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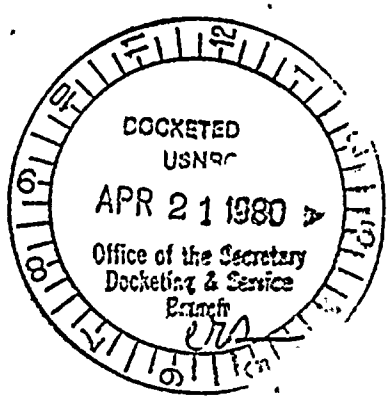

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF RESPONSE TO APPLICANT'S APPLICATION FOR STAY OF APPEAL BOARD ORDER REQUIRING DISCLOSURE OF SANITIZED VERSION OF SECURITY PLAN

I. Introduction

On April 14, 1980, Pacific Gas and Electric Company (Applicant) applied to the Nuclear Regulatory Commission (Commission) for a stay and review of the Atomic Safety and Licensing Appeal Board's (Appeal Board's) April 11, 1980 Second Prehearing Conference Order. That Appeal Board Order granted Counsel for the Intervenor San Luis Obispo Mothers for Peace access to a "sanitized" version of the Diablo Canyon security plan and specifically directed the Applicant to make the plan available to the Intervenors on April 21, 1980, unless a stay of that Order was obtained from the Commission prior to that date.1/

For the reasons set forth below, the NRC Staff (Staff) believes that the Applicant has failed to satisfy its burden of showing that the Appeal Board Order should be stayed under the provisions of 10 C.F.R. § 2.788 because it will be irreparably harmed or that it will prevail on the merits of its concurrently filed Petition for Review.

1/ Appeal Board Second Prehearing Conference Order at 21-22.

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For these reasons, the Staff submits that the Application for a Stay ought to be denied as a matter of law.

II. Statement of the Case

The instant controversy is part of an extended legal debate[2/] over whether Applicant, Pacific Gas and Electric Company, should be required to divulge the contents of its plant security plan to Counsel for the Intervenors or their witness in order that they might litigate the adequacy of that plan in this operating license proceeding. Following initial consideration of this question by the Atomic Safety and Licensing Board, the Appeal Board held that the adequacy of the Applicant's security plan was litigible in this proceeding, provided that certain safeguards were instituted to protect the plan from disclosure. In remanding the security issue, the Appeal Board instructed the Licensing Board to "restrict the release to those portions of the plan needed by intervenor to litigate its contention or to limit the portions of the plan to be released in terms of the qualifications of the proposed witness."[3/]

2/ This matter has been under litigation since 1976. E.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), Applicant's Petition for Review Denied, CLI-77-23, 6 NRC 455 (1977); ALAB-504, 8 NRC 406 (1978); ALAB-514, 8 NRC 697 (1978); CLI-79-1, 9 NRC 1 (1979); ALAB-580, 10 NRC ___ (February 15, 1980).

3/ ALAB-410, supra, 5 NRC at 1405.

On remand, the Intervenors failed to qualify an expert witness and withdrew from the security hearings.[4/] The Licensing Board nonetheless inspected the security installations of the Diablo Canyon Plant on a tour and heard testimony on the issue of compliance of the Applicant's security plan with Part 73 of the Commission's regulations.[5/]

On a subsequent appeal of the security issue by the Intervenors, the Appeal Board held that the Licensing Board erred in not examining the security plan itself; it ordered that the parties, including the Intervenors, present testimony de novo to the Appeal Board on the issue of the adequacy of the Applicant's security measures.[6/] At the direction of the Appeal Board,[7/] Applicant and Staff prepared a "sanitized"[8/] version of those parts of the plan relevant to Intervenors' contentions which would be made available to Intervenors at Applicant's offices for hearing preparation purposes.[9/] At

4/ Intervenors' Response to Participation in Hearing on Security Hearing dated January 19, 1979.

5/ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant), LBP-79-26, 10 NRC 453, 507 (September 27, 1979).

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9/ Pursuant to the Protective Order issued by the Appeal Board, W. Andrew Baldwin, Esq., and Yale I. Jones, Esq., Counsel for Intervenors on April 4, 1980 executed Affidavits of Non-Disclosure of the contents of the sanitized version of the security plan.

the Second Prehearing Conference the Applicant orally moved for a stay of disclosure of the sanitized version of the security plan arguing, inter alia, that no litigation of the security plan should be allowed in this proceeding and that therefore the plan should not be divulged to the Intervenors.[10/] The Appeal Board noted that in their view "no stay is warranted under governing law and regulations" but nonetheless held that "if by the close of business Monday, April 14, licensee has filed a motion for a stay with the Commission, intervenor's counsel will not be given access to the sanitized plan for one week thereafter, i.e., until the close of business the following Monday, April 21, 1980."[11/]

On April 14, 1980 Applicant filed the instant Application for a Stay which is essentially a repetition of the oral motion made before the Appeal Board. This Staff pleading is in response to Applicant Pacific Gas and Electric Company's Application for a Stay.

III. Discussion

A. THE APPLICANT HAS FAILED TO SATISFY ITS BURDEN OF JUSTIFYING THE ISSUANCE OF A STAY, PENDENTE LITE.

Under the Commission's regulations, the applicant or proponent of a stay bears the burden of persuasion to show that the factors set forth in

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10/ Atomic Safety and Licensing Appeal Board Second Prehearing Conference Order (Report of the Prehearing Conference held April 2, 1980) dated April 11, 1980 at 16.

11/ Id. at 21-22.

10 C.F.R. § 2.788 are met. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 270 (1978); 10 C.F.R. § 2.732. The four factors required to be considered under Section 2.788(e) are whether the moving party has made a strong showing that it is likely to prevail on the merits, whether the party will be irreparably injured unless a stay is granted, whether the granting of a stay would harm other parties, and where the public interest lies. As will be shown below, an examination of the Appeal Board decision and the standards for issuance of a stay mentioned above show the instant application for a stay to be without merit.

1. The Applicants Have Not Made a Strong Showing That They Are Likely To Prevail On The Merits Of The Request For Commission Review.

The Applicant has not made a strong showing that it will prevail on the merits of the legal issue of whether it must reveal the contents of the sanitized security plan. Its main argument on this issue in the Application for a Stay is that the "Applicant is unable to ascertain with any certainty whether Intervenor's counsel is likely to abide by the terms of the protective order and affidavit of non-disclosure." The Applicant has presented

this same argument to the Licensing Board and Appeal Board on several occasions without success, and we preceive no new merit to the argument as now presented. Thus, the Applicant has failed to make any showing that the Appeal Board's decision requiring disclosure is likely to be found "erroneous with respect to an important question of fact, law, or policy."[12/] The sole basis for its Petition to Review seems to consist of a desire that the law on this issue ought to be otherwise; this is an insufficient basis for the issuance of a stay. This lack of a showing of the likelihood of prevailing on the merits is underscored by the Appeal Board's ruling on this issue which observes that the decision rests on such a firm legal foundation of Appeal Board and Commission decisions that two Appeal Board members stated that they might have decided the issue in a contrary manner "had the regulations and precedents favoring revelation of the security plan not been so clearly drawn".[13/] In addition, as noted by the Appeal Board in the Second Prehearing Conference Order, the Commission itself implicitly acknowledged the fact that security plans may be disclosed in its decision denying the Applicant certification of the disclosure issue in ALAB-410.[14/]

12/ Compare 10 C.F.R. § 2.786(b)(1) with 10 C.F.R. § 2.788(e)(1) and see Applicant's Petition for Review, passim.

13/ ALAB-410, supra, at 1407.

14/ CLI-77-23, supra, 6 NRC at 456.

2. Applicant Has Failed To Show That It Would Be Irreparably Injured Unless A Stay Were Issued.

The Applicant's argument that it will sustain irreparable injury if a stay is not issued consists of little more than the bare and unsupported theory that "the greater the number of individuals who know the details of the plan, the greater the risk that the details will become public knowledge."[15/] This argument is combined with the correlative but unproved assumption that the public health and safety would be threatened by the fact that more people know about the plan, no matter how reliable they are. Such an assumption is, however, clearly contrary to the conclusion of the Appeal Board that no showing has been made by the Applicant that the recipients of the sanitized verision of the security plan are likely to compromise the confidentiality of the document.[16/] Applicant merely argues that it is "unable to ascertain whether Intervenor's counsel is likely to abide by the terms of the protective order and affidavit of non-disclosure." Such speculation falls short of satisfying the burden of showing that the persons to whom the security plan is released cannot be relied upon to maintain the confidentiality of the plan.[17/]

15/ Applicant's Application for Stay at 4.

16/ Appeal Board Second Prehearing Conference Order at 9-11, 19.

17/ See 10 C.F.R. § 2.732, Appeal Board Second Prehearing Conference Order at 12 and Tr. 81.

In addition, Applicant's argument overlooks the elaborate provisions tailored by the Appeal Board and parties to protect the information in question. First, as of this date, only Co-counsel for the Intervenors (and possibly later Intervenors' witness, the former Deputy Police Chief of San Francisco) will ever see the document in question. Second, such examination will be in the confines of the Applicant's offices under a protective order promulgated by the Appeal Board. Finally, such individuals can have access only as signatories to affidavits of non-disclosure. Also, as noted above, the plan has been "sanitized" by the Applicant and Staff to delete specific references in the document which might be critical if compromised, and the contents of the sanitized report are further limited to only that material which is both "necessary" and "relevant" to litigation of the Intervenors' contentions.[18/] In short, gives such safeguards, there appears to be little likelihood of harm to Applicant.

3. Harm To The Parties

While the grant of a stay in this case pending Commission review of the Appeal Board's Order could possibly delay the litigation of this issue and thus conceivably could affect all parties as a result of protracting their burdens, the Staff believes that this effect would be minimal; the Staff believes that no undue expense would accrue the parties because of any delays. For these reasons, no party is favored under this factor.

18/ ALAB-410, supra, 5 NRC at 1405-1406.

4. Where The Public Interest Lies

As the Appeal Board pointed out in ALAB-410, supra, controlling law and precedent favor the litigation of the instant security issue.[19/] However, as the Second Prehearing Conference Order makes quite clear, the Appeal Board worked out the details for protection of the security plan by use of sanitization, a protective order, an agreement of non-disclosure and restricted access so that the right of the Applicant to maintain the confidentiality of its plan could be balanced against the Intervenors' right to litigate the issue. Accordingly, because this balancing has occurred and compensating provisions have been made in the form of safeguards for the confidentiality of the plan, the public interest consideration does not weigh in favor of or against Applicant's request for a stay.

Conclusion

For the reasons discussed above, the NRC Staff believes that Applicant, Pacific Gas and Electric Company, has failed to satisfy its burden of showing that it will be irreparably harmed unless a stay is issued or that it is likely to prevail on the merits of the legal issue of disclosure of its sanitized security plan. Accordingly, the NRC Staff believes that Pacific

19/ ALAB 410, supra, 5 NRC at 1407.

Gas and Electric's application for a stay pendente lite under the provisions of 10 C.F.R. §2.788(e). should be denied.

Respectfully submitted,

L. Dow Davis IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 18th day of April, 1980.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT'S APPLICATION FOR STAY OF APPEAL BOARD ORDER REQUIRING DISCLOSURE OF SANITIZED VERSION OF SECURITY PLAN" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or air mail, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 18th day of April, 1980.

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Washington, D. C. 20555

L. Dow Davis
Counsel for NRC Staff

4/18/80

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I. Introduction

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For the reasons set forth below, the NRC Staff (Staff) believes that the Applicant has failed to satisfy its burden of showing that the Appeal Board Order should be stayed under the provisions of 10 C.F.R. § 2.788 because it will be irreparably harmed or that it will prevail on the merits of its concurrently filed Petition for Review.

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For these reasons, the Staff submits that the Application for a Stay ought to be denied as a matter of law.

II. Statement of the Case

The instant controversy is part of an extended legal debate[2/] over whether Applicant, Pacific Gas and Electric Company, should be required to divulge the contents of its plant security plan to Counsel for the Intervenors or their witness in order that they might litigate the adequacy of that plan in this operating license proceeding. Following initial consideration of this question by the Atomic Safety and Licensing Board, the Appeal Board held that the adequacy of the Applicant's security plan was litigible in this proceeding, provided that certain safeguards were instituted to protect the plan from disclosure. In remanding the security issue, the Appeal Board instructed the Licensing Board to "restrict the release to those portions of the plan needed by intervenor to litigate its contention or to limit the portions of the plan to be released in terms of the qualifications of the proposed witness."[3/]

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On April 14, 1980 Applicant filed the instant Application for a Stay which is essentially a repetition of the oral motion made before the Appeal Board. This Staff pleading is in response to Applicant Pacific Gas and Electric Company's Application for a Stay.

III. Discussion

A. THE APPLICANT HAS FAILED TO SATISFY ITS BURDEN OF JUSTIFYING THE ISSUANCE OF A STAY, PENDENTE LITE.

Under the Commission's regulations, the applicant or proponent of a stay bears the burden of persuasion to show that the factors set forth in

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1. The Applicants Have Not Made a Strong Showing That They Are Likely To Prevail On The Merits Of The Request For Commission Review.

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In addition, Applicant's argument overlooks the elaborate provisions tailored by the Appeal Board and parties to protect the information in question. First, as of this date, only Co-counsel for the Intervenors (and possibly later Intervenors' witness, the former Deputy Police Chief of San Francisco) will ever see the document in question. Second, such examination will be in the confines of the Applicant's offices under a protective order promulgated by the Appeal Board. Finally, such individuals can have access only as signatories to affidavits of non-disclosure. Also, as noted above, the plan has been "sanitized" by the Applicant and Staff to delete specific references in the document which might be critical if compromised, and the contents of the sanitized report are further limited to only that material which is both "necessary" and "relevant" to litigation of the Intervenors' contentions.[18/] In short, gives such safeguards, there appears to be little likelihood of harm to Applicant.

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18/ ALAB-410, supra, 5 NRC at 1405-1406.

4. Where The Public Interest Lies

As the Appeal Board pointed out in ALAB-410, supra, controlling law and precedent favor the litigation of the instant security issue.[19/] However, as the Second Prehearing Conference Order makes quite clear, the Appeal Board worked out the details for protection of the security plan by use of sanitization, a protective order, an agreement of non-disclosure and restricted access so that the right of the Applicant to maintain the confidentiality of its plan could be balanced against the Intervenors' right to litigate the issue. Accordingly, because this balancing has occurred and compensating provisions have been made in the form of safeguards for the confidentiality of the plan, the public interest consideration does not weigh in favor of or against Applicant's request for a stay.

Conclusion

For the reasons discussed above, the NRC Staff believes that Applicant, Pacific Gas and Electric Company, has failed to satisfy its burden of showing that it will be irreparably harmed unless a stay is issued or that it is likely to prevail on the merits of the legal issue of disclosure of its sanitized security plan. Accordingly, the NRC Staff believes that Pacific

19/ ALAB 410, supra, 5 NRC at 1407.

Gas and Electric's application for a stay pendente lite under the provisions of 10 C.F.R. §2.788(e). should be denied.

Respectfully submitted,

L. Dow Davis IV

L. Dow Davis IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 18th day of April, 1980.

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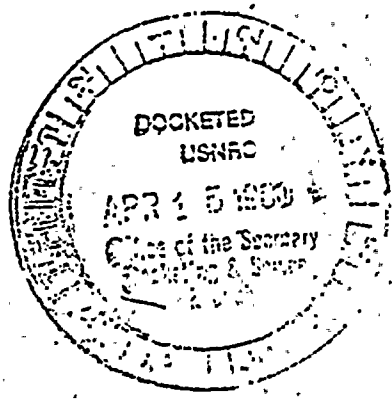

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

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 No. 1 and 2)	)	
	)	

APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR STAY OF APPEAL BOARD'S ORDER REQUIRING DISCLOSURE OF A SANITIZED VERSION OF THE DIABLO CANYON SECURITY PLAN

Pursuant to 10 C.F.R. § 2.788, Applicant PACIFIC GAS AND ELECTRIC COMPANY ("Applicant") requests the Commission to stay the Second Prehearing Conference Order ("Order") dated April 11, 1980, as issued by the Atomic Safety Licensing and Appeal Board ("Appeal Board"). By such Order the Appeal Board has directed that, upon execution of an affidavit of non-disclosure, it will grant counsel for the Intervenor SAN LUIS OBISPO MOTHERS FOR PEACE ("Intervenor") access to a "sanitized" version of the Diablo Canyon security plan on April 21, 1980, unless the Appeal Board or the Commission directs otherwise prior to such date. The serious implications associated with disclosure of a sanitized version of the Diablo Canyon security plan warrant this Commission to direct the Appeal Board to withhold access from Intervenor's counsel pending the Commission's decision on a petition for review filed contemporaneously herewith by Applicant.

As set forth in the Appeal Board's Order, Applicant requested a stay of the Appeal Board's decision to disclose to Intervenor's counsel during the prehearing conference held on April 2, 1980. The Appeal Board denied the request. (Order at 17.)

I.

WHETHER APPLICANT IS LIKELY TO PREVAIL ON THE MERITS

It is implicit in the Appeal Board's Order that disclosure of security plans to lawyers under a protective order and an affidavit of non-disclosure is acceptable and required by law for no other reason than they are lawyers, irrespective of any other qualifications or lack thereof. Apparently, the Appeal Board is laboring under the misapprehension that lawyers, by virtue of their license to practice, are uniquely endowed with integrity and are never guilty of misdeeds. This might not be too surprising, because the Appeal Board that issued the Order includes two lawyers. Among the several lessons learned from recent history, however, is that lawyers are merely mortal and are not entitled by reason of their licenses to any presumptive standing or status, and clearly do not have any more integrity or judgment than anyone else.

Applicant is unable to ascertain with any certainty whether Intervenor's counsel is likely to abide by the terms of the protective order and affidavit of non-disclosure. Without insinuating in any way that Intervenor's counsel are a risk as respects disclosure, Applicant simply does not and cannot know what the specific risks are. However, in the interest of protecting the

integrity of the security plan, something more than a protective order and affidavit of non-disclosure is required. One option which is available to the Commission would be to order that any person reviewing any portion of the security plan voluntarily submit to a security check, such as a "Q" or "L" clearance by the appropriate federal agency, upon request of the Applicant.

The Appeal Board points to this Commission's Order in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), CLI-77-23, 6 NRC 455 (1977), in support of its decision that some disclosure of the security plan is required. Applicant disagrees with the Appeal Board's conclusion respecting the Commission's views as expressed in CLI-77-23. What the Commission said was that the sufficiency of an applicant's security plan is relevant to the findings and determinations that must be made before an operating license may be issued. The Commission then added:

> "The extent to which the above principles and the facts of this case require disclosure beyond the general outlines and criteria of the applicant's security plan is a matter for the Licensing Board to decide in the first instance and under the guidelines of ALAB-410, subject of course to the ordinary procedures for review by the Appeal Board and the Commission." 6 NRC at 456 (emphasis added).

The time for Commission review is at hand. As fully explained by Applicant in its petition for review, any prior appeal by Applicant would have been interlocutory in nature. The Appeal

Board is simply wrong in suggesting otherwise.

Finally, the Appeal Board's Order is erroneous because, contrary to the rules established in the Northern States Power case, Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) ALAB-288, NRCI-75/9 390, 393 (1975), it permits Intervenor to reenter the proceeding even though the Licensing Board ruled Intervenor had voluntarily defaulted. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), LBP-79-26, 10 NRC _____ (1979) (slip opinion at 93). The Licensing Board's ruling was the central issue in the Intervenor's appeal, but the Appeal Board deliberately sidestepped the issue. However, until the Licensing Board's ruling is reversed and set aside, it stands as the law of the case and Intervenor is not a proper party to any reopened evidentiary proceeding.

II.

WHETHER APPLICANT WILL BE IRREPARABLY INJURED UNLESS A STAY IS GRANTED.

The very nature of a security plan argues against disclosure. Applicant has long maintained that "the greater the number of individuals who know the details of the plan, the greater the risk that the details will become public knowledge." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), ALAB-410, 5 NRC 1398, 1401 (1977). The Commission itself has acknowledged that "the prospect of even limited disclosure of physical security plans for nuclear facilities poses serious and difficult questions." CLI-77-23, 6 NRC at 456

(emphasis added). Furthermore, the Advisory Committee on Reactor Safeguards ("ACRS") has expressed its belief that the disclosure of security plans "will reduce severely the ability of licensees to provide adequate protection against sabotage." Letter from M. Bender, Chairman of the ACRS, to Joseph M. Hendrie (August 18, 1977) (emphasis added).

Whether it is the disclosure of a "sanitized" version of the plan, or something more, such a disclosure is a breach of the integrity of the plan. Once the plan is disclosed, it would do no good for this Commission, or some other tribunal, to decide later that the plan should not have been disclosed. As explained by Applicant in Part I of this Application, there is no way for Applicant, or, for that matter, this Commission, to know whether the terms of the protective order and affidavit of non-disclosure will be respected. With a subject as sensitive as security, it is best to be safe, and not disclose at all. In addition, it will not do for the Appeal Board to attempt to minimize the significance of the disclosure it has ordered by noting that it is only a "sanitized" version of the plan that will be handed over. Any disclosure other than a general outline (such as the table of contents) would release details of the plan, albeit not necessarily "gory" details. Yet, if such details became public knowledge, the plan would be destroyed. As Chairman Salzman stated during the prehearing conference:

> "Let us not talk in the abstract. We are discussing information which if it gets out,

> it simply would destroy or injure the plan. We are not talking about things [which if they get out], somebody can be sued later." (Transcript at 22.)

Even assuming that Intervenor and the Appeal Board are willing to proceed with the plan as "sanitized" by Applicant and the Staff, it is hard to imagine that Intervenor will argue other than that without some of the "gory" details, it will be unable to draft its contentions with any greater specificity. Thus, further details will undoubtedly be requested. In fact, further disclosure apparently has already been contemplated by the Appeal Board: "The only information currently scheduled for release to intervenor is a sanitized version of the plan." (Order at 18, emphasis added).

III.

WHETHER THE GRANTING OF A STAY WOULD HARM INTERVENOR

The Appeal Board states in its Order that because Intervenor is a public organization with limited funds, it cannot be expected to bear the burdens of litigation indefinitely. The Appeal Board then concludes that another delay would be an unnecessary hardship on Intervenor.

Applicant submits that the harm described by the Appeal Board is simply insignificant. It must not be forgotten that Intervenor had withdrawn from the security plan proceeding in January, 1979. It was not until the Appeal Board decided to conduct a de novo hearing, and, by fiat and grace, determined it to be appropriate for Intervenor to participate, that Intervenor's

litigation of the security plan resumed. It seems strange, indeed, that the Appeal Board would basically ignore the fact that Intervenor had withdrawn thirteen months prior to the decision to conduct a de novo proceeding, and then suggest that granting the stay requested by Applicant would constitute an unnecessary burden.

In any event, Applicant submits that the expense for Intervenor if a stay is granted would not constitute the severe hardship the Appeal Board would have the Commission believe. At most, the expense would be the preparation of an answer to Applicant's Petition for Review. Such could hardly be described as a severe hardship.

IV.

WHERE THE PUBLIC INTEREST LIES.

Although traditionally the consideration of the public interest is not the focus of the Commission's attention in the review of an application for a stay, in this case the factor is equally important to any of the previous three. Contrary to the Appeal Board's treatment of this factor, more is involved than "there must be an end to litigation." (Order at 21.) It is patently unfair for the Appeal Board to single out this application for stay as an unnecessary protraction of the litigation. After all, it was Intervenor who, time and time again, proffered unqualified witnesses and sought review of the

various decisions holding its witnesses to be unqualified. It was Intervenor which withdrew from the proceeding before the Licensing Board and then came forth with new counsel immediately preceding the hearing in an attempt to jump back in. Furthermore, it was the Appeal Board which decided to conduct a de novo proceeding and to have Intervenor participate.

The principal consideration here is whether it is in the public interest to disclose during the course of a proceeding for an operating license any details ("gory" or otherwise) associated with the security plan for a nuclear power plant. Those who are sensitive to maintaining the integrity of security plans see the illogic in the disclosure of such plans. They include this Commission, the ACRS and members of the Appeal Board panel. See ALAB-410, 5 NRC at 1407 (Additional comments of Dr. Quarles and Dr. Johnson).

Knowledge of the details of a plant's security system would obviously make it easier for a person or persons seeking to inflict harm to the facility to defeat that system. For this reason alone, security plan information must be protected against disclosure. In the interest of public health and safety, this Commission must decide to stay the Appeal Board's Order and decide for itself the extent to which security plan information should be disclosed during a licensing proceeding.

WHEREFORE, Applicant respectfully requests the Commission to stay the effectiveness of the Appeal Board's April 11, 1980 Order pending the Commission's review of the petition for review

filed contemporaneously herewith by Applicant.

Respectfully submitted,

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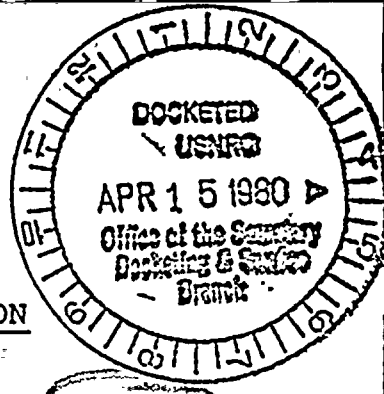

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

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

PETITION OF PACIFIC GAS AND ELECTRIC COMPANY FOR REVIEW OF APPEAL BOARD'S ORDER REQUIRING DISCLOSURE OF A SANITIZED VERSION OF THE DIABLO CANYON SECURITY PLAN

Petitioner PACIFIC GAS AND ELECTRIC COMPANY ("Petitioner") hereby petitions the Commission to review the Second Prehearing Conference Order ("Order") dated April 11, 1980, as issued by the Atomic Safety and Licensing Appeal Board ("Appeal Board"). By such Order, the Appeal Board has directed that, upon execution of an affidavit of non-disclosure, it will grant counsel for the Intervenor SAN LUIS OBISPO MOTHERS FOR PEACE ("Intervenor") access to a "sanitized" version of the Diablo Canyon security plan on April 21, 1980, unless the Appeal Board or the Commission directs otherwise prior to such date. The primary issue raised by the Appeal Board's Order, and the impelling reason for filing this Petition, is the requirement that a version of the security plan other than a general outline (such as the table of contents) be disclosed to Intervenor's counsel with no safeguards other than a protective order and affidavit of non-disclosure.

The matters raised in this Petition for Review were

raised during the April 2, 1980, prehearing conference in connection with Petitioner's Application for a Stay before the Appeal Board. (See Order at 9-12, 14-22, transcript at 56-82, 136-142).

I.

WHY THE COMMISSION SHOULD REVIEW THE APPEAL BOARD'S ORDER.

The disclosure of even a portion of the security plan for a nuclear facility is a matter of grave concern. The Commission itself has explicitly acknowledged that "the prospect of even limited disclosure of physical security plans for nuclear facilities poses serious and difficult questions." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), CLI-77-23, 6 NRC 455, 456 (1977) (emphasis added).

It will not do to say, as the Appeal Board does in its Order, that Intervenor's counsel will have only limited access to the sanitized version of the plan. Disclosure of any of the plan can have serious consequences. Limiting Intervenor's access to a specific place may narrow the chance of disclosure but certainly does not eliminate it. Even were the Board's conception valid, it is clear that the Appeal Board itself anticipates that under the precedent it is attempting to establish, there will be more disclosures in this proceeding: "The only information currently scheduled for release to intervenor is a sanitized version of the security plan." (Order at 18, emphasis added.) Although the sanitized version contains none of the plan's "gory"

details, disclosure of any version which contains more than a general outline (such as the table of contents) would disclose details of the plan. Thus, the disclosure of even a sanitized version violates the plan's integrity. In addition, and as seemingly contemplated by the Appeal Board, it is unlikely that Intervenor will find the sanitized version sufficient for its purposes in refining its contentions or in making any judgments about the adequacy of the plan. Thus, if the sanitized version is handed over, a number of requests for disclosure of further details from Intervenor should be anticipated.

The questions of whether disclosure should be required, to whom the disclosure should be made and the conditions that should be imposed in event of disclosure are questions of policy which must be addressed by the Commission itself. To permit the Appeal Board to usurp the Commission's powers and responsibilities to establish policy on an issue of such importance is unthinkable. Yet, if this Petition is denied, the Commission shall have acquiesced in such usurpation and avoided its responsibility. Even more damning, the denial of this Petition will accomplish this result without providing any opportunity to air the arguments which should be made against the disclosure policy established by the Appeal Board.

It will not do to hide behind some legalistic subterfuge that the Petitioner did not take advantage of prior opportunities to seek Commission review of the Appeal Board's decision that some disclosure of the Diablo Canyon security plan

is required. None of the Appeal Board's prior written opinions on this matter were appealable. ALAB-410 ordered that Intervenor could review the plan if it qualified an expert, but no expert was ever qualified. In addition, in ALAB-410, the Appeal Board suggested as a guideline to the Licensing Board that the plan was to be made available to Intervenor's counsel, but such release could be read to be contingent on Intervenor's qualification of an expert, based on the Appeal Board's admonition that "[t]he plan, or any portion thereof, is to be released solely to individuals qualified to review it." ALAB-410, 5 NRC 1398, 1406 (1977). In any event, Intervenor's counsel never asked for the plan. Furthermore, Intervenor's counsel informed the Licensing Board that they were unable to conduct a meaningful review of the plan in the absence of finding a qualified witness, and for that reason Intervenor withdrew from the security plan proceeding in January, 1979. Additional counsel for Intervenor appeared on the eve of the February, 1979 hearing and, in an attempt to convince the Licensing Board that Intervenor should be permitted to reenter the proceeding, argued that he was qualified to review the plan. The Licensing Board ruled, however, that Intervenor had withdrawn in January, 1979; and would not be permitted to jump back in the proceeding. This ruling has yet to be overturned.

In sum, Petitioner has never, until now, been ordered to turn over anything to anyone respecting the security plan. Petitioner saw nothing to be gained by attempting some interlocutory or piecemeal appeal to the Commission. As

suggested earlier, Petitioner considers it likely that, if the sanitized version is released, Intervenor will ask for the disclosure of further details of the plan. Thus, even at this stage, not all of the potential issues have been framed with ultimate precision. Nonetheless, because the Appeal Board has ordered the disclosure of the sanitized version on April 21, 1980, the general issue of disclosure is sufficiently ripe for Commission review.

Establishment of policy governing the disclosure of security plans must be accomplished prior to disclosure. If this Commission grants this Petition or otherwise accepts review of the Appeal Board's Order, it will have exercised its responsibility to establish policy. To do otherwise will be an abdication. If this Commission declines to review the Appeal Board's Order at this stage, the harm of disclosure may well have been wreaked upon the Petitioner and the public before the matter will again be subject to review.

It has previously been recognized that disclosure of the contents of security plans could "reduce severely the ability of licensees to provide adequate protection against sabotage." Letter from M. Bender, Chairman of the Advisory Committee on Reactor Safeguards, to Joseph M. Hendrie (August 18, 1977). The exposure of Petitioner and the public to such risks without adequate hearing is not only contrary to basic laws of fairness, but completely without warrant under circumstances where a delay in disclosure to

permit Commission consideration of this vitally important issue will impose insignificant hardship upon Intervenor or anyone else.

II.

WHY THE APPEAL BOARD'S ORDER IS ERRONEOUS.

It is implicit in the Appeal Board's Order that disclosure of security plans to lawyers under a protective order and an affidavit of non-disclosure is acceptable and required by law for no other reason than they are lawyers, irrespective of any other qualifications or lack thereof. Apparently, the Appeal Board is laboring under the misapprehension that lawyers, by virtue of their license to practice, are uniquely endowed with integrity and are never guilty of misdeeds. This might not be too surprising, because the Appeal Board that issued the Order includes two lawyers. Among the several lessons learned from recent history, however, is that lawyers are merely mortal and are not entitled by reason of their licenses to any presumptive standing or status, and clearly do not have any more integrity or judgment than anyone else.

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The Appeal Board points to this Commission's Order in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), CLI-77-23, 6 NRC 455 (1977), in support of its decision that some disclosure of the security plan is required. Applicant disagrees with the Appeal Board's conclusion respecting the Commission's views as expressed in CLI-77-23. What the Commission said was that the sufficiency of an applicant's security plan is relevant to the findings and determinations that must be made before an operating license may be issued. The Commission then added:

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The time for Commission review is at hand. As fully explained by Applicant in Part I of this petition for review, any prior appeal by Applicant would have been interlocutory in nature. The Appeal Board is simply wrong in suggesting otherwise.

Finally, the Appeal Board's Order is erroneous because, contrary to the rules established in the Northern States Power

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WHEREFORE, Petitioner respectfully requests that the Commission grant this Petition and issue an appropriate order specifying the issues to be reviewed and directing that appropriate briefs be filed or that oral argument be held, or both.

Respectfully submitted,

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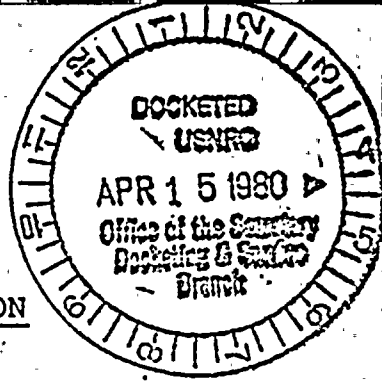
DATED: April 14, 1980.

4/14/80



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The questions of whether disclosure should be required, to whom the disclosure should be made and the conditions that should be imposed in event of disclosure are questions of policy which must be addressed by the Commission itself. To permit the Appeal Board to usurp the Commission's powers and responsibilities to establish policy on an issue of such importance is unthinkable. Yet, if this Petition is denied, the Commission shall have acquiesced in such usurpation and avoided its responsibility. Even more damning, the denial of this Petition will accomplish this result without providing any opportunity to air the arguments which should be made against the disclosure policy established by the Appeal Board.

It will not do to hide behind some legalistic subterfuge that the Petitioner did not take advantage of prior opportunities to seek Commission review of the Appeal Board's decision that some disclosure of the Diablo Canyon security plan

is required. None of the Appeal Board's prior written opinions on this matter were appealable. ALAB-410 ordered that Intervenor could review the plan if it qualified an expert, but no expert was ever qualified. In addition, in ALAB-410, the Appeal Board suggested as a guideline to the Licensing Board that the plan was to be made available to Intervenor's counsel, but such release could be read to be contingent on Intervenor's qualification of an expert, based on the Appeal Board's admonition that "[t]he plan, or any portion thereof, is to be released solely to individuals qualified to review it." ALAB-410, 5 NRC 1398, 1406 (1977). In any event, Intervenor's counsel never asked for the plan. Furthermore, Intervenor's counsel informed the Licensing Board that they were unable to conduct a meaningful review of the plan in the absence of finding a qualified witness, and for that reason Intervenor withdrew from the security plan proceeding in January, 1979. Additional counsel for Intervenor appeared on the eve of the February, 1979 hearing and, in an attempt to convince the Licensing Board that Intervenor should be permitted to reenter the proceeding, argued that he was qualified to review the plan. The Licensing Board ruled, however, that Intervenor had withdrawn in January, 1979; and would not be permitted to jump back in the proceeding. This ruling has yet to be overturned.

In sum, Petitioner has never, until now, been ordered to turn over anything to anyone respecting the security plan. Petitioner saw nothing to be gained by attempting some interlocutory or piecemeal appeal to the Commission. As

suggested earlier, Petitioner considers it likely that, if the sanitized version is released, Intervenor will ask for the disclosure of further details of the plan. Thus, even at this stage, not all of the potential issues have been framed with ultimate precision. Nonetheless, because the Appeal Board has ordered the disclosure of the sanitized version on April 21, 1980, the general issue of disclosure is sufficiently ripe for Commission review.

Establishment of policy governing the disclosure of security plans must be accomplished prior to disclosure. If this Commission grants this Petition or otherwise accepts review of the Appeal Board's Order, it will have exercised its responsibility to establish policy. To do otherwise will be an abdication. If this Commission declines to review the Appeal Board's Order at this stage, the harm of disclosure may well have been wreaked upon the Petitioner and the public before the matter will again be subject to review.

It has previously been recognized that disclosure of the contents of security plans could "reduce severely the ability of licensees to provide adequate protection against sabotage." Letter from M. Bender, Chairman of the Advisory Committee on Reactor Safeguards, to Joseph M. Hendrie (August 18, 1977). The exposure of Petitioner and the public to such risks without adequate hearing is not only contrary to basic laws of fairness, but completely without warrant under circumstances where a delay in disclosure to

permit Commission consideration of this vitally important issue will impose insignificant hardship upon Intervenor or anyone else.

II.

WHY THE APPEAL BOARD'S ORDER IS ERRONEOUS.

It is implicit in the Appeal Board's Order that disclosure of security plans to lawyers under a protective order and an affidavit of non-disclosure is acceptable and required by law for no other reason than they are lawyers, irrespective of any other qualifications or lack thereof. Apparently, the Appeal Board is laboring under the misapprehension that lawyers, by virtue of their license to practice, are uniquely endowed with integrity and are never guilty of misdeeds. This might not be too surprising, because the Appeal Board that issued the Order includes two lawyers. Among the several lessons learned from recent history, however, is that lawyers are merely mortal and are not entitled by reason of their licenses to any presumptive standing or status, and clearly do not have any more integrity or judgment than anyone else.

Applicant is unable to ascertain with any certainty whether Intervenor's counsel is likely to abide by the terms of the protective order and affidavit of non-disclosure. Without insinuating in any way that Intervenor's counsel are a risk as respects disclosure, Applicant simply does not and cannot know what the specific risks are. However, in the interest of protecting the integrity of the security plan, something more than a protective order and affidavit of non-disclosure is required. One option

which is available to the Commission would be to order that any person reviewing any portion of the security plan voluntarily submit to a security check, such as a "Q" or "L" clearance by the appropriate federal agency, upon request of the Applicant.

The Appeal Board points to this Commission's Order in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), CLI-77-23, 6 NRC 455 (1977), in support of its decision that some disclosure of the security plan is required. Applicant disagrees with the Appeal Board's conclusion respecting the Commission's views as expressed in CLI-77-23. What the Commission said was that the sufficiency of an applicant's security plan is relevant to the findings and determinations that must be made before an operating license may be issued. The Commission then added:

> "The extent to which the above principles and the facts of this case require disclosure beyond the general outlines and criteria of the applicant's security plan is a matter for the Licensing Board to decide in the first instance and under the guidelines of ALAB-410, subject of course to the ordinary procedures for review by the Appeal Board and the Commission." 6 NRC at 456 (emphasis added).

The time for Commission review is at hand. As fully explained by Applicant in Part I of this petition for review, any prior appeal by Applicant would have been interlocutory in nature. The Appeal Board is simply wrong in suggesting otherwise.

Finally, the Appeal Board's Order is erroneous because, contrary to the rules established in the Northern States Power

case, Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) ALAB-288, NRCI-75/9 390, 393 (1975), it permits Intervenor to reenter the proceeding even though the Licensing Board ruled Intervenor had voluntarily defaulted. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), LBP-79-26, 10 NRC _____ (1979) (slip opinion at 93). The Licensing Board's ruling was the central issue in the Intervenor's appeal, but the Appeal Board deliberately sidestepped the issue. However, until the Licensing Board's ruling is reversed and set aside, it stands as the law of the case and Intervenor is not a proper party to any reopened evidentiary proceeding.

WHEREFORE, Petitioner respectfully requests that the Commission grant this Petition and issue an appropriate order specifying the issues to be reviewed and directing that appropriate briefs be filed or that oral argument be held, or both.

Respectfully submitted,

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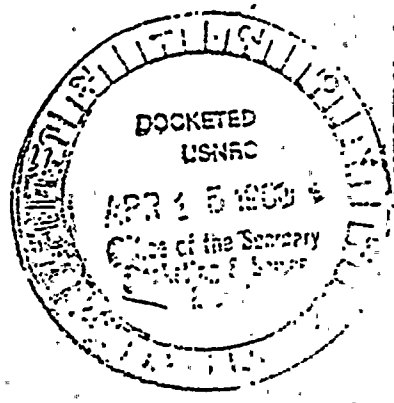
4/14/80



UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

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 No. 1 and 2)	)	
	)	

APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR STAY OF APPEAL BOARD'S ORDER REQUIRING DISCLOSURE OF A SANITIZED VERSION OF THE DIABLO CANYON SECURITY PLAN

Pursuant to 10 C.F.R. § 2.788, Applicant PACIFIC GAS AND ELECTRIC COMPANY ("Applicant") requests the Commission to stay the Second Prehearing Conference Order ("Order") dated April 11, 1980, as issued by the Atomic Safety Licensing and Appeal Board ("Appeal Board"). By such Order the Appeal Board has directed that, upon execution of an affidavit of non-disclosure, it will grant counsel for the Intervenor SAN LUIS OBISPO MOTHERS FOR PEACE ("Intervenor") access to a "sanitized" version of the Diablo Canyon security plan on April 21, 1980, unless the Appeal Board or the Commission directs otherwise prior to such date. The serious implications associated with disclosure of a sanitized version of the Diablo Canyon security plan warrant this Commission to direct the Appeal Board to withhold access from Intervenor's counsel pending the Commission's decision on a petition for review filed contemporaneously herewith by Applicant.

As set forth in the Appeal Board's Order, Applicant requested a stay of the Appeal Board's decision to disclose to Intervenor's counsel during the prehearing conference held on April 2, 1980. The Appeal Board denied the request. (Order at 17.)

I.

WHETHER APPLICANT IS LIKELY TO PREVAIL ON THE MERITS

It is implicit in the Appeal Board's Order that disclosure of security plans to lawyers under a protective order and an affidavit of non-disclosure is acceptable and required by law for no other reason than they are lawyers, irrespective of any other qualifications or lack thereof. Apparently, the Appeal Board is laboring under the misapprehension that lawyers, by virtue of their license to practice, are uniquely endowed with integrity and are never guilty of misdeeds. This might not be too surprising, because the Appeal Board that issued the Order includes two lawyers. Among the several lessons learned from recent history, however, is that lawyers are merely mortal and are not entitled by reason of their licenses to any presumptive standing or status, and clearly do not have any more integrity or judgment than anyone else.

Applicant is unable to ascertain with any certainty whether Intervenor's counsel is likely to abide by the terms of the protective order and affidavit of non-disclosure. Without insinuating in any way that Intervenor's counsel are a risk as respects disclosure, Applicant simply does not and cannot know what the specific risks are. However, in the interest of protecting the

integrity of the security plan, something more than a protective order and affidavit of non-disclosure is required. One option which is available to the Commission would be to order that any person reviewing any portion of the security plan voluntarily submit to a security check, such as a "Q" or "L" clearance by the appropriate federal agency, upon request of the Applicant.

The Appeal Board points to this Commission's Order in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), CLI-77-23, 6 NRC 455 (1977), in support of its decision that some disclosure of the security plan is required. Applicant disagrees with the Appeal Board's conclusion respecting the Commission's views as expressed in CLI-77-23. What the Commission said was that the sufficiency of an applicant's security plan is relevant to the findings and determinations that must be made before an operating license may be issued. The Commission then added:

> "The extent to which the above principles and the facts of this case require disclosure beyond the general outlines and criteria of the applicant's security plan is a matter for the Licensing Board to decide in the first instance and under the guidelines of ALAB-410, subject of course to the ordinary procedures for review by the Appeal Board and the Commission." 6 NRC at 456 (emphasis added).

The time for Commission review is at hand. As fully explained by Applicant in its petition for review, any prior appeal by Applicant would have been interlocutory in nature. The Appeal

Board is simply wrong in suggesting otherwise.

Finally, the Appeal Board's Order is erroneous because, contrary to the rules established in the Northern States Power case, Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) ALAB-288, NRCI-75/9 390, 393 (1975), it permits Intervenor to reenter the proceeding even though the Licensing Board ruled Intervenor had voluntarily defaulted. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), LBP-79-26, 10 NRC _____ (1979) (slip opinion at 93). The Licensing Board's ruling was the central issue in the Intervenor's appeal, but the Appeal Board deliberately sidestepped the issue. However, until the Licensing Board's ruling is reversed and set aside, it stands as the law of the case and Intervenor is not a proper party to any reopened evidentiary proceeding.

II.

WHETHER APPLICANT WILL BE IRREPARABLY INJURED UNLESS A STAY IS GRANTED.

The very nature of a security plan argues against disclosure. Applicant has long maintained that "the greater the number of individuals who know the details of the plan, the greater the risk that the details will become public knowledge." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units No. 1 and 2), ALAB-410, 5 NRC 1398, 1401 (1977). The Commission itself has acknowledged that "the prospect of even limited disclosure of physical security plans for nuclear facilities poses serious and difficult questions." CLI-77-23, 6 NRC at 456

(emphasis added). Furthermore, the Advisory Committee on Reactor Safeguards ("ACRS") has expressed its belief that the disclosure of security plans "will reduce severely the ability of licensees to provide adequate protection against sabotage." Letter from M. Bender, Chairman of the ACRS, to Joseph M. Hendrie (August 18, 1977) (emphasis added).

Whether it is the disclosure of a "sanitized" version of the plan, or something more, such a disclosure is a breach of the integrity of the plan. Once the plan is disclosed, it would do no good for this Commission, or some other tribunal, to decide later that the plan should not have been disclosed. As explained by Applicant in Part I of this Application, there is no way for Applicant, or, for that matter, this Commission, to know whether the terms of the protective order and affidavit of non-disclosure will be respected. With a subject as sensitive as security, it is best to be safe, and not disclose at all. In addition, it will not do for the Appeal Board to attempt to minimize the significance of the disclosure it has ordered by noting that it is only a "sanitized" version of the plan that will be handed over. Any disclosure other than a general outline (such as the table of contents) would release details of the plan, albeit not necessarily "gory" details. Yet, if such details became public knowledge, the plan would be destroyed. As Chairman Salzman stated during the prehearing conference:

> "Let us not talk in the abstract. We are discussing information which if it gets out,

> it simply would destroy or injure the plan. We are not talking about things [which if they get out], somebody can be sued later." (Transcript at 22.)

Even assuming that Intervenor and the Appeal Board are willing to proceed with the plan as "sanitized" by Applicant and the Staff, it is hard to imagine that Intervenor will argue other than that without some of the "gory" details, it will be unable to draft its contentions with any greater specificity. Thus, further details will undoubtedly be requested. In fact, further disclosure apparently has already been contemplated by the Appeal Board: "The only information currently scheduled for release to intervenor is a sanitized version of the plan." (Order at 18, emphasis added).

III.

WHETHER THE GRANTING OF A STAY WOULD HARM INTERVENOR

The Appeal Board states in its Order that because Intervenor is a public organization with limited funds, it cannot be expected to bear the burdens of litigation indefinitely. The Appeal Board then concludes that another delay would be an unnecessary hardship on Intervenor.

Applicant submits that the harm described by the Appeal Board is simply insignificant. It must not be forgotten that Intervenor had withdrawn from the security plan proceeding in January, 1979. It was not until the Appeal Board decided to conduct a de novo hearing, and, by fiat and grace, determined it to be appropriate for Intervenor to participate, that Intervenor's

litigation of the security plan resumed. It seems strange, indeed, that the Appeal Board would basically ignore the fact that Intervenor had withdrawn thirteen months prior to the decision to conduct a de novo proceeding, and then suggest that granting the stay requested by Applicant would constitute an unnecessary burden.

In any event, Applicant submits that the expense for Intervenor if a stay is granted would not constitute the severe hardship the Appeal Board would have the Commission believe. At most, the expense would be the preparation of an answer to Applicant's Petition for Review. Such could hardly be described as a severe hardship.

IV.

WHERE THE PUBLIC INTEREST LIES.

Although traditionally the consideration of the public interest is not the focus of the Commission's attention in the review of an application for a stay, in this case the factor is equally important to any of the previous three. Contrary to the Appeal Board's treatment of this factor, more is involved than "there must be an end to litigation." (Order at 21.) It is patently unfair for the Appeal Board to single out this application for stay as an unnecessary protraction of the litigation. After all, it was Intervenor who, time and time again, proffered unqualified witnesses and sought review of the

various decisions holding its witnesses to be unqualified. It was Intervenor which withdrew from the proceeding before the Licensing Board and then came forth with new counsel immediately preceding the hearing in an attempt to jump back in. Furthermore, it was the Appeal Board which decided to conduct a de novo proceeding and to have Intervenor participate.

The principal consideration here is whether it is in the public interest to disclose during the course of a proceeding for an operating license any details ("gory" or otherwise) associated with the security plan for a nuclear power plant. Those who are sensitive to maintaining the integrity of security plans see the illogic in the disclosure of such plans. They include this Commission, the ACRS and members of the Appeal Board panel. See ALAB-410, 5 NRC at 1407 (Additional comments of Dr. Quarles and Dr. Johnson).

Knowledge of the details of a plant's security system would obviously make it easier for a person or persons seeking to inflict harm to the facility to defeat that system. For this reason alone, security plan information must be protected against disclosure. In the interest of public health and safety, this Commission must decide to stay the Appeal Board's Order and decide for itself the extent to which security plan information should be disclosed during a licensing proceeding.

WHEREFORE, Applicant respectfully requests the Commission to stay the effectiveness of the Appeal Board's April 11, 1980 Order pending the Commission's review of the petition for review

filed contemporaneously herewith by Applicant.

Respectfully submitted,

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