

REGULATORY INFORMATION DISTRIBUTION SYSTEM (RIDS)

ACCESSION NBR: 8009030699 DOC. DATE: 80/08/28 NOTARIZED: NO DOCKET #
 FACIL: ~~50-275~~ Diablo Canyon Nuclear Power Plant, Unit 1, Pacific Ga 05000275
~~50-323~~ Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Ga 05000323

AUTH. NAME	AUTHOR AFFILIATION
CRANE, P.A.	Pacific Gas & Electric Co.
GEHR, A.C.	Pacific Gas & Electric Co.
NORTON, B.	Pacific Gas & Electric Co.
RECIP. NAME	RECIPIENT AFFILIATION
	Atomic Safety and Licensing Board Panel

SUBJECT: Response to ASLB 800814 order re util motion to load fuel & for low power tests, Governor of CA pleading should be stricken per NUREG-0694, Joint Intervenors' reply inconsistent w/NUREG-0694, Certificate of Svc encl.

DISTRIBUTION CODE: DS03S COPIES RECEIVED: LTR 0 ENCL 1 SIZE: 7
 TITLE: Filings (Not Orig by NRC)

NOTES: J Hanchett w/1 copy all material. 05000275
~~J Hanchett w/1 copy all material.~~ 05000323

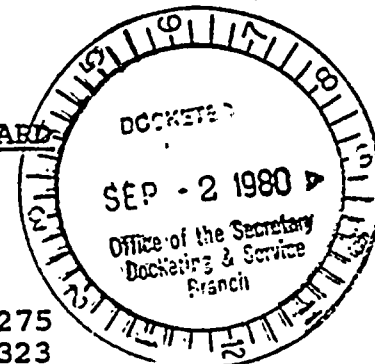
	RECIPIENT ID CODE/NAME	COPIES		RECIPIENT ID CODE/NAME	COPIES	
		LTR	ENCL		LTR	ENCL
ACTION:	LEE, J.		1	BUCKLEY, B.		1
INTERNAL:	ASLAP	5	5	ASLB		1
	D/DIR, HUM FAC S	2	2	I&E	2	2
	NRC PDR	1	1	OE: D. BLANTON		1
	PUBLIC AFFAIRS	1	1	<u>REG FILE</u>		1
EXTERNAL:	LPDR		1	NSIC		1

SEP 4 1980

TOTAL NUMBER OF COPIES REQUIRED: LTR 0 ENCL 19

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

Docket No. 50-275
Docket No. 50-323
(Fuel Load and Low Power Test)

REPLY OF PACIFIC GAS AND ELECTRIC COMPANY
TO ASLB ORDER DATED AUGUST 14, 1980

On August 14, 1980 the Board issued an order relative to PGandE's motion to load fuel and conduct low power tests (the "motion") requesting "Supplemental positions from each party." This order was supplemented by an additional order dated August 21, 1980. Accordingly, PGandE offers the following comments on certain of the pleadings filed in response to the motion:

Intervenor Brown Response

The pleading filed on behalf of Intervenor Governor Brown is completely non-responsive to the substance of the motion and should be stricken.

Brown first argues that the motion is deficient under 10 CFR 2.730. PGandE finds this assertion bewildering. As required by that section the motion was "in writing," "state[d] with particularity the grounds and relief sought" (permission to load fuel and perform the seven tests described in detail in attachments to the motion) and was accompanied by a form of affidavit supporting the motion. A proposed form of order was not considered appropriate because in reviewing the licenses issued for the Sequoyah, North Anna, and Salem facilities

DS03
59/1



(the other three well-publicized so-called Near Term Operating License plants (NUREG-0694, p. 4) it was apparent that they contained much language from the applicable Staff Safety Evaluation Reports, and, at the time the motion was filed, the Diablo Canyon SER had not yet been issued. Thus it was assumed that the reference in the motion to licenses in the form previously approved would be understood to refer to the three most recently issued low power licenses for the three other NTOL facilities named above and in NUREG-0694. Now that the Diablo Canyon SER (NUREG-0674, Supplement No. 10) is available proposed forms of licenses are being prepared and will be filed and served on all parties promptly.

Brown attacks the form of Affidavit on the alleged ground that it "lacks content." However, the affidavit permits the Board to accept the statements in the motion as affirmative evidence. It has been long-standing NRC and AEC policy to accept as evidence statements in affidavit form or supported by an affidavit (see, for example, 10 CFR 2.749(b), 50.30(b)). In view of the Commission's Statement of Policy and NUREG-0694 referred to below, the affidavit should permit the Board and NRC to issue the requested licenses.

Finally, Brown attacks the motion as not substantively addressing the criteria of 10 CFR 50.57(a). PGandE's motion was filed pursuant to 10 CFR 50.57(c). This regulation provides that prior to taking action on any such motion a party opposes

". . . the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy . . ."

In its order permitting Brown to intervene as a representative of an interested state the Board requested Brown to state his areas of concern



with some specificity. In a reply dated December 19, 1979 Brown cited emergency planning and preparedness, the other stipulated safety issues already before the Board, seismic focusing and high stress drop and such further issues of concern as may be revealed following completion of Staff review. To date, none in this latter category have been designated. Thus, the only portions of paragraph (a) involved are subsections (3) and (6) and they are directly addressed in the motion and supporting affidavit (§§ 4(iii) and 5).

Most importantly Brown totally ignores the Commission's Statement of Policy (45 Federal Register 41738) and NUREG-0694 "TMI-Related Requirements for New Operating Licenses." The latter document sets forth four types of TMI-related requirements and actions for new operating licenses, among them (Part 1) "Fuel-Loading and Low Power Testing Requirements." The Statement of Policy provides

". . . that the above-mentioned list of TMI-related requirements for new operating licenses found in NUREG-0694 is necessary and sufficient for responding to the TMI-2 accident."

Thus the statement in the motion that PGandE has or will comply with the requirements of NUREG-0694 adequately responds to the TMI-related issues. This is confirmed by Supplement No. 10 of the Staff's Safety Evaluation Report (NUREG-0674) which considers in detail the NUREG-0694 requirements and documents PGandE's compliance with them. The Staff conclusion is as follows:

"Moreover, we have evaluated the information provided by the applicant and conclude that all matters required by TMI-Related Requirements for New Operating Licenses (NUREG-0694) for operation up to five percent of rated power have been adequately addressed." (p.1)

PGandE requests that this document be incorporated in the record in



support of the motion.

Accordingly, PGandE concludes that the Brown reply to the PGandE motion should be stricken or at least ignored in considering the merits of PGandE's motion as it fails totally to make a substantive response. (See also discussion of Joint Intervenors' Answer below.)

Joint Intervenors' Answer

Similarly, the Joint Intervenors' answer to the motion should be stricken since it too fails to make a substantive response. As pointed out by the Staff in its answer to the motion:

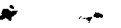
"In the event that a party to this proceeding objects to Applicant's motion such a party should be required to state such objections in contention form and to indicate with specificity the relevance of that party's contention or contentions to the fuel load and low power operation activities for which the Applicant seeks authorization." (p. 12)

The answer is also fatally defective since it is completely inconsistent with the NRC Statement of Policy referred to above and NUREG-0694. Accordingly, there is nothing in this answer, as well as the Brown answer, that would preclude issuance of the requested licenses or that could form a proper basis for a challenge to issuance of such licenses.

Respectfully submitted,

MALCOLM H. FURBUSH
PHILIP A. CRANE, JR.
Pacific Gas and Electric Company
77 Beale Street - 31st Floor
San Francisco, California 94106
(415) 781-4211

ARTHUR C. GEHR
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7288



BRUCE NORTON
Norton, Burke, Berry & Junck
3216 North Third Street
Suite 300
Phoenix, Arizona 85012
(602) 264-0033

Attorneys for
Pacific Gas and Electric Company

By 
Philip A. Crane, Jr.

Dated: August 28, 1980



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

Units 1 and 2)

Diablo Canyon Site)

Docket No. 50-275

Docket No. 50-323

CERTIFICATE OF SERVICE

The foregoing document(x) of Pacific Gas and Electric Company has (~~been~~) been served today on the following by deposit in the United States mail, properly stamped and addressed:

Elizabeth S. Bowers, Esq.
Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. William E. Martin
Atomic Safety and Licensing Board
Senior Ecologist
Battelle Memorial Institute
Columbus, Ohio 43201

Mrs. Elizabeth Apfelberg
C/o Nancy Culver
192 Luneta Drive
San Luis Obispo, California 93401

Janice E. Kerr, Esq.
Public Utilities Commission
of the State of California
5246 State Building
350 McAllister Street
San Francisco, California 94102

Mrs. Raye Fleming
1920 Mattie Road
Shell Beach, California 93449

Mr. Frederick Eissler
Scenic Shoreline Preservation
Conference, Inc.
4623 More Mesa Drive
Santa Barbara, California 93105

Mrs. Sandra A. Silver
1760 Alisal Street
San Luis Obispo, California 93401

Mr. Gordon Silver
1760 Alisal Street
San Luis Obispo, California 93401

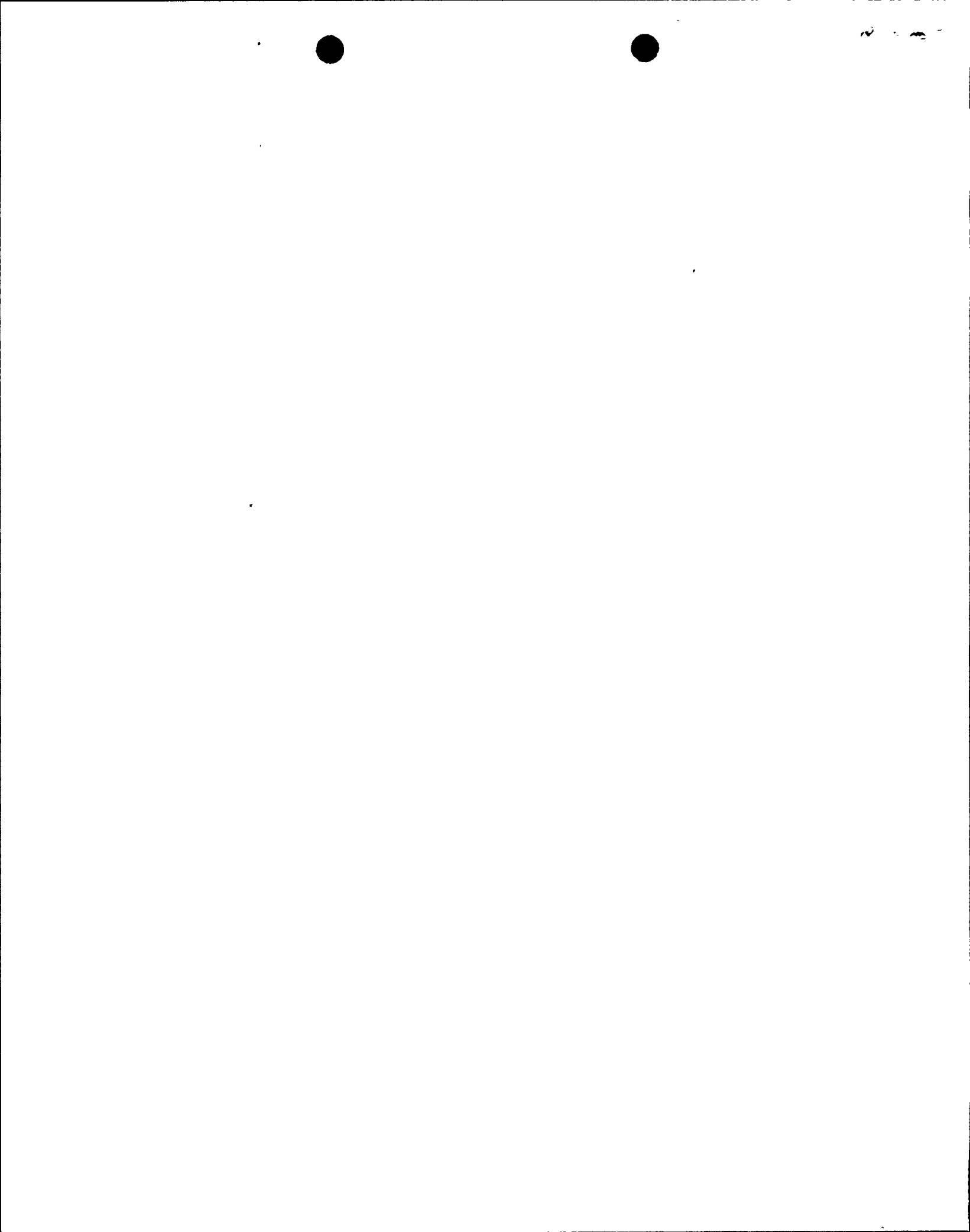
John Phillips, Esq.
Center for Law in the Public Interest
10203 Santa Monica Drive
Los Angeles, California 90067

David F. Fleischaker, Esq.
1735 Eye Street, N.W.
Suite 709
Washington, D. C. 20006

Arthur C. Gehr, Esq.
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

Bruce Norton, Esq.
Norton, Burke, Berry & Junck
3216 North Third Street
Suite 300
Phoenix, Arizona 85012

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



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

Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn.: Docketing and Service Section

William J. Olmstead, Esq.
L. Dow Davis, IV, Esq.
Edward G. Ketchen, Esq.
Lucinda Low Swartz, Esq.
Office of Executive Legal Director
BETH 042
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Richard B. Hubbard
MHB Technical Associates
1723 Hamilton Avenue, Suite K
San Jose, California 95125

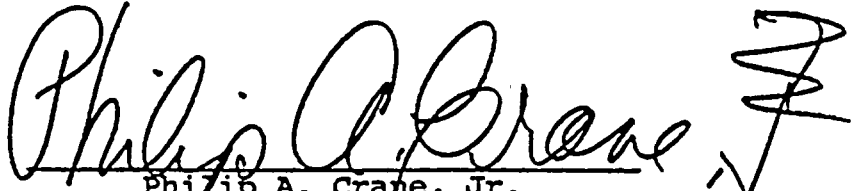
Harry M. Willis, Esq.
W. Andrew Baldwin, Esq.
Seymour & Willis
601 California Street
Suite 2100
San Francisco, California 94108

Mr. Carl Neiberger
Telegram Tribune
P. O. Box 112
San Luis Obispo, California 93402

Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Hill, Christopher & Phillips
1900 M Street, N.W.
Washington, D. C. 20036

J. Anthony Kline, Esq.
Legal Affairs Secretary
Governor's Office
State Capitol
Sacramento, California 95814

Byron S. Georgiou, Esq.
Deputy Legal Affairs Secretary
Governor's Office
State Capitol
Sacramento, California 95814


Philip A. Crane, Jr.
Attorney
Pacific Gas and Electric Company

Date: August 28, 1980

