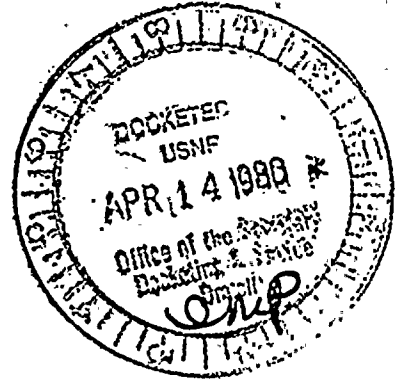


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. W. Reed Johnson 1/
Thomas S. Moore



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

SECOND PREHEARING CONFERENCE ORDER

(REPORT OF THE PREHEARING CONFERENCE HELD APRIL 2, 1980)

April 11, 1980

Pursuant to notice, on April 2, 1980 we held a closed prehearing conference in San Luis Obispo, California, for the purpose of establishing procedures and schedules for receiving evidence on the adequacy of Pacific Gas and Electric Company's security plan for its Diablo Canyon nuclear facility.

1/ Dr. Johnson participated in the decisions described in this report and concurs in the results reached; he did not, however, review the final draft of the report. See also Dr. Johnson's individual view on one point expressed at p. 21, infra.

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1. The following appearances were noted:

(a) For the San Luis Obispo Mothers for Peace,
intervenor:

Mr. Yale T. Jones, lead counsel
100 Van Ness Avenue
San Francisco, California 94102
(415)431-5310

Mr. W. Andrew Baldwin
124 Spear Street
San Francisco, California 94105
(415)495-4779

Mr. Paul C. Valentine
321 Lytton Avenue
Palo Alto, California 94302
(415)327-6700

(Mr. Valentine's appearance was filed
by mail; he did not attend the prehearing
conference.)

(b) For the licensee, Pacific Gas and Electric
Company:

Mr. Bruce Norton, lead counsel
3216 North Third Street, Suite 300
Phoenix, Arizona 85012
(602)264-0033

Mr. Malcolm M. Furbush and
Mr. Philip A. Crane, Jr.
Law Department, 31st Floor
77 Beale Street
San Francisco, California 94106
(415)781-4211

Mr. Arthur C. Gehr
3100 Valley Center
Phoenix, Arizona 85073
(602)257-7288

(c) For the Nuclear Regulatory Commission staff:

Mr. James R. Tourtellotte, lead counsel
(301)492-7474
Mr. Marc R. Staenberg (301)492-8689,
Mr. Edward G. Ketchen (301)492-7502, and
Mr. L. Dow Davis (301)492-7501
Executive Legal Director's Office
Nuclear Regulatory Commission
Washington, D. C. 20555

(Mr. Davis' appearance was filed by mail;
he did not attend the prehearing confer-
ence.)

2. Lead counsel. Each party has several lawyers and, in both the licensee's and intervenor's case, lawyers with separate offices in different communities. In the past, this has resulted in some confusion about the actual position being expoused by one party or another. Particularly as we will be dealing with sensitive material, we directed each party to designate one of its representatives to act as "lead counsel." As previously set forth, the parties have each done so. Lead counsel's responsibilities for his client in this proceeding are as follows:

- (1) Speak and act for his client in all matters except where he specifically designates one of his co-counsel to do so.
- (2) Sign all pleadings and motions.
- (3) Serve all papers.
- (4) Accept service of all papers.

Motions, briefs and other papers are to be served on lead counsel only, with copies to the members of this Board. The Secretary of the Commission (docketing and service section) shall not be served. Because of the nature of the subject matter, we will make the necessary arrangements with the Secretary's office to insure that material entitled to confidential treatment under 10 C.F.R. §2.790 is not made public.

3. Closed conference. Intervenor moved to open the prehearing conference to the general public when specific portions of the licensee's physical security plan were not under actual consideration. Upon consideration of arguments from the intervenor in favor of the motion, from the licensee in opposition, and from the staff, the motion was denied. The announcement of the prehearing conference had specified that it would be closed, the licensee represented that its presentations were prepared with that understanding in mind, and that it would aid the free exchange of ideas at this preliminary conference if counsel did not have to measure his words with extreme care in order to insure that he did not inadvertently disclose to the public confidential aspects of the licensee's security arrangements.

4. Protective Order and Affidavit of Non-Disclosure.

The licensee's physical security plan for the Diablo Canyon nuclear facility is entitled to confidential treatment under Commission regulations. 10 C.F.R. §2.790(d). We announced in our First Prehearing Conference Order (February 25, 1980) that neither the security plan nor information regarding it would be released to intervenor's counsel or expert witnesses except under protective order and upon their execution of a suitable affidavit of non-disclosure.^{2/} At our request, the parties prepared an initial draft of those documents which, with some revisions on our part, were distributed to the parties and taken up at the prehearing conference. There were no objections raised to the form of the protective order. With one exception, counsel for all parties were able to agree on a form of non-disclosure affidavit that was acceptable. Among other things, that affidavit specifies the way protected information will be handled, safeguarded and accounted for. Intervenor's counsel and witnesses would be given access to such information only at a facility in San Francisco to be made available by the licensee. Protected information would

^{2/} See also the extended discussion of this point in ALAB-410, 5 NRC 1398, 1405-06 (1977).

be retained at that site for safekeeping unless and until actually needed for the hearing. (The protective order and the required form of affidavit of non-disclosure, which we have been advised intervenor's counsel have executed, are appended to this report.)

One matter, however, could not be resolved by agreement. The order and affidavit allow the recipients of "protected information" to discuss it only with "authorized persons" (terms defined in the affidavit and not in dispute). The question arose whether intervenor's counsel and expert witness could nevertheless discuss protected information publicly with outsiders where they had obtained such information from other sources, i.e., other than by disclosure under the terms of the protective order. Over intervenor's objection, we ruled that such discussion would not be permitted.

The ruling rests on several grounds. First, the security plan is very sensitive information. Severe consequences to the public safety may result from its compromise. Accordingly, precautions necessarily must be taken to safeguard the plan. We believe it the wisest course in the circumstances to avoid any questions which might otherwise arise

concerning whether security plan information from another source is similar or identical to that previously disclosed under protective order.

Second, the limitation on disclosure has been narrowly drawn. It runs only to counsel and the expert witness, not to the intervenor organization. Protected information will not be given to the group itself under the procedures we have adopted. See ALAB-410, supra, 5 NRC at 1404, 1406. Because it covers only those very few individuals who will actually receive protected information pursuant to their terms, the order and affidavit work no infringement of intervenor's rights. The order is carefully tailored to protect intervenor's ability to participate effectively in the proceeding while, at the same time, minimizing the possibility of compromising licensee's security arrangements.

Third, intervenor's contentions in this proceeding boil down to the assertion that licensee's current security arrangements are inadequate. Their espousal of that position is not hampered by their counsel's preclusion from discussing, outside the hearing, details of those arrangements that have been revealed to them in confidence. Counsel's broadcast of such information, from whatever source obtained, manifestly will

not advance intervenor's proffered purpose of increasing the plant's protection from industrial sabotage. Indeed, even in public proceedings where sensitive information is not involved, the Code of Professional Responsibility of the American Bar Association considerably restricts the comments that counsel representing a party in an administrative hearing may make to the public.^{3/}

Finally, if intervenor's counsel should obtain protected information from an outside source, nothing in the protective order or affidavit of non-disclosure precludes them from bring-

3/ Disciplinary Rule 7-107 provides in pertinent part that

- (H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:
- (1) Evidence regarding the occurrence or transaction involved.
 - (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
 - (3) Physical evidence of the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
 - (4) His opinion as to the merits of the claims, defenses, or positions of an interested person.
 - (5) Any other matter reasonably likely to interfere with a fair hearing.

(Emphasis supplied.)

ing that fact to our attention. (Indeed, the protective order requires that they do so.) A request for reconsideration could be made at that time, when we could rule in the context of a concrete situation and not on hypothetical circumstances.

5. Execution of Non-Disclosure Affidavits. The next order of business was to have been the execution by intervenor's counsel of non-disclosure affidavits. Those documents had to be retyped, however, to incorporate the changes adopted at the prehearing conference. In addition, intervenor's counsel wished to discuss those changes with their client. We accordingly allowed intervenor's counsel until Monday, April 7th, to execute the affidavits in question if intervenor wished to participate further in our review of licensee's physical security plan for the Diablo Canyon facility. (At this writing, we have been advised that the affidavits have been executed by counsel, but we have not received the executed copies.)

6. Objections to counsel. In the past the licensee has objected to litigating any contention concerning the adequacy of its security plan that might allow intervenor to obtain information about that plan for fear that it might be publicly disclosed as a result. We have previously rejected licensee's position. See ALAB-410, 5 NRC 1398, review denied, CLI-77-23, 6 NRC 455 (1977). Our First Prehearing Conference Order

provided that:

The law presumes that counsel will abide by their oaths and comply with protective orders. Therefore, if any party has reason to believe that any counsel is not likely to abide by the terms of a protective order, it shall bring the information upon which its belief is founded to our attention at the prehearing conference in a written motion to exclude that individual from the hearing and from receiving the details of the security plan. See ALAB-410, 5 NRC at 1406.

Pursuant to that invitation, licensee moved to exclude from participation in the review of the security plan one of intervenor's counsel, Mr. W. Andrew Baldwin.^{4/}

The motion rested upon statements made by Mr. Baldwin reported in the news media. This suggested to licensee an apparent lack of judgment and discretion on his part and, in its opinion, "gives rise to serious questions [about Mr. Baldwin's] likelihood of complying with non-disclosure agreements." Appended to the motion was a xerographic copy of one newspaper article that had appeared in the "Atascadero

^{4/} Licensee's motion papers represented that it had no knowledge about whether intervenor's other counsel, Messrs. Jones and Valentine, would be likely to violate the terms of the protective order or the non-disclosure affidavit. At the prehearing conference, however, licensee's counsel stated that he had no qualms about Mr. Jones in this respect. Tr. 59. Mr. Valentine was not present at the conference and apparently will not participate in this phase of the proceeding because of other professional commitments.

News" on February 16, 1979. The article purported to describe remarks made some fifteen months previous by Mr. Baldwin to a group opposed to the Diablo Canyon plant. No other evidence of Mr. Baldwin's likelihood of disobeying a protective order was offered in support of licensee's motion. Upon questioning by the Board, licensee stated that it had not attempted to investigate Mr. Baldwin's personal background. Mr. Furbush, the licensee's vice president and general counsel, explained the reason why not. He stated that whether or not such investigations were legally permissible, it was licensee's policy not to investigate individuals unless they were seeking employment with it in a sensitive position. Tr. 61-67.

The staff did not support the licensee's motion. Tr. 67-68.

Mr. Baldwin stated in essence that he had not previously seen the newspaper article in question. While he had no definitive recollection, in his view the article appeared to be an incomplete representation of his remarks and, in any event, it did not establish that he would disobey protective orders or disregard non-disclosure affidavits. Mr. Baldwin represented affirmatively to us that he would comply with such orders and affidavits. Tr. 78-79.

The Board, after deliberation, denied the motion to exclude Mr. Baldwin from further participation on the ground that applicant had not met its burden of proof.^{5/} Tr. 81. We have entered a protective order.

7. Objections to qualifications and depositions of expert witnesses. Intervenor proposes to use Jeramiah P. Taylor as its expert witness. Mr. Taylor retired earlier this year as Deputy Police Chief of San Francisco. According to the resume presented by intervenor, Chief Taylor's professional background includes experience in building and site security; protection from explosives; riot and crowd control; anti-sniper measures; protecting important individuals; hostage negotiations; intelligence; and disaster

5/ Licensee's motion also urged that we postpone the security plan review until intervenor's counsel and witness had been subjected to a "Q-clearance" background check. The staff opposed this idea as impermissible under the regulations and, moreover, one that would delay the proceeding at least six months. When it was suggested that licensing of Diablo Canyon might have to be delayed in the interim if we adopted this course because it would mean putting off completion of the hearing on the security plan contentions, licensee stated that any such delay would be unacceptable. In the circumstances, we denied this phase of licensee's motion also.

and security coordination. Neither the licensee nor the staff objected to Mr. Taylor's overall qualification as an expert witness in security matters. The licensee expressed the desire to depose him, however, to ascertain the extent of his expertise in specific areas.

The intervenor sought similar leave to depose licensee's two witnesses, Messrs. Medcalf and Dettman, to discover the extent of their expertise in security matters. Intervenor represented that it had in mind the questioning each of these witnesses for "an hour or less." Tr. 98.

The staff desired to participate in the depositions of all three witnesses. Leave to depose the three named witnesses at licensee's San Francisco offices was granted by the Board. The depositions are to be taken on April 17th, unless counsel for all parties agree on some earlier time or other location and notify us of the change.

8. "Sanitized" version of the Diablo Canyon physical security plan. Our First Prehearing Conference Order instructed the applicant and the staff jointly to prepare and give to us at the prehearing conference a "sanitized" version of the physical security plan for Diablo Canyon.^{6/} It was our intent to review that version to insure that it did not reveal the operative portions of the actual plan in unnecessary detail, and then to allow intervenor's counsel to examine the sanitized plan under protective order and the conditions specified in their affidavits of non-disclosure.^{7/} For reasons explained in paragraph 5, however, counsel did not execute those affidavits at the prehearing conference. In addition, there was a misunderstanding about precisely how the sanitized plan was to be prepared. We therefore allowed the applicant and the staff until Friday, April 11, 1980, to submit their version of the sanitized plan to us. We also announced that one week thereafter, intervenor's counsel were to be given access to the sanitized version of the plan in accordance with the conditions of their affidavits of non-disclosure, provided, of course, that they had executed those affidavits.

^{6/} The term "sanitized" plan is explained in ALAB-410. See 5 NRC at 1405.

^{7/} Those conditions essentially restrict counsel's access to the plan to a room to be made available in licensee's San Francisco offices.

9. Licensee's motion to stay intervenor's access to the "sanitized" plan. The steps we followed in calling for preparation of a "sanitized" security plan and our grant of access to it to intervenor (through counsel and expert witness) are in accord with the guidelines laid down nearly three years ago in this case. ALAB-410, 5 NRC 1398 (1977). Without repeating what was said there, that decision explains why challenges to the adequacy of security plans for nuclear power plants may be entertained in licensing proceedings. It also carefully circumscribes the conditions under which limited portions of those plans may be disclosed to intervenors in order to permit those issues to be litigated. In declining to review ALAB-410, the Commission stated in CLI-77-23, 6 NRC 455, 456 (1977); that

* * * the prospect of even limited disclosure of physical security plans for nuclear facilities poses serious and difficult questions. * * * Nonetheless, our responsibilities require the Commission to make certain findings and determinations before issuing an operating license for a nuclear power reactor, and the sufficiency of an applicant's proposed safeguards plans and procedures are relevant to those findings and determinations. 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.

Since that time, proceedings in this case have been conducted on the assumptions that the alleged inadequacies in licensee's Diablo Canyon physical security plan are

cognizable contentions and that the intervenor is entitled to access to relevant portions of the plan -- at least to the extent we contemplated in ALAB-410. And considerable time has been expended by the parties in litigation before the Licensing Board, ourselves, and the Commission over such matters as the qualifications of intervenor's proposed security plan expert witnesses.^{8/} Notwithstanding this, on March 21, 1980 the licensee advised us by letter "that if and when we are ordered to turn over even the sanitized version of the [security] plan we will file a motion for stay and an appeal to the Commission." We placed that request for relief on the agenda of the prehearing conference and considered it there.

The grounds asserted by licensee for a stay and for their "appeal" are not based on any objection to the qualifications of intervenor's proposed expert witness, retired San Francisco Deputy Police Chief Taylor. Rather, we understand licensee to contend that even were Mr. Baldwin excluded from the proceeding, no litigation of the adequacy of its security plan should be allowed in this proceeding. It is on this ground that licensee argues that the plan should not be disclosed to intervenor even in a sanitized form.

^{8/} See, e.g., ALAB-504, 8 NRC 406 (1978); ALAB-514, 8 NRC 697 (1978); CLI-79-1, 9 NRC 1 (1979); ALAB-580, 11 NRC _____ (February 15, 1980).

At the prehearing conference we announced that the licensee's motion for a stay was denied by a unanimous vote of the Board on the ground that it had not established grounds for that relief. See 10 C.F.R. §2.788(e).

First, licensee has not made "a strong showing that it is likely to prevail on the merits." The legal question whether the adequacy of a security plan is a proper issue for consideration in an adjudicatory proceeding was squarely addressed in ALAB-410 and is now the law of the case. There, in reliance upon Commission decisions as well as our own, we decided the issue adversely to licensee. Id., 5 NRC at 1402 and following. Licensee can take no comfort from the Commission's opinion explaining its reasons for declining to review ALAB-410. The Commission there specifically stated that some disclosure of the licensee's security plan was necessary to the conduct of this proceeding. CLI-77-23, 6 NRC 455, 456 (1977). The Commission would hardly have said that were it of the view that the subject matter was simply not open to litigation at all.

Neither are we impressed by licensee's argument that since ALAB-410 there has been no "final decision" of this Board on the question which it could use as a vehicle to obtain plenary Commission review of the issue. Licensee could have (but did

not) make its position known in opposing intervenor's attempt to get Commission review on the disqualification of its security plan witness.^{9/} Licensee might also have invoked the procedures available under 10 C.F.R. §2.758 and urged that the rule be waived or an exception made for it and the security plan issues not be considered in this case. And of course licensee could have asked us -- or the Commission itself -- to take up the issue by "certification." 10 C.F.R. §2.785(d).^{10/} No doubt there are other means by which licensee could have brought the substance of its position to the Commission's attention.^{11/} Its own failure to have invoked any of them in the intervening years may not now be used to bolster its need for Commission review.

Neither has licensee shown that it will be irreparably injured if a stay is not granted. The only information currently scheduled for release to intervenor is a sanitized version of the security plan -- one with the details of its

^{9/} See, e.g., CLI-79-1, 9 NRC 1 (1979).

^{10/} See, e.g., Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 790 (1978), certification granted, CLI-80-3, 11 NRC _____ (February 20, 1980).

^{11/} E.g., 10 C.F.R. §2.771 (petition for reconsideration), 10 C.F.R. §2.802 (petition for rulemaking).

operation excised by the staff with the assistance of licensee itself. Moreover, even that document will not be allowed to leave licensee's own premises (see affidavit of non-disclosure, infra, para. 4). And access to the sanitized plan will be given only to intervenor's counsel, under protective order, who have sworn not to disclose its contents -- even to their client. Intervenor's expert witness -- Chief Taylor -- would be under similar restraints. There has been no showing that counsel will not comply with our order or abide his oath (in the case of Mr. Jones, that assertion was not even made). In the totality of circumstances, we perceive no likelihood of injury, much less irreparable injury, to licensee by allowing the limited access to the security plan now proper in the orderly course of this litigation.

The granting of a stay, on the other hand, will work a hardship on intervenor. Whether one agrees with its position or not, it is to be recognized that intervenor has legitimately invoked the appropriate Commission procedures in an effort to have the Diablo Canyon security plan reviewed by others than those who drafted and approved it initially. Its attempt to get that review has been opposed at every opportunity by the licensee, which has every right to do so. But intervenor is

a public organization with limited funds; it cannot be expected to bear the burdens of litigation indefinitely. Another delay will be a hardship on it that is, in our judgment, not necessary.

Finally, where does the public interest lie? If the adequacy of licensee's security plan is properly at issue here, then the public interest is served best by moving forward with this proceeding as swiftly as circumstances and fairness permit. Intervenor has now obtained a witness whose expertise in security matters of this kind appears to be unquestioned. His review of the plan will be helpful, if not in improving the licensee's security arrangements, then certainly in assuring that its plan is in fact a good one. Moreover, it is to be borne in mind that licensee is pressing for an operating license for the Diablo Canyon facility, one unit of which is nearly completed. That license may not be authorized pending review and approval of its security plan. A stay of these proceedings -- the practical effect of denying intervenor access to the sanitized plan -- will mean that the security plan issue will be "in the critical path." (Certain other issues are also open.) We neither express nor intimate any opinion on whether the plant should or should not receive an operating license.

But we think it not in the public interest to delay this proceeding to allow time for review of the sort of question licensee seeks to raise before the Commission very belatedly and for a second time. There must be some end to litigation.

At this juncture we note that our foregoing discussion was prefaced with the remark (p. 20), "If the adequacy of licensee's security plan is properly at issue here, * * *." Dr. Johnson reiterates that his view of intervenor participation in security plan hearings has not changed from that expressed in conjunction with Dr. Quarles in their concurrence in ALAB-410. In that concurrence they stated "had the regulations and precedents favoring [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.

10. Final Order on release of security plan. Notwithstanding our view that no stay is warranted under the governing law and regulations, 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.^{12/}
Unless the Commission or we direct otherwise in the interim,
intervenor's counsel shall then be given access to the san-
itized version of the security plan in accordance with our
protective order and the affidavits of non-disclosure they
have executed.

11. Other matters. We have intentionally left a number
of other scheduling and procedural matters outstanding until
we have had an opportunity to review the staff's and appli-
cant's version of the sanitized security plan. Once we have
reviewed the plan, we will issue a subsequent prehearing order
concerning such matters as filing dates (a) for objections to
any area of a witness' expertise; (b) for intervenor's amended
contentions; and (c) for witness testimony.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Bishop
C. Jean Bishop
Secretary to the
Appeal Board

^{12/} At the prehearing conference, we indicated that licensee's
stay motion should be filed by Friday, April 11th. At its
counsel's request, based on his need to be away from his
office on other business, we allowed licensee one extra
business day to file its papers with the Commission.



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 AND ELECTRIC COMPANY)	Docket Nos. 50-275 OL
)	50-323 OL
(Diablo Canyon Nuclear Power Plant,)	
Units 1 and 2))	

PROTECTIVE ORDER ON SECURITY PLAN INFORMATION

Counsel and witnesses for Intervenor San Luis Obispo Mothers for Peace (Intervenor) who have executed an Affidavit of Non-Disclosure, in the form attached, shall be permitted access to "protected information"^{*/} upon the following conditions:

1. Only Intervenor's counsel and Intervenor's experts who have been qualified in accordance with the requirements of our decision in Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), and our Order of February 25, 1980 in this proceeding, may have access to protected information on a "need to know" basis.

*/ As used in this order, "protected information" has the same meaning as used in the Affidavit of Non-Disclosure, annexed hereto.

2. Counsel and experts who receive any protected information (including transcripts of in camera hearings, filed testimony or any other document that reveals protected information) shall maintain its confidentiality as required by the annexed Affidavit of Non-Disclosure, the terms of which are hereby incorporated into this protective order.

3. Counsel and experts who receive any protective information shall use it solely for the purpose of participation in matters directly pertaining to this security plan hearing and any further proceedings in this case directly involving security matters, and for no other purposes.

4. Counsel and experts shall keep a record of all protected information in their possession and shall account for and deliver that information to the Commission official designated by this Board in accordance with the Affidavit of Non-Disclosure that they have executed.

5. In addition to the requirements specified in the Affidavit of Non-Disclosure, all papers filed in this proceeding (including testimony) that contain any protected information shall be segregated and:

(a) served on lead counsel and the members of this Board only;


(b) served in a heavy, opaque inner envelope bearing the name of the addressee and the statement "PRIVATE."

TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked.

6. Counsel, experts or any other individual who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

It is so ORDERED.

FOR THE APPEAL BOARD


Richard S. Salzman, Chairman

Done at San Luis Obispo, California,
this 3rd day of April, 1980.



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

_____)
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

AFFIDAVIT OF NON-DISCLOSURE

I, _____, being duly sworn, state:

1. As used in this Affidavit of Non-Disclosure,

(a) "Protected information" is (1) any form of the physical security plan for the licensee's Diablo canyon Nuclear Power Plant, Units 1 and 2; or (2) any information dealing with or describing details of that plan.

(b) An "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Appeal Board ("Appeal Board"), has executed a copy of this affidavit; or (3) a person employed by Pacific Gas and Electric Company, the licensee, and authorized by it in accordance with Commission regulations to have access to protected information.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected

information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else.

3. I will not reproduce any protected information by any means without the Appeal Board's express approval or direction. So long as I possess protected information, I shall continue to take these precautions until further order of the Appeal Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

(a) my use of the protected information will be made at a facility in San Francisco to be made available by Pacific Gas and Electric Company.

(b) I will keep and safeguard all such material in a safe to be obtained by intervenors at Pacific Gas and Electric Company's expense, after consultation with Pacific Gas and Electric Company and to be located at all times at the above designated location.

(c) Any secretarial work performed at my request or under my supervision will be performed at the above location by one secretary of intervenor's designation. Intervenors shall furnish Pacific Gas and Electric Company, the Board and Staff an appropriate resume of the secretary's background and experience.

(d) Necessary typing and reproduction equipment will be furnished by Pacific Gas and Electric Company.

(e) All intervenor mailings involving protected information shall be made from the facility furnished by Pacific Gas and Electric Co.

5. If I prepare papers containing protected information in order to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information in order to help me prepare those papers has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Appeal Board before I reveal any protected information to any such person.

6. I shall use protected information only for the purpose of preparation for this proceeding or any further proceedings in this case dealing with security plan issues, and for no other purpose.

7. I shall keep a record of all protected information in my possession, including any copies of that information made by or for me. At the conclusion of this proceeding, I shall account to the Appeal Board or to a Commission employee designated by that Board for all the papers or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding, I shall deliver those papers and materials to the Appeal Board (or to a Commission employee designated by the Board), together with all notes and data which contain protected information for safekeeping during the lifetime of the plant.

8. I make this agreement with the following understandings:
(a) I do not waive any objections that any other person may have to executing an affidavit such as this one; (b) I will not publicly discuss or disclose any protected information that I receive by any means whatever.

Subscribed and sworn to before me this

day of April, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY) Docket No. (s) 50-275
) 50-323
(Diablo Canyon Nuclear Power)
Plant, Units 1 and 2))
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
14th day of April 1970.

Reginald T. Downing
Office of the Secretary of the Commission



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

(Diablo Canyon, Units 1 and 2)
)
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)

Docket No.(s) 50-275
50-323

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