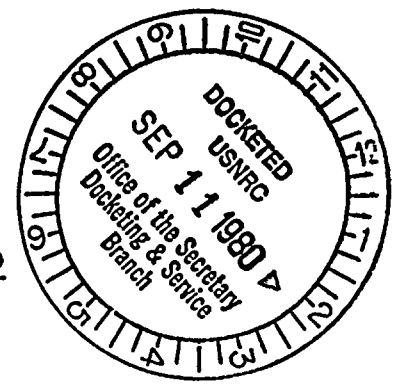


Sept 11, 1980

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 Nos. 50-275 OL
50-323 OL

RESPONSE OF GOVERNOR BROWN
TO THE ASLB ORDER DATED AUGUST 14, 1980

Governor Edmund G. Brown, Jr. hereby responds to this Board's Order of August 14, 1980, which afforded participants the opportunity to submit supplemental positions concerning PG&E's Motion to load fuel and to perform low power tests ("Motion").

Governor Brown respectfully urges this Board to dismiss summarily PG&E's Motion for the reasons set forth in the Governor's "Answer and Opposition" to PG&E's Motion, dated August 4, 1980. As set forth at length in the Answer and Opposition, the Motion fails to satisfy the requirements of Sections 2.730(b) and 2.732 of the NRC's Regulations. The Commission has mandated that Licensing Boards enforce these regulations strictly, and in the Indian Point case the Commission rebuked the Appeal Board for not adhering to this mandate. CCH Nuc. Reg. Reporter ¶¶30,120; 30,133. If the NRC's procedural regulations apply to PG&E -- and we

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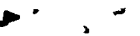
submit as a matter of law that they must -- then PG&E's Motion should be summarily dismissed.

Nothing in PG&E's Reply, dated August 28, 1980, refutes or weakens the soundness of the Governor's position. Indeed, to the contrary, PG&E's Reply itself underscores the validity of the Governor's position. Accordingly, we discuss briefly below the principal matters stated, and those significantly unstated, by PG&E in its Reply.

1. PG&E fails to address the Commission's Indian Point decision. However, there is no shelter from the compelling mandate of the Indian Point decision: motions which do not comply with Sections 2.730(b) and 2.732 must be summarily denied.

2. PG&E states: "the affidavit [which accompanies PG&E's Motion] permits the Board to accept the statements in the motion as affirmative evidence." (PG&E Reply, p.2.) PG&E's statement lacks merit. We, of course, recognize that a properly drawn affidavit -- unlike the pro forma document submitted by PG&E -- may be used to support assertions, but either the affidavit or the referenced material must contain supporting evidence. In the instant case, neither the affidavit nor the Motion contains any evidence whatsoever. (See Governor's "Answer and Opposition", pp. 8-10.)

PG&E's attempt to save its Motion by referencing collateral matters of record as its own "evidence" cannot be sustained. PG&E's "request" (PG&E's Reply, pp. 3-4) that a statement from the Staff's Safety Evaluation Report "be



incorporated in the record in support of the motion" is actually an admission that the Motion and affidavit are themselves devoid of evidence. In fact, when the affidavit references the Motion, one document with no evidence in it references a second document with no evidence in it. PG&E has simply failed to support its Motion as required by the NRC's Regulations.

3. PG&E's citation of the Commission's Statement of Policy (45 Federal Register 41738) is misguided and irrelevant to the threshold issue before this Board. Nowhere does the Commission's Policy Statement suspend Sections 2.730(b) or 2.732 of the NRC's Regulations. The applicability of those regulations to PG&E's Motion is the central issue here. PG&E's citation of the Policy Statement is simply off the mark.

4. Finally, PG&E mistakenly suggests that the Motion addresses all matters in controversy, as required by Section 50.57(c). In its Reply, PG&E still has not addressed the security and seismic issues which clearly are in controversy, both by Governor Brown and by Joint Intervenors. Indeed, given the facts (a) that full security safeguards are required for low power testing, (b) that the previous security findings in this proceeding were "vacated" and "set aside", and (c) that the security issue is now before the Appeal Board subject to de novo litigation, there is no possible legal basis for the grant of PG&E's Motion, even if the Motion were in compliance with Sections 2.730(b) and

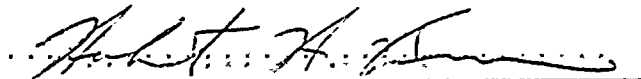
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2.732 of the regulations.

For the foregoing reasons, we respectfully reiterate our request that PG&E's Motion be summarily dismissed.

Respectfully submitted,

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September 11, 1980

