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	Atomic Safety and Licensing Board Panel

SUBJECT: Response in opposition to Governor of CA motion for revision of nondisclosure affidavit re security plan.Takes exception to Governor of CA 800814 & 19 ltrs submitted in response to ASLAB order.Certificate of Svc encl.

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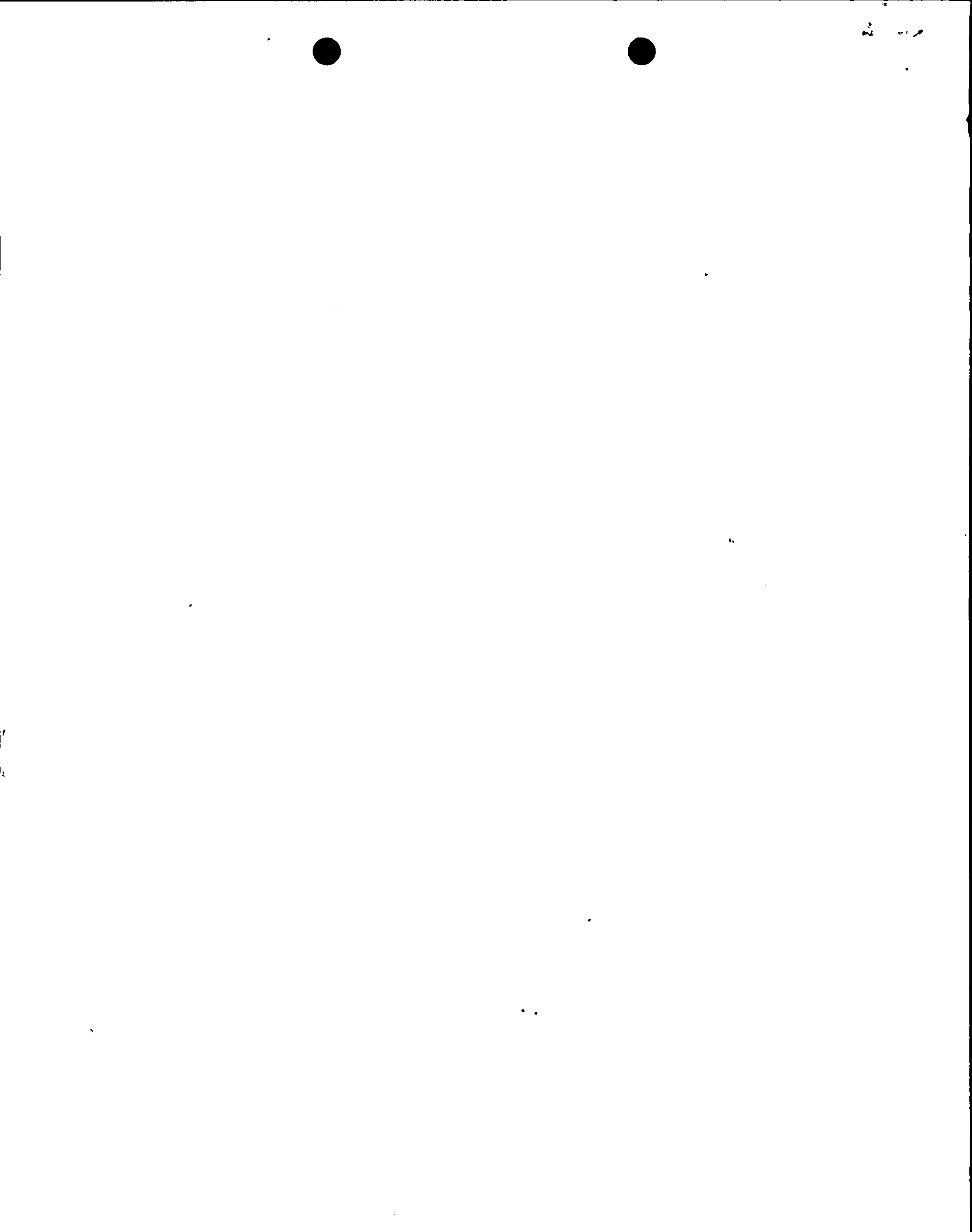


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

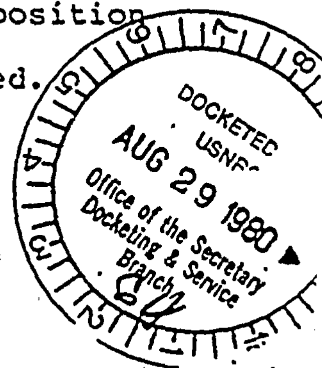
AUG 21 1980

RESPONSE OF APPLICANT PACIFIC GAS AND ELECTRIC COMPANY TO MOTION FOR REVISION OF NON-DISCLOSURE AFFIDAVIT AND PREHEARING SCHEDULE; APPEAL BOARD ORDER OF AUGUST 14, 1980; RESPONSE OF GOVERNOR BROWN TO APPEAL BOARD ORDER OF AUGUST 14, 1980; LETTERS OF AUGUST 14 AND 19, 1980 FROM INTERVENOR BROWN'S COUNSEL

Applicant PACIFIC GAS AND ELECTRIC COMPANY hereby responds to a series of formal and informal filings made by Intervenor Brown, commencing with his Motion for Revision of Non-Disclosure Affidavit and Prehearing Schedule. It is respectfully submitted that the Motion should be denied.

1. Revision of the Affidavit of Non-Disclosure

Intervenor Brown, a latecomer to these proceedings, has apparently decided that the agreements as to procedures negotiated by the other parties to these proceedings, and ratified by this Board at the Second Prehearing Conference and subsequent thereto, are totally unacceptable. The procedures for review of the plan, be it sanitized or full, have not varied, except in non-essential detail, since the Second Prehearing Conference. Applicant finds it strange indeed that Intervenor takes this position immediately after Applicant relented from its heretofore immovable position that only a sanitized version of the plan could be viewed.



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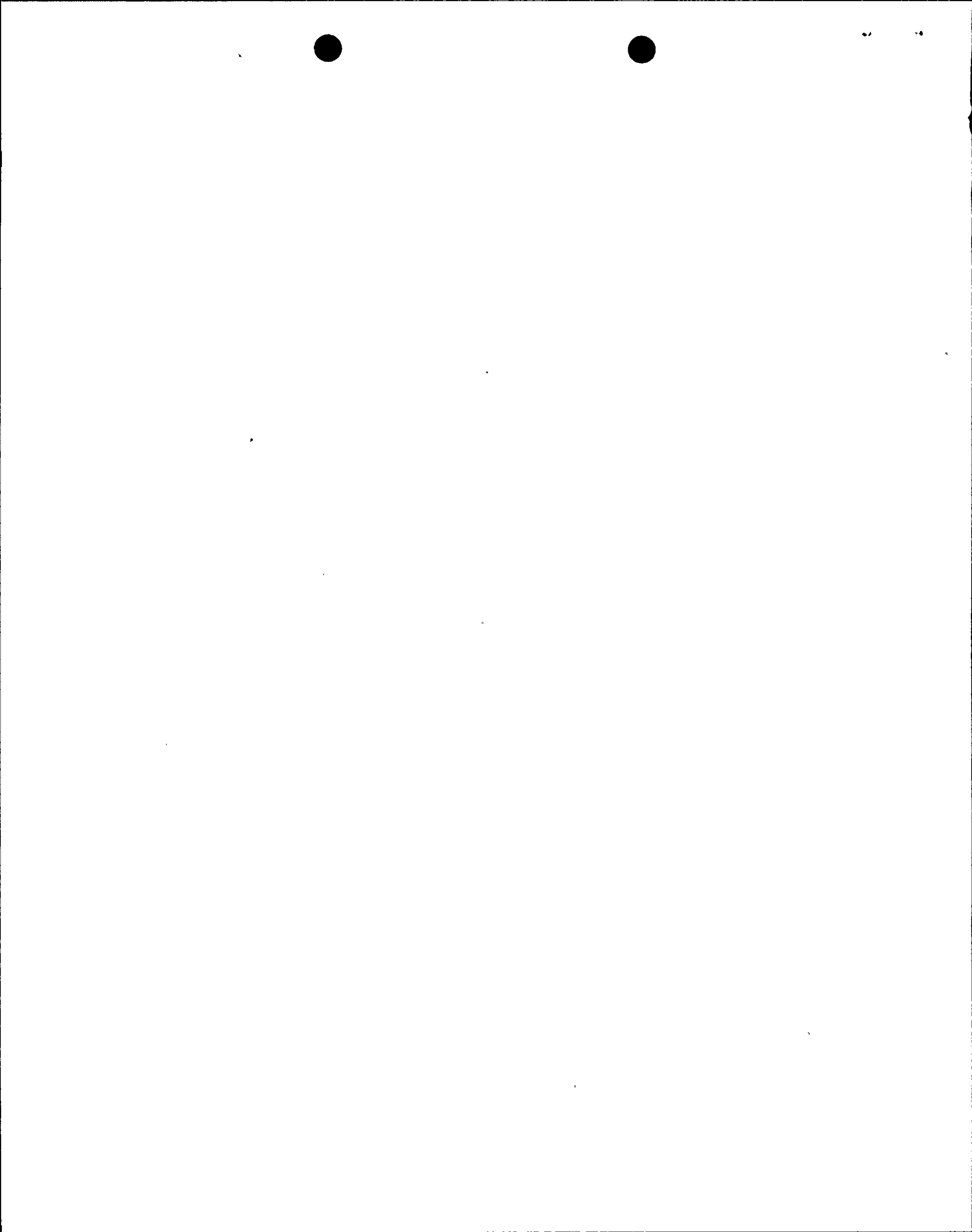
what Intervenor Brown now proposes would literally obliterate any safeguards as to the integrity of the plan itself. He proposes that "we" (attorneys for Intervenor) be allowed to take notes and "materials developed from such notes" to "be kept in a safe in our office at all times other than when in our personal possession." Intervenor then proposes that his witnesses (3 in number at divergent locations) be permitted the same privilege and finally, that personal secretaries be permitted to type pleadings and "other materials" at their office.

It is the position of Applicant that should the request of Intervenor be granted, the affidavit of non-disclosure would become as worthless as apparently are the agreements previously negotiated in these proceedings. Intervenor offers nothing but convenience as an excuse for its new position. It is respectfully submitted that the convenience, or lack thereof, to Intervenor, his counsel and witnesses is not and should not become the byword of these proceedings. The security of Diablo Canyon is indeed what this entire process is supposedly to help insure.

2. Request for Discovery

Intervenor also requests this Board to initiate a discovery schedule on security matters. Again, Applicant respectfully requests that the Motion be denied. In its response to the Board's inquiry of August 14, 1980, Intervenor apparently anticipates all forms of discovery short of an independent medical examination, prolongated over an extended and obviously open-ended period of time. While the type of discovery set forth by



Intervenor is typical for normal litigation, it is respectfully submitted that such discovery in these extraordinary circumstances basically serves two negative purposes. First, Intervenor once again wants to increase the number of people, locations, and processes involved, thereby increasing the opportunity to breach the integrity of the plan; Second, delay, apparently interminable.

Intervenor, in its pleadings, argues that their discovery "will narrow the hearing issues and ensure that the hearing itself is on matters of genuine uncertainty." This shibboleth must be viewed in the actual light of these specific proceedings. The sum and total purpose is for this Board to make a determination as to whether the security plan for Diablo Canyon meets applicable Commission regulations. Intervenor gives as its sole example of what discovery will accomplish that they "will gain necessary information regarding the development of PG&E's security arrangements; including PG&E's basis for designating certain postulated threats and events as well as the essential underlying methodology. This will provide the basis with which to understand the import of the present provisions of the plan." While the quote immediately preceding may sound good, the clear meaning of the words do not go to whether the plan itself complies with the regulations. What difference does it make why or how Applicant designated certain postulated threats? The question is whether those postulations meet the regulations. Similarly, whether Intervenor understands the "import of the present plan" is not necessary; it is only necessary that the present plan meets

the regulations. Applicant suspects that what Intervenor really wants is the traditional opportunity of discovering what Applicant and/or Staff is going to say regarding how the plan meets regulations. That desire and need can better be met in this non-traditional situation by the exchange of prefiled testimony which has obviously been contemplated by the Board and parties heretofore.

Discovery as outlined by Intervenor will not shorten the actual hearing and, undeniably, will lengthen considerably the hearing process. Applicant submits that the integrity of the plan, the actual goal of this proceeding and commonsense dictate that Intervenor's request for discovery be denied.

3. Informal Submittals to Board by Intervenor

Applicant takes exception to the informal submittals to this Board of letters dated August 14 and 19, 1980, by attorneys for Intervenor to lead counsel for Applicant. Exception is taken for two reasons: First, it was the express order of this Board that only lead counsel speak for the parties and second, the letter of August 19, 1980, is substantially misleading. The letter of August 14, 1980, from Intervenor's lead counsel to Applicant's lead counsel is simple enough. Mr. Brown announced his intention of being at Applicant's headquarters on August 21 and 22 and requested five complete copies of the plan. The letter of August 19, 1980, is however, carefully absent pertinent facts. The first conversation referred to in the letter was a call placed by the undersigned to Mr. Brown's office stating that we did not

have five copies available and that we were not inclined to reproduce the plan. Mr. Lanpher was informed that the matter would be looked into and he would be contacted. The next day he was informed that while there was only the one clean copy of the plan at Applicant's office, there were one or two extra copies at the site which would be made available on the 21st and 22nd. It was at this point (the 19th) that Mr. Lanpher, contrary to Mr. Brown's letter, stated for the first time that they intended to be at Applicant's offices the 20th. It was pointed out to Mr. Lanpher that Applicant's security personnel and Joint Intervenor's lead counsel and expert witness were touring the security facilities at Diablo Canyon on the 19th and 20th and that the security plan was locked up in Mr. Willis' safe at Applicant's building. On Thursday, the 21st, two or three copies of the plan would be available for Intervenor.

It is submitted that Mr. Lanpher's letter of August 19 is not, as he claims, "a further dimension of these unworkable procedures". It is simply a self-fulfilling prophecy. The procedures heretofore established, given reasonable opportunity and reasonable people, can indeed work.

Respectfully submitted,

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By [signature]
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DATED: August 20, 1980.

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF APPLICANT PACIFIC GAS AND ELECTRIC COMPANY TO MOTION FOR REVISION OF NON-DISCLOSURE AFFIDAVIT AND PREHEARING SCHEDULE; APPEAL BOARD ORDER OF AUGUST 14, 1980; RESPONSE OF GOVERNOR BROWN TO APPEAL BOARD ORDER OF AUGUST 14, 1980; LETTERS OF AUGUST 14 AND 19, 1980 FROM INTERVENOR BROWN'S COUNSEL" dated August 20, 1980, have been served on the following by delivery to Federal Express for service August 21, 1980, or by deposit in the United States mail, this 20th day of August, 1980:

Richard S. Salzman, Chairman
Atomic Safety and Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

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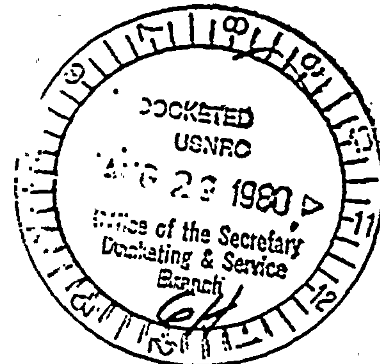

Bruce Norton