequate emergency preparedness is an essential aspect in the protection of the public health and safety,"[13/] and, as is explained in the introduction to Appendix E to 10 C.F.R. Part 50, they establish "minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness."[14/] No lesser standard should be permitted at Diablo Canyon.

NUREG-0737 provides still further proof of the Commission's intention. As adopted on December 18, 1980, this clarification of new TMI-related requirements describes not only the required items, but also an implementation schedule directing compliance prior to a specified date or the taking of a particular action (i.e., fuel load, full power, etc.). The emergency planning requirements, which became effective November 3, 1980, are to be satisfied prior to "fuel load." NUREG-0737, at 2-11 (attached hereto as Exhibit J). Those requirements are clear and unequivocal, and to exempt Diablo Canyon from the established implementation schedule would constitute a reversion to requirements considered

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13/ 45 Fed.Reg. 55404 (preamble to revised regulations).

14/ Id. at 55411 (emphasis added).

inadequate by the Commission and discredited by the TMI-2 accident.[15]

Section 50.47(b) of 10 C.F.R. specifies in detail the standards which must be met by the on-site and off-site emergency plans, and it incorporates by reference the specific criteria contained in NUREG-0654 which address those standards. In Supplement 12, the Staff concludes that the current Diablo Canyon on-site and off-site plans "do not fully comply with NUREG-0654, Rev. 1 requirements."[16] The mandatory standards set forth in section 50.47(b) may not legally be circumvented by an applicant without first making the required showings under section 50.47(c)(1) -- namely, that

> deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

Neither PGandE nor the Staff have specifically addressed those showings, and the appropriate time and place for them to do so is at the scheduled hearing in San Luis Obispo. If at that time PGandE is able to justify the exemption in accord with section 50.47(c), then some measure of relief may be proper. Until the requisite factual showings of compliance (under section 50.47(b)) or justified noncompliance (under section 50.47(c)) have been

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15/ See Joint Intervenors' March 9, 1981 letter to Harold Denton in response to PGandE's February 27, 1981 letter to Denton requesting relief from the NUREG-0737 emergency planning requirements. (Attached hereto as Exhibit K.)

16/ Supplement 12, at III-3.

made, however, PGandE's low power license application must be rejected and the Staff and PGandE motions for summary disposition denied.

2. Existing Applicant, State, and Local Emergency Response Plans Are Inadequate to Assure Protection of the Public Health and Safety

The Commission's regulations require that prior to issuance of a low power testing license certain essential findings must be made, including the following:

> (a) There is reasonable assurance . . . that the activities authorized by the operating license can be conducted without endangering the health and safety of the public . . . ; and
>
> (b) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. 17/

More specific to the issue of emergency planning, section 50.47(a) of 10 C.F.R. states that

> [n]o operating license for a nuclear power reactor will be issued unless a finding has been made by the NRC that the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

None of these findings can be made with respect to the proposed low power test program at Diablo Canyon. The Hubbard affidavit, discussed supra, establishes that because significant

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17 10 C.F.R. § 50.57(a)(3) and (6); see also 10 C.F.R. § 50.57(c).

off-site consequences may result from low power testing at the facility, effective off-site emergency planning is necessary. As the following discussion of material facts demonstrates, no such emergency planning currently exists for Diablo Canyon.[18/] Accordingly, the Staff and PGandE motions for summary disposition must be denied.

To the extent that State and local emergency plans may once have been prepared, they are now in the process of extensive revision or replacement in light of the TMI-2 experience. Existing plans are seriously flawed in several fundamental respects. First, none addresses and prepares for the contingency of a radiological emergency occurring simultaneously with an earthquake in the vicinity of the plant.[19/] Given the recognized seismic danger associated with Diablo Canyon because of its proximity to the Hosgri fault, the failure of applicable emergency plans to consider and allow for such possibilities as blocked or destroyed evacuation routes, severed communication lines, significant nonradiological structural damage and physical injury, widespread panic, and earthquake-related natural phenomena, such as tsunami, is clearly inconsistent with a rational concept of emergency response

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18/ This discussion is based on the exhibits and affidavits attached hereto as well as certain of the affidavits filed by Governor Brown as part of his opposition to the pending motions.

19/ Affidavit of Russell D. Rosene, attached hereto as Exhibit L; affidavits of Kurt P. Kupper and Jeffrey Jorgenson, Governor Brown Opposition, Exhibits 7 and 8.

planning.[20/]

Second, existing plans have not been implemented and, as a result, San Luis Obispo County and the population centers within it are unprepared to respond to an emergency at Diablo Canyon. According to the affidavit of Russell D. Rosene (attached hereto as Exhibit L), who is a resident of Avila Beach and has repeatedly served as a disaster preparedness and response consultant for various United Nations agencies, emergency planning is grossly inadequate in Avila Beach, the first residential area downwind from the plant. Despite the fact that on warm weather holidays the number of beach visitors may range from 5,000 to 12,000 persons, the only open land-evacuation route is a narrow, winding, two-lane road originating in Avila Beach and connecting with State Highway 101 at a distance of two miles. Should this road become blocked as a result of earthquake, landslide, flooding, or traffic accident, evacuation from Avila Beach would be a virtual impossibility. Moreover, although a resident of Avila Beach, Mr. Rosene has never been provided any instructions by PGandE, the NRC, or the County of San Luis Obispo on actions to be taken in the event of a radiological emergency at the plant. Based on his experience as a disaster response consultant, Mr. Rosene cites numerous inadequacies in existing planning, including the absence of

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20/ See In the Matter of Southern California Edison Co. (San Onofre Nuclear Generating Station), Licensing Board Memorandum and Order, at 2 (April 8, 1981), where the licensing board recognized that "[a]pplicants, particularly applicants in a seismically active area like California, should be prepared to demonstrate that their emergency plans can function in a major earthquake situation."

(a) an immediate notification system, (b) alternative evacuation routes, (c) instructions on evacuation for residents and visitors, (d) preparation for the simultaneous occurrence of a nuclear accident and natural disaster, and (e) special provisions for the evacuation of infirm and disabled persons from the area. He concludes that emergency planning is virtually nonexistent in Avila Beach.

The City of Pismo Beach is only slightly further downwind from the plant and is similarly unprepared to respond to a nuclear accident at Diablo Canyon. According to the attached affidavits (Exhibits M and N) of two Pismo Beach City Council members, Marian Mellow and William Richardson, Jr., the city does not have an adequate emergency response plan. Although the city has a population of over 5,000 residents and, during the peak season, the number of visitors to the area may exceed 200,000 persons, the current San Luis Obispo County plan has not been implemented, at least to the extent that it purports to include the City of Pismo Beach. Both council members conclude that the plan provides no assurance that the city can adequately respond to a radiological emergency at Diablo Canyon.

Other public documents and affidavits already filed in this proceeding similarly indicate the inadequacy of local off-site emergency planning throughout the County. Although the revised "San Luis Obispo County Emergency Plan" was adopted by the Board of Supervisors under protest on March 26, 1979 -- two days prior to the TMI-2 accident -- the Board unanimously authorized its Chairman to communicate to the area's state legislators

that "[i]t is our Board's belief that the County Emergency Plan . . . is cumbersome, verbose, and unusable as a response manual." (Attached hereto as Exhibit O.) On April 11, 1979, then-member of the Board of Supervisors Dr. Richard Kresja chronicled in a letter to the Assembly Subcommittee on Energy the consistently low priority given emergency planning by county officials and the misplaced reliance of the NRC and PGandE upon "commitments" from nonexistent local agencies and informal contacts with hospital facilities rather than formal contracts. (Attached hereto as Exhibit P.)

Affidavits of other local and state officials have been filed herein on behalf of Governor Brown. Although their contents need not be reiterated here in detail, they provide a graphic picture of the absence of preparedness at the local level. According to Board of Supervisors members Kupper and Jorgenson, the County of San Luis Obispo has failed to implement existing plans, and there are no plans to implement them at the present time. Training and coordination of personnel, vital emergency response equipment, emergency response exercises, medical facilities, and public information programs are either nonexistent or seriously inadequate.[21/] County Health Officer Dr. Howard Mitchell describes the insufficiency of monitoring, treatment, and transport facilities and equipment

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21/ Governor Brown's Opposition, Exhibits 7 and 8; see also affidavit of Alan C. Bond, San Luis Obispo City Councilman, id., Exhibit 12.

necessary to respond to a nuclear accident at Diablo Canyon.[22] This affidavit confirms the views of 69 physicians of San Luis Obispo, expressed in 1979 in a Statement of Concern previously filed herein, that medical facilities are inadequate to respond to a radiological emergency. (Attached hereto as Exhibit Q.)

The affidavit of the Director of Parks and Recreation for the State of California, Pete Dangermond, Jr., indicates that, although staff responsibilities will include evacuation of visitors and employees from the many units of the State Park System in the vicinity of Diablo Canyon, neither PGandE nor the NRC has invited Park Service officials to participate in nuclear emergency training exercises, drills, or official discussions to develop emergency procedures. In addition, existing communications equipment is inadequate, and coordinated planning with the County has not occurred.[23] Similarly, the Area Coordinator for the Office of Emergency Services, Fire and Rescue Division, establishes the absence of any coordinated effort among county fire departments to train personnel for a radiological emergency or to determine how resources would be utilized in the event of such an emergency at Diablo Canyon.[24]

Finally, the affidavit of Robert Paulus, Deputy Director of the California Department of Forestry for Fire Protection

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22/ Id., Exhibit 10.

23/ Id., Exhibit 13.

24/ Id., Exhibit 15.

and Technical Services, demonstrates that personnel upon whom PGandE intends to rely to respond to an on-site emergency have received no detailed training on techniques or equipment necessary to respond in conditions involving radiation hazards. The "refresher training in radiation protection practices and procedures" is nonexistent. In fact, the letter of understanding between PGandE and CDR Ranger-in-Charge has been abrogated as of April 1981.[25/]

The foregoing discussion and referenced exhibits demonstrate both from a legal and factual perspective not only the need for effective emergency planning, but also the irrefutable absence of such planning with respect to Diablo Canyon. Particularly at the local and state levels -- at which extensive plan revision is currently being done -- there is urgent need for reform. In addition, PGandE's on-site plan does not satisfy all NUREG-0654 criteria, and radiation training currently included in the plan is not, in fact, being provided. Until a coordinated and effective combined applicant, state, and local emergency response capability has been devised and demonstrated, PGandE's application for low power testing licenses must be denied.

In view of the above showing of genuine issues of material fact, the Staff and PGandE motions for summary disposition of Joint Intervenors' emergency planning contentions must be denied.

25/ Id., Exhibit 14.

C. Water Level Indication in the Reactor Vessel

Joint Intervenors' contention 13 focusses on the absence at Diablo Canyon of a precise and reliable indication of water level in the reactor vessel. Such measurement is one of the best indicators of the approach to inadequate core cooling and, therefore, is a necessary addition to Diablo Canyon. Because the instrumentation proposed to be installed by PGandE is still unproven and may have serious deficiencies, Joint Intervenors submit that the Staff and PGandE motions for summary disposition of this issue must be denied.

The TMI-2 accident demonstrated the wide range of serious safety hazards that can result when the plant instrumentation does not provide the information needed to determine the course of action necessary to protect public health and safety. The absence at TMI-2 of a direct measure of water level in the reactor vessel is a perfect example of this: had such instrumentation been available, the accident might have been averted. Because the operators did not have the precise information that a direct measure of core water level would have supplied, however, a number of incorrect decisions were made and actions taken which resulted in uncovering of the core and fuel damage.

The importance of reliable measures of the kind lacking at TMI-2 has been recognized in various Commission documents, including its regulations. GDC-13 provides as follows:

> Instrumentation shall be provided to monitor variables and systems over their anticipated ranges for normal operations, for anticipated operational occurrences, and for accident conditions as appropriate

> to assure adequate safety, including those variables that can affect the fission process, the integrity of the reactor core, the reactor coolant pressure boundary, and the containment and its associated systems. * * *

Section 4.8 of IEEE Std. 279, "Criteria for Nuclear Power Plant Protection Systems," requires that "[t]o the extent feasible and practical, protection system inputs shall be derived from signals which are direct measures of the desired variables." (Emphasis added.)

The attached affidavit of Gregory C. Minor[26/] describes in detail the relevant existing instrumentation at Diablo Canyon and that which PGandE has committed to install prior to fuel load. There is general agreement that present displays do not provide for an indication of vessel water level.[27/] Nor does the existing instrumentation provide an "unambiguous and easy to interpret" indication of inadequate core cooling.[28/]

PGandE intends to augment these components with a Subcooling Margin Meter ("SMM") and a Reactor Vessel Level Instrumentation System ("RVLIS"), by Westinghouse. It is this combined instrumentation upon which both the Staff and PGandE rely in seeking summary disposition. As the affidavit of Mr. Minor demonstrates, however, there are numerous issues of material fact regarding the adequacy of the system, including, inter alia,

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26/ Attached hereto as Exhibit R. This affidavit was prepared and filed as part of Governor Brown's Opposition to the pending summary disposition motions.

27/ Id. at 3.

28/ Id. at 4.

the following:

(1) The Westinghouse system proposed for Diablo Canyon is still under development with ongoing testing not scheduled to be completed until November 1981 and reports to be provided to the NRC by January 1982;

(2) The NRC does not intend to make a finding of acceptability of the total inadequate core cooling system until after January 1982;

(3) The RVLIS indication system is not unambiguous and easy to interpret, and there are conditions for which the system may provide erroneous or uncertain reading of water level;

(4) The system does not provide coverage for all types of transients or accidents and thus might provide ambiguous or misleading information to the operator. Readings may be misleading under conditions of void redistribution, level swell, coolant pumps being turned on or off, small breaks in the vessel head, and severe accidents such as anticipated transient without scram;

(5) During LOCAs of greater than six-inch size, the RVLIS may provide ambiguous indications of inadequate core cooling, although there is no way for the operator to know when that occurs;

(6) If the system has only one data processor, it is vulnerable to single failure and/or erroneous indications on each of the redundant displays; if there are two, there is no indication of how the operator is to deal with a

discrepancy in the two output displays. In addition, plugging or blocking of the vessel penetration points used for sensing pressures for the differential pressure instruments could provide an ambiguous and erroneous indication.

(7) The RLVIS data processor(s) and the displays are not required to be qualified for seismic conditions which the plant may be expected to experience. Thus, there is no assurance that the system will survive a severe earthquake. In the event the processor or one of the displays fails, there appears to be no failure indication or indication of which display devices the operator is to rely upon.

The Staff suggests in its motion that in view of the increased time available to respond to an accident during low power operation of the plant, vessel water level indication is unnecessary.[29/] The increased time to respond to an accident at low power is not a sufficient basis for summary disposition. See In the Matter of Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), Nos. 50-369, 50-370, Memorandum and Order Regarding Applicant's Motion for Summary Disposition

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29/ Affidavit of Laurence E. Phillips, at 7; see also PGandE affidavit of James Shiffer, at 2.

(November 25, 1980).[30] In addition, there is no instrument other than water level indication to detect the approach to inadequate core cooling. According to Mr. Minor, one cannot rule out the possibility of accidents, even at low power, which will require swift and accurate operator responses, particularly in view of the fact that some safety systems will be disabled during the testing program and the plant will be in the "shake-down" phase.[31]

In light of the foregoing and the attached affidavit of Mr. Minor, the Staff and PGandE motions for summary disposition must be denied.

D. Valve Testing

Joint Intervenors' contention 24 focusses on the failure of PGandE to conduct adequate testing of relief, block, and safety valves to verify their capabilities under normal, transient, and accident conditions. Because there is considerable doubt regarding the status of such valves at Diablo Canyon and because current testing will not be completed until the middle of 1982, the Staff and PGandE motions for summary disposition must be denied.

30/ In the McGuire decision, the licensing board denied summary disposition with regard to the low power testing phase because the intervenor had raised an issue of material fact regarding hydrogen control. Despite a stipulation that absent ECCS operation there would be a minimum of 3900 seconds after a LOCA until hydrogen generation begins and approximately 18 hours until the containment would be filled with hydrogen, the board concluded that it could not rule as a matter of law that no genuine issue of fact existed because the intervenor controverted the applicant's assertion that operators would have more than enough time to respond to the LOCA.

31/ Affidavit of Gregory C. Minor, at 8.

The opening of the PORV and its failure to reclose were key factors in the TMI-2 accident. In addition, for several hours the operator failed to detect the open PORV and terminate the LOCA by closing the block valve. The Staff has noted that "[t]his and other operating experience raise a significant question about the performance qualification of two types of valves in the primary coolant boundary: relief and safety valves."[32/] The accident demonstrated graphically the safety significance of these valves in causing or mitigating a LOCA.

The attached affidavit of Gregory C. Minor defines in detail the substantive factual issues which are the focus of Joint Intervenors' contention 13.[33/] Although the PORVs perform various safety functions, they have a tendency to stick open and have experienced problems with leakage past the valve. Current testing of the various valves here in issue is being conducted by EPRI, and the Staff places great reliance on that testing in its pending motion. As the attached affidavit of Mr. Minor demonstrates, however, there are numerous issues of material fact regarding the adequacy of that testing and the need for further testing prior to low power licensing. Those issues include, inter alia, the following:

32/ NUREG-0578, at 7.

33/ Attached hereto as Exhibit S. This affidavit was prepared and filed as part of Governor Brown's Opposition to the pending summary disposition motions.

(1) PGandE has not provided data to show that the EPRI tests of Diablo Canyon valves meet several fundamental requirements:

(a) the tests must be conducted on a statistically significant number of valves of each valve type;

(b) a significant number of tests must be performed to evaluate degradation or valve lifetime (in terms of numer of operations);

(c) the tests must cover the full range of operating, transient and accident conditions; and

(d) the tests must be representative of the Diablo Canyon physical piping and arrangement;

(2) These fundamental requirements are not being met, at least to the following extent:

(a) testing is not being done under ATWS conditions, one of the most severe accidents demanding PORV operation;

(b) the preliminary block valve test is on only a sample of one;

(c) only steam conditions (of unspecified temperature and pressure) have been tested so far;

(3) Three out of seven of the block valves sampled failed to close when operating under a differential pressure of between 750 and 1500 psid. Given these failures and the higher pressures expected during operation, transients, and accident and ATWS conditions, there is a high likelihood

that these and other valves may not be able to operate correctly under all expected conditions;[34/]

(4) In view of the test failures and because there is little assurance that test results will verify proper functioning over the full range of conditions, approval of a low power license should only follow successful completion of valve testing.

The suggestion by the Staff that any deficiencies discovered in testing after the commencement of operation can be remedied at that time is an insufficient assurance that the public health and safety will be protected. In light of the uncertainty surrounding the EPRI test results, all necessary modifications should be made based upon completed testing of these initial components and prior to low power testing. Such a requirement is consistent with ALARA and the General Design Criteria 1, 14, 15, and 30.

Based on the foregoing discussion of material facts and the attached affidavit of Mr. Minor, the Staff and PGandE motions for summary disposition must be denied.

34/ PGandE failed to mention the test failures of the three block valves when selectively citing the limited results of the preliminary steam tests on the block valve similar to those at Diablo Canyon. See Affidavit of Hoch, at 2. For a discussion of the block valve failures, see I&E Bull. 81-02, April 9, 1981 (attached hereto as Exhibit T).

III

CONCLUSION

The foregoing discussion and the exhibits and affidavits referenced herein clearly demonstrate the existence of genuine issues of material fact with respect to Joint Intervenors' admitted contentions. The NRC Staff and PGandE have, therefore, failed to carry their burden of proof on their respective motions for summary disposition. In addition, PGandE's motion is fatally deficient because it contains no short and concise statement of undisputed facts.

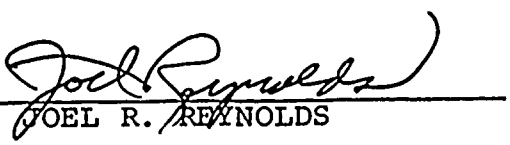
Accordingly, the NRC Staff and PGandE motions for summary disposition must be denied.

Dated: April 27, 1981

Respectfully submitted,

JOHN R. PHILLIPS, ESQ.
JOEL R. REYNOLDS, ESQ.
Center for Law in the
Public Interest
10203 Santa Monica Boulevard
Fifth Floor
Los Angeles, CA 90067
(213) 879-5588

DAVID S. FLEISCHAKER, ESQ.
1735 Eye Street, N.W.
Washington, D.C. 20006
(202) 638-6070

By 
JOEL R. REYNOLDS

Attorneys for Intervenors

SAN LUIS OBISPO MOTHERS FOR
PEACE
SCENIC SHORELINE PRESERVATION
CONFERENCE, INC.
ECOLOGY ACTION CLUB
SANDRA SILVER
GORDON SILVER
ELIZABETH APFELBERG
JOHN J. FORSTER

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 O.L. 50-323 O.L.
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	(Low Power Test Proceeding)

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 1981, I have served copies of the foregoing JOINT INTERVENORS' RESPONSE IN OPPOSITION TO NRC STAFF AND PACIFIC GAS AND ELECTRIC COMPANY MOTIONS FOR SUMMARY DISPOSITION, together with attached exhibits, mailing them through the U.S. mails, first class, postage prepaid.

Joseph M. Hendrie,
Commissioner
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

Peter A. Bradford,
Commissioner
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

Victor Gilinsky,
Commissioner
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

John F. Ahearne,
Chairman
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

Richard S. Salzman,
Chairman
Atomic Safety & Licensing
Appeal Board
U.S.Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland 20014

Dr. W. Reed Johnson
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland 20014

Dr. John H. Buck
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland 20014

Admin. Judge John F. Wolf,
Chairman
Atomic Safety & Licensing
Board
U.S. Nuclear Regulatory
Commission
Mail Drop East West 450
Washington, D.C. 20555

Glenn O. Bright
Atomic Safety & Licensing
Board
U.S. Nuclear Regulatory
Commission
Mail Drop East West 450
Washington, D.C. 20555

Dr. Jerry R. Kline
Atomic Safety & Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docket & Service Branch
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

William Olmstead, Esq.
Marc R. Staenberg, Esq.
Edward G. Ketchen, Esq.
Office of the Executive Legal
Director - BETH 042
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Nancy Culver
192 Luneta Drive
San Luis Obispo, CA 93401

Mr. Fredrick Eissler
Scenic Shoreline Preservation
Conference, Inc.
4623 More Mesa Drive
Santa Barbara, CA 93105

Sandra A. Silver
1760 Alisal Street
San Luis Obispo, CA 93401

Gordon Silver
1760 Alisal Street
San Luis Obispo, CA 93401

David S. Fleischaker, Esq.
1735 Eye Street, N.W.
Washington, D.C. 20006

Bruce Norton, Esq.
3216 N. Third Street
Suite 202
Phoenix, Arizona 85012

Mr. Yale I. Jones, Esq.
100 Van Ness Avenue
19th Floor
San Francisco, CA 94102

Andrew Baldwin, Esq.
Friends of the Earth
124 Spear Street
San Francisco, CA 94105

Harry M. Willis, Esq.
Seymour and Willis
601 California Street
Suite 2100
San Francisco, CA 94108

Janice E. Kerr, Esq.
Lawrence Q. Garcia, Esq.
J. Calvin Simpson, Esq.
California Public Utilities Commission
5246 State Building
350 McAllister Street
San Francisco, CA 94102

Malcolm H. Furbush, Esq.
Vice President and General Counsel
Philip A. Crane, Esq.
Pacific Gas & Electric Company
P. O. Box 7442
San Francisco, CA 94106

Arthur C. Gehr, Esq.
Snell & Wilmer
3100 Valley Center
Phoenix, Arizona 85073

Mrs. Raye Fleming
1920 Mattie Road
Shell Beach, CA 93449

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, CA 95125

Carl Nieburger
Telegram Tribune
P. O. Box 112
San Luis Obispo, CA 93402

Byron Georgiou, Esq.
Legal Affairs Secretary to the Governor
State Capitol Building
Sacramento, CA 95814

Lawrence Coe Lanpher, Esq.
Hill, Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20036

JOEL R. REYNOLDS, ESQ.