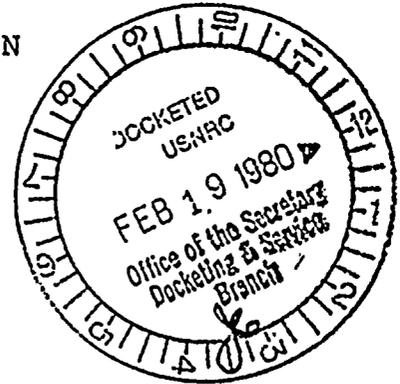


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



SERVED FEB 19 1980

In the Matter of )  
 )  
 )  
PACIFIC GAS AND ELECTRIC COMPANY )  
 )  
(Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2) )

Docket Nos. 50-275 OL  
50-323 OL

Messrs. Paul C. Valentine, Palo Alto, California,  
W. Andrew Baldwin and Yale I. Jones, San Francisco,  
California, argued the cause and filed a brief  
for intervenor San Luis Obispo Mothers for  
Peace, appellant.

Mr. Bruce Norton, Phoenix, Arizona, argued the  
cause and, with Messrs. Malcom H. Furbush  
and Philip A. Crane, Jr., San Francisco,  
California, and Arthur C. Gehr, Phoenix,  
Arizona, filed a brief for applicant Pacific  
Gas and Electric Company, appellee.

Mr. James R. Tourtellotte argued the cause and  
Mr. Marc R. Staenberg filed a brief for the  
Nuclear Regulatory Commission staff.

DECISION

February 15, 1980

(ALAB-580)

1. Among the contentions that intervenor San Luis Obispo  
Mothers for Peace has been pressing in this operating license  
proceeding are challenges to the adequacy of the Pacific Gas and

Ho.  
8 002220.174  
60

Electric Company (PG&E) physical security plan for protecting the Diablo Canyon nuclear power facility from industrial sabotage. <sup>1/</sup> A combination of circumstances (including the accidental death of intervenor's proffered expert witness) led to several Licensing Board rulings culminating in the Board's holding that intervenor had "voluntarily defaulted" on this issue. The Board therefore precluded intervenor from going to hearing on security plan contentions. <sup>2/</sup>

Nevertheless, at the urging of both the applicant and the staff the Board below inspected the security features of the nuclear plant and took evidence in camera about their adequacy -- albeit in the absence of the intervenor. On the basis of that inspection and on the evidence presented to it at the closed hearing, the Licensing Board made an unequivocal finding "that the PG&E security plan complies with all applicable NRC regulations." <sup>3/</sup>

---

<sup>1/</sup> The requirements for physical security plans for nuclear power plants are detailed in 10 C.F.R. §73.55 (1979 Rev.).

<sup>2/</sup> LBP-79-26, 10 NRC \_\_\_\_, \_\_ (slip opinion, Part IV, at 93) (September 27, 1979).

<sup>3/</sup> Id. at \_\_ (slip opinion at 93-94).

The Licensing Board's decision also considered whether the facility is adequately designed to withstand earthquakes. As explained in the Appeal Panel Chairman's January 4, 1980, memorandum (unpublished), intervenor was represented on the security plan and earthquake issues by different counsel with offices in different cities. The matters were tried separately and respective counsel filed exceptions and briefs independently. For convenience (and in the absence of any objection) we have treated the matters as two separate appeals; earthquake contentions are to be taken up by another appeal board with two technical members.

On this appeal from that ruling, intervenor generally asserts that the Licensing Board erred by (1) finding intervenor's expert witness unqualified to examine the Diablo Canyon security plan and to testify about its adequacy; (2) holding intervenor had withdrawn from the proceeding by "voluntary default"; (3) inspecting the Diablo Canyon facility's security features in the company of the applicant and the staff's representatives but not intervenor's; and (4) barring intervenor's substitute counsel from the in camera evidentiary hearing on the adequacy of the security plan.

We need not, however, resolve any of these questions because of a circumstance no party foresaw. While considering this appeal, we were unable to determine precisely what documents or other material the Licensing Board relied upon when making its security plan finding. Accordingly, on February 6, 1980, we requested that Board to identify all such materials. The Board responded on February 11th with a memorandum stating that "[t]he transcript of the in camera hearing, which contains the prepared testimony of the witnesses, is the only 'document' considered by the Board. The Board also visually inspected various features of the security system during the site visit."

What is not manifest from the Licensing Board's response is, first, that either the in camera hearing transcript nor any other part of the record contains the Diablo Canyon physical security plan and second, that the Board never looked at it <sup>4/</sup> For the reasons which follow, we believe that in these circumstances the Board's finding of regulatory compliance cannot stand.

2. The evidence adduced at the closed hearing was quite limited. The applicant offered two witnesses whose testimony amounted to no more than the expression of their "opinion" that the security plan met the Commission's requirements. The basis for this conclusion was not questioned by the Board. Staff witnesses also testified, mainly to explain the staff's methodology for evaluating the Diablo Canyon security plan and to list briefly the plan's salient features. Lastly, the staff's Security Plan Evaluation Report, which was only slightly more expansive than the staff testimony, was placed into the record as if read.

Reliance on such secondary sources is no substitute for examining the plan's actual provisions. Our own review

---

<sup>4/</sup> By way of further check, the Chairman and one member of this Board independently inquired of Counsel to the Licensing Board Panel specifically whether the Board had looked at the Diablo Canyon security plan itself. Counsel responded that he had checked with the Board members and confirmed that the Board had not done so.

of that document confirms this.<sup>5/</sup> There are instances where the plan's conformity with applicable Commission regulations is not self-evident -- and some where it is even doubtful -- even when considered in the light of the evidence adduced at the closed hearing.<sup>6/</sup> It may well be that these apparent discrepancies can easily be explained on pertinent inquiry, but that was the purpose of the in camera hearing session. We do not believe it possible for the Board to have found that the security plan conforms fully to all regulatory requirements without having at least read that plan. The Board's security finding is, therefore, legally impermissible.

To be sure, were the Licensing Board correct that intervenor had defaulted -- a question we do not decide -- there arguably may have been no need for the Board to pass on the security plan contentions. A hearing is not mandatory in an operating license proceeding and a board need decide only con-

---

<sup>5/</sup> Upon examining the in camera record, we noted the absence of the security plan and proceeded to obtain a copy from its staff custodian on the mistaken assumption that the Licensing Board had returned it to him for safekeeping. As mentioned, the Licensing Board never had the plan at all.

<sup>6/</sup> The regulatory requirements of section 73.55 coupled with the complexities of the plan are such that a brief hearing, even when supplemented by an hour's walking tour of the plant, are insufficient to dispense with actual examination of the plan.

tested issues.<sup>7/</sup> But a board is not barred from looking into other concerns where it finds a serious safety issue that merits further exploration.<sup>8/</sup> The adequacy of a security plan can certainly be such a matter.<sup>9/</sup> Moreover, not only the intervenor but the applicant and the staff both urged that the Board review the Diablo Canyon security plan.<sup>10/</sup> Having undertaken to perform that task -- and here we think it had little choice but to do so -- the Board was bound to inquire diligently into the sufficiency of the plan's provisions. We do not understand the staff or the applicant, in asking for that review, to have been suggesting anything else.<sup>11/</sup> No conceivable good is served by making empty findings in the absence of essential evidence. Thus the unequivocal finding that the security plan "complies with all applicable NRC regulations" -- where the Licensing Board never saw the plan --

---

7/ Cincinnati Gas & Electric Co. (Zimmer Station), ALAB-305, 3 NRC 8, 9 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 fn. 10 (1974).

8/ Consolidated Edison Co. of N. Y. (Indian Point Unit 3), CLI-74-28, 8 AEC 7 (1974); 10 C.F.R. §§2.760a and 2.104(c).

9/ Pacific Gas & Electric Co. (Diablo Canyon Plant, Units 1 & 2), CLI-77-23, 6 NRC 455, 456 (1977).

10/ 10 NRC at \_\_\_ (slip opinion at 93).

11/ Surprisingly, neither party offered the security plan into evidence or asked that official notice be taken of it. "The staff has the obligation to lay all relevant materials before the Board to enable it adequately to dispose of the issues before it." Consolidated Edison Co. of N. Y. (Indian Point Station, Units 1, 2 & 3), CLI-77-02, 5 NRC 13, 15 (1977). But given the Board's determination to evaluate the security plan, the staff's failure to ask formally that it be noticed does not excuse the Board's failure to look at it or, alternatively, to state why it did not find it necessary to review the actual plan.

is so much waste ink. Of course circumstances may arise where a board might determine that a thorough inquiry was not necessary. But in that case its minimum obligation would be to acknowledge the fact and to explain it. Here the Licensing Board did neither.

Moreover, it is a statutory requirement that the adjudicatory decisions of this Commission stand or fall on the basis of the record on which they rest.<sup>12/</sup> The Administrative Procedure Act (to which NRC proceedings are specifically subject<sup>13/</sup>) mandates in pertinent part that "[t]he transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision . . . ." 5 U.S.C. §556(e). Given the duty to decide in accordance with the facts provided, "[a] finding without evidence is arbitrary and baseless," ICC v. Louisville & N. R. Co., 227 U.S. 88, 91 (1913) -- a principle that has constitutional underpinnings.<sup>14/</sup> Accordingly, the Board's security

---

<sup>12/</sup> A licensing proceeding is an adjudication within the meaning of the APA. Porter County Chapter v. AEC, 533 F.2d 1011, 1019 (7th Cir.), certiorari denied, 429 U.S. 945 (1976); Citizens for a Safe Environment v. AEC, 489 F.2d 1018, 1021 (3rd Cir. 1974); Siegel v. AEC, 400 F.2d 778, 785 (D.C. Cir. 1968).

<sup>13/</sup> 42 U.S.C. §2239(b); see also 5 U.S.C. §559.

<sup>14/</sup> As the Court explained (227 U.S. at 91): "if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

plan finding must be set aside.

3. Our own concerns about the Diablo Canyon security plan are sufficiently numerous that the question of its adequacy merits consideration de novo. In the circumstances presented and in the interests of reasonable expedition, we deem it the wiser course to conduct that hearing ourselves. We are bolstered in this view by matters stressed at oral argument -- particularly the application of the general propositions laid down earlier in this proceeding in ALAB-410, 5 NRC 1398 (1977), to the concrete circumstances of the case. ALAB-410 was in many ways a matter of first impression. The diverse readings it has received from the parties before us suggest that it may be in need of refinement -- a task more suitable to ourselves as its author than to the Board below as its interpreter.

Because we intend to explore fully the adequacy of the security plan in any event, we see little to be gained by resolving the series of questions raised by intervenor's appeal.<sup>15/</sup> The situation in which they arose is truly unique. We think it unlikely that a board will be faced soon again with the farrago of inconsistent positions, substitute counsel, and a dying witness that recurred here. We believe that we may be aided in developing the record if the intervenor is

---

<sup>15/</sup> Even were intervenor to prevail, it would be entitled to no more relief than we now accord.

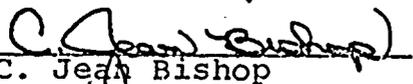
allowed to participate as a party in the forthcoming hearings; in the exercise of our discretion we will let it do so. The terms of its participation will, of course, be governed by ALAB-410.

In light of the manifest need to avoid unnecessary disclosure of the security plan, we shall decide precisely how we shall proceed after a closed prehearing conference where we will consider the parties' suggestions. An order calling for such suggestions and calendaring such a conference will follow shortly. It is appropriate now, however, to apprise all parties that we are determined to move ahead swiftly; that requests for extensions of time or postponements will be looked upon with disfavor; and that any party intending to present witnesses should arrange for their services immediately.

Part IV of the partial initial decision of September 27, 1979 is vacated.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Bishop  
Secretary to the  
Appeal Board

[The additional comment of Dr. Johnson follows on page 10.]

Additional comment of Dr. Johnson:

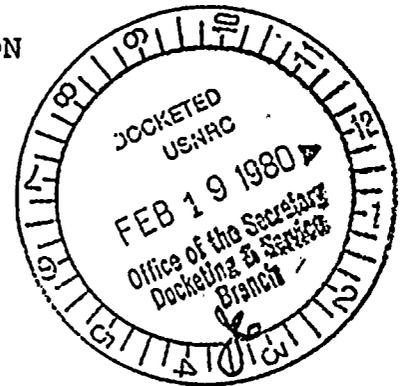
My view of intervenor participation in security plan hearings has not changed from that expressed in conjunction with Dr. Quarles in our concurrence in ALAB-410. We said there that "had the regulations and precedents favoring it [intervenor participation] not been so clearly drawn, we would have found that nuclear power plant site security plans should not be disclosed in the hearing process."

5 NRC at 1407.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



SERVED FEB 19 1980

In the Matter of )  
 )  
 )  
PACIFIC GAS AND ELECTRIC COMPANY )  
 )  
 )  
(Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2) )  
 )

Docket Nos. 50-275-OL  
50-323-OL

Messrs. Paul C. Valentine, Palo Alto, California, W. Andrew Baldwin and Yale I. Jones, San Francisco, California, argued the cause and filed a brief for intervenor San Luis Obispo Mothers for Peace, appellant.

Mr. Bruce Norton, Phoenix, Arizona, argued the cause and, with Messrs. Malcom H. Furbush and Philip A. Crane, Jr., San Francisco, California, and Arthur C. Gehr, Phoenix, Arizona, filed a brief for applicant Pacific Gas and Electric Company, appellee.

Mr. James R. Tourtellotte argued the cause and Mr. Marc R. Staenberg filed a brief for the Nuclear Regulatory Commission staff.

DECISION

February 15, 1980

(ALAB-580)

1. Among the contentions that intervenor San Luis Obispo Mothers for Peace has been pressing in this operating license proceeding are challenges to the adequacy of the Pacific Gas and

140  
7

60

Electric Company (PG&E) physical security plan for protecting the Diablo Canyon nuclear power facility from industrial sabotage.<sup>1/</sup> A combination of circumstances (including the accidental death of intervenor's proffered expert witness) led to several Licensing Board rulings culminating in the Board's holding that intervenor had "voluntarily defaulted" on this issue. The Board therefore precluded intervenor from going to hearing concerning security plan contentions.<sup>2/</sup>

Nevertheless, at the urging of both the applicant and the staff the Board below inspected the security features of the nuclear plant and took evidence in camera about their adequacy -- albeit in the absence of the intervenor. On the basis of that inspection and on the evidence presented to it at the closed hearing, the Licensing Board made an unequivocal finding "that the PG&E security plan complies with all applicable NRC regulations."<sup>3/</sup>

---

1/ The requirements for physical security plans for nuclear power plants are detailed in 10 C.F.R. §73.55 (1979 Rev.).

2/ LBP-79-26, 10 NRC \_\_\_, \_\_ (slip opinion, Part IV, at 93) (September 27, 1979).

3/ Id. at \_\_\_ (slip opinion at 93-94).

The Licensing Board's decision also considered whether the facility is adequately designed to withstand earthquakes. As explained in the Appeal Panel Chairman's January 4, 1980, memorandum (unpublished), intervenor was represented on the security plan and earthquake issues by different counsel with offices in different cities. The matters were tried separately and respective counsel filed exceptions and briefs independently. For convenience (and in the absence of any objection) we have treated the matters as two separate appeals; earthquake contentions are to be taken up by another appeal board with two technical members.

On this appeal from that ruling, intervenor generally asserts that the Licensing Board erred by (1) finding intervenor's expert witness unqualified to examine the Diablo Canyon security plan and to testify about its adequacy; (2) holding intervenor had withdrawn from the proceeding by "voluntary default"; (3) inspecting the Diablo Canyon facility's security features in the company of the applicant and the staff's representatives but not intervenor's; and (4) barring intervenor's substitute counsel from the in camera evidentiary hearing on the adequacy of the security plan.

We need not, however, resolve any of these questions because of a circumstance no party foresaw. While considering this appeal, we were unable to determine precisely what documents or other material the Licensing Board relied upon when making its security plan finding. Accordingly, on February 6, 1980, we requested that Board to identify all such materials. The Board responded on February 11th with a memorandum stating that "[t]he transcript of the in camera hearing, which contains the prepared testimony of the witnesses, is the only 'document' considered by the Board. The Board also visually inspected various features of the security system during the site visit."

What is not manifest from the Licensing Board's response is, first, that either the in camera hearing transcript nor any other part of the record contains the Diablo Canyon physical security plan and, second, that the Board never looked at it <sup>4/</sup> For the reasons which follow, we believe that in these circumstances the Board's finding of regulatory compliance cannot stand.

2. The evidence adduced at the closed hearing was quite limited. The applicant offered two witnesses whose testimony amounted to no more than the expression of their "opinion" that the security plan met the Commission's requirements. The basis for this conclusion was not questioned by the Board. Staff witnesses also testified, mainly to explain the staff's methodology for evaluating the Diablo Canyon security plan and to list briefly the plan's salient features. Lastly, the staff's Security Plan Evaluation Report, which was only slightly more expansive than the staff testimony, was placed into the record as if read.

Reliance on such secondary sources is no substitute for examining the plan's actual provisions. Our own review

---

<sup>4/</sup> By way of further check, the Chairman and one member of this Board independently inquired of Counsel to the Licensing Board Panel specifically whether the Board had looked at the Diablo Canyon security plan itself. Counsel responded that he had checked with the Board members and confirmed that the Board had not done so.

of that document confirms this.<sup>5/</sup> There are instances where the plan's conformity with applicable Commission regulations is not self-evident -- and some where it is even doubtful -- even when considered in the light of the evidence adduced at the closed hearing.<sup>6/</sup> It may well be that these apparent discrepancies can easily be explained on pertinent inquiry, but that was the purpose of the in camera hearing session. We do not believe it possible for the Board to have found that the security plan conforms fully to all regulatory requirements without having at least read that plan. The Board's security finding is, therefore, legally impermissible.

To be sure, were the Licensing Board correct that intervenor had defaulted -- a question we do not decide -- there arguably may have been no need for the Board to pass on the security plan contentions. A hearing is not mandatory in an operating license proceeding and a board need decide only con-

---

<sup>5/</sup> Upon examining the in camera record, we noted the absence of the security plan and proceeded to obtain a copy from its staff custodian on the mistaken assumption that the Licensing Board had returned it to him for safekeeping. As mentioned, the Licensing Board never had the plan at all.

<sup>6/</sup> The regulatory requirements of section 73.55 coupled with the complexities of the plan are such that a brief hearing, even when supplemented by an hour's walking tour of the plant, are insufficient to dispense with actual examination of the plan.

tested issues.<sup>7/</sup> But a board is not barred from looking into other concerns where it finds a serious safety issue that merits further exploration.<sup>8/</sup> The adequacy of a security plan can certainly be such a matter.<sup>9/</sup> Moreover, not only the intervenor but the applicant and the staff both urged that the Board review the Diablo Canyon security plan.<sup>10/</sup> Having undertaken to perform that task -- and here we think it had little choice but to do so -- the Board was bound to inquire diligently into the sufficiency of the plan's provisions. We do not understand the staff or the applicant, in asking for that review, to have been suggesting anything else.<sup>11/</sup> No conceivable good is served by making empty findings in the absence of essential evidence. Thus the unequivocal finding that the security plan "complies with all applicable NRC regulations" -- where the Licensing Board never saw the plan --

- 
- 7/ Cincinnati Gas & Electric Co. (Zimmer Station), ALAB-305, 3 NRC 8, 9 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 fn. 10 (1974).
- 8/ Consolidated Edison Co. of N. Y. (Indian Point Unit 3), CLI-74-28, 8 AEC 7 (1974); 10 C.F.R. §§2.760a and 2.104(c).
- 9/ Pacific Gas & Electric Co. (Diablo Canyon Plant, Units 1 & 2), CLI-77-23, 6 NRC 455, 456 (1977).
- 10/ 10 NRC at \_\_\_ (slip opinion at 93).
- 11/ Surprisingly, neither party offered the security plan into evidence or asked that official notice be taken of it. "The staff has the obligation to lay all relevant materials before the Board to enable it adequately to dispose of the issues before it." Consolidated Edison Co. of N. Y. (Indian Point Station, Units 1, 2 & 3), CLI-77-02, 5 NRC 13, 15 (1977). But given the Board's determination to evaluate the security plan, the staff's failure to ask formally that it be noticed does not excuse the Board's failure to look at it or, alternatively, to state why it did not find it necessary to review the actual plan.

is so much waste ink. Of course circumstances may arise where a board might determine that a thorough inquiry was not necessary. But in that case its minimum obligation would be to acknowledge the fact and to explain it. Here the Licensing Board did neither.

Moreover, it is a statutory requirement that the adjudicatory decisions of this Commission stand or fall on the basis of the record on which they rest.<sup>12/</sup> The Administrative Procedure Act (to which NRC proceedings are specifically subject<sup>13/</sup>) mandates in pertinent part that "[t]he transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision . . . ." 5 U.S.C. §556(e). Given the duty to decide in accordance with the facts provided, "[a] finding without evidence is arbitrary and baseless," ICC v. Louisville & N. R. Co., 227 U.S. 88, 91 (1913) -- a principle that has constitutional underpinnings.<sup>14/</sup> Accordingly, the Board's security

---

<sup>12/</sup> A licensing proceeding is an adjudication within the meaning of the APA. Porter County Chapter v. AEC, 533 F.2d 1011, 1019 (7th Cir.), certiorari denied, 429 U.S. 945 (1976); Citizens for a Safe Environment v. AEC, 489 F.2d 1018, 1021 (3rd Cir. 1974); Siegel v. AEC, 400 F.2d 778, 785 (D.C. Cir. 1968).

<sup>13/</sup> 42 U.S.C. §2239(b); see also 5 U.S.C. §559.

<sup>14/</sup> As the Court explained (227 U.S. at 91): "if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

plan finding must be set aside.

3. Our own concerns about the Diablo Canyon security plan are sufficiently numerous that the question of its adequacy merits consideration de novo. In the circumstances presented and in the interests of reasonable expedition, we deem it the wiser course to conduct that hearing ourselves. We are bolstered in this view by matters stressed at oral argument -- particularly the application of the general propositions laid down earlier in this proceeding in ALAB-410, 5 NRC 1398 (1977), to the concrete circumstances of the case. ALAB-410 was in many ways a matter of first impression. The diverse readings it has received from the parties before us suggest that it may be in need of refinement -- a task more suitable to ourselves as its author than to the Board below as its interpreter.

Because we intend to explore fully the adequacy of the security plan in any event, we see little to be gained by resolving the series of questions raised by intervenor's appeal.<sup>15/</sup> The situation in which they arose is truly unique. We think it unlikely that a board will be faced soon again with the farrago of inconsistent positions, substitute counsel, and a dying witness that recurred here. We believe that we may be aided in developing the record if the intervenor is

---

<sup>15/</sup> Even were intervenor to prevail, it would be entitled to no more relief than we now accord.

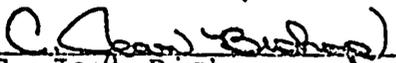
allowed to participate as a party in the forthcoming hearings; in the exercise of our discretion we will let it do so. The terms of its participation will, of course, be governed by ALAB-410.

In light of the manifest need to avoid unnecessary disclosure of the security plan, we shall decide precisely how we shall proceed after a closed prehearing conference where we will consider the parties' suggestions. An order calling for such suggestions and calendaring such a conference will follow shortly. It is appropriate now, however, to apprise all parties that we are determined to move ahead swiftly; that requests for extensions of time or postponements will be looked upon with disfavor; and that any party intending to present witnesses should arrange for their services immediately.

Part IV of the partial initial decision of September 27, 1979 is vacated.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Bishop  
Secretary to the  
Appeal Board

[The additional comment of Dr. Johnson follows on page 10.]

Additional comment of Dr. Johnson:

My view of intervenor participation in security plan hearings has not changed from that expressed in conjunction with Dr. Quarles in our concurrence in ALAB-410. We said there that "had the regulations and precedents favoring it [intervenor participation] not been so clearly drawn, we would have found that nuclear power plant site security plans should not be disclosed in the hearing process."

5 NRC at 1407.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



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

Docket Nos. 50-275 OL  
50-~~232~~ OL  
323

ORDER

January 16, 1980

On January 2, 1980, this cause was calendared for argument in San Francisco, California, on January 23, 1980. This morning we received through the mails a request by intervenor, the appellant, for a continuance of oral argument, with the representation that applicant's counsel would not object to a postponement until January 29, 30 or 31.

Previously scheduled commitments by the members of this Board, however, rule out those alternate dates. Consequently, if not held as scheduled, the argument would have to be postponed for approximately a month. We also note that intervenor is represented by three attorneys, all of whom are on the

AO  
1

6

brief, and it is not represented that all of them will be unavailable for argument on the 23rd of January. In the circumstances, the motion for a continuance is denied.

It is so ORDERED.

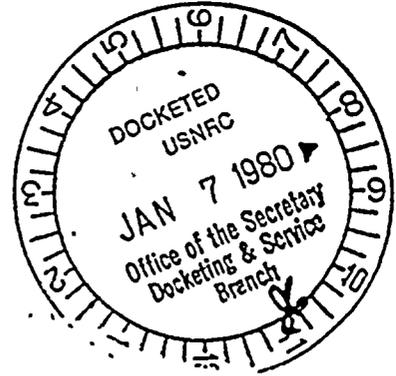
FOR THE APPEAL BOARD

  
C. Jean Bishop  
Secretary to the  
Appeal Board

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



In the Matter of )

PACIFIC GAS & ELECTRIC COMPANY )

(Diablo Canyon Nuclear Power )  
Plant, Units 1 & 2) )

Docket Nos. 50-275 OL  
50-323 OL

ORDER

January 4, 1980

The oral argument in this cause scheduled for Wednesday, January 23, 1980 will be heard at 9:30 a.m. that day in the United States Tax Court, room 2021, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, California.

Each side will be allowed one hour for argument. Intervenor, San Luis Obispo Mothers for Peace, will be heard first and may reserve part of its time for rebuttal. The applicant and the staff will then be heard in that order, dividing their time equally unless they agree otherwise. Each party shall mail to the Secretary of this Board by January 11, 1980 the name, address and telephone number of counsel who will argue in its behalf.

It is so ORDERED.

FOR THE APPEAL BOARD

*Barbara A. Tompkins*  
Barbara A. Tompkins  
Secretary to the  
Appeal Board

H/O  
1

67

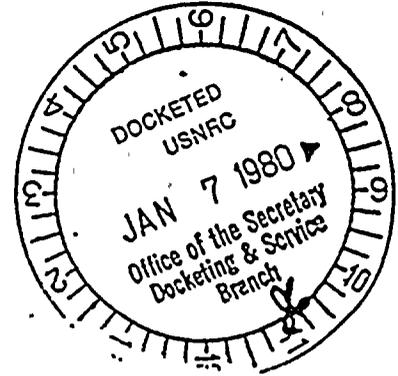


1920

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



In the Matter of )

PACIFIC GAS & ELECTRIC COMPANY )

(Diablo Canyon Nuclear Power )  
Plant, Units 1 & 2 )

) Docket Nos. 50-275 OL  
) 50-323 OL

ORDER

January 4, 1980

The oral argument in this cause scheduled for Wednesday, January 23, 1980 will be heard at 9:30 a.m. that day in the United States Tax Court, room 2021, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, California.

Each side will be allowed one hour for argument. Intervenor, San Luis Obispo Mothers for Peace, will be heard first and may reserve part of its time for rebuttal. The applicant and the staff will then be heard in that order, dividing their time equally unless they agree otherwise. Each party shall mail to the Secretary of this Board by January 11, 1980 the name, address and telephone number of counsel who will argue in its behalf.

It is so ORDERED.

FOR THE APPEAL BOARD

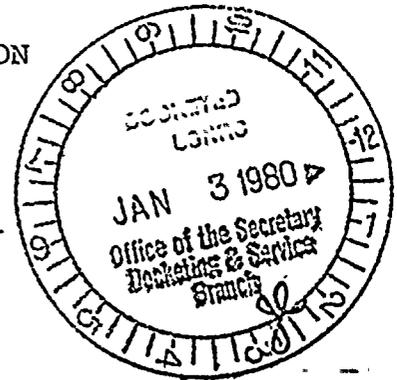
*Barbara A. Tompkins*  
Barbara A. Tompkins  
Secretary to the  
Appeal Board



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



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

Docket Nos. 50-275 OL  
50-323 OL

ORDER

January 2, 1980

The Board will hear oral argument on intervenors exceptions related to the security plan issues in San Francisco, California, on Wednesday, January 23, 1980. The exact time, place and order of argument will be announced in a subsequent order. The Board may also specify in that order matters in which it is particularly interested that counsel should be prepared to discuss.

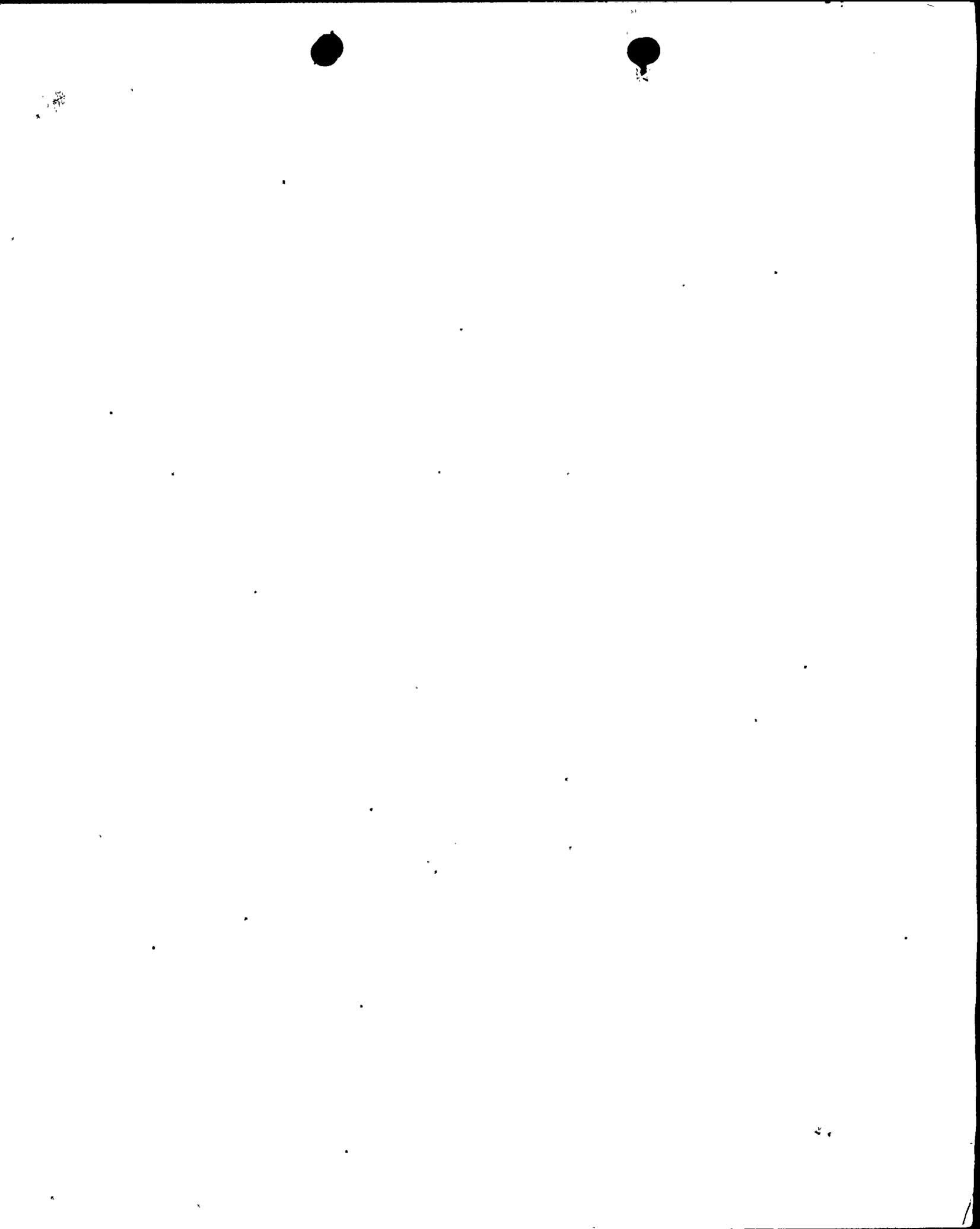
It is so ORDERED.

FOR THE APPEAL BOARD

*Barbara A. Tompkins*  
Barbara A. Tompkins  
Secretary to the  
Appeal Board

HO

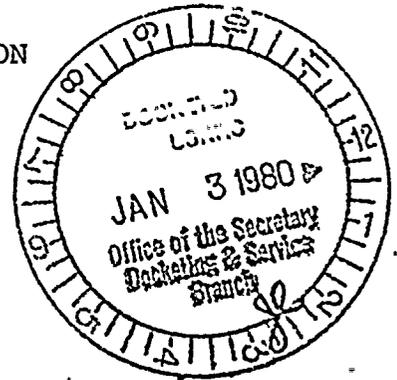
CA



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



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

Docket Nos. 50-275 OL  
50-323 OL

ORDER

January 2, 1980

The Board will hear oral argument on intervenors exceptions related to the security plan issues in San Francisco, California, on Wednesday, January 23, 1980. The exact time, place and order of argument will be announced in a subsequent order. The Board may also specify in that order matters in which it is particularly interested that counsel should be prepared to discuss.

It is so ORDERED.

FOR THE APPEAL BOARD

*Barbara A. Tompkins*  
Barbara A. Tompkins  
Secretary to the  
Appeal Board

60 H/O 1

