

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

PACIFIC GAS AND ELECTRIC)	
(Diablo Canyon Nuclear Power)	DOCKET NO. 50-275-OL
Plant Units 1 and 2)	50-323-OL

DATE: January 29, 1981 PAGES: 207 - 373

AT: Bethesda, Maryland



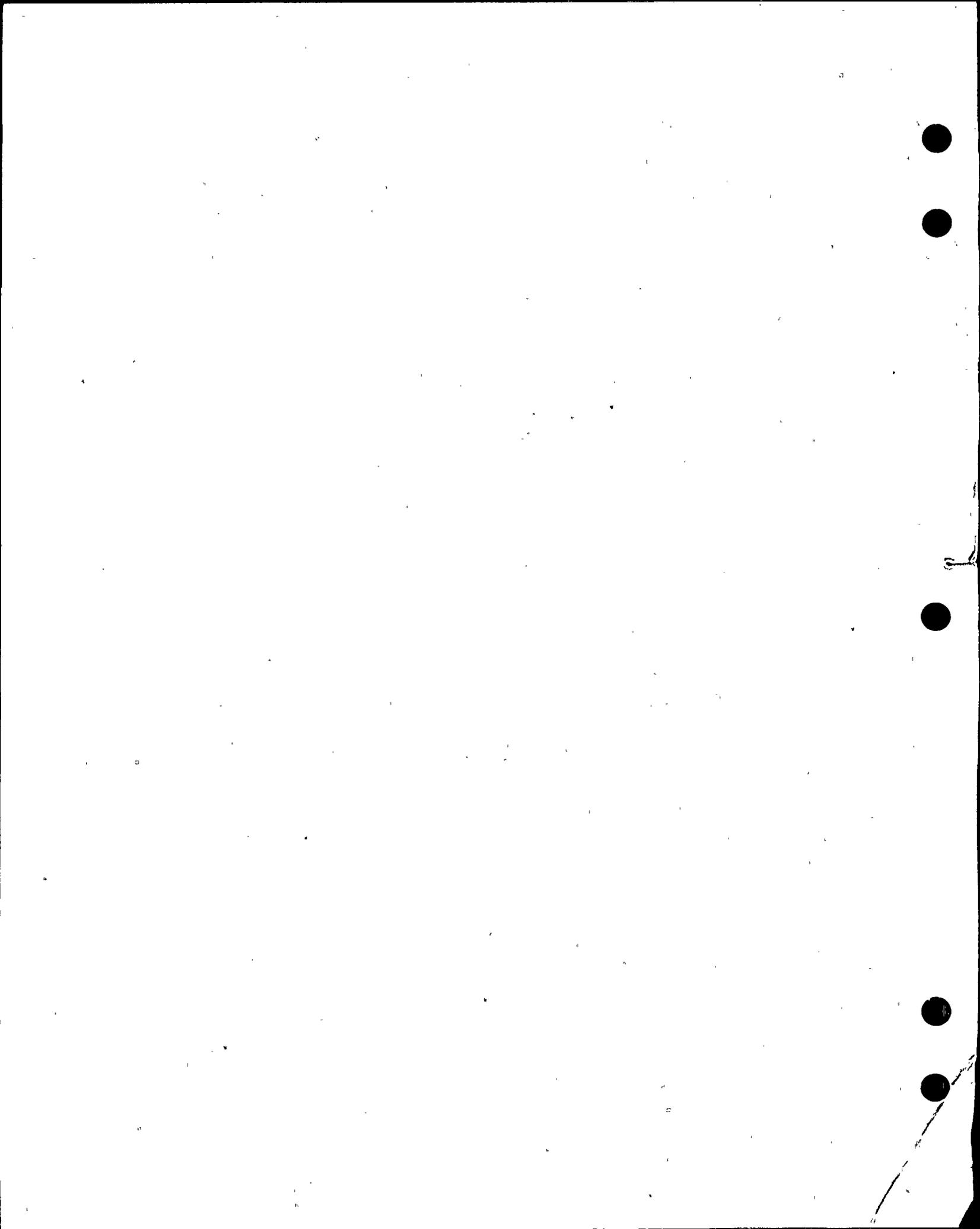
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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 THE ATOMIC SAFETY AND LICENSING BOARD

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4 In the matter of: :
5 PACIFIC GAS AND ELECTRIC COMPANY :
(Diablo Canyon Nuclear Power :
6 Plant Units 1 and 2.) :
7 - - - - - x

DOCKET NOS. 50-275-01
50-323-01

8 Nuclear Regulatory Commission
9 5th Floor Hearing Room
4350 East West Highway
Bethesda, Maryland

10 Thursday, January 29, 1981

11
12 The conference in the above-entitled matter
13 convened, pursuant to notice, at 9:04 a.m.

14 BEFORE:

15 ELIZABETH S. BOWERS, Administrative Judge
(presiding)

16 DR. JERRY R. KLINE, Administrative Judge

17 GLENN O. BRIGHT, Administrative Judge

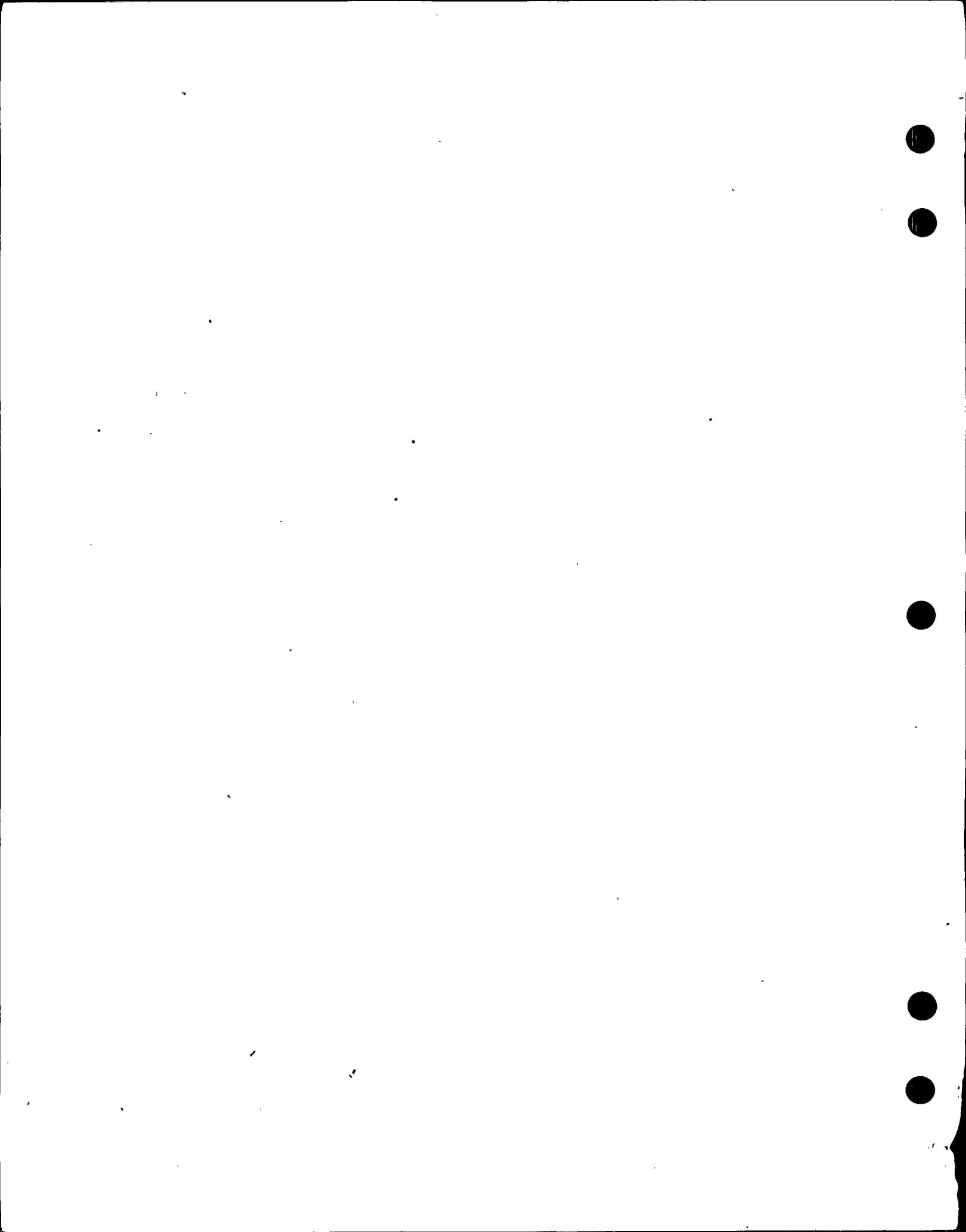
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P R O C E E D I N G S

1
2 JUDGE BOWERS: Are you ready to begin, Mr.
3 Reynolds?

4 MR. REYNOLDS: I am.

5 JUDGE BOWERS: We are on Contention Number 6; is
6 that correct?

7 MR. REYNOLDS: Yes, it is.

8 Contentions 6 and 17 deal with hydrogen
9 generation. 6 refers to the design capabilities of the
10 containment building, and 17 refers to the design of the
11 hydrogen control system. The nexus with TMI is essentially
12 that approximately 30 percent to 50 percent of the zirconium
13 cladding in the core reacted to form hydrogen. Some of the
14 hydrogen was released into the containment and exploded.
15 This exceeded the maximum assumption of 5 percent set forth
16 in the NRC regs by six to ten times.

17 I think the significance of it is that the core
18 damage or core melt accident could result in generation of
19 amounts of hydrogen which, if ignited, could exceed
20 pressures exceeding the containment design pressures. With
21 such an event is the potential for widespread release of
22 radiation.

23 There is no basis to conclude after TMI that the 5
24 percent limiting assumption contained in the regulations is
25 reasonable. That assumption was discredited at TMI.



1 Indeed, the Commission has imposed limits beyond those
2 prescribed in section 50.44 in the case of Sequoyah and D.
3 C. Cook plants. We believe that compliance with these
4 Contentions is necessary to assure the health and safety of
5 the public.

6 JUDGE BOWERS: Have you concluded?

7 MR. REYNOLDS: Yes.

8 JUDGE BOWERS: Mr. Norton.

9 MR. NORTON: Well, we would oppose both of these
10 Contentions. There is absolutely no showing, nor is there
11 any attempt at showing, that this is somehow a problem at
12 Diablo Canyon. There is nothing before this Board to so
13 indicate, and, in fact, the plants that Mr. Reynolds just
14 mentioned are different: They are ice condensor plants,
15 which Diablo Canyon is not.

16 JUDGE BOWERS: I am sorry, I should have checked
17 with Mr. Brown. Do you have a Contention in the hydrogen
18 area, Mr. Lanpher?

19 MR. LANPHER: No, ma'am.

20 JUDGE BOWERS: Mr. Olmstead.

21 MR. OLMSTEAD: Yes. The Staff objects to this.
22 These two Contentions on the ground, number one, that the
23 Contention should show a nexus between factual situation at
24 Diablo and the TMI requirement. There should be some
25 argument as to the compliance or noncompliance with the



1 regulatory requirements. And the Contentions just assert
2 that the Applicants failed to demonstrate something at this
3 stage of the proceeding, I think that is insufficient.

4 JUDGE BOWERS: Mr. Reynolds.

5 MR. NORTON: Excuse me, Judge Bowers. May I ask
6 for a clarification? One of the things I don't think we
7 have, I know we didn't cover with this one and I think we
8 have with the previous ones, is whether or not we are
9 talking about something that is required to be done under
10 NUREG-0737 or its precursor 0694. And I don't think there
11 is anything that is in 0694 that is now in 0737, so I think
12 we can put all of our attention to 0737.

13 But this particular one is not in 0737. And I
14 think that is of importance to this Board in deciding
15 whether or not to admit the Contention, and maybe we could
16 identify each one as we go as to whether or not it is an
17 0737 requirement, which this one is not -- or these two, I
18 should say, are not.

19 JUDGE BOWERS: We think it is important for the
20 record to show whether it is in 0737 or not.

21 MR. NORTON: All right.

22 MR. REYNOLDS: These two Contentions are
23 sufficiently specific to set forth exactly what we are
24 referring to, and I think the connection to TMI is
25 self-evident. Hydrogen generation was a recognized problem



1 at TMI. It was important to safety.

2 The objection that is raised by Mr. Norton is a
3 question of fact, which is more properly dealt with on a
4 motion for summary disposition. And if such a motion is
5 made, we will certainly be prepared to respond to that at
6 that time.

7 However, in terms of admission of the Contention,
8 it is not an appropriate argument. The same is true of the
9 staff's response. As far as connecting it to 0737.
10 Requirement 2.E.4.1 refers to dedicated hydrogen
11 penetration. That is a requirement dealing with this
12 subject area. Although it does not specifically contain a
13 requirement which we feel meets our two Contentions, it's
14 the same area and should go further. In other words, the
15 0737 requirement is not sufficient.

16 And 0694, 2.B.4, related to analysis of hydrogen
17 control, I did not find this in 0737, and it is not clear to
18 me why it is not in 0737. There is no statement one way or
19 another that I have discovered.

20 These two areas which I have just noted relate to
21 this area of hydrogen generation. They are in 0737 and
22 0694. They are insufficient to assure the safety of the
23 public, and pursuant to the policy statement, we have a
24 right to submit them as Contentions in this proceeding.

25 MR. NORTON: Mrs. Bowers, there were new matters



1 brought up, and that was the reference to 0737, which I have
2 turned to 2.E.4.1-1. And if one reads that and then looks
3 at the Contentions, they are not the same, first of all.

4 And secondly, even if there were, there have to be
5 allegations that somehow this is applicable to Diablo Canyon
6 by way of similar system, et cetera. There is no such
7 evidence to submit this as a Contention on that basis.

8 Mr. Fleischaker is right when he says that is a
9 factual matter. The fact is it is not the same. They are
10 different types of facilities. And he is absolutely correct
11 that that is a factual matter. That is the very point:
12 that the Intervenor must somehow support this Contention
13 with an affidavit that it is somehow related to Diablo
14 Canyon, that the issue is somehow related to Diablo Canyon.
15 And they fail to do so.

16 JUDGE BOWERS: Mr. Norton, we told the Intervenors
17 yesterday that at this stage in the proceeding it was not
18 necessary for them to have affidavits from technical people,
19 that argument could be made by counsel.

20 MR. OLMSTEAD: Judge Bowers, could I -- I would
21 like to respond to this, too, because it does concern me in
22 this particular area.

23 We pointed out in our response to their
24 Contentions that they were dealing with two different
25 systems. Now, I could have been more specific and said



1 Three Mile Island had external recombiners, Diablo Canyon
2 has internal recombiners. But these parties have been in
3 the proceeding a long time, they have the technical data
4 available to them, they've participated in the safety
5 hearings.

6 And I think at this point we can expect an
7 allegation of significant factual difference between the
8 technical reviewers of the staff and the Applicant and their
9 own reviewers before we admit a Contention, because I think
10 it is almost self-evident, if you look, for instance, at
11 NUREG-0694, 2.E.4.1, to which Mr. Reynolds referred, you
12 will find that it talks about external penetrations, which
13 is not applicable at Diablo Canyon.

14 And I think the Contention does have to be more
15 factually specific as to the disagreement between what the
16 Applicant has done in response to the TMI matters and its
17 relationship to the TMI accident and exactly what it is the
18 Intervenors expect to prove as a result of the Contention
19 they are putting forward. I do not think that general
20 Contentions are adequate at this stage in the proceeding.

21 MR. NORTON: Judge Bowers, to add to that, all you
22 have to do is read the policy statement, and it's very
23 clear. You know, you could just go through 0737 and list
24 every thing as a Contention. But the policy statement makes
25 it very clear that that is not what we should be doing



1 here. I do not think there is any argument about that.

2 There has got to be shown some relationship
3 between what is listed in 0737 and Diablo Canyon. You can't
4 just say, "Well, it's listed in 0737; therefore, we can make
5 a Contention out of it." There has got to be a
6 relationship.

7 JUDGE BOWERS: I think we made it clear that that
8 is our position, that we do want to see the nexus.

9 MR. REYNOLDS: And that is what I was certainly
10 attempting to do. The policy statement makes it very clear
11 that Intervenors have a right to challenge the sufficiency
12 of the 0737 requirements.

13 To the extent that 0737 deals with the question of
14 hydrogen control, I have noted two areas where it does deal
15 with it. We don't feel that those measures are adequate.
16 The objections which I have been hearing here relate to the
17 merits, and we will be perfectly happy to respond to those
18 at the appropriate time.

19 But I think the law is clear that the merits are
20 not to be considered in determining the admissibility of a
21 Contention. That is more appropriate for a motion of
22 summary disposition. And I would cite two cases: Alabama
23 Power Company 7 AEC 210, 1974; and the Mississippi Power and
24 Light Company 6 AEC 423, in which it was held that it is not
25 necessary for Intervenors to detail the evidence upon which



1 they intend to rely.

2 MR. FLEISCHAKER: Ms. Bowers, I just want to say
3 one thing, because I believe we are going to be getting into
4 the specificity thing, and I could see this coming from the
5 beginning. We are probably going to have this argument on
6 every Contention we have submitted, that our Contentions are
7 not sufficiently specific. And it is the staff and the
8 Applicant's intent to shut us out from the ability to
9 litigate these Contentions.

10 I will bet you that if you look at our Contentions
11 and you compare the two Contentions that have been admitted
12 in this proceeding, in most of the proceedings in which I
13 have been involved, you will find that these are
14 significantly more specific than Contentions that are, as a
15 general rule, admitted in proceedings before a Licensing
16 Board on applications either for construction permits, for
17 operating licenses, or for low-power tests.

18 What we have here is Mr. Norton and Mr. Olmstead,
19 lawyers, arguing technical facts. They are trying to
20 convince this Board that somehow their system at Diablo
21 Canyon is different from the one at TMI. That kind of
22 argument is appropriate for a motion for summary
23 disposition. If they are right, they can make their motion
24 for summary disposition, attach the affidavits of their
25 experts, and we will have to put that fact into contest in



1 order to litigate this issue.

2 But we are not here to decide motions for summary
3 disposition; we are not here to give evidence. We are here
4 to meet the specificity requirement of Contentions. And I
5 think that the tack that is being applied here is simply one
6 of making this Board apply a criteria which is -- the tactic
7 here is to try to shut us out by trying to apply a criteria
8 which has no application to the Contentions.

9 JUDGE BOWERS: Mr. Fleischaker, you didn't mention
10 the Allen Creek appeal board decision that came out last
11 spring, I think it was in April. A great many people think
12 that that broadened what was required for admissibility of
13 Contentions.

14 MR. FLEISCHAKER: Well, I am well aware of the
15 Allen Creek criteria, and all I can tell you is that I
16 believe we have met those criteria and these Contentions and
17 the kinds of factual, particular factual distinctions that
18 they are seeking to make us apply here are the kinds of
19 factual allegations that have to be sustained through
20 affidavits on motions for summary judgment.

21 JUDGE BOWERS: Maybe my use of the word
22 "broadened" was not appropriate. A great many people read
23 that as requiring less in the way of specificity than some
24 of the earlier decisions had required.

25 Well, can we go on to the next Contention?



1 MR. FLEISCHAKER: Let me just say this. I
2 believe, Ms. Bowers, that the purpose of the Contention is
3 to put the parties on notice as to what is to be litigated.
4 It is obvious that these two folks know what is going to be
5 litigated. They are sitting here making the kinds of
6 technical distinctions that only their project managers can
7 tell them about.

8 We have put the -- the purpose of the Contention
9 is not to litigate the fact, not to settle the factual
10 dispute. The purpose of the Contention is to set forth our
11 concern in a manner that puts them on notice. There ain't
12 nobody in this room that can argue that these folks ain't
13 got notice. They're sitting here making the kind of
14 technical distinctions that you would expect to be
15 litigated.

16 So these Contentions meet that fundamental
17 specificity requirement, and if they've got a problem, if
18 they think that their plants are different and that these
19 don't apply, fine. Do it with summary judgment and get
20 their affidavits in, and we will either have to cave or get
21 affidavits that put those facts into contest.

22 JUDGE BOWERS: You want to say something?

23 MR. OLMSTEAD: Judge Bowers, I do want to respond,
24 because I couldn't disagree more with everything he said. I
25 think I disagree more with him on this subject than anything



1 he's said in this prehearing conference.

2 Number one, this is not an Allen Creek situation.
3 This is not a preliminary test of Contentions prior to an
4 evidentiary record, prior to the issuance of a safety
5 evaluation in the typical case. Normally, you have a notice
6 of hearing, people have to identify the aspects they're
7 interested in and file the Contentions at a time in the
8 proceeding when all of the technical facts are not available
9 to them.

10 We are not in that situation here. We have had a
11 full record developed, and now the question is: How does
12 the policy statement and the rules apply to a record that is
13 complete? And we went through all that yesterday. The
14 Intervenors have a number of tests to meet in this
15 proceeding, which they cannot meet with Contentions that are
16 just directed to a section of the action plan. They have
17 got to meet a reopening-of-the-record standard. They have
18 got to show some nexus between the Contentions they
19 previously filed and the Contentions that they are starting
20 to put forward here. If they are attacking a rule, they
21 have to show why the special circumstances exist here to
22 attack that rule. They have not made those showings.

23 In addition, they don't want to address the three
24 things the Commission specifically asked them to address.
25 Furthermore, the Commission specifically stated in their



1 policy statement that they didn't want the entire action
2 plan litigated. If we were to use the test that Mr.
3 Fleischaker is suggesting to do, there is nothing that would
4 prevent them from going right down the action plan and
5 putting every single section of the action plan in
6 contention.

7 I think they have an obligation to do much more
8 than that. I think they have got to draw the nexus between
9 their prior case. I think they have to be aware of what the
10 design and construction and operation of Diablo, is based
11 on SER Supplement 10 and the Applicant's submittal. And I
12 think that they owe us a responsibility to point to a
13 specific system that they think doesn't meet the regulations
14 and tell us why.

15 I don't even view that as a factual statement that
16 a lawyer can not make. I think that they can be much more
17 specific than they've been here. And I don't think that
18 they can meet the reopening standard if they are not.

19 MR. FLEISCHAKER: Let me reply briefly.

20 First of all, the fundamental premise upon which
21 that argument is made is wrong.

22 MR. NORTON: Ms. Bowers, I am going to object. We
23 have argued this over and over and over. We argued it all
24 day yesterday periodically, and we are arguing it again this
25 morning. I would like to move on to the Contentions



1 individually. You know, this Board is going to have to rule
2 on these Contentions.

3 MR. FLEISCHAKER: Let me reply briefly, because I
4 think there was a misstatement which is important to
5 clarify.

6 JUDGE BOWERS: Well, be very brief, Mr.
7 Fleischaker.

8 MR. FLEISCHAKER: Mr. Olmstead, you indicated --
9 well, I think Mr. Olmstead indicated, Judge Bowers, that the
10 SER and all the items has been completed. Wrong. The SER
11 that has been done is the Supplement 10. Supplement 10 of
12 the SER only covers NUREG-0694. The December 10th policy
13 statement allows us to challenge beyond that list. So the
14 SER has not addressed any issue beyond the list that is in
15 0737 -- excuse me, 0694.

16 And that is a critical fact. And if you think
17 about it -- and I think it will be brought out later in this
18 proceeding -- the staff's entire position rests on the fact
19 that on December 18 the Commission put them over a barrel.
20 Essentially, what the Commission said to the staff is,
21 "Folks, you are going to have to litigate beyond the list
22 that is covered in Supplement 10 to the SER." And they are
23 not prepared to litigate beyond that list.

24 JUDGE BOWERS: Well, Mr. Fleischaker, I raised
25 this question yesterday, that Supplement 10 had come out



1 prior to 0737, but we do know in the response filing from
2 staff on the proposed Contentions and subjects, that the
3 staff addressed the requirements in 0737 in those December
4 filings, December 23, I think.

5 Can we go on to the next Contention?

6 MR. REYNOLDS: Contention 7 asserts that the
7 Applicant has failed to address adequately safety
8 considerations designated as high priority and/or high risk,
9 in Table B.2 of NUREG-0660.

10 The TMI action plan was developed as a response to
11 the Three Mile Island accident, and these particular
12 high-priority or high-risk items are of safety importance.
13 And that is self-evident from the fact that they were
14 designated as high priority and/or high risk in Table B.2.

15 We feel that a number of these are inadequately
16 dealt with -- and should be -- prior to issuance of a fuel
17 loading license.

18 MR. NORTON: Judge Bowers, we object to this
19 Contention for the reasons set forth in our response.
20 Additionally, there has been no attempt in either the filing
21 nor in the oral argument this morning to comply with page 8
22 or page 9 of the policy statement, nor any reopening
23 standards or anything else.

24 Also, as pointed out by the staff, no one knows
25 what they are talking about here in terms of what items.



1 What items are they talking about? One item, 50 items, 100
2 items? No one has any idea. Nor do they, I would submit.

3 JUDGE BOWERS: Governor Brown have a Contention in
4 this area?

5 MR. LANPHER: No, ma'am.

6 JUDGE BOWERS: Mr. Olmstead.

7 MR. OLMSTEAD: I would just add that the staff
8 does object to this Contention on the grounds of
9 specificity. We also feel that they have not met the
10 standards set forth in the Commission's policy statement
11 with regard to this Contention. And these items are not in
12 NUREG-0737 designated by the Commission as a proper and
13 appropriate response for TMI issues.

14 JUDGE BOWERS: Mr. Reynolds.

15 MR. REYNOLDS: I am prepared to specify
16 approximately ten items which we are particularly concerned
17 with, if the Board is interested in hearing those items.

18 JUDGE BOWERS: Why didn't you do that when you
19 make your first presentation?

20 MR. REYNOLDS: Well, we, in reading the responses,
21 found the objection that they were not specific. So at that
22 time, I did go and make a list of those particular items
23 that we are concerned about.

24 JUDGE BOWERS: Well, I mean today when you made
25 your first presentation, rather than bringing it up on



1 rebuttal?

2 MR. REYNOLDS: I could have easily done that.

3 Okay. The first item -- and these are taken from
4 the TMI action plan -- 1.A.2.1, 2.B.1, 2.B.2, 2.B.3, 1.C.8,
5 2.E.1.1, 2.E.4.2, 3.A.3.1, 3.B.2, 3.A.3.3, 3.D.3.4,
6 1.A.2.3.

7 MR. OLMSTEAD: Excuse me. I didn't catch that.

8 MR. REYNOLDS: I am sorry. 3.D.3.4, 1.A.2.3,
9 2.B.7, and 2.E.3.3.

10 There is no explanation as to why these are not
11 dealt with in 0737. They should be dealt with. They are
12 issues of high priority and safety significance.

13 What I mean by that is they are given a high-point
14 allocation by the staff in NUREG-0660.

15 JUDGE BOWERS: Well, since this new information
16 came upon your response we will give Mr. Norton and Mr.
17 Olmstead an opportunity to respond if you want to.

18 MR. NORTON: It suffers from the same defects as
19 the Contention. Just by listing ten items, it still doesn't
20 tell you -- they just say, "It's inadequate." Well, is it
21 relevant to a low-power test motion? Is it relevant, is
22 there a nexus between what happened at TMI and at Diablo
23 Canyon? None of those criteria have been met, so nothing
24 has changed other than the fact that we now have ten
25 specific things that I don't know what they are because I



1 couldn't keep track of those numbers and the table is many,
2 many pages long. But none of the requirements have been
3 satisfied by a listing of those ten items.

4 JUDGE BOWERS: Mr. Olmstead?

5 MR. OLMSTEAD: Well, I just quickly wanted to look
6 and see what we were referring to. And the first one I came
7 to -- I am not sure which table they are in, but if I look
8 at Table 10, Priorities and --

9 MR. REYNOLDS: Excuse me. Table B.2.

10 MR. OLMSTEAD: Okay. Well, that makes a big
11 difference.

12 MR. REYNOLDS: I believe that is specified in the
13 Contention.

14 MR. NORTON: Excuse me. I have a real problem
15 with NUREG-0660 Table B.2, because as finally issued, I
16 don't believe it's in there. And I would like to see it.

17 MR. REYNOLDS: It is in there. I beg to differ
18 with you.

19 MR. NORTON: Could I see it? I don't have it, so
20 I am having trouble following you, because I have Table 1
21 also, which is what we thought you were referring from. We
22 would like to see the final issue because of 0660 and Table
23 B.2, because, frankly, we don't have it.

24 MR. REYNOLDS: We have the revised August 1980
25 version of the TMI action plan.



1 MR. NORTON: And do you have the final NUREG-0660?

2 MR. REYNOLDS: Yes..

3 MR. NORTON: And could we see Table B.2?

4 MR. OLMSTEAD: If I might point out, I am looking
5 at Table B.2, Decision Group A, 1.A.2.1, which is the first
6 item that Intervenors are arguing is not in just NUREG-0737,
7 and it is entitled "Immediate Upgrading of Operator and
8 Senior Operator Training and Qualifications." And that is a
9 subject covered in NUREG-0737.

10 So if that pattern holds true with some of the
11 others, I still am at a loss to understand --

12 MR. REYNOLDS: Excuse me. Is that dealt with in
13 Supp 10, the SER?

14 MR. OLMSTEAD: I would assume so, but just a
15 minute.

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1 MR. NORTON: Judge Bowers, for the record, volume
2 2 of NUREG-0660, dated May 1980, has an introduction, which
3 I might quote from very briefly. It says:

4 "The tables included in this volume list the
5 recommendations from the various organizations and task
6 forces investigating the accident at Three Mile Island. The
7 tables are annotated to provide easy references to the
8 associated parts of the action plan in volume 1. The tables
9 are also annotated to provide a shorthand indication of how
10 the various recommendations are treated in the action plan.
11 The explanation of those notations are provided at the
12 beginning of each table.

13 "This volume also includes a point by point
14 comparison of the items in volume 1 with the President's
15 statement of December 7th, 1979, in response to the
16 recommendations of the President's Commission. This volume
17 also contains a point by point response to the comments on
18 draft two of the plan by the AIF, including a description of
19 where and how the plan was changed as a result of those
20 comments.

21 "Finally, the volume contains a cross-reference of
22 the action plan to the Commission actions, a major NRC staff
23 paper on operator qualifications and licensing."

24 As I understand it, there were three or four
25 issues in NUREG-0660, all of which were, quote, "final," end



1 quote, but there were further finals. So I am not at all
2 clear whether everybody's looking at the same table or not.
3 I think there is some confusion, at least in my mind, as to
4 what we are referring to.

5 And I want to make sure that the numbers that were
6 given by Mr. Reynolds are properly identified as to units,
7 specifically which document, which version of it we are
8 talking about.

9 MR. OLMSTEAD: I think if the Board will look on
10 page 1.A-7 of sub 10, they will find a paragraph labeled
11 1.A.3.1, which incorporates 1.A.2.1, which is the paragraph
12 referred to here. And if you look at the subject matter of
13 what is addressed there, you will find that it does deal
14 with upgraded training.

15 MR. REYNOLDS: Excuse me. Could you tell me the
16 page.

17 MR. OLMSTEAD: 1.A-7.

18 JUDGE BOWERS: I think we do have a problem that
19 Mr. Norton identified. We want to make sure that the
20 version --

21 MR. REYNOLDS: Let me just tell you exactly what I
22 am looking at.

23 MR. NORTON: I am looking at one that does have a
24 Table B.2, which Mr. Lanpher was kind enough to give me.
25 And it says, "Date Published, May 1980." I hope that is the



1 same one you are looking at.

2 MR. REYNOLDS: I have NUREG-0660, on the title
3 page of which it says, "Date Published, May 1980, Revised
4 August 1980."

5 MR. NORTON: The one I'm looking at doesn't say
6 "Revised August 1980," but it does have a Table B.2 in it,
7 and that is the problem. This action plan, as I understand
8 it, was revised a number of times. And I am not sure that
9 the final one has a Table B.2 in it. I am still not sure of
10 that, because I've got one later than you have got.

11 MR. REYNOLDS: As far as I know, and I could be
12 mistaken, this is the most recent version of the action
13 plan.

14 MR. FLEISCHAKER: What we can say is that this is
15 the one that was sent to us on the distribution list by the
16 NRC, and we have identified it as precisely as we can.

17 JUDGE BOWERS: Could the staff comment?

18 MR. OLMSTEAD: Judge Bowers, the problem is that
19 we ought not to get into fights over which revision is
20 which. The Commission has designed 0737. Everybody knows
21 what 0737 is.

22 If what the Joint Intervenors want to do is go
23 find out if there is something in the action plan that has
24 not been adequately incorporated into 0737, they have an
25 obligation to take us through that analysis and show us why



1 the discussion in the sub 10 in the Applicant's submittals
2 related to TMI-related requirements are not sufficient.

3 I don't think it should be up to us to have to go
4 back and chase it down and find out that it is indeed
5 covered in some paragraph of the SER. I don't think that
6 they can pick up just any old document, find something that
7 on the surface of it appears not to be treated, and allege
8 that it hasn't been treated and therefore that ought to be a
9 factual contention, because it is obvious that they don't
10 know anything about it.

11 JUDGE BOWERS: Mr. Reynolds?

12 MR. REYNOLDS: I think we are again getting into
13 the merits of the situation. And what we have done, we have
14 set forth the contention, we have set forth the exact
15 provisions in Table B-2 which we were concerned with. If
16 Mr. Olmstead feels that it is dealt with, then that is
17 properly put forward on a motion for summary disposition,
18 which we will respond to.

19 MR. NORTON: Excuse me, Judge Bowers. I am a
20 little concerned. If I understand Joint Intervenors'
21 position correctly, they could allege as a contention --
22 obviously, that would be disposed of by summary disposition
23 -- that my wristwatch somehow interferes with proper
24 operation of Diablo Canyon.

25 I think that is what they are telling this Board,



1 that they have the right to submit that as a contention, but
2 they don't have to do anything further than that. That's
3 very specific: Bruce Norton's wristwatch will interfere
4 with the safe operation of Diablo Canyon, very specific.
5 And that the only way that we can get rid of that is by a
6 motion of summary disposition, by an affidavit that that
7 just isn't so, and they are going to have to come up with
8 evidence that it is so.

9 If I understand their position, that is their
10 position. And I would like a clarification, because if
11 indeed that is their position I would like to know that. I
12 really hear that as what they're saying.

13 MR. REYNOLDS: That is not what we are saying. We
14 are clearly bound by the Commission's studies and statements
15 with respect to Three Mile Island.

16 This contention is based entirely on the TMI
17 action plan. Mr. Norton's wristwatch is not in the TMI
18 action plan and we certainly wouldn't submit any contention
19 with respect to that.

20 MR. NORTON: That's a very interesting
21 clarification of their position. I appreciate it.

22 JUDGE BOWERS: Well, let me ask. If I understood,
23 Mr. Reynolds, you are saying that something that was in 0660
24 was dropped and not in 0737; is that correct?

25 MR. REYNOLDS: A number of these things are not in



1 0737. As Mr. Olmstead has pointed out, there may be one or
2 two which are dealt with very briefly in sub 10 and are
3 listed in 0737. But again, that goes to the adequacy with
4 which they are dealt.

5 As Mr. Fleischaker is pointing out, the Commission
6 in its policy statement has specifically permitted us to go
7 beyond 0737, and all they have required is that we meet the
8 three-part test. In showing the nexus, we have directed it
9 to the action plan.

10 These are given high point allocations by the
11 Commission. That is why we are concerned with them. They
12 wouldn't be given such high point allocations if the
13 Commission didn't feel they were important to safety. That
14 deals with the significance of the question.

15 JUDGE BOWERS: Can we go into the next contention,
16 Mr. Olmstead?

17 MR. OLMSTEAD: I will get to comment on that at
18 another point. But I would point out, Vermont Yankee
19 settled a long time ago that you didn't just throw
20 contentions out on the record, that there ought to be some
21 colorable argument that required reasonable minds to inquire
22 further. And I just don't hear that. I don't even hear
23 them meeting that, much less the standard for reopening the
24 record.

25 JUDGE BOWERS: We'd like to go on to the next



1 contention.

2 MR. REYNOLDS: Contentions 8 and 9 focus on the
3 systems for forced cooling. I think they are somewhat
4 self-explanatory. They explain their connection with the
5 Three Mile Island accident and the demonstration that a
6 reliable method of forced cooling is essential to safety.

7 This is basic to the defense in depth principle,
8 in that it is necessary not only to have an adequate
9 emergency core cooling system, but also an adequate primary
10 cooling system to reduce the need to resort to the emergency
11 core cooling system. Indeed, one of the lessons learned at
12 TMI was that challenges to the ECCS should be reduced.

13 The failure to demonstrate a reliable forced
14 cooling method, even with the occurrence of two-phased flow
15 and voids such as occurred at TMI, threatens the public
16 health and safety and violates GDC-34 and 35.

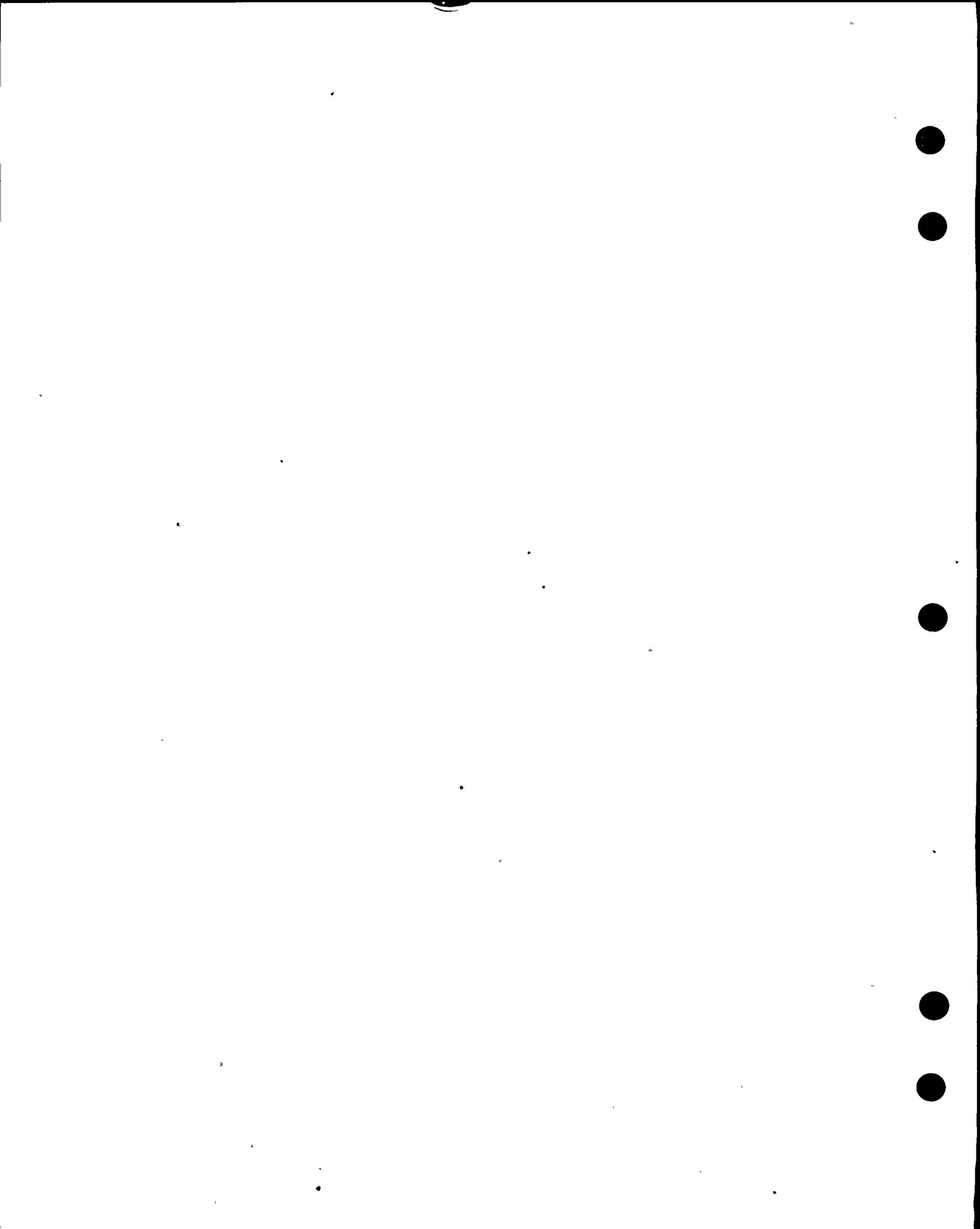
17 MR. NORTON: Our response to that is, first of
18 all, may we ask Mr. Reynolds to identify whether this is a
19 0737 issue or not?

20 MR. REYNOLDS: There are three provisions of 0737
21 which relate to this issue: 1.C.1, 1.G.1, and 2.D.1.

22 MR. NORTON: Could we have a repeat on those?

23 MR. REYNOLDS: 1.C.1, 1.G.1, 2.D.1.

24 MR. NORTON: Judge Bowers, I guess my problem is,
25 I'm not sure, is it being alleged that we don't comply with



1 those three sections of 0737, or is it that the word
2 "cooling" appears in those sections of 0737? That is my
3 problem. In other words, I don't know what I'm responding
4 to here.

5 MR. REYNOLDS: Again, these three provisions of
6 0737 relate to the area of concern. Whether or not they
7 specifically require what is in these contentions in our
8 opinion is not the issue, because based on the policy
9 statement we have the right to go beyond those where we can
10 demonstrate a nexus to TMI and the significance of the
11 issue.

12 MR. NORTON: Maybe I have a problem with the nexus
13 of the issue to the TMI-2 accident. I assume that what Mr.
14 Reynolds is arguing is that all he has to do is somehow say
15 this was somehow involved with TMI.

16 With all of the studies that have been done and
17 all the plans that have been written and all of the
18 recommendations and so on and so forth, it is hard to
19 imagine anything that isn't arguably somehow related to
20 TMI. I don't think that is what the Commission has in mind
21 when it says nexus.

22 I think what they are talking about, in addition
23 to that, is how that relates to Diablo Canyon. It has got
24 to somehow be related to Diablo Canyon. And that is what I
25 have not heard anything about, how any of this has anything



1 to do with Diablo Canyon.

2 Again, for the same reasons as for the prior
3 contentions, there has been no showing under pages 8 and 9
4 of the policy statement or motion to reopen standards as to
5 how this issue should properly be before the Board. I
6 frankly see it as an attack, very frankly, on regulations
7 that were pre-existent to TMI.

8 There is no allegation here that we do not comply
9 with 0737 or 0694, simply allegations that we don't comply
10 with regulations that were in existence at the time the
11 safety and seismic hearings were held several years ago. I
12 don't see anything different. I don't see why they could
13 not have litigated this in 1977 or 1978.

14 They are talking about 10 CFR Part 50, Appendix A,
15 50.55-AH, et cetera. Those issues could well have been
16 litigated prior to this time.

17 MR. LANPHER: Judge Bowers, Governor Brown has a
18 subject related to Joint Intervenors' Contention No. 8, and
19 so if I might be heard.

20 JUDGE BOWERS: Go ahead.

21 MR. LANPHER: Governor Brown's issue 5 raises the
22 issue of whether one additional test or a different set of
23 tests needs to be run at Diablo Canyon, namely tests to
24 demonstrate the capability of the Diablo Canyon facility to
25 cool using two-phase natural circulation, in other words



1 where there is a high void fraction.

2 This is specifically discussed in the SER Supp 10
3 at page 1.G-3, where it is noted that PG&E has opposed
4 natural circulation tests in the two-phased state. This is
5 also -- well, it is not specifically discussed, but the
6 question of what tests for natural circulation should be run
7 by Applicants is raised in NUREG-0737, Part 1.G.1, which Mr.
8 Reynolds previously discussed.

9 I believe the nexus to TMI is very clear with
10 respect to two-phased natural circulation cooling at TMI.
11 There was a two-phased situation, the operators were not
12 able to recognize it immediately, and once it was recognized
13 or suspected they were not able to establish two-phased
14 natural circulation.

15 There have been a lot of studies since TMI which
16 in theory demonstrate that two-phased natural circulation
17 may be successful. However, to my knowledge it has never
18 been demonstrated in any pressurized water reactor.

19 The question which is raised, I believe, in the
20 SER at the page I gave and which we raise now is whether one
21 of the tests which PG&E should be required to perform is to
22 demonstrate that Diablo Canyon can operate with two-phased
23 natural circulation cooling.

24 JUDGE BOWERS: Mr. Norton, do you want to respond
25 to that?



1 MR. NORTON: Let Mr. Olmstead go ahead.

2 MR. OLMSTEAD: Okay. We object to these on a
3 number of grounds, both the Governor's subject area number 5
4 and Intervenors' contentions 8 and 9.

5 Number 1, Intervenors did not have a contention
6 that I was able to find in the prior proceeding relating to
7 this subject area. So consequently, we feel the
8 Commission's policy statement requires them to meet the
9 late-filed contention requirement as well as the reopening
10 the record requirement.

11 Secondly, as to Joint Intervenors contentions 8
12 and 9, I am unable to understand exactly what it is they are
13 contending, because there are a number of tests at Diablo
14 Canyon.

15 As far as Governor Brown's subject 5, it is clear
16 that he is arguing for an additional two-phased cooling
17 test, and in that case is going beyond the requirements of
18 NUREG-0737, and that requires some particular showing to be
19 made, which I don't think his argument makes.

20 In addition, the Governor, in our view, if he is
21 not going to meet the late-filed contention requirements of
22 2.714, is not going to meet the showing of reopening of the
23 record, is not going to meet the showing under 2.758 on a
24 challenge to the regulations, then he has got to participate
25 on the Intervenors' contentions and suffers the same defect



1 that they suffer, in that there is no prior contention on
2 this subject matter.

3 JUDGE BOWERS: Well, Mr. Norton waived his time
4 for Mr. Olmstead. But let me go back to you, Mr. Norton,
5 for following Mr. Lanpher's presentation.

6 MR. NORTON: Mr. Olmstead has stated it very
7 accurately. Both parties here seem to feel they don't have
8 to meet any of these tests to reopen the record or for
9 late-filed contentions and so on. They just seem to think
10 that they can raise any issue they want to raise. And we
11 again oppose it on the basis of Mr. Olmstead's statement.

12 JUDGE BOWERS: Mr. Reynolds?

13 MR. REYNOLDS: In response to Mr. Olmstead, I
14 would note again in contention 8 the line particularly with
15 regard to two-phased flow and with voids such as occurred at
16 TMI-2. That I think bears directly on the point which Mr.
17 Lanpher raised.

18 In response to Mr. Norton, it seems that PG&E does
19 not want to deal with the TMI accident. One of the critical
20 things that was learned there was that an adequate and
21 reliable cooling system was important to safety.
22 Particularly this is demonstrated by the fact that the
23 reactor coolant pumps had to be turned off because they
24 could not handle the two-phased flow. That was a
25 significant contributing factor to the accident which



1 occurred there.

2 The policy statement gives us right, again, to
3 challenge the sufficiency of 0737 requirements if we can
4 demonstrate a nexus with TMI and the significance of the
5 issue. We feel that we have done so on this, on these two
6 contentions.

7 JUDGE BOWERS: Let's go on to number 10 -- well,
8 Mr. Lanpher?

9 MR. LANPHER: Well, let me just ask a question of
10 clarification first of all, Judge Bowers. The reason that I
11 stepped in here was, since we had an issue on the same
12 subject, I thought when we got around to Governor Brown's we
13 won't have to go through the same ones again. So I hope
14 that I'm entitled to a short rebuttal also, and we won't
15 have to cover it later; is that correct?

16 JUDGE BOWERS: Yes.

17 MR. LANPHER: First of all, Mr. Olmstead stated
18 that this two-phased natural circulation test is not
19 required by 0737 unless we're going beyond the requirements
20 of 0737. I believe something to that effect was stated.
21 0737 does not specify the particular tests which applicants
22 for a fuel-loading license need to carry out. And indeed,
23 in SER Supp 10 the staff makes clear that other applicants
24 for fuel loading, for instance at Sequoyah, had different
25 tests than what are being carried out or being proposed by



1 PG&E.

2 So it is not correct to say that 0737 specifically
3 sets forth the particular tests which have to be carried
4 out. There is some discretion here on PG&E's part. They
5 articulated, I'm sure, to the NRC why they wanted to carry
6 out certain tests.

7 We don't have a specific requirement here that you
8 have to do -- I think they proposed seven tests -- that
9 these seven tests are set forth in black and white and have
10 to be done. These are the tests which PG&E proposed.

11 Our position is that there is an additional test
12 which has a clear nexus to TMI and which ought to be carried
13 out.

14 JUDGE BOWERS: We would like to go on to 10.

15 MR. REYNOLDS: Joint Intervenors contentions 10
16 and 11 relate to the pressurizer heaters. To some extent,
17 that is related also to the discussion we just had under 8
18 and 9, so I won't go into again the importance of
19 maintaining coolant flow to remove decay heat.

20 Both forced and natural circulation require
21 maintenance of a high pressure level to prevent boiling,
22 which could lead to a loss of coolant accident. Cooling is
23 important to safety to prevent core damage. Accordingly,
24 the pressurizer heater should be safety-grade. This again
25 is important to the defense in depth principle and to the



1 reduction of challenges to the emergency core cooling .
2 system.

3 NUREG-0578 at page A-2 makes the explicit
4 connection between the TMI-2 accident with the need to
5 maintain pressure through the use of the pressurizer
6 heaters. Reg Guide 1.139 recognizes the safety function of
7 systems and equipment necessary to maintain cooling and hot
8 standby conditions.

9 According to Commission policy in assessing
10 adequacy of plant design, only those systems that meet
11 general design criteria can be assumed to function.
12 Therefore, if a system or component is needed to prevent or
13 mitigate an accident, it must be safety grade. We contend
14 that the pressurizer heaters should be safety-grade.

15 With respect to contention 10, I think our focus
16 is the failure to demonstrate that by connecting the
17 pressurizer heater to the onsite power supply the onsite
18 power supply will not be degraded in any way, such as that
19 supply will not meet the single failure criterion.

20 JUDGE BOWERS: Mr. Lanpher, do you have a subject
21 in this area?

22 MR. LANPHER: No, ma'am.

23 JUDGE BOWERS: Mr. Norton?

24 MR. NORTON: Again, may we ask Mr. Reynolds to
25 identify whether or not this is a 0737 requirement?



1 MR. REYNOLDS: 0737, 2.E.3.1 refers to emergency
2 power for pressurizer heaters.

3 MR. NORTON: Maybe I'm looking at the wrong
4 document. I'm looking at NUREG-0737, and it's Roman numeral
5 III.3-1-1, and it's on page 3-85, that's entitled "Emergency
6 Power Supply for Pressurizer Heaters."

7 MR. REYNOLDS: I'm looking at page 2-6. Ah,
8 you're looking at the clarification. I'm looking at the
9 actual table.

10 MR. NORTON: Now may we ask, Judge Bowers, whether
11 it is the Joint Intervenors' position that we have not
12 complied with the requirements of NUREG-0737, specifically
13 Roman numeral II.3.1, as contained in enclosure 2, or is it
14 their position that we have said we don't have to comply, or
15 what? What is their position?

16 JUDGE BOWERS: Could you respond, Mr. Reynolds?

17 MR. REYNOLDS: Under contention 10, our concern is
18 that the pressurizer heaters be classified as important to
19 safety. 0737 does not require that. We feel that it should
20 require it because, as TMI demonstrated clearly, pressurizer
21 heaters and the need to maintain pressure is important to
22 safety. We challenge the sufficiency of 0737's
23 requirement.

24 MR. NORTON: Excuse me, Judge Bowers. I wish Mr.
25 Fleischaker would do this instead of Mr. Reynolds, because



1 Mr. Fleischaker is sitting there telling Mr. Reynolds what
2 to say and it's taking twice as long while Mr. Reynolds
3 listens to Mr. Fleischaker.

4 MR. REYNOLDS: I don't think it is entirely
5 accurate. But I do think it is appropriate for Mr.
6 Fleischaker, if he has something to add, to be able to
7 communicate it.

8 JUDGE BOWERS: We have seen this over and over
9 again, a senior assisting a junior in these matters, and it
10 is appropriate. You're a little bit loud, though, Mr.
11 Fleischaker. That is why it's not necessary for Mr.
12 Reynolds to repeat.

13 MR. NORTON: All right. We would like to respond,
14 then, because it is now clear that this is an attack on the
15 sufficiency of 0737. We would respond that they have not
16 met the criteria set forth in the policy statement of the
17 Commission to set forth a contention. And I am not going to
18 go through the 2.714 motion to reopen and everything each
19 time, but that is the gist of it.

20 JUDGE BOWERS: Mr. Lanpher, do you have
21 contentions? Mr. Olmstead?

22 MR. OLMSTEAD: Yes. As I have been tracking
23 along, I must admit the last couple of days I have felt a
24 little bit guilty because I thought maybe there was some
25 misunderstanding of the staff's position on all of this



1 business of reopening the record and having prefiled the
2 contentions.

3 But as I read our response to these contentions, I
4 set that out in specific detail, that we thought they ought
5 to meet the showing required to show the nexus of TMI to
6 Diablo, namely how this issue is relevant, the significance
7 of the issue, the difference between Intervenor's position
8 and the Commission rationale.

9 And then we went on to point out that they did not
10 have a prefiled contention here. We thought that they ought
11 to make an argument as to why a late-filed contention must
12 be met. And we pointed out that since the issues didn't
13 fall within the scope of it, they had to go into 2.714-A.

14 I have not heard any of those arguments with
15 regard to any of these contentions, and I don't think they
16 have made that showing.

17 MR. REYNOLDS: Again we come down to what seems to
18 be the fundamental question here for the past few days, what
19 does the policy statement mean. It seems very clear to us
20 that it means that the Commission will permit us to
21 challenge the sufficiency of the 0737 requirements.

22 Based on TMI, the Commission determined that
23 existing regulations were inadequate. They then issued 0737
24 as a supplementary requirement. The policy statement issued
25 of December 18th explicitly gives Intervenor's the right to



1 challenge the sufficiency of those requirements.

2 These two contentions and a number that we have
3 discussed before are directed to that explicit language in
4 the policy statement.

5 MR. NORTON: Judge Bowers, I agree 100 percent
6 with what Mr. Reynolds just said. However, he ignores the
7 second half of what the Commission said, and that is what he
8 must do in order to challenge the sufficiency of those
9 requirements. No one has said he doesn't have the authority
10 or -- excuse me -- the ability to challenge the sufficiency
11 of those requirements. But he has to do it in a certain
12 manner, and they are choosing to ignore that on each one of
13 these contentions.

14 Frankly, they also have not addressed anything as
15 respects the question of low power versus full power. They
16 have never addressed that question at all.

17 MR. REYNOLDS: By definition, all these
18 contentions relate --

19 MR. NORTON: Excuse me, Judge Bowers. I believe
20 I'm addressing the bench.

21 Perhaps we could speed this up by having them
22 categorize which ones they are challenging the sufficiency
23 of, which numbers are in that category, and making one
24 argument, as opposed to doing it over and over and over and
25 over. I submit that to Joint Intervenors as a way to speed



1 this up, because I think it is very clear what their
2 position is.

3 It is of course up to them whether they want to go
4 one by one. But if indeed they are, for those that they are
5 challenging the sufficiency of the contention's requirements
6 under NUREG-0737, that just seems to me to be one
7 contention, although it may have many subparts, and it
8 really doesn't make sense to argue each of those subparts if
9 indeed that is their position. And they have the right to
10 do so, period.

11 MR. REYNOLDS: Judge Bowers, what I've been
12 attempting to do is to address both the considerations which
13 Mr. Norton raises and those in the three-part test.
14 Frankly, as I stated yesterday, we are somewhat baffled by
15 point C of the three-part test and have a little trouble
16 dealing with it.

17 In terms of the nexus, though, all of these
18 contentions are derived from what occurred at TMI. And in
19 terms of the significance, they are important to safety.
20 They were significant contributing factors at TMI, and that
21 in itself demonstrates their significance.

22 Now, in terms of just pointing out, categorizing
23 which ones challenge the sufficiency, I'd be willing to do
24 that on the one hand. On the other hand, that would make it
25 very difficult to address that three-part test.



1 MR. NORTON: Excuse me. Judge Bowers, yesterday
2 Joint Intervenors argued that they had problems with C and
3 they are arguing that again today. And yet, they have
4 NUREG-0660, which specifically at the beginning of each
5 section sets forth the Commission's rationale. That is the
6 rationale the Commission is talking about.

7 I don't understand what the problem is in
8 identifying that. They have the document, obviously.

9 MR. FLEISCHAKER: I will just say this one thing,
10 since we touched on it yesterday. The comments at the
11 beginning of each section are fairly general. Our problem
12 is that we have been unable to find a Commission rationale
13 with respect to each of the individual items that we are
14 listing here.

15 We understand what the general scheme was, that is
16 that the Commission considered a number of factors,
17 including importance to safety, ease of implementation, cost
18 and staff resources, Applicant resources. But with respect
19 to the individual items that we raise in individual
20 contentions, if we go to the Commission documents we find
21 nowhere a statement as to why that item was not included in
22 0737. And unless we find that, we cannot respond to it.

23 If either Mr. Norton or the staff can find that,
24 we will be happy to respond point by point.

25 And as for the matter of proceeding, we would just



1 as soon continue one contention at a time. We think we can
2 keep on moving as it becomes more repetitious, I believe.

3 JUDGE BOWERS: We don't want to hear the same
4 philosophical argument on each contention that we have been
5 hearing.

6 Now, have we concluded?

7 MR. NORTON: Excuse me, Judge Bowers. Can we have
8 an objection which I made in response, and I think Mr.
9 Olmstead made in response to the last two, which were
10 contentions 10 and 11, which is called the sufficiency
11 objection by Applicant and the staff. And we can simply say
12 that and it will be the same one each time. I mean, I just
13 don't want to go through that each time, that's all. Is
14 that okay? We will call it our sufficiency objection, if
15 you will, and then we won't have to make that speech each
16 time.

17 JUDGE BOWERS: We will take official notice of
18 your sufficiency objection.

19 MR. LANPHER: Judge Bowers, Mr. Lanpher here.

20 JUDGE BOWERS: Yes.

21 MR. LANPHER: I guess I understand what the
22 sufficiency objection is. It seems to be more logical just
23 for you to take notice that we spent almost all day
24 yesterday arguing about the Commission policy statement.
25 Mr. Olmstead has made it, now Mr. Norton, whether those last



1 two paragraphs apply or not.

2 Well, you are going to have to interpret this
3 policy statement or the Commission is going to have to
4 reinterpret or whatever. I think we should just move
5 through the contentions. And I am willing to stipulate that
6 Mr. Olmstead and Mr. Norton are going to object on the basis
7 of those last two paragraphs, or at least on the basis of
8 one of those two, to everything we say.

9 MR. OLMSTEAD: I have one slight problem with
10 that, and that is, although I have made these arguments
11 until I am blue in the face, and I realize that I am wearing
12 your patience thin, it is clear to me that neither the Joint
13 Intervenors nor the Governor accept one single aspect of my
14 argument.

15 MR. LANPHER: That's correct.

16 MR. OLMSTEAD: And if they are going to so
17 stipulate, I would also like them to stipulate that if I am
18 right and they are wrong they haven't got any contentions
19 here.

20 MR. LANPHER: If the Commission says we have no
21 contentions, then we'll go to court on it. I am not going
22 to stipulate to that.

23 MR. REYNOLDS: We agree with that.

24 JUDGE BOWERS: We'd like to take a ten-minute
25 break now.



1 (Brief recess.)

2 JUDGE BOWERS: Are you ready to proceed, Mr.
3 Reynolds?

4 MR. REYNOLDS: Yes, I am. Joint Intervenors
5 contentions 12 and 24 concern the PORV valves, block valves,
6 relief and safety valves. One of the critical factors in
7 the TMI accident was the fact that the PORV valve stuck,
8 which led to a loss of coolant accident. Indeed, such
9 valves have had a history of failures.

10 And TMI demonstrated that it is insufficient to rely
11 on non-safety grade components to protect the public health
12 and safety. In view of the significant safety impact of
13 these valves, we feel that they should be required to meet
14 safety design criteria.

15 Specifically with reference to the PORV valve, I
16 would note the following safety-related functions: One, it
17 is part of the reactor coolant pressure boundary and should
18 be safety grade. GDC-14 is relevant to this aspect.

19 Two, it reduces challenges to the other safety
20 valves.

21 Three, it prevents overpressurization at low
22 temperature. It thereby protects the reactor vessel from
23 fracture.

24 Four, it reduces challenge to the ECCS.

25 Five, the PORV is used to bleed in the bleed and



1 feed mode.

2 Six, the PORV is used on low pressure injection
3 when there is inadequate core cooling.

4 With regard to sections of 0737 --

5 MR. NORTON: Excuse me, Judge Bowers and Mr.
6 Reynolds. If Mr. Reynolds wants to state what sections of
7 0737 talks about valves, I guess that is okay. But what I
8 am really interested in is whether or not, again, this is an
9 attack on Applicant saying you have not complied with 0737
10 or whether this is an attack on the sufficiency of 0737,
11 saying that 0737 doesn't go far enough or whatever. That
12 is, when I was asking for the references to 0737, that is
13 what I had in mind, as opposed to --

14 MR. REYNOLDS: I would point that out. The
15 sections that I would reference are 2.D.1, 2.G.1, and
16 2.K.3. And it is our contention that these provisions refer
17 to the area of concern and are not sufficient.

18 MR. NORTON: All right. We have a --

19 JUDGE BOWERS: Let me check. Mr. Lanpher, do you
20 have a contention in this area?

21 MR. LANPHER: Yes. Governor Brown's issue 14
22 relates to Joint Intervenors' number 24. We don't have
23 anything with respect to the PORV valve, but with respect to
24 relief and safety valves we have raised the question of
25 whether testing of relief and safety valves needs to be



1 completed prior to fuel loading. This relates to a matter
2 which is set forth in SER Supp 10 at page 2.D-1.

3 In addition, as Mr. Reynolds pointed out, it is a
4 NUREG-0737 item, at item 2.D.1. Our concern, and the reason
5 that we set this forth as an issue, is that in the SER they
6 acknowledge that there is a necessity for testing of the
7 safety and relief valves, and this was brought up from the
8 TMI accident, of course, where they were passing solid water
9 flow through safety valves and they had not been qualified
10 for that, and there was a real concern that if there was
11 continuous or more solid water flow they might stick open
12 and there would be no means to close them.

13 It is a somewhat different situation with block
14 valves, which we have not raised. Our concern with the SER
15 is that the SER relates that PG&E has described a testing
16 program, which I believe is being carried out by EPRI, the
17 Electric Power Research Institute, but it is not clear when
18 those tests will be completed. But in 0737 it's a
19 requirement for fuel load that those tests for relief and
20 safety valves be completed prior to fuel load.

21 We are questioning --

22 MR. NORTON: May we have a reference to '0737?

23 MR. LANPHER: Yes, 2.D.1. It is on page 2-6, Mr.
24 Norton.

25 MR. NORTON: Thank you.



1 MR. LANPHER: Our concern is that there is no
2 evidence that those tests have been carried out, and we have
3 heard statements that, we are entitled to a license for fuel
4 loading right this minute or right now. It seems to us that
5 there is a requirement that these tests be carried out and
6 carried out adequately to demonstrate the capacity of the
7 relief and safety valves before fuel loading is permitted,
8 and that is specified in 0737. So that is our concern.

9 MR. NORTON: In response to the last comment, if
10 you look at 0737, it is not as described by Mr. Lanpher. It
11 is that you must describe the program and schedule prior to
12 fuel load.

13 MR. LANPHER: Excuse me. Look at number 2, "RV
14 and SV test, implementation schedule, fuel load." Right
15 underneath that.

16 MR. NORTON: I understand, and I disagree with
17 your conclusion as to what that means. It just does not
18 mean what you think it does.

19 MR. LANPHER: All I am trying to do, Mrs. Bowers,
20 is specify our concern. That is the basis. You asked us to
21 relate it to TMI and relate it to NUREG-0737. We have also
22 related it to the SER Supplement 10.

23 MR. NORTON: The one question we would have of
24 Joint Intervenors is, the last sentence of number 12 says:
25 "Therefore, these valves" -- and we assume they are talking



1 about PORV valves, block valves, and safety valves. They
2 say "these valves," although I am not sure they're talking
3 about those or the PORV valves, "must be classified as
4 components important to safety and required to meet all
5 safety grade design criteria."

6 We would ask, is it the allegation of Joint
7 Intervenors that the PORV valves at Diablo Canyon are not
8 safety grade?

9 MR. REYNOLDS: No. Our allegation is that they
10 should be safety grade, all these valves, PORV valves, block
11 valves, and the instruments and controls. And if you can
12 demonstrate that they are safety grade, fine.

13 MR. NORTON: Excuse me. Is the allegation that
14 they are not?

15 MR. REYNOLDS: The allegation is, if they are not,
16 they should be.

17 Shall I proceed?

18 JUDGE BOWERS: Have you concluded, Mr. Norton?

19 MR. NORTON: Just a moment.

20 (Pause.)

21 MR. LANPHER: Judge Bowers, maybe while Mr. Norton
22 is trying to find something, we can go on to Mr. Olmstead
23 and come back. I know we're all interested in moving this
24 right along.

25 MR. NORTON: Sure, please do.



1 JUDGE BOWERS: Mr. Olmstead?

2 MR. OLMSTEAD: We have a standing objection to the
3 contention on the basis that has been previously
4 articulated, that this was not a prefiled contention or a
5 previously existing contention.

6 In addition, as to Governor Brown's issue 14, our
7 position as to the Governor having to participate on
8 contentions that are admissible or meet all of the
9 late-filed contentions stands.

10 In addition, our interpretation of 2.D.1 is not
11 the same as Governor Brown's. If you will look at the
12 references on page 3-76, you will see a number of
13 references. And essentially, a review of those references I
14 believe will show that what is required prior to fuel load
15 is a commitment to these tests, which PG&E has done.

16 Secondly, it is our belief that these are safety
17 qualified valves. That is something, of course, we would
18 have to check out, and I recognize that is a factual
19 requirement.

20 But in light of the very substantial legal
21 objections to this contention, I think it should be
22 rejected.

23 JUDGE BOWERS: Do you have anything further, Mr.
24 Norton?

25 MR. NORTON: Yes. We do not share the Governor's



1 opinion. The problem is I have not been able to find it,
2 that all we have to do is schedule the tests. That is our
3 understanding and that has been done, and that is handled in
4 the SER Supp. Governor Brown reads that differently than we
5 do, obviously.

6 But what is required is, of course, a factual
7 issue. If indeed it is required that the tests be done
8 prior to fuel load, this Board and the staff will not issue
9 a license until they are done, obviously.

10 JUDGE BOWERS: Mr. Reynolds.

11 MR. REYNOLDS: With reference to 2.D.1, it may
12 well be that if those tests have to be done prior to fuel
13 load that that would meet our concerns as well. It
14 certainly appears from 737 that that is required.

15 JUDGE BOWERS: Can we go on to the next one?

16 MR. LANPHER: Judge Bowers, can I get a little
17 rebuttal, reply, whatever word we're calling it?

18 A brief comment on one of Mr. Olmstead's
19 statements. I believe, again not to characterize, you know,
20 we have not complied with late-filed contentions -- there
21 the staff's response on our statement of subjects on which
22 we want to participate, I believe it was filed the 23rd by
23 the staff.

24 The staff, starting at the bottom of page 2, says
25 that: "The issues identified by the staff as appropriate



1 areas for contentions are" -- quote, and this was quoting
2 from an earlier staff submission -- "'those already in issue
3 in the full application plus any contentions submitted
4 concerning the low power test requirements set forth in
5 NUREG-0694" -- I will leave out some -- "'which the
6 Commission has noted in its statement of policy are
7 necessary and sufficient.'"

8 Then the staff goes on to note that NUREG-0737 has
9 superseded 0654. Skip a paragraph, it says:

10 "If Governor Brown wishes to submit contentions
11 relating to requirements in addition to NUREG-0737, he must
12 comply with the late filing provisions."

13 Now, I tried to make clear that our position on
14 those contentions -- I believe it is the same as on an
15 earlier, one of the earlier issues that we were discussing
16 -- and I am not speaking for Joint Intervenors, of course --
17 we were not going beyond 0737.

18 We have a special concern that we want to make
19 sure that various provisions in 0737 are in fact carried
20 out. Contentions or issues or subjects which go to that
21 point I do not believe fall under Mr. Olmstead's standing
22 objection.

23 JUDGE BOWERS: We'd like to go off the record for
24 just a minute.

25 (Discussion off the record.)



1 JUDGE BOWERS: Let's go back on the record.

2 MR. NORTON: In response to Governor Brown's
3 comment about 2.D.1, I would refer the Board to 3-74 of
4 NUREG-0737.

5 MR. LANPHER: I object. Aren't we through on that
6 contention? We have gone around the room a couple of
7 times.

8 MR. NORTON: No, excuse me. I had yielded while I
9 had a chance to look through this at your suggestion, Mr.
10 Lanpher, and I found what I was looking for.

11 MR. LANPHER: I thought Judge Bowers came back to
12 you after Mr. Olmstead finished.

13 MR. NORTON: Maybe she had, but I hadn't found
14 what you did. I have now found it and I am giving the page
15 reference.

16 I guess your objection could be sustained. I
17 guess the Board has the page reference.

18 JUDGE BOWERS: Why don't you go ahead, Mr.
19 Norton.

20 MR. NORTON: I just wanted to give you that page
21 reference and ask the Board to look at that as to the timing
22 of those tests. It is attached, and it makes it very
23 clear.

24 JUDGE BOWERS: Now let's go to the next one.

25 MR. REYNOLDS: Contention 13 relates to



1 instrumentation and the monitoring of direct measurement of
2 certain variables. This was critical at TMI because one of
3 the things they were not able to measure was the water level
4 in the reactor core. Had they known this, they might have
5 been able to take actions which would have avoided the
6 uncovering of the core.

7 IEEE 2-9 calls for the direct measurement of
8 design variables. One of those would be the water level in
9 the reactor core.

10 NUREG-0578 at page A-32, 41 and 10, calls for
11 various direct measurements.

12 General Design Criterion 13 calls for
13 instrumentation to monitor variables that can affect the
14 integrity of the reactor core. Water level certainly would
15 come within this category. The indication of water level
16 was necessary to tell the operator what is going on and to
17 give a warning that the core perhaps is about to uncover.

18 The relation to TMI, the nexus to TMI, is clear,
19 and the importance to safety was demonstrated by that
20 accident.

21 JUDGE BOWERS: Did I miss a reference to 737?

22 MR. REYNOLDS: Excuse me. 0737, 2.4.2,
23 instrumentation for detection of inadequate core cooling.
24 It requires a reactor water level indication by January 1st,
25 1982.



1 MR. LANPHER: Excuse me. I believe Mr. Reynolds
2 misspoke. It wasn't 2.4.2; it was 2.F.

3 MR. REYNOLDS: 2.F.

4 JUDGE BOWERS: You were both talking at once.

5 MR. REYNOLDS: That is correct, it should be
6 2.F.2.

7 MR. LANPHER: I would just believe he had misread
8 what he had written down.

9 MR. REYNOLDS: And our concern was that the 0737
10 requirement is insufficient.

11 JUDGE BOWERS: Mr. Lanpher, do you have a
12 contention subject to this area?

13 MR. LANPHER: Yes, we have a subject quite
14 similar, our subject 13. I'll try to be brief because Mr.
15 Reynolds did identify the 0737 reference. I'd like to also
16 identify the SER Supp 10 reference. That is at page 2.F-8
17 and 9, this matter is discussed.

18 And our concern relates directly to the TMI
19 accident, where the operators did not have a reliable means
20 of knowing the level of coolant in the reactor during the
21 first several hours of the accident, and accordingly they
22 allowed the core to be uncovered.

23 I believe this is one of the additional safety
24 devices that should be installed as soon as possible. We
25 recognize that in 0737 the requirement is for installation



1. some time in 1982 and merely, prior to fuel load, to
2 describe the possible methods which Applicant might propose
3 to carry out this desired instrumentation.

4 Our experts have concern that the proposals
5 described at page 2.F-9 of SER 10 -- and I believe these are
6 proposals which originally came from PG&E, though they are
7 described by the staff -- may not be adequate for the
8 reasons we set forth in this subject.

9 I would like to point one other thing out, Mrs.
10 Bowers. I meant to do it earlier. In a number of cases, we
11 have referenced SER items as items of concern, whether
12 they've been fully complied with or whether there needs to
13 be something additional done.

14 Besides those items, we'd like to call the Board's
15 attention to the River Bend decision in ALAB 444, where the
16 reference to SER items was acknowledged by the Appeal Board
17 to be of sufficient specificity to apprise parties of the
18 concern of an interested state.

19 JUDGE BOWERS: Mr. Norton?

20 MR. NORTON: Our continuing objection on the Joint
21 Intervenors' contention. I believe the last sentence by
22 Joint Intervenors' counsel was this was an attack on the
23 sufficiency of the 0737 requirement. So we have our
24 sufficiency objection.

25 JUDGE BOWERS: Mr. Olmstead.



1 MR. OLMSTEAD: Yes. This is an area where the
2 standing objection is appropriate as far as the staff is
3 concerned. We did have concerns about the specificity that
4 we noted in our response to these contentions, because the
5 SER does address this fairly specifically. And to the
6 extent that they're arguing that this requirement in
7 NUREG-0737 is not sufficient, I think we have a right to
8 know what it is that they would require.

9 MR. REYNOLDS: I think that what we would require
10 is that the time for implementation of 2.F.2 not be January
11 1, 1982, but be prior to fuel load.

12 MR. OLMSTEAD: My objection to that is they have
13 not demonstrated how this has safety significance to fuel
14 load under 50.57-C.

15 MR. REYNOLDS: My earlier remarks were directed to
16 the question of safety based on the experience at TMI. It
17 is important to the operation of the plant at any level of
18 power that there be an indication of water level in the
19 reactor core.

20 JUDGE BOWERS: Can we go on to the next one.

21 MR. REYNOLDS: Contention 14 references 10 CFR
22 50.46, which requires analysis of the ECCS performance,
23 quote, "for a number of postulated loss of coolant
24 accidents" -- and I won't read the contentions -- over the
25 entire spectrum of LOCA's.



1 In conducting these tests, it is necessary to meet
2 certain required parameters which are stated elsewhere in
3 the regulations. Two of these were exceeded at TMI, the
4 first being the peak cladding temperature exceeded the 2200
5 degrees Fahrenheit requirement set forth in 50.45-B1; and
6 more than one percent of the cladding reacted with water or
7 steam to produce hydrogen, in excess of 50.46-B3.

8 It is our contention that this contention relates
9 to the failure of the Applicant to conduct the required
10 tests based on the experience at TMI and the parameters that
11 were exceeded at that time. These tests are important to
12 safety to determine what would happen in the event of a LOCA
13 across the entire range.

14 And 0737 references 1.C.1, short-term accident and
15 procedure review. This contention, once again, goes to
16 sufficiency. We can claim that this 0737 requirement is
17 insufficient.

18 JUDGE BOWERS: Mr. Lanpher, do you have a similar
19 contention?

20 MR. LANPHER: Yes, ma'am. Governor Brown's issue
21 12 also questions whether the small break analysis tests
22 should be conducted and completed before the issuance of the
23 fuel loading licenses. I believe Mr. Reynolds, however,
24 covered our concerns as well.

25 JUDGE BOWERS: Mr. Norton?



1 MR. NORTON: Sufficiency objection. And I am a
2 little confused. What test is Mr. Reynolds saying we should
3 do? Is he saying that we have not done tests that we are
4 supposed to do or some tests should be invented that we
5 should have to do?

6 MR. REYNOLDS: As I stated, in conducting those
7 tests which were required by 1.C.1 of 0737, it is necessary
8 to utilize the parameters which were shown to be possible at
9 TMI. Specifically, the contention refers again to the
10 temperature of the reactor core -- or excuse me, of the
11 cladding -- and the percentage of the cladding which reacted
12 with water.

13 MR. NORTON: Judge Bowers, I don't -- of course,
14 the Board did not ask the question of Mr. Reynolds, but I
15 was asking the Board, of course, to ask Mr. Reynolds a
16 question. Is it the position of Joint Intervenors that we
17 have not complied with test requirements or analyses
18 requirements, or that there should be additional tests or
19 analyses requirements?

20 I think it is the latter, but I just have not
21 heard him say that.

22 JUDGE BOWERS: Mr. Reynolds?

23 MR. REYNOLDS: Our concern is that tests be
24 conducted which utilize the parameters which are referenced
25 in the contention itself. If this has not been done, they



1 should be done. Does that answer your question?

2 MR. NORTON: Except that the contention does not
3 have the word "test" in it anyplace.

4 MR. REYNOLDS: 10 CFR 50.46 refers to analysis of
5 ECCS performance.

6 MR. NORTON: Yes. Analysis is one thing. A test
7 is another.

8 MR. REYNOLDS: Fine, I stand corrected.
9 Analysis.

10 MR. NORTON: Fine. Sufficiency objection.

11 JUDGE BOWERS: Mr. Olmstead.

12 MR. OLMSTEAD: Yes. In terms of the contention
13 that we have here, I don't think that we understand exactly
14 what it is that they seek to require beyond NUREG-0737.
15 This, the analyses that are going to be done, are addressed
16 in Supplement 10 on page 1.C-1.

17 These are fairly detailed analyses that are being
18 required as a result of the TMI accident. And I think the
19 intervenors have an obligation to identify what it is beyond
20 these analyses that they would require.

21 MR. REYNOLDS: We would request that the analysis
22 which is done, as I have stated several times, include the
23 parameters which are referenced in the contention itself.
24 If further specification is required as to the precise
25 analyses, we will be happy to consult with our experts and



1 submit at a later date further specificity.

2 JUDGE BOWERS: I thought part of your explanation
3 dealt with the time they should be completed. I think you
4 cited some dates and one was 1882?

5 MR. REYNOLDS: 1982. That was on the previous
6 contention, contention 14.

7 JUDGE BOWERS: I'm sorry.

8 MR. REYNOLDS: Yes, contention 14 was the one --
9 no, I am sorry. I'm sorry, it was contention 13 which had
10 the date.

11 MR. NORTON: Excuse me, Dr. Bowers. As it
12 respects contention 14, I don't think it is either party's
13 -- excuse me, either Governor Brown's or the Joint
14 Intervenors' contention, that the tests required under 0737
15 have not been done, because in fact they have been done. I
16 think the gist is that they think the analyses should go
17 further than they are required to be gone into by 0737.

18 MR. REYNOLDS: Just to clarify your question, the
19 date to which I made reference was with respect to
20 contention 13.

21 JUDGE BOWERS: I'm sorry, but Mr. Olmstead has
22 asked you to identify where you think the analysis should go
23 beyond 0737.

24 MR. REYNOLDS: To the extent the analysis has not
25 been done utilizing the parameters referenced in the



1 contention, they should be redone.

2 MR. OLMSTEAD: What parameters in the contention?

3 I'm sorry.

4 MR. REYNOLDS: Peak cladding temperature and
5 percentage of cladding reacting with water.

6 MR. NORTON: Excuse me, Dr. Bowers. The real
7 problem is that counsel -- I mean Judge Bowers -- counsel I
8 don't believe knows what he's talking about, frankly. The
9 business of the 2200 degrees Fahrenheit is the result of an
10 analysis, not an analysis parameter. It is a result that
11 you would get from an analysis. It is not an analysis
12 parameter.

13 So he wants us to do more analyses using the
14 results, not the parameters that are in his contention.
15 That is another reason that contention should not be -- they
16 haven't specified any parameters in this contention upon
17 which to do further analysis. So it is impossible to even
18 respond to that, and there is nothing in here to respond
19 to.

20 It is like he is saying he wants new tests. He
21 didn't mean tests, he means analysis. And now he's saying
22 he wants new parameters and the parameters are in the
23 contention, but there aren't any parameters in the
24 contention.

25 MR. REYNOLDS: May I respond? I think our concern



1 is that in the analyses that are done under the regulations,
2 the parameters specified in the regulations be met. And I
3 think at TMI these parameters were exceeded. And in
4 conducting the analysis, the system should be designed to
5 meet this criterion.

6 I see reactions. I think perhaps if there is some
7 need to specify this further it would be useful for me to
8 consult with our experts and submit it in writing. There
9 are obvious limitations to my ability to respond on
10 technical issues.

11 JUDGE BOWERS: Why don't we go on to the next
12 contention, then.

13 MR. REYNOLDS: Contention 15 deals with the fact
14 that the plant at TMI was operated with a safety system
15 which was inoperable, specifically auxiliary feedwater
16 system valves which were closed and should have been open.
17 The concern of the contention is that there be a system to
18 inform the operator when a system has been disabled.

19 Had the operator at TMI known that these valves
20 were closed, the accident might have been averted by simply
21 opening those valves to permit more coolant to get into the
22 core. The NRC has recognized in the past the failure of
23 operators to comprehend the effect a closed or open valve
24 can have on the entire system. The failure to have such an
25 understanding would permit the plant to operate in violation



1 of the license if certain safety systems are not operable.

2 Reg Guide 1.417 and Section 4.31-C of IEEE 279
3 require continuous indication in the control room if a
4 protective action is bypassed.

5 Basic to this contention is an understanding of
6 the functional interdependence of certain components.
7 Another example at TMI is the fact that the fuel racks were
8 at one point tripped, and this would have prevented the
9 onsite power supply from being utilized.

10 In 0737 we would reference 2.K.1, 1.A.2.1, 1.C.6,
11 1.D.1, and 2.B.4. These deal with control room design,
12 training of operators, and operability status.

13 This contention goes to the insufficiency of the
14 0737 requirement.

15 MR. NORTON: Judge Bowers, is it the Joint
16 Intervenors' contention -- position -- that we do not comply
17 with that list of 0737 requirements that was read, or is it
18 the position that those requirements are not sufficient?

19 MR. REYNOLDS: It is our position that those
20 requirements are not sufficient.

21 MR. NORTON: Sufficiency objection.

22 JUDGE BOWERS: Does Governor Brown have a
23 subject?

24 MR. LANPHER: We do not have a subject.

25 JUDGE BOWERS: Mr. Olmstead?



1 MR. OLMSTEAD: Yes. Sufficiency objection, with
2 that clarification. I would point out that Joint
3 Intervenors did not address the matter that we raised in our
4 response, which is we agree with the statement made by this
5 contention, but there is no allegation that this has not
6 been done at Diablo, and if so in what manner.

7 MR. REYNOLDS: The allegation is that this
8 contention should be complied with at Diablo. If it is
9 complied with, that is a question that goes to the merits
10 and certainly is appropriate for a motion for summary
11 disposition.

12 JUDGE BOWERS: Are you ready to go to the next
13 one?

14 MR. REYNOLDS: Contention 16. The concern there
15 is that there should be -- the safety system should be
16 designed to prevent -- excuse me one moment. Withdrawn.

17 MR. NORTON: Pardon me?

18 MR. REYNOLDS: Contention 16 relates to the design
19 of the safety system. At TMI it was designed so that the
20 operator could prevent the completion of a safety function
21 which was initiated automatically. And the example given
22 was that the operator did shut off the ECCS prematurely.

23 Section 4.16 of IEEE 279 would require that the
24 design of the protection system not permit such operator
25 action. Again we would reference the experience at TMI as



1 far as the nexus is concerned.

2 Its importance to safety is that if the protection
3 system had been permitted to go to completion, the accident
4 might have been averted.

5 In 0737, we would reference 1.A.2.1, 1.C.5, 1.C.6,
6 2.E.1.2. These again deal with training. We do not feel
7 that training is adequate, and that the system should be
8 designed to prevent taking of any action which would prevent
9 the completion of a safety function.

10 The requirements in 0737 are insufficient.

11 MR. NORTON: Well, obviously the sufficiency
12 objection. I would point out, however, that Section 4.16 of
13 IEEE 279 -- the Joint Intervenors were kind enough to quote
14 the first sentence. They indicate that it was only a
15 partial quote by putting further dots to close, because the
16 next sentence of the quote says: "Return to operation shall
17 require subsequent deliberate operator action," which would
18 seem to indicate that Section 4.16, IEEE 279, doesn't say
19 what they say it says it all. It indeed is contrary to the
20 next sentence of their contention.

21 So I am not sure what their basis is for that
22 contention is at all, because they have misquoted -- they
23 have not misquoted. They have simply left out the next
24 sentence of that section, which totally reverses the meaning
25 of the gist of their contention.



1 MR. REYNOLDS: That is an argument that would go
2 to the merits. And if there are objections, it's a
3 technical argument which we would be prepared to respond to
4 at the proper time.

5 MR. OLMSTEAD: Objection. He's rebutting Mr.
6 Norton before we've gone around the room.

7 JUDGE BOWERS: I didn't have an opportunity to
8 check with Mr. Lanpher as to whether they have a subject.

9 MR. LANPHER: No.

10 JUDGE BOWERS: Mr. Olmstead?

11 MR. OLMSTEAD: Yes. We object to this contention
12 on the grounds that we have stated before. In addition, in
13 this particular case the interpretation of the regulation in
14 50.55, 10 CFR 50.55, doesn't take note of the exceptions for
15 reactors which were under construction by certain dates.
16 And I gather that this contention is not that a requirement
17 is not being met, but that requirements beyond those
18 currently in the books should be imposed.

19 MR. REYNOLDS: That is correct.

20 (Pause.)

21 JUDGE BOWERS: Mr. Reynolds, number 17 was handled
22 in conjunction with another contention, is that right?

23 MR. REYNOLDS: That's right. We concluded 17.

24 Contention 18 deals with environmental
25 qualification. At TMI the pressurizer level instruments



1 failed because they were not adequately qualified for the
2 accident environment. The decay heat removal system was not
3 qualified in terms of pressure, so it leaked, or in terms of
4 radiation level which it ultimately would have been
5 subjected to, so it could not be used.

6 It is critical to safety that the equipment in the
7 reactor be qualified to meet the conditions which
8 potentially may occur, and that would include the accident
9 conditions.

10 GDC-4 requires that equipment important to safety
11 be qualified to function under expected plant conditions,
12 including post-accident conditions. It is our contention
13 that the equipment at Diablo Canyon should be qualified to
14 meet all these conditions.

15 We would reference in 0737 2.B.2. This contention
16 is directed toward the insufficiency of the 0737
17 requirements.

18 MR. NORTON: Excuse me, I forgot to check. I
19 don't think the Government has one.

20 JUDGE BOWERS: That is correct.

21 MR. NORTON: Sufficiency objection.

22 JUDGE BOWERS: Mr. Olmstead.

23 MR. OLMSTEAD: Yes. We interpose our standing
24 objection. In addition, we object to the form of the
25 contention.



1 JUDGE BOWERS: Mr. Reynolds.

2 MR. REYNOLDS: Could I ask for a clarification as
3 to the objection to form?

4 MR. OLMSTEAD: Yes. If you look at page 11 of our
5 response, we indicate that we do not disagree with the
6 statement of that Reg Guide 1.89 or the equivalent, but that
7 the form of the contention is such that we do not know what
8 requirement you are alleging is not met or what additional
9 matter beyond existing requirements you would impose.

10 MR. REYNOLDS: The contention is clear that we
11 believe that Reg Guide 1.89 should be met and, to the extent
12 that it is not met, there should be, the qualifications
13 should be improved.

14 JUDGE BOWERS: Do you have anything further?

15 MR. OLMSTEAD: No. I stick by the objection to
16 the contention.

17 JUDGE BOWERS: Mr. Reynolds, what about 19?
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1 MR. REYNOLDS: The focus of Contention 19 is that
2 until there has been a Class 9 accident analysis, there is
3 no reasonable assurance that the plant can operate without
4 endangering the health and safety of the public. The TMI
5 accident was a Class 9 accident. CEQ and NRC policy has
6 changed since that time to now recognize the possibility
7 that if a Class 9 accident should occur, the Class 9
8 accident analysis should be conducted prior to operation of
9 the plant. This was the subject of our prior motion to
10 reopen.

11 MR. NORTON: Mrs. Bowers, as far as the subject of
12 the motion to reopen, that has been addressed by all of the
13 parties in pleadings and so on, and I am not going to get
14 into that here.

15 As far as this Contention goes, I find it somewhat
16 disturbing, although not surprising, that Intervenors don't
17 seem to be paying any attention to our responses to these
18 objections whatsoever. I think we pointed out in our
19 response -- and I have got it here but I am not looking at
20 it -- that 10 CFR 51.20.A and 51.20.D had to do with the
21 construction permit, and they are seemingly arguing that we
22 have some duty to do an FES for the construction permit.
23 They just ignore those kinds of objections to their
24 Contentions. And I don't know whether they just didn't
25 bother to read our objections or what.



1 So, in addition to those things set forth in the
2 motion to reopen, I would ask them to at least address
3 that.

4 JUDGE BOWERS: Let me check with Governor Brown, a
5 new Contention. Mr. Olmstead?

6 MR. OLMSTEAD: Yes. We interpose our standing
7 objection here. In addition, it is our view, the staff's
8 view, that this Contention has already been ruled on by this
9 Board in its order in which it identified the issues in this
10 proceeding as those identified by the staff's filing. And
11 we clearly pointed out that that was not a low-power test
12 issue, and the Board, in adopting that statement of issues,
13 in our opinion, has ruled this Contention out.

14 JUDGE BOWERS: I think that is the October 2
15 order. Is that right?

16 MR. OLMSTEAD: Yes.

17 JUDGE BOWERS: Mr. Reynolds?

18 MR. REYNOLDS: Our concern is that an
19 environmental impact analysis of the Class 9 accident
20 scenario be conducted prior to operation of the plant. As
21 was discussed yesterday at some point, the environmental
22 impact analysis -- an environmental impact statement has
23 been done, but that statement did not include analysis of
24 Class 9. To that extent, we contend that it is
25 insufficient and an analysis should be prepared.



1 MR. NORTON: Judge Bowers, you know, I hear what
2 he says, but what about his references to 10 CFR 51.20.A and
3 51.20.D? Is he serious?

4 JUDGE BOWERS: The Board would also like to know
5 if this has a reference in 0737.

6 MR. REYNOLDS: No, it does not.

7 MR. OLMSTEAD: If it please the Board, the staff
8 -- I guess maybe I didn't state it strongly enough. It is
9 our position that this issue has been ruled out of the scope
10 of this current proceeding, and, consequently, whatever
11 remedies Intervenors had at the time that ruling was made,
12 they should have pursued.

13 I do not want them to be able to bootstrap the
14 issue back in front of the Board again. I think once a
15 ruling has been made, that's enough, and it ought to be
16 dropped at that.

17 MR. LANPHER: Judge Bowers, could I be heard
18 briefly on that?

19 JUDGE BOWERS: Yes.

20 MR. LANPHER: I understand the Board's ruling back
21 in October. However, we mustn't lose sight of the fact that
22 the Commission has given additional guidance since then. I
23 don't believe Mr. Olmstead meant that this Board was to
24 ignore the October 18th policy statement to the extent that
25 that might require changes in the scope of this proceeding.



1 MR. OLMSTEAD: I think if you will go back and
2 look at the pleadings, you will find that the staff has
3 consistently indicated that this is not an issue under the
4 policy statement or NUREG-0737, but rather involves a
5 different policy statement concerning the consideration of
6 Class 9 accidents in Commission proceedings.

7 And we have pointed that out in our pleading which
8 resulted in the October 2 order. And I think that all the
9 lawyers in this case can read these things as well as I can,
10 and I don't see why I have to hold people's hands and walk
11 them through which policy statement is the appropriate one.

12 MR. LANPHER: I will just register my objection to
13 some of Mr. Olmstead's most recent statements. I don't
14 think we need that kind of language in this proceeding.

15 JUDGE BOWERS: Mr. Reynolds, I have -- do you want
16 a ruling on your objection?

17 MR. LANPHER: No. I am perfectly willing to just
18 let it stand just like that. I think we have been carrying
19 on reasonably well. But this "holding hands," Mr. Olmstead
20 made some very broad statements, and I just asked for a
21 clarification. I don't need his wise remarks.

22 JUDGE BOWERS: Well, Mr. Reynolds, are you ready?

23 MR. REYNOLDS: Yes. We would say -- excuse me --
24 the policy statement, again, which was issued on December
25 18th, permits Joint Intervenors to challenge the sufficiency



1 requirements. And I think that is the important change
2 which Mr. Lanpher is referring to since the Board issued its
3 order on October 2nd.

4 Now, as far as Mr. Norton's objection, the
5 reference in the Contention is not there to provide the
6 specific basis for the requirement. The EIS was required at
7 the construction stage. There are also other provisions in
8 the regs which require an EIS at the operation license
9 stage. At neither stage in the Diablo Canyon proceeding has
10 a Class 9 accident analysis been done. The Contention is
11 directed towards our concern that such an analysis be done
12 prior to the issuance of a fuel loading and low-power
13 testing license.

14 JUDGE BOWERS: Just for the record, Mr. Reynolds,
15 the construction permit for Unit 1 was prior to NEPA. The
16 construction permit for Unit 2 was after NEPA but prior to
17 the Calvert Cliffs decision. So there was a special
18 proceeding on Unit 2.

19 Now can we go to the next one?

20 MR. REYNOLDS: Contentions 20 and 23 focus on the
21 area of systems interaction and the fact that a number of
22 components classified as non-safety grade were utilized at
23 TMI in safety functions, and accordingly that these
24 components should be classified as important to safety and
25 required to meet the General Design Criteria.



1 Certain examples of that would be PORV valve,
2 pressurizer level instruments, block valves. All of these
3 were important to safety at TMI.

4 No systematic evaluation of interactions has yet
5 been done.

6 One moment.

7 At Diablo Canyon a partial systems interaction
8 study has been done with respect to seismic. Many adverse
9 interactions were discovered and presumably were remedied.
10 Further study is necessary that goes beyond the seismic
11 aspects.

12 A recent memorandum from an NRC employee, Mr.
13 Demetrios Basdekas to James Tourtellotte, on October 10,
14 1980, referenced his concern that the control systems be
15 considered as -- the safety importance of control systems --
16 be considered and that analyses of systems interactions be
17 conducted.

18 Although there is no specific reference in 0737,
19 the TMI action plan Table B.2 references systems
20 interactions as an area of concern, at 2.C.3.

21 To the extent that 0737 does not require this, our
22 contention is that it is insufficient.

23 MR. NORTON: Sufficiency objection, our standing
24 objection.

25 JUDGE BOWERS: Mr. Olmstead?



1 MR. OLMSTEAD: Yes. Sufficiency objection. Plus
2 I think they should be required to address Supplement 11,
3 which deals with systems interactions at Diablo, pursuant to
4 NUREG-0737.

5 JUDGE BOWERS: Supplement 11?

6 MR. OLMSTEAD: Yes. There is a supplement to the
7 SER, Supplement Number 11, dated October 1980, entitled --

8 JUDGE BOWERS: We don't have it. We thought 10
9 was the last one out.

10 MR. OLMSTEAD: No. This one was published -- it
11 was not TMI-related, but it was a systems interaction
12 analysis required by the Commission, Supplement 11.

13 MR. NORTON: No, it was not required by the
14 Commission. It was not required. The ACRS suggested it,
15 and we thought it was a good idea to do what the ACRS
16 suggested. And the systems interaction analysis was done,
17 and SER Supp 11 was issued in October 1980. We don't
18 publish it, the Commission does.

19 JUDGE BOWERS: We don't have that.

20 MR. OLMSTEAD: It is NUREG-0675, Supp 11. I guess
21 I assumed that you are on the standard distribution list for
22 supplements to the SERs.

23 JUDGE BOWERS: We were. Well, I may have
24 misunderstood. This was Supp 11 for the SER for Diablo
25 Canyon?



1 MR. NORTON: It is.

2 MR. OLMSTEAD: It is safety evaluation report
3 related to the operation of Diablo Canyon Nuclear Power
4 Plant Units 1 and 2, Docket Numbers Supplement 11,
5 NUREG-0675. We will see that you get copies, yes. And I
6 would check the distribution list, because you are supposed
7 to routinely get those.

8 JUDGE BOWERS: I am on a distribution list that
9 has me down for about 11 things, 11 proceedings.

10 Where are we? Had you concluded, Mr. Olmstead?

11 MR. OLMSTEAD: Oh, yes, I am sorry.

12 JUDGE BOWERS: Mr. Reynolds?

13 MR. REYNOLDS: The Supp 11 is limited to seismic
14 interactions, was it not, or seismically induced
15 interactions?

16 MR. OLMSTEAD: Right. It was triggered by seismic
17 concerns. That was the ACRS concern that triggered it. But
18 essentially, what it is was a systems interaction analysis
19 of non-safety systems with safety systems, which I believe
20 is the area he is attempting to put a Contention in the
21 record.

22 MR. FLEISCHAKER: Let me save time just by stating
23 this. Our concern is that Supplement 11 in the systems
24 interaction study did not go far enough. It failed to
25 discuss or address seismically induced interactions between



1 control systems and other safety systems.

2 That subject is covered to some extent in an
3 October memorandum from Mr. Basdekas, reactor safety
4 engineer, to Mr. James R. Tourtellotte, assistant chief
5 hearing counsel, ELD. The subject of it is "Safety
6 implications of control systems and plant dynamics and their
7 relevance to TMI-1 ASLAP hearings."

8 That memorandum, and others attached to it, came
9 to us only recently from Darrell G. Eisenhut, director,
10 Division of Licensing. His cover memorandum is "To All
11 Boards," and the subject is "Differing Professional
12 Opinion," Board Notification BN-80-15.

13 This memorandum and the subject that Mr. Basdekas
14 talks about in here is the subject of our concerns. He
15 demonstrates the limitations of the systems interaction
16 studies that have been covered to date. And the control --
17 and seismically induced failures in control systems at
18 Westinghouse systems such as are in Three Mile Island are an
19 important subject.

20 They has been discussed before in memorandum by
21 Mr. Stephen Hanauer, when he says, "Westinghouse thinks it's
22 great. I think they are unsafe." I think that memorandum
23 is also in the file.

24 JUDGE BOWERS: Well, we're moving along much
25 better with the code words for speeches -- in lieu of



1 speeches. We can go a few minutes longer before we break
2 for lunch.

3 MR. REYNOLDS: Judge Bowers, we have only one more
4 Contention, because we have dealt with a number previously
5 and we are going to drop a number at the end. So if we can
6 just do this last one, we can be brief.

7 JUDGE BOWERS: Fine.

8 Mr. Norton, I missed a beautiful opportunity
9 yesterday. I mentioned Dr. Saltzman was Mr. Saltzman's
10 wife. Well, when you call me "Dr. Bowers," you know, I
11 could have mentioned my son. Missed.

12 MR. REYNOLDS: Our main concern in Contention 20
13 is documentation of deviations. This is not required by
14 0737.

15 MR. OLMSTEAD: Contention 21?

16 MR. REYNOLDS: I am sorry. Contention 21 is what
17 I meant. Our main concern is documentation of deviations.
18 This is not required in 0737. However, it has been
19 recognized in the past as a desirable measure. Public Law
20 98-295 section 110 requires documentation of deviations from
21 a Standard Review Plan. This has been proposed for
22 extension to NTOLs by public notice on October 9, 1980.

23 In addition, there are a number of other
24 references in documents which have been issued in 1980. An
25 August 14, 1980, news release contained a letter from



1 Leonard Bickwit, which admits the deficiencies in licensing
2 procedures in terms of documentation of deviations. On May
3 12, 1980, the Commission requested a resource estimate for
4 documentation of deviations, to which Harold Denton
5 responded on June 13, 1980, in which he stated that
6 documentation of deviations analysis would be desirable.

7 It is our contention that documentation of
8 deviations would improve safety and that it would assure
9 that design is in accord with the reg guides and regulations
10 of the Commission.

11 Because this is not referenced in 0737, it again
12 is our concern that the additional operating requirements
13 are insufficient.

14 JUDGE BOWERS: Do you have a Contention, Mr.
15 Norton?

16 MR. NORTON: I am not at all sure how this is
17 related to TMI. I am not sure. There has just been a blush
18 statement that it is, but I am not sure that there is any
19 showing of that.

20 In addition to that, the sufficiency objection.
21 And that's it.

22 JUDGE BOWERS: Mr. Olmstead?

23 MR. OLMSTEAD: Yes. I interpose the standing
24 objections we make. And in addition to which I don't
25 believe that this is an item that is fairly within the



1 purview of matters related to the TMI accident.
2 Essentially, this is a Contention that could have been
3 interposed before the record closed on a timely basis.

4 JUDGE BOWERS: Mr. Reynolds?

5 MR. REYNOLDS: The connection to TMI is stated in
6 the Contention itself. The absence of automatic indication
7 systems required by Reg Guide 1.47 contributed to the
8 operation of the plant with the auxiliary feedwater system
9 completely disabled. It is that kind of occurrence which we
10 would hope to avoid at Diablo Canyon by this Contention.

11 JUDGE BOWERS: Do you want to respond, Mr.
12 Norton?

13 MR. NORTON: May we get to the Contentions they
14 are going to drop?

15 MR. REYNOLDS: We will drop Contention 22, 25, 26,
16 and 27. In addition, I think we stated earlier that -- yes,
17 we did state earlier that 26 was to be dropped.

18 JUDGE BOWERS: Yes.

19 MR. NORTON: We stipulate.

20 MR. OLMSTEAD: No objection.

21 JUDGE BOWERS: Well, sometimes when we think we
22 can finish up in the next half-hour or hour, we keep going.
23 But we do want to talk about scheduling, we want to talk
24 about things. So we think it is appropriate to take a
25 luncheon break now and be back no later than 1:00 o'clock.



1 MR. OLMSTEAD: Are we going through the Governor's
2 subjects in the same way?

3 JUDGE BOWERS: Yes. You have additional ones that
4 haven't been covered? How many?

5 MR. LANPHER: Yes, we do.

6 JUDGE BOWERS: About how many?

7 MR. LANPHER: I think there are about ten, though
8 one or two have some subparts. I think there are ten that
9 we have not covered, two of which have subparts.

10 JUDGE BOWERS: Fine.

11 (Whereupon, at 11:30 a.m., the Board was recessed,
12 to reconvene at 1:00 p.m., the same day.)

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AFTERNOON SESSION

(1:05 p.m.)

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3 JUDGE BOWERS: We'd like to resume.

4 Mr. Lanpher?

5 MR. LANPHER: Yes, Judge Bowers. I will be going
6 through most of Governor Brown's subjects. Several Mr.
7 Brown, my colleague, will handle. But for the most part I
8 will be handling them.

9 Subjects 1 and 2, pursuant to a statement I made
10 yesterday, we withdrew, just for the record is clear. And
11 we are participating on Joint Intervenors' 1 and 2.

12 Subject number 3 considers emergency planning and
13 we've already discussed that, so I don't think there's any
14 need for further comment.

15 So we will start with subject 4. Subject 4 lists
16 a number of matters set forth in the staff's Supplement 10
17 to the SER which are of concern to Governor Brown. I think
18 it'll save some time if I make a couple of statements up
19 front with respect to this subject and some others where we
20 have referenced SER items.

21 I believe the nexus to TMI is clear where we have
22 referenced an SER item, because the SER is specifically
23 designed to address the post-TMI requirements. I am not
24 going to go over that in detail, that nexus issue, unless
25 you, Judge Bowers, or some other person wants me to address



1 it further.

2 In addition, I mentioned this morning, I believe
3 it was, our feeling with respect to specificity questions.
4 I brought the Board's attention to ALAB 444 relating to
5 whether the reference to SER items meets specificity
6 requirements. Again, I am not going to go over that again,
7 although I will have some additional comments on
8 specificity.

9 With that introduction, Judge Bowers, to go
10 through items A through G of subject 4? Do you just want me
11 to go through subject A and then give everyone a chance to
12 go around, or what?

13 JUDGE BOWERS: Let me check with the parties. Mr.
14 Norton?

15 MR. NORTON: If I understand what Mr. Lanpher is
16 saying correctly --

17 MR. LANPHER: I haven't said it yet.

18 MR. NORTON: No, if I understand it correctly,
19 what you have said today, it is that you are not challenging
20 the sufficiency of 0737 in A through G. What you are saying
21 is it is not clear to you from reading the SER Supp that the
22 Applicant has complied with the requirements of 0737 in
23 these specific areas of A through G, as set forth in SER
24 Supp 10.

25 MR. LANPHER: May I respond to that?



1 JUDGE BOWERS: Yes.

2 MR. LANPHER: That is basically right. It is not
3 our position that PG&E has to have complied by now. I
4 recognize that some of these things have to be done before
5 fuel load and we are at least some time away from that. So
6 I just amend what you said, that we do not believe that
7 there is an adequate demonstration that you will comply
8 prior to that fuel load.

9 None of these items in subject 4 do challenge the
10 sufficiency of 0737, but rather inquire further whether in
11 fact it is being complied with.

12 MR. NORTON: Well, I think, Mrs. Bowers, I have
13 taken the position -- and maybe the staff will disagree with
14 this -- but it is our position that that is not an improper
15 thing for Governor Brown to be doing. We have raised a
16 motion, the Board must consider that motion. They clearly
17 must consider the SER Supp.

18 And I think the Governor, as the interested
19 representative of the State, has the right to do those
20 things that are set forth in 715 as respects these things.

21 Now, that doesn't necessarily mean that there has
22 to be a hearing. It may well be handled by summary
23 disposition, because, you know, we would certainly file an
24 affidavit, and I presume the staff would, too, in light of
25 the staff's SER 10, that indeed we do comply with 0737. And



1 I suppose they could counter that in some specific way, one
2 or the other.

3 But they certainly have the right to participate
4 at that level. That does not make it a contention, however,
5 of the Joint Intervenors. That is an entirely different
6 thing. So I don't know that we really have a disagreement
7 about this.

8 Can we go off the record?

9 MR. LANPHER: Can we go off the record for a
10 second?

11 (Discussion off the record.)

12 JUDGE BOWERS: We're back on the record.

13 Have you concluded, Mr. Norton?

14 MR. NORTON: Yes. Unfortunately, I think Mr.
15 Lanpher was more concerned about the pipe smoking than he
16 was with what I said. I don't know whether he heard it.

17 MR. LANPHER: I heard it. I don't know whether
18 the staff agrees with you.

19 JUDGE BOWERS: Let's go to Mr. Olmstead.

20 MR. OLMSTEAD: I'm not sure that I understand Mr.
21 Norton. We are interposing the objection, since we are
22 starting on Governor Brown. I don't know whether you want
23 me to go over specifically those objections again that we
24 have previously discussed.

25 JUDGE BOWERS: It is in your filing.



1 MR. OLMSTEAD: Yes. But mainly, we do believe
2 that to have a contention for litigation, that all of those
3 requirements we specified previously must be met. And in
4 the Governor's case, if there is not a relevant Joint
5 Intervenors' contention tied to a previous contention, then
6 he must meet 2.714, which we have specified in our filing.

7 Now, those standing objections aside, I think then
8 you get to the question of whether there is a factual
9 dispute appropriate to a hearing or not. And I don't
10 understand these contentions to bring a factual dispute.

11 Namely, the Governor is contending that these
12 requirements should be met, these requirements being
13 requirements taken out of 0737. The staff's position is
14 that they should be met. The staff is reviewing this
15 information as it is submitted and making its independent
16 determination as to whether it is to be met.

17 PG&E is not disputing that they should meet these
18 requirements. So we don't really have a factual issue.
19 What we will have is a question of at what point can the
20 license issue, hinging upon at what point does someone
21 decide these have been met and who decides it. And it seems
22 to me that that is more in the nature of argument than in
23 the nature of disputed facts.

24 JUDGE BOWERS: Mr. Norton.

25 MR. NORTON: Excuse me. I think that is very well



30

1 put. That is exactly what, in a different way, what I am
2 getting at. It is that these are not the level of
3 contentions. These are things the SER Supp says this is
4 required and it has not yet been done.

5 I am sure that of A through G, many of those items
6 have not been done since SER Supp 10 was done. But clearly
7 the Board will have to make that finding. It will certainly
8 have to make that a condition of a low power license.

9 If for example B wasn't done -- and that is a good
10 example, because it I don't believe has been done --
11 obviously they would say, the operators will have to pass
12 this test before they can load fuel.

13 So we do not object to it in that sense, that it
14 is not really a contention; it is a clear requirement. We
15 recognize that requirement, the staff recognizes that
16 requirement. And I think, as I understand the Governor's
17 contention, we must meet that requirement before we can load
18 the fuel, and I agree.

19 And so it was in that sense that I say we don't
20 really have any objection to this as stated.

21 JUDGE BOWERS: Mr. Lanpher?

22 MR. LANPHER: The more the talking goes, the more
23 confused it gets, I am afraid.

24 Our only position is that, yes, PG&E does have to
25 meet these requirements. They are specified in the NUREG



1 documents and the SER. Whether or not they do meet those
2 requirements is something that we believe that we, as an
3 interested state, have an opportunity to participate on.

4 We are not going beyond the requirements. But in
5 the context of the granting of the license, if we believe
6 that the requirements are not being met, let's say maybe
7 there's an interpretation difficulty or whatever, we want to
8 be heard on that. We don't want this to be something that
9 happens outside of this low power test proceeding.

10 Now, it may be that three documents we can get
11 from PG&E or whatever -- for instance, B is a good example
12 -- that the co-license examinations will all be
13 satisfactorily done and no hearing will be required. We
14 don't want to have a hearing on something that is not
15 required. I couldn't agree more with Mr. Norton.

16 Then let me just give another example. For
17 instance, on the startup test procedures, that is subpart F,
18 that is just a short section in the SER. It is noted in the
19 SER that that is something that is, at least as of August or
20 whenever the SER was written, that was under review by
21 Westinghouse. It had not even been reviewed by the NRC
22 staff.

23 Now, whether those startup procedures are in fact
24 adequate, we would like to have an opportunity to review
25 them and give our views on whether they are adequate. And



1 that is really the gist on what subject number 4 is.

2 JUDGE BOWERS: Your original question was whether
3 it should be taken one by one in subparts, and I think
4 you've had a response from both PG&E and the staff as to
5 their position on the entire thing on 4. So can we move on
6 to your next one?

7 MR. LANPHER: I think so. I'd be delighted to.

8 Number 5 we have covered. That has to do with
9 two-phased natural circulation, and Joint Intervenors have a
10 subject on that. We addressed that this morning.

11 Number 6 relates to the statement made by PG&E on
12 page 2 of its July 16 motion that the activities which PG&E
13 seeks to conduct under the licenses which it seeks are,
14 quote, "vital to demonstrate the effectiveness," and then it
15 goes on, of the training program, the management
16 organization, the operating procedures. That is a bald
17 statement in the notion.

18 MR. NORTON: Excuse me. Is it possible for them
19 to take 6 and 7? Our response to the two is going to be
20 exactly the same, and I assume your statements regarding
21 those two are going to be exactly the same also.

22 MR. LANPHER: Sure. I don't mind that.

23 Generically, we have a number of subjects that we
24 have listed, and it goes beyond 6 and 7. There are a number
25 where we have quoted back as a question whether or not one



1 of the statements made in PG&E's motion are in fact true.

2 We believe that clearly, under the motion rules of
3 the Commission, we have a right to contest the factual
4 allegations made by PG&E in its motion, and that is really
5 what these issues do. For instance, 7 is whether they will
6 provide meaningful technical information. We want to know
7 whether or not it will.

8 That is addressed very briefly in the SER at page
9 1.3-3, but in no significant detail. Frankly, Mrs. Bowers
10 -- and I think Mr. Brown made this point yesterday -- we
11 contest overall whether there is a need in this proceeding
12 for low power testing. We believe it is much more
13 appropriate to wait until the operating license is granted.

14 We believe that allegations which PG&E has made,
15 for instance those that are the subject of 6 and 7, are
16 there to attempt to demonstrate a need. We can test that
17 and that is the purpose of these issues.

18 JUDGE BOWERS: Mr. Norton.

19 MR. NORTON: As far as 6 and 7, if Mr. Lanpher
20 would take the time to look at number 10, I assume the
21 argument is precisely the same for number 10 and maybe we
22 could respond to that at the same time. Is it indeed?

23 It again is a short quote from the motion. That
24 is the only other one I think that falls in that category.
25 Perhaps we could dispose of that.



1 MR. LANPHER: Well, number 11 also is taken right
2 out of the motion also.

3 MR. NORTON: All right. So are we covering now 6,
4 7, 10 and 11, to save time?

5 MR. LANPHER: With my reservation of going through
6 my notes, if you want to just wait a minute.

7 MR. NORTON: Sure.

8 (Pause.)

9 MR. LANPHER: I'm going to ask my colleague. Mr.
10 Brown may want to participate, because he was going to
11 handle some of these.

12 Fine. Go ahead, Mr. Norton.

13 MR. NORTON: Okay. First of all, there has got to
14 be, as pointed out repeatedly over the last day and a half,
15 some showing under Section 2.714, some showing of good cause
16 or a showing for late-filed contentions as to how this is
17 relevant. Because in the motion we made some statements
18 which, very frankly, seemed kind of obvious on their face,
19 that if you do low power testing it's going to provide some
20 meaningful technical information. That certainly seems
21 obvious on its face to me.

22 Any time you start up a reactor and do tests,
23 you're going to have some meaningful technical information.
24 And I cannot imagine having a hearing on whether or not that
25 is true.



1 Obviously you're going to get some training for
2 your operators. And again, I think I just cannot imagine
3 how one could argue that you are not going to have a hearing
4 on that subject. Frankly, it seems like a spurious thing to
5 do.

6 But just because we made those, what seems to me
7 to be self-evident statements in our motion, it doesn't mean
8 they are relevant to our request for a low power test
9 license and therefore should be litigated. For example --
10 well, I have trouble saying "for example," because I just
11 can't imagine how you go through a two-month or three-month
12 test program and not get valuable operator training out of
13 it.

14 But if somehow someone could make that argument
15 that someone would believe that you didn't get operator
16 training out of it, that is still not a reason to not grant
17 the license for low power testing. And for that reason, in
18 addition to the failure of their showing, the showing they
19 are required to show under 2.714, we don't really see the
20 relevance of these contentions to this low power testing.

21 And I appreciate the statements are definitely out
22 of our motion, but that doesn't mean that they had to be in
23 there.

24 JUDGE BOWERS: Mr. Olmstead.

25 MR. OLMSTEAD: Yes. The staff has its standing



1 objections to these contentions.

2 Secondly, I am a little uncertain how to respond,
3 in a sense, to the statements made by both Mr. Norton and
4 Mr. Lanpher, because I am not sure there is a significant
5 factual dispute on this matter. And maybe Mr. Lanpher could
6 clarify this. I don't think he has an intent of putting on
7 technical testimony to this subject concerning a
8 disagreement with the staff, the Applicant and his own
9 witnesses about what kind of information will come from this
10 test program.

11 Rather, I think what he wants to do is argue that
12 it is not the type of information which is meaningful enough
13 to be self-justifying. And I wonder if I could have that
14 clarified.

15 JUDGE BOWERS: Mr. Lanpher.

16 MR. LANPHER: That is one aspect of it, your
17 latter statement, that we question whether this in fact will
18 provide results which justify the granting of a license.
19 Further, we believe there may be alternatives, for instance
20 simulator training and other things, by which you would not
21 need to go critical or even load fuel in order to accomplish
22 many of the hopeful gains which PG&E has referenced.

23 MR. OLMSTEAD: Okay. But the clarification I am
24 seeking is whether you have an intention of putting on
25 technical testimony to the effect that the information which



1 will come from these tests is not the information which is
2 stated in the SER or in the Applicant's submittals to be the
3 information which would come from these tests.

4 MR. LANPHER: I cannot respond to that without my
5 technical people here, to tell you the truth. I cannot tell
6 you what they're going to testify to. That is one possible
7 area that the testimony would go to. We have not talked
8 that out yet.

9 MR. NORTON: Excuse me, Judge Bowers. This is the
10 second time Mr. Lanpher has referred to his technical
11 people. I'd like to know who those technical people are, if
12 they indeed exist.

13 MR. LANPHER: That is completely improper, Mrs.
14 Bowers. We are not at that point in this proceeding. Let's
15 just go forward and discuss these contentions.

16 JUDGE BOWERS: We agree with Mr. Lanpher.

17 MR. OLMSTEAD: If I could complete my remarks, I
18 doubt seriously whether there would be much technical
19 dispute about the type of information that one would get
20 from the tests proposed by PG&E. If there is no dispute as
21 to the type of information, nor is the Governor willing to
22 at this point state that he wishes to contest as a factual
23 matter the type of information that would come from the
24 tests, essentially what we are down to is an argument over
25 whether that is the type of information which supports the



1 motion or not, namely, is it a meaningful kind of test to be
2 conducted or is it not.

3 In that case I would view it as something that is
4 appropriate for argument, but not appropriate for
5 adjudication in an adjudicatory proceeding.

6 In the case that it is the latter -- I mean, the
7 former that Governor Brown wishes to do, namely contest what
8 kind of information is going to be provided by these tests
9 as a factual matter, then I think he has an obligation to be
10 specific as to what it is that he disagrees with in the SER
11 and in the Applicant's submittals concerning the type of
12 information that is expected to be contained.

13 JUDGE BOWERS: Mr. Lanpher, do you want to
14 respond? Mr. Brown?

15 MR. BROWN: There is a fundamental fact here.
16 Either these words are specific that we have quoted back or
17 they are not specific. If in fact the words are not
18 specific and therefore there is something wrong with our
19 contention for not being specific, it means the document
20 from which we took these words is not specific.

21 If that document is not specific, it does not
22 comply with Section 2.730-B of this Commission's rules,
23 which provides a motion must be specific, and therefore the
24 motion should be dismissed herewith and PG&E should come
25 back with a specific motion. That's point one.



1 Point two is that this Board in its order early in
2 this proceeding, the first order, I think in fact,
3 acknowledged after we moved to dismiss PG&E's motion for a
4 lack of specificity and for failure to sustain the company's
5 burden of proof under Section 2.732, this Board stated, and
6 I think this is a quote, that: "While the motion could be
7 more complete," unquote, we nevertheless think there is
8 enough to go forward on.

9 And we are sitting here today on the assumption
10 that we are going to get that information which makes it
11 more complete. It might have to be done through the
12 discovery process if it can't be done this way.

13 But either we have an adequate motion and
14 therefore our contentions which quote from that contention
15 are specific and adequate or, by definition, neither ours
16 nor PG&E's document is sufficiently specific to satisfy the
17 single legal criterion of specificity. That is the
18 threshold issue.

19 JUDGE BOWERS: Mr. Norton.

20 MR. NORTON: First of all, to take a few words out
21 of the motion and say that those words are not specific,
22 translates to the motion is not specific, is not exactly the
23 way you proceed to make an argument. For example, in number
24 10 they quote, "will provide significant supplemental
25 operator training," end quote. And because we argue that



1 that is not very specific, they say, therefore if that isn't
2 specific then the motion must be struck as nonspecific. I
3 think the fallacy of that is obvious.

4 Second, there has been an additional submittal.
5 The exact form of license has been submitted, and it is that
6 specificity that the Board was directing its attention to in
7 the order referenced by Mr. Brown. That was submitted, I
8 believe, December 18th is my memory of the date. And Mr.
9 Brown and Mr. Fleischaker certainly have that lengthy
10 document.

11 JUDGE BOWERS: Mr. Olmstead.

12 MR. OLMSTEAD: The point I was trying to make is
13 that the Governor references the staff's SER Supp 10, page
14 1.G-5. Now, that is a part of the discussion on training
15 during low power testing, which includes the test proposed
16 by PG&E, and the description in the SER states what the
17 staff thinks the tests are and the results that they expect
18 from the tests and the type of information that should be
19 provided.

20 As a matter of fact, on 1.G-3 it talks about
21 criterion 1, that the tests should provide meaningful
22 technical information beyond that obtained during the normal
23 test program. And if you go on and read that, it explains
24 what type of meaningful technical information the staff
25 expects.



1 My point is a very simple one: If there is a
2 factual controversy as to the statements in the SER by the
3 staff such that there is an issue appropriate for
4 adjudication, the Governor should specify what that is. If
5 the controversy is not on the appearance in the SER, but
6 over whether that does indeed provide meaningful technical
7 information, then I don't view that as an appropriate issue
8 for adjudication.

9 JUDGE BOWERS: We'll give you a chance for
10 rebuttal and then we want to move on.

11 MR. BROWN: I am not going to continue with the
12 other point. I think that nothing said in any way can
13 change a rose from being a rose, frankly.

14 And secondly, there was an affidavit attached to
15 the motion, Mr. Shiffer's affidavit, which provided the
16 evidentiary support. He stated in his affidavit that, "I
17 subscribe to the fact that what is contained in the motion
18 is true and correct to the best of my belief." That was
19 deemed to be the only evidence that was at that time
20 submitted with the motion.

21 Now, if we are going to stipulate that these words
22 are not specific, how could that constitute evidence? I
23 mean, if no one can identify it, if it's not good enough to
24 know what it is, it certainly can't be evidence. It is not
25 the definition of evidence in the standard used by the



1 Commission.

2 But for the purposes of showing a factual example,
3 our contention 11, which parrots back a statement from the
4 motion, is whether early operation at Diablo Canyon Units 1
5 and 2 will contribute in any meaningful way toward the
6 national objective of reducing dependence on imported oil
7 and/or reducing in any meaningful way the risks or
8 consequences to the public of inadequate generating
9 resources and/or allow generation of power using less
10 expensive fuels.

11 The fact is, there is no need, as we said earlier
12 and Mr. Lanpher just said, for the low power test license.
13 This is a factual argument.

14 There is no way, we contend, in which this
15 facility, by being granted a low power test license, will
16 contribute in any way to the resolution of any fossil
17 fuel-related issue. The oil consumed in a nuclear power
18 plant isn't crude oil; it is residual fuel oil. That
19 residual fuel oil in southern California historically has
20 been the byproduct and the so-called slight or yield of
21 refineries there that are producing gasoline for the largest
22 gas consumption market in the world, the southern California
23 market.

24 Southern California today is awash with residual
25 fuel oil, so much that you may be surprised to know that the



1 Department of Energy has been authorizing the export of
2 residual fuel oil, which is also called bunker sea oil or
3 bunker oil and is used to fuel ships. There's so much of it
4 that it's the cheapest place on earth to buy that kind of
5 fuel and ships go out of their way to get it.

6 Secondly, there's so much gas out there now,
7 natural gas, that companies have problems; they're drowning
8 in it. They have to pay, under something called take-or-pay
9 contracts, for gas that they can't even take, there's so
10 much of it. And it's being discovered.

11 So much in fact is being discovered that an
12 exemption was made by the Economic Regulatory Administration
13 of DOE for the use of natural gas, despite the fact that the
14 Power Plant and Industrial Fuel Use Act of two years ago
15 expressly prohibits the use of natural gas.

16 At first it was called a bubble by the Department
17 of Energy. Now it's just called a large abundance of
18 natural gas.

19 The oil back-out legislation that was proposed
20 last year got into serious trouble, because we're starting
21 to find more oil and because people are deciding that one of
22 the alternative fuels might be the heavy oil which sits,
23 apparently to the tune of billions of recoverable barrels
24 and slowly becoming economically recoverable barrels in
25 California alone.



1 Yesterday the President decontrolled oil.

2 All these things go to the question of whether
3 this plant is going to in any way meaningfully or in any
4 conceivable way contribute to this nation's concerns with
5 respect to oil.

6 That's in the motion and we're going to debate
7 that. And when we finish debating it, the facts of record
8 are going to say this plant doesn't do that, and since it
9 doesn't do it it's not needed.

10 And our purpose here clearly is to show there is
11 no need for the low power test license. And one of the ways
12 we're going to do it is by contesting these factual issues.

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1 JUDGE BOWERS: Can we go on to other subjects?

2 MR. LANPHER: Yes, ma'am.

3 JUDGE BOWERS: Can we go back to 8?

4 MR. LANPHER: We've covered 7, 8, 10 and 11
5 generically. I think that was the agreement.

6 JUDGE BOWERS: I thought you were doing 6, 7, 10
7 and 11.

8 MR. NORTON: I think 8 was included, although it
9 was not clearly specifically mentioned. It was another
10 quote.

11 JUDGE BOWERS: I see.

12 MR. LANPHER: Frankly, I think we can deal with
13 Subject No. 9 also very briefly, because it basically
14 connects the motion again; that is, paragraph 4 of the
15 motion where it says that "The activities will not result in
16 radiation levels within the plant, including those from
17 deposits that would include implementation of requirements
18 stemming from the various post-TMI actions."

19 We have also added the concern that whether this
20 would impede taking these actions due to the fact that
21 worker exposure might be too high; and that was not
22 mentioned in the motion, but I believe it relates precisely
23 to the allegation which is made in the motion by PG&E.

24 Accordingly again, as Mr. Brown was describing it,
25 these are statements made in the motion which we are seeking



1 to contest.

2 Rather than go further, that is all I really need
3 to say on Subject 9, I believe. It was covered more or less
4 by the previous statements that we had made.

5 JUDGE BOWERS: Mr. Norton.

6 MR. NORTON: In response, our standing objections
7 which apply to all of these, along with the standing
8 objections with the staff.

9 Yes, that's all. There's no sense of getting into
10 the merits of the subject matter.

11 JUDGE BOWERS: Mr. Olmstead.

12 MR. OLMSTEAD: We have a standing objection here,
13 and this one in particular is not related to the TMI-related
14 requirements, so the only relationship is to the motion. So
15 the objections we have on 6, 7, 8, 10 and 11 would apply
16 here.

17 JUDGE BOWERS: Do you have anything further, Mr.
18 Lanpher?

19 MR. LANPHER: No, ma'am.

20 JUDGE BOWERS: Well, the next is 12.

21 MR. LANPHER: I believe the next is 15, Judge
22 Bowers. I believe we covered 12, 13 and 14 in conjunction
23 with joint intervenor issues.

24 JUDGE BOWERS: Okay.

25 MR. LANPHER: As I said at the start of my



1 presentation, I believe the nexus with TMI is clear. It is
2 mentioned in the SEI supplement. There are references also
3 in 0737 at page III-47 and at page II-4.

4 Now, in 0737 the question of adequate procedures
5 for dissemination of operating experience is listed as an
6 operating license requirement, rather than as a fuel load
7 requirement. So our position is that the dissemination of
8 operating experience is an extremely important factor
9 stemming from the TMI experience, especially since it was
10 revealed that while not identical kinds of accidents to TMI
11 but related events having to do with the PORV valve and that
12 sort of thing had occurred but had never been disseminated
13 to other operators.

14 We believe that it is important prior to fuel load
15 and low power testing for PG&E to demonstrate that it does
16 have effective procedures in place so that they may be
17 judged during the lower power testing period; so that if any
18 revisions need to take place, they can be implemented and
19 put in place prior to the time of going to full power.

20 I would like to expand just briefly on that. I do
21 not doubt that PG&E has procedures or contemplates having
22 procedures. I am quite concerned whether those procedures
23 adequately specify the criteria by which to determine what
24 operating experience is in fact relevant, and whether there
25 are in place training activities, etcetera, to assure that



1 operators, once they are given that information, do in fact
2 understand it.

3 MR. NORTON: Excuse me. May we ask for a
4 clarification? I thought I understood, and then I believe
5 Mr. Lanpher said something that confused me. Is the
6 Governor saying that he believes the procedures we have,
7 which incidentally were submitted on December 2nd, 1980 to
8 the staff and obviously were not reviewed by you in
9 preparing this contention which was submitted on December
10 3rd, a day later, but is it the position of the Governor
11 that those procedures are inadequate, that are required
12 under 0737, the ones we have submitted or inadequate, or
13 that the procedures required by 0737 are insufficient, or
14 that those procedures should be implemented a time different
15 than are required by 0737?

16 MR. LANPHER: Our position is twofold. First of
17 all, the procedures should be implemented prior to or at the
18 same time as going to fuel loading rather than at the
19 operating license, so a different time.

20 MR. NORTON: Than 0737 requires. So it is the
21 sufficiency of 0737.

22 MR. LANPHER: In terms of the timing, 0737, and it
23 is not surprising, does not specify exactly what has to be
24 in procedures. Procedures by their nature do not lend
25 themselves to being specified exactly what is going to be in



1 them.

2 I will be frank. I have not had an opportunity to
3 carefully review the PG&E procedures. We want this issue in
4 here. We are not contending in here that they are
5 inadequate. We want to examine that, as we believe an
6 interested state has a right to do, and if we do believe
7 they are inadequate, we will take that position. But we
8 want this issue in here because we think it is extremely
9 important that adequate procedures be in fact in place.

10 Does that clarify that?

11 MR. NORTON: Certainly. Thank you. We have our
12 standing objection. Again, this is not a contention, and
13 the state has made no effort of making any showing, as our
14 standing objection has pointed out on numerous prior
15 occasions. And I certainly meant the Governor and not the
16 state.

17 JUDGE BOWERS: Mr. Olmstead.

18 MR. OLMSTEAD: The standing objection of the staff
19 applies to this contention.

20 JUDGE BOWERS: Do you have anything further, Mr.
21 Lanpher?

22 MR. LANPHER: No, I don't.

23 JUDGE BOWERS: Then do we go into the next one?
24 What would that be, 16?

25 MR. LANPHER: Yes, ma'am.



1 As a preliminary matters, subsections B, C, D, and
2 E of this subject we are now prepared to drop, so we will
3 not be addressing those unless Mr. Norton objects.

4 JUDGE BOWERS: Could you give us those again?

5 MR. LANPHER: B, C, D, and E. So I will be
6 addressing myself to the other three subparts.

7 MR. NORTON: Excuse me. I hate to go back, but
8 the dissemination of that information of the operating
9 experience is required to be disseminated prior to fuel
10 loading under 0737, so you may not indeed by challenging the
11 sufficiency of that regulation.

12 MR. LANPHER: Fine. I just can't read. I'm
13 delighted, because you certainly will try to comply, I'm
14 sure.

15 MR. NORTON: We already have. I just wanted the
16 record clear for the Board.

17 MR. LANPHER: Can you clarify that, what you are
18 referring to?

19 MR. NORTON: Sure. NUREG-0675, which is
20 supplement number 10 to the SER, if you will look at page
21 1.C-6, up above that it is 1.C-5, "Licensee dissemination of
22 operating experiences position: Operating reactors will
23 complete by September 1980 -- operating license applicants
24 will complete by September 1980 or prior to fuel loading
25 period."



1 So you are not really, I don't believe, attacking
2 the timing as you might have thought you were.

3 MR. LANPHER: Just so the record is clear, this
4 doesn't exactly help me, but if you look at page II-4 of
5 NUREG-0737, I think they've changed that requirement on
6 you. So I will accept your commitment to do it prior to
7 fuel loading.

8 MR. NORTON: Well, it's in here. The problem with
9 0737 is you have to be very careful between the tables and
10 the text. The tables are very imprecise, and you really
11 have to go to the text and read them carefully to see what
12 the timing is. But that is the commitment, and it is not an
13 issue. It certainly would be a condition of any low power
14 license.

15 MR. LANPHER: Fine. Moving on to 16, Subject 16A,
16 well, the matters specified in 16 are matters which are not
17 required by 0737 at this time; although with respect to the
18 NRC audit of emergency procedures, that is mentioned, I
19 believe, just briefly in 0737 on page II-5. That is a full
20 power requirement. That is at the top of that page.

21 Our concern with the emergency procedures is that
22 the nexus to TMI again is clear. It is mentioned in 0737.
23 It is part of NUREG-0660 which arose out of TMI, of course.
24 Our concern, of course, is at TMI there is substantial
25 question regarding the adequacy of emergency procedures was



1 raised, and it was determined that they were not adequate
2 for the kind of transient which was experienced there.

3 I know operating reactors have gone through a lot
4 of work the past year and a half, two years to improve their
5 emergency procedures. We believe that as part of the
6 testing program, low power testing program, if it is in fact
7 going to take place, those emergency procedures ought to be
8 in place and previously audited by the NRC so that their
9 adequacy can be judged during that low power testing program.

10 I understand you have the emergency procedures, of
11 course, but the NRC audit has not been completed; so what we
12 are asking for is completion of that so we can be sure that
13 the NRC staff is prepared to review the emergency procedures
14 carefully as they're actually implemented during a low power
15 testing program.

16 MR. NORTON: Excuse me, Mr. Lanpher. I assume you
17 are through with A and are moving to the remaining ones?

18 MR. LANPHER: Yes.

19 MR. NORTON: Well, again, to speed the remaining
20 ones up, the last two, F, G, have been done, and what you
21 are asking for is completion of; and all I can do is tell
22 you that they have been done, and we would certainly be
23 willing to stipulate, seeing as how they're already done,
24 that they will be done prior to fuel loading.

25 And I appreciate there are time lags. This is



1 January 28th, 29th, and yours was submitted on December 3rd
2 and so on.

3 MR. LANPHER: Well -- finish your statement. I'm
4 sorry.

5 MR. NORTON: What I am saying is we don't disagree
6 obviously. If we've already done something that shouldn't
7 be done, it would be silly for us to sit and have a
8 disagreement about that. From our standpoint it would be
9 silly.

10 Now, I can appreciate your saying that you do not
11 yet know that they have been done. What I am telling you is
12 that we do not disagree that they should be done prior to
13 fuel load.

14 MR. LANPHER: If we could get evidence that they
15 have in fact been done adequately, we certainly have no
16 desire to litigate such an issue. That would be crazy.

17 MR. NORTON: All right. In response to A -- and
18 incidentally, to both F and G -- first of all, these are not
19 low power requirements under 0737. They are long-term. G,
20 for example, is a long-term 0737 requirement. That is not
21 to say, however, that we hadn't done those last two things,
22 even though they were not requirements.

23 So these, all of these under 16, in fact, even the
24 ones struck, are an attack on the sufficiency of 0737, and
25 therefore, our standing objection and the staff's standing



1 objection should be invoked here as to whether or not these
2 should be contentions.

3 JUDGE BOWERS: Mr. Olmstead.

4 MR. OLMSTEAD: Yes. The staff invokes its
5 standing objection insofar as these go beyond the
6 requirements of NUREG-0737. I do have a couple of comments.

7 We, of course, have the legal arguments on
8 emergency planning still outstanding, and on item G, just so
9 that there is no confusion, that is a full power requirement
10 which is undergoing staff review, but the staff has not
11 completed its re-evaluation of AFW reliability at this time,
12 namely the review of the applicant's submittal. They have
13 submitted and complied with the requirement subject to staff
14 review and approval.

15 JUDGE BOWERS: Do you have anything further, Mr.
16 Lanpher?

17 MR. LANPHER: Not on this subject.

18 JUDGE BOWERS: Seventeen?

19 MR. LANPHER: Mr. Brown is going to address the
20 last subject.

21 MR. NORTON: Excuse me, Mrs. Bowers. The last
22 subject is obviously the motion to stay proceedings argument
23 all over again, is it not?

24 MR. BROWN: No, it isn't. I'd like to proceed
25 with it because I think we're going through our issues now.



1 Yesterday there was a motion to stay. We don't have a
2 motion to stay now.

3 I am going to make a motion, however. It's not
4 going to be to stay. It's going to deal with these
5 regulations. And I'd like to refer the Board -- we can save
6 a great deal of time because this morning I jotted down
7 concisely the argument and the motion that we'll make in a
8 moment.

9 But if I could refer the Board, please, to Section
10 51.5 of the Commission's regulations, I think then I can lay
11 out everything in advance and make it crystal clear.

12 (Pause.)

13 JUDGE BOWERS: Okay.

14 MR. BROWN: Oh, everyone's prepared? If the Board
15 would please refer its attention to subsection A, 51.5A,
16 that refers to an environmental impact statement, and it
17 says, "An environmental impact statement will be prepared
18 and circulated." And then under point 2 there it says, "For
19 issuance of a full power license." That has been done in
20 this proceeding.

21 Now, if the Board would continue to subsection B,
22 which recognizes the existence, of course, of subsection A
23 above it, and the Commission was aware of that, section B is
24 entirely different, and it says, "Many licensing and
25 regulatory actions of the Commission other than those in



1 paragraph A" -- that is, other than the full power license
2 environmental impact statement -- "may or may not require
3 preparation of an environmental impact statement, depending
4 upon the circumstances.

5 "In determining whether a statement should or
6 should not be done, the Commission will be guided by the
7 CEQ's guidelines."

8 Then it says "Such other actions" -- that is, it's
9 saying such other actions include, that is, those which may
10 or may not require an environmental impact statement,
11 include. Then if the Board would please refer to subsection
12 3 of B, it says "Issuance of a license to operate a power
13 reactor at less than full power."

14 Now, these are distinct. A referred to full power
15 license and an EIS, and B, an entirely separate matter, the
16 Commission knows if it wanted to say that a low power test
17 license is subsumed or embraced by A, it wouldn't have had
18 B. It says B is separate, and you might need an EIS and you
19 might not; but to figure out the answer to that, you go to
20 subsection C.1, and subsection C.1 there says, "The
21 environmental impact of the proposed licensing and
22 regulatory actions of paragraph B" -- and recall, paragraph
23 B meant low power test license in subsection 3 -- "will be
24 evaluated." It says "will." "And if it is determined that
25 an EIS should be prepared after it will be done, a notice of



1 intent shall go forth," and so on. "If," it continues, "it
2 is determined that an environmental impact statement need
3 not be prepared for one of these matters in B, which
4 includes the low power test license, then a negative
5 declaration and environmental impact appraisal will, unless
6 other determined by the Commission, be prepared in
7 accordance with 51.7 and 51.50D."

8 Now, what all of these mean, there is only one
9 answer, is that there must be a resolution to satisfy B of
10 whether or not to do an environmental impact statement. And
11 the only way to determine that is what subsection C.1 says,
12 by doing an environmental appraisal or assessment, unless,
13 it says, it is determined by the Commission otherwise.

14 So this Board really has to either require the
15 staff or it really has to find that these provisions apply,
16 and thus they require the provisions, the staff to do an
17 environmental appraisal in order to determine whether to do
18 an environmental assessment, or this Board could otherwise
19 determine that there is no need for that.

20 The former, of course, is what we ask for, and we
21 request the Board to direct the staff to do the
22 environmental appraisal. Should the Board decide not to do
23 that, it would have to make the otherwise determination
24 stated here, and it would have to have a rational basis for
25 that.



1 There is a body of law that has developed over the
2 ten years, and we have cited those cases in our motion to
3 stay, and to that extent I would ask that those cases be
4 referred to and the many cases cited therein by the courts;
5 that there must be a hard look at the environmental effects
6 before deciding against taking environmental action.

7 So in deciding whether there is a rational basis
8 even for an environmental assessment, that can't be done
9 without taking a hard look at this. And accordingly, what
10 Governor Brown moves this Board is, first, to rule -- we
11 specifically move this Board to rule that Section 51.5B(3)
12 applies to PG&E's proposal to operate the Diablo Canyon
13 plant at less than full power; and second, to direct the
14 staff to assess the environmental impact of such PG&E
15 proposal in accordance with Section 51.5C(1).

16 We request that this Board direct the staff to
17 perform the appraisal in order to determine whether an EIS
18 is necessary, and we further request that the environmental
19 appraisal contain the substance required by Section 1508.9A
20 and B of the regulations of the Council of Environmental
21 Quality, which are referred to in the Commission's
22 regulations that I quoted.

23 And this CEQ regulation, Section 1508.9B states,
24 "Environmental assessment shall include brief discussions of
25 the need for the proposal of alternatives as required by



1 Section 102E of the environmental impacts of the proposed
2 action" -- that reference to that section is in the National
3 Environmental Policy Act -- "and alternatives and a listing
4 of agencies and persons consulted."

5 This is a mandatory requirement, and it is apart
6 from the environmental impact statement that has already
7 been prepared. There is no conceivable escape from that.

8 Finally, we respectfully ask the Board if it does
9 not agree with us to state the specific reasons for and the
10 bases of its decisions as required by law, so that we can
11 expeditiously move toward a resolution of this, either by an
12 Appeals Board or by the Commission.

13 And to that extent I would like to refer to the
14 Board to A Lab 422 and NRCCH Reporting Service. The
15 particular citation is paragraph 30,216.02, and I quote the
16 Appeals Board there, "We long ago reminded licensing boards
17 of their duty not only to resolve contested issues, but to
18 articulate in reasonable detail the basis for the course of
19 action chosen.

20 "We, as well as the parties, should be able
21 readily to apprehend the foundation for the Board's ruling,
22 for it is a well accepted principle of administrative law
23 that the orderly function of the process of review required
24 that the grounds upon which the administrative agency acted
25 be clearly disclosed and adequately sustained. A board must



1 do more than reach conclusions. It must confront the facts."

2 That paragraph is replete with citations.

3 If the Board believes that it has no power, on the
4 other hand, to direct the staff to prepare the environmental
5 impact statement -- I am sorry -- to prepare the
6 environmental assessment under Section 51.C.1, then we
7 request respectfully that the Board find that Section
8 51.5B(3) applies to PG&E's instant proposal, and to certify
9 the question of this Board's power to the Commission.

10 However, we don't believe there really is an issue
11 on that. The Board, in our judgment, unquestionably has the
12 power, and indeed, we refer the Board to Section 51.53 and
13 Section 51.52D of the Commission's regulations which
14 necessarily empower the Board to direct the staff to prepare
15 the requested environmental assessment.

16 Those sections deal explicitly with the low power
17 test situation that we have here, and I don't believe there
18 is room for any argument on that.

19 Thank you very much.

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1 JUDGE BOWERS: Before we go to the other parties,
2 Mr. Brown, I would like to mention a little thing that I
3 have in the back of my mind. We don't have CCH in this
4 office. We use the original on things. And when you give
5 us a citation only to that CCH paragraph thing, it doesn't
6 give us -- well, then we have to search and hunt. So if you
7 will give the case name and the ALAB number and the date --

8 MR. BROWN: I certainly will.

9 JUDGE BOWERS: -- then that gives us information
10 we can use immediately.

11 MR. BROWN: I am terribly sorry. It's Seabrook
12 Station Units 1 and 2. The decision is July 26, 1977. The
13 ALAB number is 422. And this point is about I believe it's
14 the ninth paragraph of the opinion.

15 JUDGE BOWERS: Well, I just wanted to make a
16 general statement. If you will give us the information
17 other than just the CCH citation.

18 Now, Mr. Norton.

19 MR. NORTON: I thought this was something
20 different than the motion to stay, but I did not hear
21 anything different than was argued in the motion to stay
22 yesterday, and I am not going to repeat all the arguments
23 that we made yesterday in our response to the motion to stay
24 the staff made yesterday and the staff's response, and would
25 simply incorporate my reference in response to Mr. Brown's



1 latest renewal of his prior motion.

2 JUDGE BOWERS: Mr. Olmstead.

3 MR. OLMSTEAD: Well, the staff's position on the
4 same motion was essentially that there was a procedural
5 defect in Governor Brown's motion in that he didn't address
6 the stay requirements. And that was the basis for the
7 Board's ruling. Now he is not asking for a stay, as I
8 understand it; he is asking for a determination as a matter
9 of fact and law that the environmental assessment and
10 environmental impact statement in this proceeding is not
11 sufficient.

12 And the only reason that he cited you to ALAB 422
13 was for the very normal proposition that boards need to
14 articulate the basis of their ruling on motions, which I
15 don't object to.

16 What I object to is that yesterday and in my
17 response to his stay motion I pointed out Citizens for Safe
18 Power vs. NRC, 524 Fed. 2nd, 1291, page 1301, D.C. Circuit,
19 1975, on essentially identical facts where the Contention
20 was made that an environmental impact appraisal or statement
21 had to be made separately for low-power testing. The Court
22 said "No."

23 I also pointed out the Trojan case, which was 8
24 NRC 717, affirmed by the Appeal Board in 9 NRC 287, 1979, to
25 the same effect.



1 Now, I think that Governor Brown has an obligation
2 to address the case law of this Commission and of the
3 District of Columbia Circuit Court of Appeals. And until he
4 does so, I think the Board is totally justified in rejecting
5 such Contentions on the grounds he has made no effort as a
6 matter of law to distinguish the case law that is binding on
7 this Board. And I think that is all the reasons that you
8 have to give the Governor.

9 JUDGE BOWERS: Mr. Brown?

10 MR. BROWN: Well, I cited cases. But I consider
11 it, in light of Mr. Olmstead's comments, to be a highly
12 inconsistent remark that you wouldn't have distinguished the
13 cases that I cited. It is quite surprising for a gentleman
14 to do that.

15 However, the case cited by Mr. Olmstead goes to
16 the question of an environmental impact statement in the
17 case he cited. We are asking this Board to do what no one
18 can dispute: decide whether an environmental impact
19 statement is necessary on the merits by complying with the
20 regulations of this agency. It is only a procedural
21 requirement.

22 Mr. Olmstead's companions on the staff are bound
23 by law to do an assessment, an appraisal. They have the
24 right under law to conclude that there is no significant
25 environmental impact that requires an EIS. That they



1 haven't done. There is no way out of that.

2 Nader vs. Butterfield, Hanley vs. Kleindinst, City
3 of Davis against Coleman, and a litany of decisions that
4 began in the mid-1970s one after another making that clear.
5 We are not saying, "Do an EIS, a statement." We are saying,
6 "Comply with the regulations. If you have a rational basis,
7 NRC staff, not to perform an EIS, set it down and publish it
8 in accordance with your own regulations and don't do it.
9 But set it down." You haven't set it down.

10 We further believe that if you do an environmental
11 assessment, procedurally as the law requires and in
12 accordance with your own regulations, embracing section
13 1508.9 of CEQ's regulations which requires a discussion of
14 the need for the proposal, you will, we submit, find there
15 is no need for this. But we acknowledge that you have a
16 right to find there is a need, as long as you have a
17 reason.

18 And all we are saying is that your regulations
19 apply to the low-power testing because they say that your
20 regulations apply to it. And the court case you cite does
21 not deal with the requirement of doing an environmental
22 assessment of whether or not this applies. The cases I
23 cited are among the many, many cases dealing with
24 assessments, and there is no way out, notwithstanding how
25 much wiggling the staff wants to do.



1 MR. OLMSTEAD: I would point you, if I may, to the
2 quotation at the top of page 7 of the staff's response to
3 the Governor's stay request, citing the Trojan Nuclear Power
4 Plant case, "Consequently, we find that authorization of
5 interim operation does not require the preparation and
6 issuance of either an environmental impact statement or an
7 environmental impact appraisal and negative declaration
8 pursuant to 10 CFR 51.5.B. and C," the very Contention the
9 Governor is putting forward here.

10 MR. BROWN: That was on the facts of that case,
11 and what we're saying --

12 MR. NORTON: Objection. Judge Bowers, this has
13 got to stop. This argument was made yesterday over and
14 over. Each party now has spoken about three or four times,
15 and we have got other matters pending.

16 JUDGE BOWERS: Well, we agree with you. We are
17 hearing, to some extent, a replay of the positions stated
18 yesterday.

19 So does that conclude, then, Governor Brown's
20 statement of subjects?

21 MR. BROWN: Yes, that does.

22 JUDGE BOWERS: Well, since we are all together and
23 this is not easy to do with people spread throughout the
24 country, we do want to consider within the time left some of
25 the subjects that may be appropriate, depending on our



1 ruling in our order subsequent to the prehearing conference,
2 such as scheduling.

3 But let me check with each party and see if there
4 are other matters that you want to bring to everyone's
5 attention at this time. Mr. Norton?

6 MR. NORTON: Well, this is connected with what you
7 are going to do. But we would like stipulation of the
8 parties that should there be -- I don't know quite how to
9 put this -- should there be Contentions of a factual nature
10 as opposed to Contentions of a legal argument nature, where
11 you don't have to take evidence?

12 Obviously, I don't think anyone would dispute that
13 the policy statement, and while we dispute a lot about it, I
14 think it's very clear that it says, "We encourage the Boards
15 to handle these things by summary disposition." I don't
16 think anybody can argue with what that means. It's pretty
17 clear. Does anybody disagree that that is what the policy
18 statement says, I guess they could speak and say it doesn't
19 say that.

20 But we would ask that we file the motions for
21 summary disposition very quickly and that we not, under the
22 circumstances of this case, be bound by the rule which
23 provides that you file your motions for summary disposition
24 at least 45 days in advance of a hearing, because all that
25 does is encourage hearing date to be delayed. And we don't



1 think that it makes any sense in this proceeding.

2 That rule was designed in your normal construction
3 permit or operating license proceeding where you have a long
4 track leading into your hearing. Here that doesn't do
5 anything but prejudice the Applicant, and I don't know that
6 anyone would be insistent on the rule, but I don't want to
7 file a motion for summary disposition and have someone come
8 back and say you can't consider it because it's 42 days
9 before what we've agreed upon is the hearing date.

10 So I would like to handle that summary disposition
11 date first.

12 JUDGE BOWERS: Well, let me check with Mr.
13 Fleischaker.

14 MR. FLEISCHAKER: Before we get into scheduling,
15 because this really is a matter of scheduling, I have a
16 request to the Board to certify a question to the
17 Commission. And I would like to state that the question
18 that I would like the Board to certify and then the basis
19 for that motion. And it will just take me a couple of
20 moments.

21 I would like to -- the Joint Intervenors would
22 like the Board, the Licensing Board, to certify the
23 following question to the Commission in this proceeding to
24 determine whether PG&E should be granted a license to fuel
25 load and engage in low-power testing:



1 "What requirements, other than relevancy to
2 low-power operation, sufficient specificity, and inadequate
3 statement of the basis for the Contention must be met for a
4 Contention to be admitted for litigation in this period?"

5 The Commission's policy statement, as you know,
6 encourages the Board, specifically on page 8, to certify
7 questions where the Board are in doubt as to the meaning or
8 the intentions, the Commission's intentions, in approving
9 NUREG-0737. And the fundamental question which we really
10 haven't resolved yet and which we had significant debate
11 over yesterday is what issues may be heard in this
12 proceeding. And I think that before we go forward, we have
13 got to get an answer to that question.

14 I would like to refer you first of all to the
15 staff's memorandum of September 25, 1980. In that
16 memorandum the staff identified as appropriate areas for
17 contention, "Those already in issue in the full application,
18 plus any Contention submitted concerning the low-power test
19 requirements set forth in NUREG-0694, 'TMI-Related
20 Requirements for New Operating Licenses,' which the
21 Commission has noted in its statement of policy are
22 necessary and sufficient for responding to the TMI-2
23 accident."

24 The Board essentially adopted that position in an
25 order that it issued earlier this fall. Later, on December



1 23, in the staff's response to our statement of Contention,
2 the Board -- excuse me -- the staff reiterated that position
3 and then noted that the NUREG-0694 had been superseded by
4 NUREG-0737 and stated Contentions would "therefore also be
5 appropriate which concern the requirements of NUREG-0737."

6 And then it goes on to say the following, and I
7 want to underscore this, at page 3 of that December 23rd
8 staff paper. Subsequent to the Licensing Board's October 2,
9 1980, order, the Commission issued a revised policy
10 statement. This policy statement clarified the Board's
11 earlier policy statements on treatment of TMI-related
12 requirements.

13 While making clear that Intervenors may litigate
14 the sufficiency of the NUREG-0737 requirements, the
15 Commission added that it would be "useful if the parties, in
16 taking a position on such TMI-related requirements, stated:
17 A, the nexus of the issue to the TMI-2 accident; B, the
18 significance of the issue; and C, any differences between
19 their position and the rationale underlying the Commission
20 consideration of additional TMI-related requirements."

21 The staff believes the Licensing Board should
22 require Intervenors to modify any Contentions not otherwise
23 found objectionable, to address the above three
24 clarifications the Commission suggests.

25 That same position is again stated in that order



1 that was dated -- excuse me -- in the staff paper that was
2 dated later on in December -- excuse me -- January 12, the
3 NRC staff response to the Licensing Board's order for status
4 of requests to defer ruling.

5 That is our position. We agree with that
6 position. The difference is that the staff has grafted a
7 couple of other requirements, which I still don't
8 understand, onto -- for an issue to be admissible in this
9 proceeding.

10 One of those requirements seems to be that for an
11 issue beyond 0737 to be admissible, it must satisfy the
12 requirements of 2.714.A. That requirement is not found in
13 the policy statement anywhere, either the revised policy
14 statement or the earlier policy statement. In fact, that
15 requirement is based on the fact that Supplement 10 to the
16 staff's safety evaluation report is limited to those issues
17 set forth in 0694, and so the staff is not yet prepared,
18 apparently, to litigate the sufficiency -- or excuse me --
19 issues beyond the list contained in 0737.

20 A further staff requirement seems to be that --
21 and this one is really hard to understand -- that somehow
22 the 0737 issues are automatically folded into this
23 proceeding because they meet the Wolf Creek test, whereas
24 those beyond 0737 have to meet the Wolf Creek test.

25 Well, that is just not the case, because including



1 the 0737 list will not automatically result in a change in
2 rulings, because, A, we have the right to challenge the
3 sufficiency of that list, and, equally as important, the
4 Applicant has the right to challenge the necessity.

5 So the staff has made an arbitrary distinction
6 between those issues listed on 0737 and those beyond 0737.
7 That distinction has no basis in law. It has no basis in
8 the Wolf Creek rule. It has absolutely no basis in safety.

9 Finally, the staff imposes some requirement that
10 some of our issues -- and I am still not sure which ones --
11 relate back to Contentions that were previously admitted in
12 this proceeding. By that, I mean Contentions that were
13 admitted prior to the TMI accident.

14 Let's think about that requirement. How can we
15 anticipate additional regulatory requirements before Three
16 Mile Island and file Contentions? The answer is simple: We
17 couldn't. Prior to Three Mile Island, any Contention that
18 went beyond the regulations was thrown out as a challenge to
19 the regulations. It is that simple.

20 So the staff's position basically boils down to
21 this: We should have anticipated the regulatory
22 deficiencies that were shown up in Three Mile Island and
23 challenged them, because that is precisely what these new
24 augmented requirements do. But we couldn't do that, so --
25 we just couldn't do that. Had we anticipated them and



1 challenged the regulations, our Contentions would have been
2 thrown out. So the staff's position on that basic position,
3 we believe, is just legally bankrupt.

4 Let me move to the last point, and that is the
5 Applicant's position. The Applicant's position is basically
6 this: That the time for filing Contentions is closed. That
7 closed two years ago. And so that in order to have a
8 Contention in this proceeding, we have got to meet the tests
9 on the bottom of page 8, 2.714.A, as well as the Wolf Creek
10 test on the top of page 9.

11 Let me tell you what the fundamental problem with
12 that is. It ignores the Lessons Learned from Three Mile
13 Island. The fundamental lesson of Three Mile Island is
14 this: The regulations are not adequate to assure safety --
15 period.

16 In order to assure safety, we have to have
17 augmented regulations. The Commission in its policy
18 statement has augmented those regulations, and the Atomic
19 Energy Act absolutely guarantees us the right to have a
20 hearing on those augmented regulations. They deny us that
21 right, and if you interpret the policy statement consistent
22 with their position, you are interpreting that policy
23 statement to be absolutely in opposition to the right of
24 hearing guaranteed by the Atomic Energy Act.

25 That is our position. And the bottom line is



1 this: We have three conflicting positions. We think ours
2 is right. But we suggest that in order to move this
3 proceeding along, that we ought to get a clarifying
4 statement from the Commission. And I have drafted a request
5 for certification so that we can get specific direction. We
6 request that the Licensing Board submit that question to the
7 Commission.

8 JUDGE BOWERS: Mr. Norton.

9 MR. NORTON: Well, the first thing, I think Mr.
10 Fleischaker must have misspoken early on when he said the
11 staff's statement about section 2.714.A.4 was nowhere
12 contained in either the old or the new policy statement,
13 because Mr. Fleischaker at the end admitted that section
14 2.714.A.1 was contained in the paragraph at the bottom of
15 page 8. So perhaps he misspoke. If he didn't misspeak at
16 the beginning, he is inconsistent.

17 Mr. Fleischaker states our position fairly well.
18 We think it is very clear what our position is and it has
19 been made to this Board. Now, what Mr. Fleischaker ignores
20 is the nuance of that position. He says they are entitled
21 to be heard. Anybody is entitled to be heard when they are
22 a party in a proceeding and another party makes a motion.
23 No denying that. We have never maintained that.

24 The question is: What is that party's duty to get
25 the Contention before this Board? What must he do to get a



1 Contention in a litigable position? That is the question.
2 Not his right to be heard. Nobody is saying he doesn't have
3 a right to be heard.

4 What we are saying is that he has not properly
5 done those things that he must do to get a Contention before
6 this Board. He has not complied with the policy statement.
7 Where is a showing of good cause? Where is the showing of
8 what the "defect" or the "safety significance" is at Diablo
9 Canyon?

10 It is easy to go to 0737 and say, "Well, gee, the
11 nexus is all there. I mean it is obviously TMI-related.
12 Here is it. So we want to have a hearing on it." You can
13 do that with each and every word contained in 0737,
14 certainly in each and every numbered item. Just submit it
15 and say, "These are our Contentions. We say that Diablo
16 Canyon doesn't comply with each and every one of these. And
17 further, we say that each and every one of these is
18 insufficient." So we would have about 650 Contentions or
19 6000 Contentions, however many that would turn out to be.

20 They have not done any more than that. They have
21 picked some 20 to 40, depending on whether you read
22 subsections and so on of these, apparently on some random
23 basis, and they have said simply that. They have said they
24 aren't sufficient enough -- period.

25 Or they have said, "We don't know whether they



1 will comply with it or not -- period." They haven't gone
2 any further than that. And I submit to you that any fair
3 reading of this policy statement leads you to the conclusion
4 that they must go further than that. They have to. It just
5 doesn't make any sense to interpret the policy statement any
6 other way.

7 As far as directed certification to the Commission
8 goes, Mr. Fleischaker says he wants to do that so we can
9 move these proceedings along, I don't think he really means
10 that. What he means is so that we can delay these
11 proceedings several more months or a year while the
12 Commission sits on it and takes its time deciding it, if
13 they do decide it, if they would accept it.

14 What I suggest that this Board do is to rule, as
15 it has fully intended to as a result of this prehearing
16 conference, and if Mr. Fleischaker or the Applicant or the
17 staff or Governor Brown doesn't like what this Board does,
18 then we can ask for directed certification for the
19 Commission to reverse what this Board has done. I think all
20 of our positions are very clear. I think the Board
21 understands our positions, and I think the Board can
22 probably read the policy statement every bit as well as we
23 can and come to their own conclusion.

24 JUDGE BOWERS: Mr. Norton, before we leave you, I
25 want to ask about a matter in an oversimplified way. We



1 .were discussing this at noon, and, of course, we need to
2 review the transcript and go through all the papers again.

3 But are we correct that the Applicant, when you
4 are talking sufficiency, you are talking only about those
5 items that are in 0737, and you are saying that the policy
6 statement allows the sufficiency -- well, let me start with
7 the Intervenors. When you are talking sufficiency, you are
8 saying either the requirements of 0737 are insufficient, the
9 items in themselves, or they should include items that they
10 don't include? Is that correct, Mr. Reynolds and Mr.
11 Fleischaker?

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1 MR. FLEISCHAKER: May I have a second, please?

2 (Pause.)

3 MR. REYNOLDS: Our answer is that we mean both.

4 That does not mean both in every instance. I mean, one
5 contention may be directed toward the sufficiency of a
6 particular item in 0737. Other contentions may be directed
7 to the fact that 0737 does not contain that item.

8 JUDGE BOWERS: So one or the other.

9 MR. REYNOLDS: Yes.

10 MR. NORTON: That was certainly our understanding
11 of what they were say, is that 0737 doesn't go far enough in
12 one way or the other, but that is certainly attacking the
13 sufficiency of 0737.

14 JUDGE BOWERS: And I realize I'm trying to
15 oversimplify something that we heard about for hours
16 yesterday, and PG&E is saying that that is no good because
17 you cannot do one of those?

18 MR. NORTON: No. It might be proper if they did
19 what they are supposed to do, but you can't simply allege
20 that. My example of my watch is not a bad analogy. They
21 could allege that because I wear a watch, Diablo Canyon
22 isn't safe, period. If that is all they do, you cannot
23 admit that as a contention.

24 Well, frankly, that is what they've done here.
25 They have just picked up 0737, pick some lines and say they



1 aren't sufficient, period. They've got a duty to do more
2 than that before it can be a contention.

3 JUDGE BOWERS: Now, your watch would probably be
4 outside 0737.

5 MR. NORTON: But so is what they are saying
6 outside 0737. They are saying it is not sufficient. They
7 are not saying how it is not sufficient. They are not
8 saying instead of four analyses you've got to have five
9 analyses, and this is the kind of analyses you've got to
10 have, and this is why it is important, and this is why it is
11 related to Diablo Canyon.

12 They don't do any of that. They say it is not
13 sufficient, period. Therefore, we are entitled to litigate
14 it. That is our objection.

15 You know, if you had made a contention like that,
16 I guess they are free to go out and spend six years
17 developing that contention into really 50 or 60 contentions,
18 because maybe they'll come up with 50 or 60 ideas as to how
19 it is insufficient and 50 or 60 witnesses who will come in
20 and will do each of them a different test.

21 It is an endless thing, and that is why this
22 policy statement says look, we are not going to reopen each
23 an every licensing proceeding and litigate Three Mile Island
24 from A to Z. They make it very clear; it is just so clear
25 on those last two pages. If you have got something, you



1 know, let us know what it is. Tell us. If you think -- and
2 I'm using the word "analysis" -- if you think a specific
3 analysis should be done, tell us what analysis should be
4 done, why it should be done, how it relates to Diablo Canyon
5 and TMI, how it is of safety significance, and what is
6 different about it, and what was in the record before the
7 Board, before the record was closed.

8 They haven't even attempted to do that. In fact,
9 they are very honest about it and say that's a lot of crap.
10 We don't have to do any of that. All we've got to do is say
11 it's insufficient, period.

12 MR. OLMSTEAD: Are we going to hear from the other
13 parties, or is the Governor going to speak on this?

14 MR. BROWN: We would like to make a statement.

15 JUDGE BOWERS: We would like to make some
16 questions and let Mr. Norton see them, so it might be
17 appropriate to go ahead now.

18 MR. OLMSTEAD: I want to be clear that I don't
19 necessarily agree with Mr. Norton's analogy.

20 JUDGE BOWERS: We want to be sure we understand it.

21 JUDGE KLINE: I am still having trouble
22 understanding. I think I understand what the Joint
23 Intervenors said, but let me now ask Mr. Norton again. On
24 the question of sufficiency there are two ways of looking at
25 sufficiency. One is the list itself may be expanded with



1 new items. 'The other is the existing things in the list .
2 might themselves be expanded, that is.

3 And I think the answer they got from the Joint
4 Intervenors is that sufficiency encompasses both.

5 MR. NORTON: One or the other or both.

6 JUDGE KLINE: One or the other or both.

7 Now, I want to understand if that is also your
8 position or your view on it.

9 MR. NORTON: I would have to go to each specific
10 contention, because I frankly don't have a memory of them
11 making that distinction as they went through the
12 contentions. And I suspect if we looked at the contentions
13 for a moment --

14 JUDGE BOWERS: Well, on the record they indicated
15 which fell within 0737.

16 MR. NORTON: Okay. There were some other
17 contentions that had nothing to do with the 0737, and they
18 say that 0737 is insufficient because it does not include
19 that subject matter.

20 Well, very clearly, I think that, you know, the
21 policy statement requires them to do more than simply state
22 that, without any question.

23 JUDGE KLINE: I think the question that I had
24 really relates more to the policy statement than to your
25 response to Joint Intervenors. In reading the policy



1 statement, does the policy statement permit both
2 interpretations, or does it limit them to one or the other?

3 MR. NORTON: Well, excuse me. If you'll give me a
4 moment, I'm not sure that I have read that portion of the
5 policy statement with that question in mind, and I would
6 like to do it if you'll give me a moment to find it.

7 It says at the top of page 8, "The parties may
8 challenge the new requirements as unnecessary, on the one
9 hand, or insufficient on the other within the limits of the
10 regulations. Insofar as the second category,
11 supplementation of existing regulations, is concerned, the
12 parties may challenge either the necessity for or
13 sufficiency of such requirements."

14 I'm not sure that that makes a distinction that
15 you have made wherein I take it the distinction you are
16 making -- we've talked about the one where it is not even
17 mentioned in 0737. But where, for example, 0737 says you
18 shall do A, B, and C, and they are saying A, B, and C isn't
19 enough; you also have to do D, E, and F.

20 The problem is they never tell us the D, E, and
21 F. They just say A, B, and C isn't enough.

22 I don't know that this policy statement
23 distinguishes between those two things, between where it
24 isn't mentioned at all and where it says you must do A, B,
25 and C.



1 I had not thought about it before. As I read the
2 sentence it doesn't leap out at me as being a distinguishing
3 feature.

4 My argument is the same in either case. They have
5 a duty, as far as I'm concerned, to either tell us what D,
6 E, and F is or what something else is that isn't required.
7 So it doesn't affect my position.

8 JUDGE BOWERS: Governor Brown, I don't know --

9 MR. BROWN: Yes. We support Mr. Fleischaker's
10 request, and the reasonableness of his request is just
11 what's gone on here yesterday and today. There is a great
12 deal of confusion as to the appropriate interpretation of
13 the Commission's words. This is one of the instances, one
14 of the few instances where the Commission itself expressly
15 invited the Licensing Boards to certify a question such as
16 this.

17 Significantly, this is the very first contested
18 case under the policy statement, and I should not think
19 there would be any reluctance on the part of the Board to
20 make the certification as requested to get a definitive
21 ruling.

22 If the interpretation of the staff and PG&E were
23 to prevail, its effect would be to write out of the
24 regulation the opportunity for a fair hearing which is
25 guaranteed by law.



1 The necessity of advanced submission of
2 contentions of the Joint Intervenors and issues by the
3 Governor is to provide adequate notice, and that has been
4 done.

5 And it seems to us that the necessary legal
6 threshold has been crossed. There is enough on the record
7 now for the Board to make the appropriate findings and for
8 us to move forth with the hearing.

9 To the extent that we are confronted with
10 arguments which would in effect bar some of the exercise of
11 statutory rights, then we believe it is appropriate that Mr.
12 Fleischaker's alternative for association be pursued.

13 JUDGE BOWERS: Mr. Olmstead.

14 MR. OLMSTEAD: Yes. I'm going to try again. I
15 think that the problem the Board is having is that there is
16 a lot of fighting of the plain meaning of the policy
17 statement, as well as fighting about its ambiguities. And
18 there are some ambiguities, but it also has very plain
19 statements in it.

20 Now, Mr. Fleischaker in his motion has suggested
21 that somehow the staff position has evolved to something it
22 was not. I would point out to the Board way back on
23 September 25th, 1980, at the bottom of page 7 of that very
24 filing he referred to is the reference to 2.714A(1), which
25 is the requirement for filing late contentions where you



1 didn't have a previous contention in the proceeding. And
2 that was precisely why we put it in.

3 Why didn't we make the argument more exhaustive
4 then? The answer is simple. They hadn't filed any
5 contentions there. It was a futile act for us to go into
6 great detail about how their contentions did or didn't meet
7 the policy statement, because we didn't know what their
8 contentions were going to be.

9 The Commission expects adherence to its
10 regulations. It is quite clear that it expects the
11 standards for reopening the record to be met. Neither the
12 Governor nor the intervenors want to argue that. Instead
13 they want to argue about a fair hearing required by law.

14 A fair hearing required by law was had on this
15 docket. It was properly pursuant to Section 189 of the
16 Atomic Energy Act. All of these people intervened. They
17 exercised their rights. This Board closed the record.

18 The law requires the standards for reopening the
19 record to be met; so does the Commission's policy statement.

20 Now, the Commission also recognized that that was
21 fairly easy to do in some areas, particularly when there was
22 a contention in the very matter that was impacted by the TMI
23 accident, and they set out some standards at the top of page
24 8 they wanted to talk about, and they had two. Mr.
25 Fleischaker is right in one respect: some of these



1 requirements go beyond the Commission's regulations. So
2 when you are talking about sufficiency, you have to decide
3 which category you are in. If you are in the first
4 category, refinement of existing regulations, the parties
5 can challenge the new requirements as unnecessary or
6 insufficient within the limits of the regulations.

7 Now, that all presupposes that they have met the
8 reopening the record standard and the good contention
9 standard, and they are not in late filed contention
10 posture. But they have met, they are not challenging the
11 regulations under 2.758.

12 Then you look at the first category up here, and
13 what they are able to do is make the good old routine
14 contention that they have not complied with the regulation
15 for X reasons.

16 Now I come to Bruce's watch analogy, which I told
17 you I had some disagreement with. The reason I have
18 disagreement with, it is it is very specific. He is saying
19 one ought not to be allowed to wear watches in the Diablo
20 Canyon facility.

21 I can deal with that very easily, because I can
22 say watches, there is no regulatory requirement about
23 wearing watches in the Diablo Canyon facility. So what they
24 are clearly doing is going beyond the regulations.

25 The contentions you have here are not that



1 specific. I cannot tell whether they're trying to go beyond
2 the regulations or if they are trying to refine a
3 requirement under the regulations, because they won't tell
4 me what it is they want to litigate.

5 Now, it's the second category -- all they want to
6 tell me, incidentally, is NUREG-0737 has a requirement, and
7 we don't think it is sufficient; but they don't tell me what
8 it is that they would require.

9 Okay. Now, the second category is a challenge to
10 the regulations, and there you have another showing, a
11 barrier to go over, and that is the special circumstances
12 showing. That is why the Commission sets out these three
13 things they want parties to show -- the nexus between the
14 TMI accident and the particular facility in the issue in
15 this proceeding; the significance of the issue for safety --
16 that is the second aspect of that; and the third one is
17 differences between their positions and the rationale which
18 you will find in the documents related to 0737 that the
19 Commission used. Because in those areas the Commission has,
20 in essence, determined that there are special circumstances
21 to impose this additional requirement. Therefore, they've
22 met the legal standard of 2.7518, a challenge to existing
23 regulations.

24 They want the parties to meet that same standard.
25 Explain to us parties why you think this



1 additional requirement beyond current regulatory
2 requirements should be imposed.

3 But Intervenors and the Governor come in here, and
4 they think they're in a brand-new proceeding where a notice
5 has just issued, and they can have general contentions and
6 that this Board has to accept them.

7 And I submit to this Board that any reading of the
8 policy statement will reveal that that is not true. And in
9 that case I say you don't need directed certification. You
10 don't need to refer this to the Commission, and I would
11 reject Intervenors' motion.

12 JUDGE BOWERS: Well, I guess, Mr. Fleischaker, if
13 you want another opportunity?

14 MR. FLEISCHAKER: I've said everything I have to
15 say.

16 JUDGE BOWERS: Let me check and see if there are
17 other matters other than scheduling. I know you started
18 into this, Mr. Norton. We'll start with you.

19 Other matters other than scheduling?

20 MR. NORTON: No. I should not have brought up the
21 one I did bring up when you said other than scheduling, but
22 I guess I didn't hear the first part of it.

23 JUDGE BOWERS: No. I think I talked about
24 scheduling when you got started. What about the Joint
25 Intervenors, other matters other than scheduling?



1 MR. REYNOLDS: No.

2 JUDGE BOWERS: Governor Brown?

3 MR. BROWN: We have no more at this point.

4 JUDGE BOWERS: And the staff?

5 MR. OLMSTEAD: Other than scheduling, no.

6 JUDGE BOWERS: Well, in some circumstances I think
7 it is appropriate to go off the record to talk about
8 scheduling, but I think in this proceeding I think it is
9 better to have everything but light housekeeping matters on
10 the record.

11 MR. FLEISCHAKER: We agree..

12 MR. OLMSTEAD: I just came from a proceeding where
13 I insisted on bench conferences being on the record, so this
14 'seems tame to me.

15 JUDGE BOWERS: One thing we haven't heard in the
16 last two days, what was that expression, Mr. Fleischaker?
17 You accused Mr. Norton of shaking his finger at your
18 witnesses, and he said he didn't, and you said you shook a
19 psychological finger?

20 MR. FLEISCHAKER: No. That's been replaced --

21 MR. NORTON: That was a mental finger. No, it was
22 a verbal finger, a verbal finger; and I think I said
23 something about a verbal finger to you or something terrible.

24 JUDGE BOWERS: Mr. Norton, you were talking about
25 summary disposition.



1 MR. NORTON: Yes. The rules provide again, and it
2 is in the context very obviously of an operating or
3 construction permit license proceeding, that any motions for
4 summary disposition must be filed at least 45 days prior to
5 hearing. You know, when rules are written people don't
6 think of all the potential circumstances they're going to
7 find themselves in, and yet I find nothing in the rules to
8 get us away from that requirement of filing motions for
9 summary disposition at least 45 days prior to hearing.

10 JUDGE BOWERS: Well, and unfortunately when that
11 was changed -- was it 754, I think, the motions for summary
12 -- no, 749 -- well, it doesn't matter, the reg on summary
13 disposition. It was changed not long ago, and it provides
14 that the staff may file in support of a motion for summary
15 disposition; and I understand from the prior language that
16 was not true. They only filed when they were in opposition
17 of a motion for summary disposition.

18 Now, they cranked in this possible additional step
19 without changing the 45 days. Now, if the staff files in
20 support of a motion for summary disposition, then the
21 Intervenor or whoever is involved, the other party, should
22 have a right to respond. So as a practical matter you're
23 really talking 65 days instead of 45.

24 MR. NORTON: Yes. What I would like to do is to
25 first of all, if any contentions are to be had, any at all,



1 there is nothing here that we would not treat by motion for
2 summary disposition. There has been nothing raised by
3 either party that we would not be prepared to treat by
4 motion for summary disposition, and we will do so if any of
5 them are admitted, any whatsoever.

6 What we don't want to do is be in a situation
7 where we are precluded from filing them, and we get into
8 some long, drawn out scheduling where they cannot be heard
9 in a quick, orderly manner. As we have tried to emphasize
10 for the last two days, time is of the essence in this case.

11 I'm not being facetious at all when I tell you
12 it's costing my client over a million dollars a day, a day,
13 day after day after day after day, and it's now getting into
14 years. It's literally getting into billions. And everybody
15 says well, gee, what's another week, what's another month,
16 what's another day? Well, another month is another \$30
17 million, another \$45 million.

18 We just have to stop this continual delay
19 process. And I'm not pointing fingers, as Governor Brown
20 alluded to yesterday, and I don't mean to because my
21 disrespect is at the system as much as it is at those who
22 use the system to create the delay, that the system allows
23 it.

24 And so what I'm asking for is some sort of relief
25 from this 45-day summary disposition requirement. And we've



1 always cooperated pretty well before, all the parties in
2 terms of the filings and so on. We've been able to work
3 things out; you know, where people need an extra day or two
4 or three, it's been given, etcetera.

5 We've opposed, for example, Governor Brown asked
6 for an additional month and a half to file contentions, and
7 we opposed that. But I'm talking about proposed findings
8 and things like that. We've worked that out pretty well
9 between us.

10 JUDGE BOWERS: Well, Mr. Norton, I probably should
11 let the other parties get into the fray. But when you talk
12 about motions for summary disposition, in my mind you really
13 should be talking about matters that would be filed or
14 possible to file them after discovery is closed.

15 MR. NORTON: Well, I guess, Judge Bowers, the
16 problem I have with this is what discovery. You know, I
17 look at these putative contentions, and I don't see any
18 discovery. I don't have to do any discovery. They say, for
19 example, that something more than 0737 should be required.

20 Well, what discovery are they going to do from me
21 on that? I mean, what have I got to tell them? If they
22 tell me that it's their position that something more than
23 0737 is required, how do I comply with any discovery request
24 they direct at me? I mean, they send me an interrogatory
25 saying, you know --



1 There isn't any discovery to take place there.
2 And I suppose I can ask them gee, what do you have in mind;
3 but I hope to heck this Board makes them do that before they
4 allow the contention in. And if you don't, it doesn't take
5 me very long to ask them what they have in mind. Of course,
6 to me that's a basic premise before the contention could
7 even be admitted that they've got to tell you what they're
8 talking about.

9 But it isn't a situation where they're saying that
10 our analysis, as in the seismic, that our analysis of the
11 containment building is wrong, or that our vertical to
12 horizontal ratios were computed wrong, and we want to find
13 out how you computed them. Those aren't those kinds of
14 contentions that I can see. I don't see any need for
15 discovery as I look at these contentions. I really don't.

16 MR. OLMSTEAD: Can I comment here?

17 JUDGE BOWERS: Mr. Olmstead.

18 MR. OLMSTEAD: I don't really think that we're
19 going to get very far rearguing the arguments we've had on
20 the contentions. Obviously we have to await now a Board
21 ruling on the contentions.

22 I think though that we can talk about a schedule
23 making a set of alternative assumptions, one set of
24 assumptions being that the only contentions remaining to be
25 dealt with the Board involve briefing and legal argument;



1 one set of assumptions that there is a factual dispute to
2 resolve on which the parties agree that there is no
3 discovery required; and another set of assumptions on which
4 you would have a limited period of discovery, hearing,
5 etcetera, so that we don't have any further delays
6 attributable to disagreements about the schedule. Namely we
7 could just look at the schedule and determine on the basis
8 of the Board's order where we were in the sequence of
9 things, and the Board could order those alternatives based
10 upon the agreements of the parties here.

11 JUDGE BOWERS: Mr. Brown.

12 MR. BROWN: Judge Bowers, in our judgment you're
13 absolutely right about the need for discovery. I can give
14 specific examples. Take for example this question of oil
15 which I went into before. I have every intention, since
16 that is set forth as a fundamental assertion in support of
17 the request for a license, to determine how PG&E says it
18 will save oil; and I can't figure out why on my own. The
19 same with respect to the results of the testing done now. I
20 can't see how the proposed activity will give meaningful
21 results that have to be obtained now.

22 And similarly, I think that the lack of
23 specificity in the motion, which goes back right to the
24 beginning of this proceeding and was dealt with clearly by
25 the Board when the Board stated while the motion could be



1 more complete, we nevertheless believe we could go forward,
2 and we are going forward. And the discovery is an
3 indispensable element of putting some meaning into that
4 portion of the motion which was not sufficiently complete
5 and lacked substance.

6 Secondly, we don't see any reason for a departure
7 from the rules and the regulations here. There are no
8 special circumstances within the meaning of the law. Where
9 the regulations provide for 45 days, or 30 days, or 60 days,
10 or anything else, those must apply. These are the product
11 of the administrative procedures which are lawful and set
12 forth the working mechanisms of this agency. There is no
13 special showing that should change that.

14 Mr. Norton's reference to how much money it might
15 or might not cost his company has nothing to do with how
16 many days these regulations require. He can't just simply
17 attack the regulations by saying it costs a lot of money.
18 Whatever it costs it in fact costs.

19 On the other side of this, the Governor of the
20 State of California wants to make certain there is no
21 precipitous judgment here that puts this plan into
22 operation. Time is of the essence, and if the agency or its
23 administrative judges should rush to judgment and put this
24 plant on line and it is deemed unsafe, people are in
25 jeopardy. And the interest of the Governor is to assure



1 that if this plant is authorized, it is in compliance with
2 the regulations, it is safe, the people are not jeopardized;
3 and to do that we in no way could support any regulation or
4 I'd say any interpretation of the regulations or any time
5 restraints or constraints or limitations which circumvent
6 agreed upon meaning of these words.

7 So we stand strongly behind the time limits of the
8 regulations, the procedures of the regulations, and the
9 orderly process to which you alluded.

10 JUDGE BOWERS: Mr. Olmstead.

11 MR. NORTON: Excuse me, Judge Bowers. It seems to
12 me that.

13 JUDGE BOWERS: I wonder if Mr. Fleischaker should
14 be able to talk.

15 MR. NORTON: Well, so would I. I would never stop
16 him, but I have something I'm trying to say.

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1 MR. NORTON: If this was a precipitous proceeding,
2 I hope if I am ever tried for a capital offense I receive
3 such precipitous treatment in prosecution; ten years before
4 I get to my preliminary hearing.

5 It seems to me it's very difficult to talk about
6 scheduling until we get this Board's order. You are talking
7 three alternatives and I think that all we could do today
8 would be the three alternatives, and that is going to take
9 forever to do that.

10 MR. OLMSTEAD: I don't think so, if you take the
11 worst one and if that eventuality doesn't happen, you just
12 knock everything out and back up accordingly. I mean, the
13 worst schedule you could come up with from your perspective
14 is one that goes to hearing. And so if we plot that
15 schedule out and we don't go to hearing, then your schedule
16 backs up accordingly.

17 MR. NORTON: Well, that's not so. We could go to
18 hearing without contentions, for example. We could go to
19 hearing in three weeks if there were no contentions, for
20 example, or two weeks.

21 So that whether there's a hearing or not is only
22 part of the question. Whether there is a hearing with
23 contentions and whether those hearings -- there could be a
24 hearing with nothing but legal argument and the Board's
25 questions and the parties' questions of the staff on the



1 SER, for example. There's a lot of possibilities, depending
2 on this Board's order.

3 Frankly, I would rather readjourn back here a week
4 from today, if necessary, after the Board issues to do that
5 scheduling.

6 MR. OLMSTEAD: Would it please the Board. There
7 is one thing I have not brought up until now and I am going
8 to bring it up now, because I think that we just really have
9 got to get on with schedule, because I don't think we can
10 dilly-dally around.

11 You asked the staff -- you took note of the fact
12 that the staff was trying to resolve a number of these
13 issues earlier on. And we did meet and the parties at that
14 time did have a fairly reasonable schedule.

15 We did not get agreement of all of the parties.
16 The Joint Intervenors, the State and the staff were
17 essentially in agreement with a schedule at that time.
18 PG&E, because of the positions they are taking, did not want
19 that schedule, and I understand that.

20 But I think it is time for us to plan so that we
21 don't lose any time in the event that PG&E's arguments or
22 the staff's arguments don't prevail. If they do prevail,
23 then I think it is just a simple matter of backing the
24 schedule up to meet them.

25 But I don't think that we ought to go around



1 leaving people uncertain much longer, because the time frame
2 we are talking about people start to make plans for. And
3 the availability of the Board, the availability of staff
4 counsel, the availability of the Intervenors and the State,
5 PG&E, becomes very important. And I would at least like
6 people to have dates on their calendar that they attempt to
7 avoid.

8 MR. NORTON: I would agree with that. If you've
9 got the dates that are the worst case dates based on that
10 meeting that we had, I guess we can certainly listen to
11 those, although I would hope a lot of that time could be
12 backed out of that schedule given this Board's order.

13 JUDGE BOWERS: Mr. Fleischaker.

14 MR. FLEISCHAKER: Well, I am trying to figure out
15 where to begin. First of all, I think that we are safest if
16 we stick with the time limitations that are established in
17 the regulations. We are bound by them, the staff's bound by
18 them, all the parties to this proceeding are bound by them.

19 And as Mr. Brown pointed out, those time
20 limitations were established pursuant to the Administrative
21 Procedures Act and are intended to be fair to all parties.

22 MR. NORTON: There's no argument about that. I
23 was asking if we could have some agreement. If the parties
24 are not willing to agree, which they obviously are not, then
25 we are stuck by the time limitations in the regulations. I



1 wasn't asking the Board to waive those. I was asking the
2 parties to agree to consider something different than
3 those. But if they are not willing to, there is no argument
4 about that.

5 MR. OLMSTEAD: Can I just outline some dates and
6 then maybe we can take a recess so everybody can look over
7 them?

8 MR. FLEISCHAKER: Can I finish my presentation? I
9 just have one or two points. That is the first point.

10 The second point is, I agree with the Board, I
11 think that it is important that discovery proceed with that
12 disposition. That is the way it is normally done and the
13 way it ought to be done in this case. That is the way the
14 parties tentatively agreed to back in early December, before
15 the Applicant determined that it didn't want to be bound by
16 that.

17 As for discovery, there are a number of instances
18 that I can think of where we're going to have discovery.
19 For example, the Applicant and the staff have argued that
20 their plant is different from the Babcock & Wilcox plant.
21 Well, we don't know that to be the case. But more
22 important, even if on the blueprints it is technically
23 different, the real question is whether it is the functional
24 equivalent. And I can't answer that and we need discovery
25 in order to determine that.



1 The second thing is, they indicate a lot of the
2 concerns we have raised are covered. We don't know whether
3 they're covered or not, because the documents at least that
4 have been examined by our technical experts don't reveal
5 that they're covered.

6 Finally, I'd like to point out that a number of
7 the contentions that we have suggested here and which we
8 believe are applicable at the Westinghouse reactor at Diablo
9 Canyon, as well as the Babcock & Wilcox reactor out at Three
10 Mile Island, those contentions have been subjected to
11 significant discovery in that proceeding. We have had
12 discovery and we are already working on making that
13 discovery applicable in this case.

14 So we are planning discovery and we have a
15 sufficient number of questions that were previously raised
16 and found to provide useful information to expedite the
17 actual litigation.

18 JUDGE BOWERS: There was a reference made, and I
19 think some concurrence to some degree, about following the
20 timetables set out in the regulations. I want to raise the
21 question about discovery. You know, they're talking about
22 14 days for interrogatories and 14 days for response, which
23 in my mind is completely unreasonable.

24 MR. NORTON: Well, Judge Bowers, they thought my
25 request for the 45 days to shorten that down a little bit



1 was unreasonable, and they insist on sticking by the time
2 schedule. And you bet we're going to insist that we stick
3 by the timetable for discovery if indeed there is any
4 discovery to be done, right to the day.

5 JUDGE BOWERS: I can see in a simple case with one
6 or two issues that, following this 10 days to file, and then
7 of course 5 days -- 10 days following service of
8 interrogatories, 5 days to file, 14 days following service
9 to respond, a total of 34 days. In a relatively simple
10 proceeding I can see that that might be adequate.

11 But my experience has been a minimum of 30 days
12 for interrogatories, and then responses.

13 MR. NORTON: Judge Bowers, this is an exceedingly
14 simple proceeding when you rule out their contentions that
15 should not be submitted. And I would submit to you that
16 that period for discovery is more than adequate.

17 MR. LANPHER: Judge Bowers, I thought we were
18 trying to work out our worst case. Let's stop arguing about
19 whether we have good contentions or good subjects or not. I
20 mean, we have spent a day and a half doing that. Let's see
21 if we can work out, I think as Olmstead said, the worst case
22 schedule or whatever, the schedule that you don't like in
23 terms of having our issues in and contentions in, and let's
24 see where that tracks out to.

25 But let's not argue any more about whether we've



1 got good issues or not.

2 MR. NORTON: Excuse me. Am I being chastized or
3 the bench? I was responding to the bench's question.

4 JUDGE BOWERS: Would it be helpful if we recessed
5 and the parties -- do you think you have explored this
6 enough among yourselves? Could anything further be
7 accomplished?

8 MR. OLMSTEAD: We had explored this at great
9 length back at the first of the year and in late November at
10 Mr. Brown's office.

11 MR. NORTON: Except there was some fat in that
12 schedule because somebody was going to go skiing and
13 somebody was going to go someplace else.

14 MR. OLMSTEAD: Whatever fat was there is no longer
15 there.

16 What I'm trying to ascertain is whether that
17 schedule is still agreeable to the Governor and the Joint
18 Intervenors.

19 MR. BROWN: May I address Mr. Olmstead?

20 JUDGE BOWERS: Yes.

21 MR. BROWN: You will recall, Mr. Olmstead, that
22 was predicated upon the assumption that the Board's ruling
23 on contentions would be about the 15th of January. So this
24 being already two weeks beyond that, I would think that that
25 would be a somewhat tight schedule, in light of the thought



1 processes of all of the parties who had agreed to it then.
2 But unfortunately PG&E was required to withdraw.

3 MR. OLMSTEAD: Well, let's not get into that. But
4 I agree that it assumed an order by the Board by the 1st of
5 February, actually, which is not likely here.

6 On the other hand, Bruce's theory was the schedule
7 was too light. For the Board's information, the hearing
8 date, commencement date that the parties were talking about
9 then was the week of April 20th -- the 27th, actually, I
10 guess is a Monday, so it would have been the 28th, the
11 Tuesday, that the hearing would have commenced.

12 And if you take that date and move back your 45
13 days and provide discovery, if the Board were to rule by
14 February 13th you can accommodate those schedules. I mean,
15 you could meet that if that week is still available to
16 everybody.

17 MR. NORTON: And the reason we picked that week
18 was that some people were going on vacations, if I remember
19 correctly. And I don't think it is a laughing matter,
20 because if it can be held the week of the 20th we want it
21 the week of the 20th, not the week of the 28th. That's \$7
22 to \$10 million.

23 MR. FLEISCHAKER: We haven't even gotten that far
24 yet.

25 I would propose that we break for about ten



1 minutes so we can look at this list, because I'm not sure
2 yet what is in there. And then after we have had a chance
3 to talk or counsel with Mr. Olmstead, I think we can have a
4 lot better discussion before the Board.

5 JUDGE BOWERS: Well, hold it to ten minutes.

6 (Brief recess.)

7 JUDGE BOWERS: Is there a spokesperson?

8 MR. NORTON: Yes, Mr. Olmstead, I think.

9 MR. OLMSTEAD: This schedule that the parties have
10 tentatively stipulated to assumes a Board ruling on or
11 before February 13 on the contentions, issuing a prehearing
12 conference order. Should they rule by February 6th, then
13 everybody stipulates to move the schedule up one week.

14 JUDGE BOWERS: Let me tell you, one week, I'm
15 going to be in Los Angeles next week on UCLA prehearing, and
16 that has been set since the 5th of December. Now, the 13th
17 may be realistic for us, but no way that earlier date.

18 MR. OLMSTEAD: Okay. February 13th the Board
19 rules and if discovery is required it opens. Minimum
20 discovery period to March 25th, close of discovery. Motions
21 for summary disposition by April 1st. Testimony filed on
22 May 8th. And a trial date of May 19th.

23 JUDGE BOWERS: Did I miss the time for motion for
24 summary dispositions?

25 MR. OLMSTEAD: April 1st, which is a Wednesday.



1 MR. NORTON: The Applicant would like to point out
2 that is a worst case schedule.

3 JUDGE BOWERS: That is assuming we do a lot of
4 things you don't want us to do.

5 MR. NORTON: Yes.

6 MR. OLMSTEAD: Now, the Board will note the motion
7 for summary disposition follows the close of discovery.
8 There is one stipulation related to that. I pointed out to
9 the parties that there is nothing in part two that requires
10 the 45 days for motions for summary disposition to start
11 running after the close of discovery.

12 Joint Intervenors and the state wanted to do
13 that. But they have stipulated that if they file motions to
14 compel that will not change the date for motions for summary
15 disposition. So that in that eventuality there would be a
16 concurrent running of the schedule.

17 MR. BROWN: Judge Bowers, I just thought of
18 something I didn't think of when we were outside, because
19 there are two collateral matters which will have some kind
20 of an effect on this.

21 The first is Mr. Fleischaker's request for
22 certification, if that is granted. The second -- and
23 perhaps the Board could provide some guidance to the
24 participants here -- our motion with respect to the
25 preparation of an environmental assessment, that may also



1 have an effect.

2 But just to put the parties on notice, we would
3 without -- I mean, I say this with virtual certainty. I
4 cannot think of any reason, any foreseeable reason not to
5 take an appeal of that matter in the event an adverse ruling
6 were forthcoming. So there are those two caveats I would
7 add to the schedule.

8 MR. NORTON: Obviously people have whatever rights
9 they have under the regulations. And certainly this Board,
10 if they rule, would proceed on the basis that the ruling was
11 correct as opposed to on the basis that their ruling was
12 incorrect. If that is the way they felt, they would have
13 ruled the other way.

14 And we would certainly ask that in any such
15 appeal, we would certainly ask the Commission to expedite it
16 on the basis that this Board is proceeding on a hearing
17 schedule and that time is of essence to the Applicant, and
18 the Commission would either hear us or not hear us on that
19 basis, and they would either grant the relief requested by
20 the Governor and Joint Intervenors or deny or or whatever.

21 And so there is no way we can prognosticate what
22 is going to happen at this point in time. We too might ask
23 for a directed certification to the Board -- excuse me, from
24 the Board to the Commission. And in that, you know, whoever
25 does that has to follow regulations. The Commission does



1 what it has to do and this Board does what it has to do. So
2 I don't see that as affecting our agreement.

3 JUDGE BOWERS: Well, we never know what might come
4 up in the way of proceeding. Who would have ever thought we
5 would have Three Mile Island.

6 MR. FLEISCHAKER: My sense is that we've got
7 something that we can all agree on, and that we ought to
8 begin moving pursuant to that schedule. And if, for
9 example, we were to -- if the Board were to deny our request
10 for directed certification and we were to make it anyway and
11 the Commission accepted it and ordered additional
12 contentions into the proceeding, we would have to meet to
13 determine how they could fit into this schedule at that
14 time.

15 I don't think any useful purpose is served right
16 now trying to deal with all of those contingencies, and so I
17 would just propose that we adopt this and move pursuant to
18 this stipulated schedule.

19 JUDGE BOWERS: Well, we will adopt it, and of
20 course we all recognize that the unexpected could impact on
21 it.

22 Is there anything else before we adjourn?

23 MR. FLEISCHAKER: I think that we came to some
24 general understanding about if there are no factual
25 contentions but only legal arguments left after the Board



1 ruling, then there was going to be a 30-30-10 kind of a
2 schedule, I think that was generally agreeable.

3 MR. NORTON: I don't know what the 30-30-10 refers
4 to, other than it may refer to certain rules. But we would
5 file -- if you say legal argument, we would file a motion
6 for summary disposition, and whatever the rules require for
7 responses of the other parties. It would be a motion for
8 summary disposition, a motion for summary judgment. It
9 would be a legal argument. And whatever the rules provide,
10 the rules provide.

11 MR. FLEISCHAKER: That's fine with us.

12 JUDGE BOWERS: One other thing, and I don't mean
13 to impinge on your ding-dong, Mr. Norton, but we have heard
14 almost 400 limited appearance statements in this proceeding
15 to date. And the last time we were asked by all parties to
16 set apart no more than two days.

17 And we are some distance away from some possible
18 hearing. But this is something that is going to have to be
19 addressed as to whether there is still the necessity, the
20 good reason for more limited appearance statements. We
21 don't have to talk about it now.

22 MR. NORTON: Well, Mrs. Bowers, I would only say
23 that the Appeal Board has now been out there and they have
24 even taken limited appearances, although they said they
25 weren't. They allowed I think Mr. Fleischaker or one of his



1 clients to give a speech last time on the Imperial Valley
2 '79.

3 I would sure hope we don't have any more limited
4 appearances that take two days. I just think enough is
5 enough. It's been going on for years and years and years.
6 It's the same people over and over. They can certainly
7 submit any comments in writing.

8 JUDGE BOWERS: Most of the statements fell into
9 two categories: one, Hosgri; two, waste disposal. There
10 were very, very few that I think were dealing with matters
11 other than those two.

12 Let me check. Does anyone have anything further?
13 Something to think about, Mr. Norton?

14 MR. NORTON: No.

15 JUDGE BOWERS: Mr. Fleischaker?

16 MR. FLEISCHAKER: Nothing.

17 JUDGE BOWERS: Governor Brown?

18 MR. BROWN: No, we don't.

19 JUDGE BOWERS: Mr. Olmstead?

20 MR. OLMSTEAD: Is this where I get to make my
21 speech? The last hearing I was at, Mr. Norton went on
22 forever and I missed my plane. So I'm tempted.

23 MR. NORTON: Mr. Olmstead, that isn't fair. That
24 was Mr. Baldwin concluded the last hearing.

25 JUDGE BOWERS: Well then, we are adjourned and we



1 will see how promptly we can get out our order.

2 (Whereupon, at 3:36 p.m., the conference was
3 adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
THE ATOMIC SAFETY AND LICENSING BOARD

in the matter of: PACIFIC GAS AND ELECTRIC
(Diablo Canyon Nuclear Power Plant Units 1 and 2

Date of Proceeding: January 29, 1981

Docket Number: 50-275-OL & 50-323-OL

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Alfred H. Ward

Official Reporter (Typed)

Alfred H. Ward

Official Reporter (Signature)

