

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

OBJECTION TO PROPOSED EXPERTS OF  
GOVERNOR EDMUND G. BROWN, JR.  
FOR SECURITY PLAN HEARING

On July 25, 1980, the Staff received a pleading entitled "Proposed Experts of Governor Edmund G. Brown, Jr. for Security Plan Hearing and Request for Clarification." In this pleading, counsel for Governor Brown presented the names and statements of qualification for five proposed "expert consultants" along with their executed affidavits of non-disclosure and also noted his intention to use Jeremiah Taylor as an expert witness. Counsel for Governor Brown also requested that the Board clarify its procedures with respect to the right of the participants to designate additional expert witnesses after review of the security plan. The Staff will address each of these concerns in turn.

A. Expert Consultants and Witnesses

Governor Brown proposes to use five individuals as "expert consultants and, if proves necessary, as expert witnesses... in connection with the Appeal Board's hearing on the security plan issue...." The Staff has no objection to the concept of "expert consultants." A situation can be

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envisioned where certain qualified individuals review a security plan and advise counsel on that matter, but then, for a variety of reasons, it is determined not to utilize one or more of those persons as witnesses in the hearing. However, to insure that neither the spirit nor the letter of the protective order is violated by this practice, any expert consultant utilized in this manner should be required to meet the same qualifications as an expert witness before he is permitted to review the security plan. That is, access to a security plan should be given only to individuals "who have been shown to possess the technical competence necessary to evaluate the portions of the plan which they may be shown." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1404 (1977).

After a careful reading of their statements of qualification, the Staff has no objection to Darel R. Sievers, Richard E. White, or Louis O. Giuffrida as expert consultants or expert witnesses. The Staff does, however, object to Alex R. Cunningham and John J. Kearns as security experts. Although both Mr. Cunningham and Mr. Kearns are well-qualified in the field of emergency planning, their statements of qualification do not reflect either knowledge or expertise in the field of physical security. According to these statements, neither Mr. Cunningham nor Mr. Kearns have any experience with security hardware, organization, or philosophy. Without such knowledge and understanding they would be unable to render a proper expert opinion as to the adequacy of the Diablo Canyon security plan.



B. Jeremiah Taylor as an Expert Witness

The Staff does not object to the use of Jeremiah Taylor as an expert for both the Intervenors and Governor Brown. However, the Staff can foresee some procedural difficulties in the filing of testimony, the presentation of direct evidence, and the cross-examination of witnesses. As long as all the parties are aware of the potential problems and are willing to assume responsibility for meeting the Board's schedules and for sponsoring Mr. Taylor's testimony in advance of the hearing the Staff has no objection to Mr. Taylor being offered as an expert witness for two parties.

C. Request for Clarification

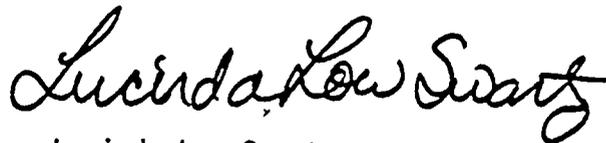
Governor Brown asks the Appeal Board to clarify the procedures for designating additional expert witnesses after review of the security plan. To avoid any potential abuse or unnecessary delay by this practice, a party should be required to demonstrate a reasonable nexus between the issues set for litigation and the new witnesses they seek to use. Any such witnesses, of course, must meet the qualification requirements for an expert witness in this proceeding. In addition, the parties should be required to state promptly upon receiving the plan their intention of designating other expert witnesses and the qualifications of these witnesses.



Conclusion

In principle, the Staff does not object to the use of expert consultants provided they have the same qualifications as are required for expert witnesses under ALAB-410. The Staff does object to Mr. Cunningham and Mr. Kern as experts because they have no background in the areas of physical security. The Staff does not object to the three other experts proposed by Governor Brown or to Jeremiah Taylor who will also testify for the Intervenors. Finally, the Staff believes that any designation of additional experts must be accompanied by a showing of the relation between the issues in the proceeding and the witnesses to be used and that such designation be made promptly so as not to delay the start of the hearing.

Respectfully submitted,



Lucinda Low Swartz  
Counsel for NRC Staff



William J. Olmstead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 30th day of July, 1980



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PACIFIC GAS AND ELECTRIC COMPANY )

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE OBJECTION TO AMENDED AFFIDAVIT OF NON-DISCLOSURE and OBJECTION TO PROPOSED EXPERTS OF GOVERNOR EDMUND G. BROWN, JR. FOR SECURITY PLAN HEARING," dated July 30, 1980, in the above-captioned proceeding, have been served on the following, by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 30th day of July, 1980:

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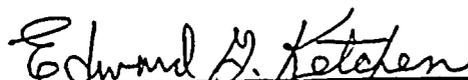
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