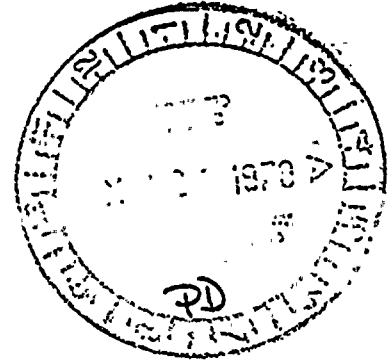


11/21/79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of:

PACIFIC GAS & ELECTRIC
COMPANY
(Diablo Canyon Nuclear
Power Plant, Units 1 & 2)

Docket Nos. 50-275 OL
50-323 OL

JOINT INTERVENORS' RESPONSE TO
THE APPLICANT'S REQUEST THAT
THE ASLB BE DIRECTED TO ISSUE
A PARTIAL INITIAL DECISION
ON THE REMAINING ISSUES,
AND THE STAFF TO ISSUE AN
OPERATING LICENSE FOR UNIT 1

On October 26, 1979, Pacific Gas and Electric Company ("Applicant") filed a motion with the Commission requesting that (1) the Commission direct the ASLB to issue its decision on the remaining matters litigated in the hearings already held; (2) the Commission authorize the ASLB to direct the Director of Nuclear Reactor Regulation to issue an operating license for Unit 1 at the Diablo Canyon site; (3) the TMI-related issues be handled on a generic basis or, in the alternative, if a hearing is required, that it be held after Unit 1 goes into operation; and (4) the recommendations in the Fleischaker letter dated September 13, 1979 be rejected. The Joint Intervenors hereby respond to the Applicant's filing.

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First, the motion should be dismissed as improperly filed with the Commission. While the Commission has broad supervisory powers and may intervene directly in a proceeding, it will normally do so only upon a showing that the immediate resolution by it of significant substantive or procedural matters clearly outweighs the benefit of permitting the proceeding to follow its normal course. Consolidated Edison Company of New York, Inc. (Indian Point Units 1, 2 and 3) CLI-75-8, NRCI 75-8, 173; U.S. Energy and Development Administration (Clinch River Breeder Reactor Project), CLI-76-13, NRCI 76-8, 67, 75-76. The Applicant has not made that showing. The only justification offered is the assertion that without Diablo Canyon the Applicant will not be able to maintain service at normal, acceptable levels. No support for that proposition in the form of sworn affidavits or documentation is provided. This unsupported assertion is not sufficient to justify the Commission's intervention.

Aside from the fact that the Applicant has not made the showing that would justify the Commission intervening in the middle of this proceeding, there is another good reason for denying the relief sought. On October 9th, the Commission published a document entitled, "Modified Adjudicatory Procedures." 44 Fed. Reg. 65049 (November 9, 1979). There the Commission spelled out the course that licensing boards are



to follow on applications for construction permits or operating licenses pending before them. Those procedures are intended to assure that the lessons learned from the TMI-2 review are properly implemented for pending operating licenses and construction permits and that the Commission will have the opportunity to sign-off personally on permit and license applications before they become effective. PG&E's request to short-cut those procedures would defeat those objectives and so should be denied.

If PG&E believes that the ASLB should close out consideration of this application, then it should file an appropriate motion with the ASLB. The parties would then have an opportunity to develop fully their arguments as to whether additional licensing requirements needed to be met and hearings held prior to issuance of an operating license. As matters stand, the Applicant is requesting the Commission to pass on these significant matters where no record has been compiled. This is another reason to deny the motion.

As for the question of renoticing and the hearing schedule, the Joint Intervenors add only two points to those made in the September 13th letter to the Commission. First, the letters received by the Commission from interested citizens bear out our argument that there is sufficient public interest in the TMI-2 related issues to justify



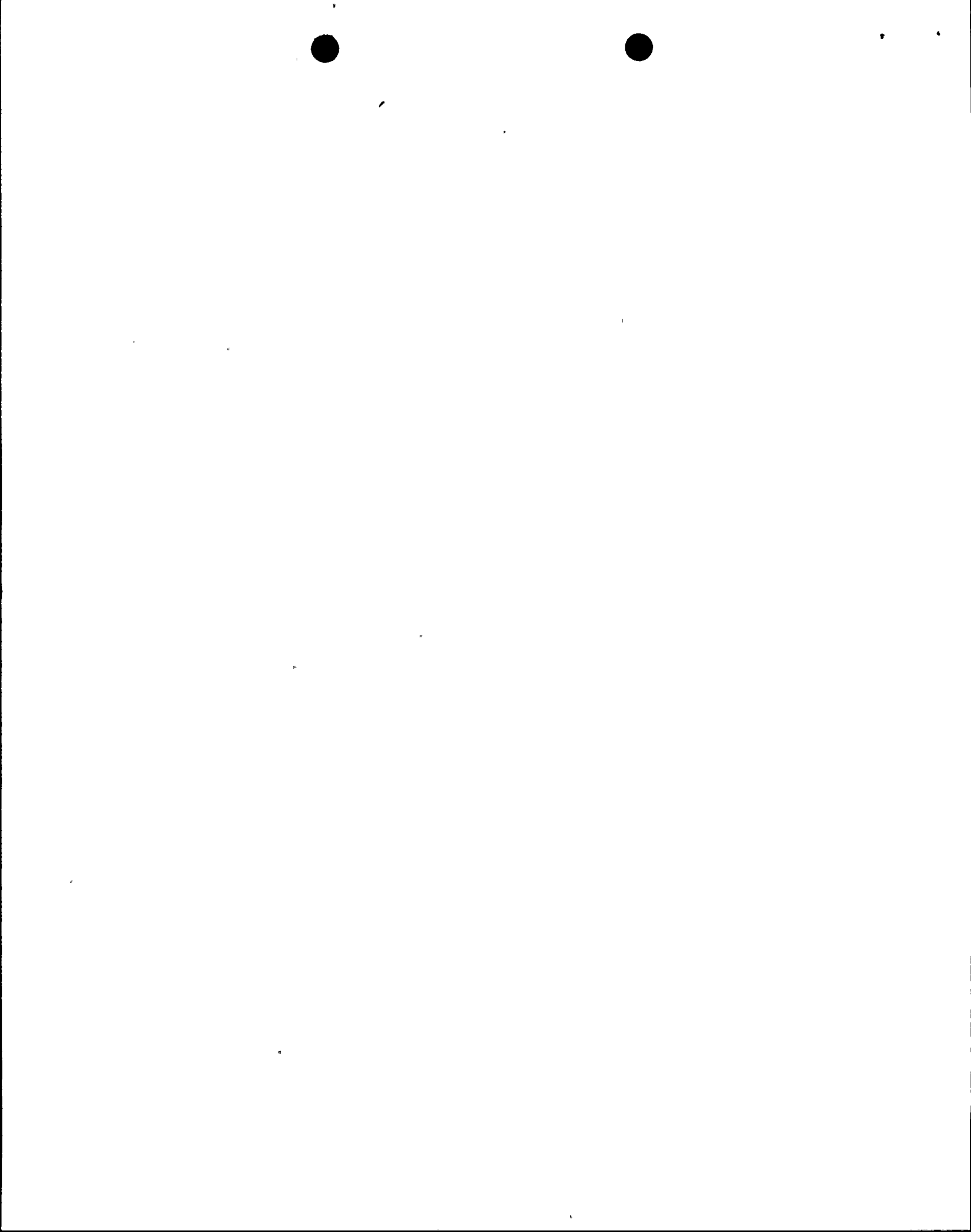
renoticing the licensing proceedings. We are well aware, that there is nothing stopping the interested public from petitioning to intervene in ongoing proceedings. (Such petitions would be premised on the position that the accident at TMI-2 provides sufficient basis for late intervention.) However, the point is that the Commission should take the initiative and inform the public that petitions to intervene in ongoing proceedings are permitted to be filed with licensing boards.

Finally, the Applicant has suggested a hearing schedule that fails to provide reasonable time for discovery and development of direct testimony. If the Commission is to provide guidance to the licensing boards then it should suggest a hearing schedule more in line with that contained in the September 13th correspondence to the Commission. On the other hand the Commission may determine to leave the matter of scheduling to licensing boards.

Wherefore, the Joint Intervenors respectfully request that PG&E's motion be dismissed. Consistent with motions previously filed with the Commission and for the reasons stated therein,^{1/} the Joint Intervenors request that consideration of this motion be limited to Commissioners Ahearne, Bradford and Gilinsky.

1/ JOINT INTERVENORS' REQUEST TO INSTITUTE PROCEEDINGS ON THE QUALIFICATION OF CHAIRMAN JOSEPH M. HENDIRE TO CONSIDER THE OPERATING LICENSE APPLICATION FOR THE DIABLO CANYON NUCLEAR POWER PLANT, and supporting POINTS AND AUTHORITIES.

JOINT INTERVENORS' REQUEST TO INSTITUTE PROCEEDINGS ON THE QUALIFICATION OF COMMISSIONER RICHARD T. KENNEDY TO CONSIDER THE OPERATING LICENSE APPLICATION FOR THE DIABLO CANYON NUCLEAR POWER PLANT, and supporting POINTS AND AUTHORITIES.



Respectfully submitted,

David S. Fleischaker

David S. Fleischaker, Esq.
1735 Eye Street, N.W.
Suite 709
Washington, D.C. 20006
(202) 638-6070

John R. Phillips, Esq.
CENTER FOR LAW IN
THE PUBLIC INTEREST
10203 Santa Monica Boulevard
Los Angeles, California 90067

Attorneys For Joint Intervenors

NOVEMBER 21, 1979



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)

PACIFIC GAS & ELECTRIC)
COMPANY)
(Diablo Canyon Nuclear)
Power Plant, Units 1 & 2))

Docket Nos. 50-275 OL
50-323 OL

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 1979, I have served copies of the foregoing JOINT INTERVENORS' RESPONSE TO THE APPLICANT'S REQUEST THAT THE ASLB BE DIRECTED TO ISSUE A PARTIAL INITIAL DECISION ON THE REMAINING ISSUES, AND THE STAFF TO ISSUE AN OPERATING LICENSE FOR UNIT 1, mailing them through the U.S. Mails, first-class, postage prepaid.

Joseph M. Hendrie,
Chairman
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

Richard T. Kennedy,
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



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

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

Alan S. Rosenthal
Atomic Safety & Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland

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

Elizabeth S. Bowers, Esq.
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. William E. Martin
Battelle Memorial Institute
Columbus, Ohio 43201

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

James R. Tourtellotte, Esq.
L. Dow Davis, 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

Mrs. Elizabeth Apfelberg
1415 Cozadero
San Luis Obispo, CA 93401

Mr. Frederick 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

John Phillips, Esq.
Center For Law In The
Public Interest
10203 Santa Monica Boulevard
Fifth Floor
Los Angeles, CA 90067

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

Paul C. Valentine, Esq.
321 Lytton Avenue
Palo Alto, CA 94302

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

John C. Morrissey, Esq.
Philip A. Crane, Esq.
Pacific Gas & Electric Company
77 Beale Street, Room 3127
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 Neiburger
Telegram Tribune
P.O. Box 112
San Luis Obispo, CA 93402

J. Anthony Kline, Esq.
Legal Affairs Secretary to
the Governor
State Capitol Building
Sacramento, California 95814

Herbert H. Brown, Esq.
Hill, Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20036

David S. Fleischaker
David S. Fleischaker, Esq.



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