NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	:	
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PACIFIC GAS AND ELECTRIC	:	
COMPANY, Diablo Canyon Nuclear	:	DOCKET NO. 50-275
Power Plant Units No. 1 and 2	:	DOCKET NO. 50-323
(Low Power Test Proceeding)	:	

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NUCLEAR REGULATORY COMMISSION

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In the Matter of:

PACIFIC GAS and ELECTRIC COMPANY, Diablo Canyon Nuclear Power Plant Units No. 1 and 2 (Low Power Test Proceeding)

Docket No. 50-275
Docket No. 50-323

Hearing Room 550
East-West Building
East-West Highway
Bethesda, Maryland

Wednesday, July 1, 1981

The Atomic Safety and Licensing Board met, pursuant to notice, at 10:00 a.m.

BOARD MEMBERS PRESENT:

JOHN F. WOLF, Esq. Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DR. GLENN O. BRIGHT
Atomic Safety and Licensing Board
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P R O C E E D I N G S

10:00 a.m.

CHAIRMAN WOLF: Good morning, ladies and gentlemen. Will counsel please state their appearances for the record?

MR. OLMSTEAD: Yes, Mr. Chairman, I am William Olmstead, Assistant Chief Hearing Counsel, appearing on behalf of the NRC staff. Seated with me this morning are Mr. Bartholomew Buckley, the Diablo Canyon Project Manager, and Ms. Mary Sweeney, a paralegal in our office.

CHAIRMAN WOLF: Thank you. Mr. Brown?

MR. BROWN: I am Herbert Brown, accompanied by Lawrence Lanpher, on behalf of California. And, pardon me, on the right of Mr. Lanpher is Mr. Richard Hubbard.

CHAIRMAN WOLF: Thank you.

MR. NORTON: Bruce Norton appearing for applicant, Pacific Gas & Electric. On my right is Mr. Phil Crane, and to my left is Mr. Malcolm Furbish.

CHAIRMAN WOLF: Thank you.

MR. REYNOLDS: My name is Joel Reynolds, I am from the Center of Law in the Public Interest representing Joint Intervenors. With me is David Fleischaker.

CHAIRMAN WOLF: Thank you. As you know, we are assembled this morning to discuss the contentions that were submitted by the joint intervenors and to attempt to arrange

a schedule for possible future proceedings.

We have been served this morning with a paper entitled Joint Intervenors' Statement of Clarified Contentions. The Board, as to that paper, will, of course, reserve to itself the right to determine whether or not the contentions as set forth in that paper are in essence the same as those that were originally submitted.

First, I would like to ask whether or not there are any preliminary matters that we should discuss before we get into the question of contentions.

MR. NORTON: Your Honor, the applicant does indeed have another matter to discuss, but I do not know if you want to do it now or later. But we would like to discuss if there is going to be a hearing, where the hearing is going to be. We would like to take that up with the Board.

CHAIRMAN WOLF: Yes, we would be glad to do that when we come to the discussion of the schedule for the hearing.

MR. NORTON: Fine.

CHAIRMAN WOLF: I thought since all parties here are aware of the position, their own position and the positions of the other parties and the position of the Board regarding the contentions submitted by the joint intervenors, it seemed to me that a prolonged discussion of them was not necessary. But if there can be a showing as to

whether or not these contentions come within the guidance that has been given by the Commission in NUREG-0737 and the other guidance that has been put forth, we would like to hear some discussion of that.

It perhaps would move the matter along if each party had, say, 15 minutes, if that is necessary, to discuss for the record orally their position on these contentions. So I will call on the joint intervenors to discuss it first, if you would, please.

MR. REYNOLDS: Thank you. There are essentially two motions pending; first, the May 9, 1979 motion to reopen, or, in the alternative, request for directed certification was submitted and focuses on the issue of emergency response planning.

The second is a March 24, 1981 motion to reopen with respect to a number of TMI-related contentions. The issues are discussed at some length in each of the documents. I do not think it is necessary really to go into too much detail about the substance.

We submitted last night a Statement of Clarified Contentions, which you mentioned, Judge Wolf, in anticipation of this conference. And to facilitate consideration of the issues and to focus the contentions themselves, we have consolidated contentions where possible and eliminated perhaps about 40% of the contentions.

The discussion which is contained in the motions themselves we feel is fairly detailed with respect to the relationship of the issues to the TMI accident, and also, as far as the safety significance of those issues.

The clarified contentions focus more I think on the specific relationship to Diablo Canyon, but in addition, tries to give more explanation of what our concerns are. Both motions arise out of the TMI accident, and all the issues contained in them are brought on by that event.

The motions are predicated upon significant new information arising out of the accident itself; specifically, the cause of the accident, the sequence of events which occurred, the severity of events, the interactions among systems and components, the inability to respond effectively or adequately to protect the public, and the implications of the accident are significant for the Commission's regulatory policy as well.

Further significant information related to TMI has been developed by subsequent reports and studies which have been conducted by numerous different agencies or commissions. The most recent have been the Commission's own conclusions with respect to the accident, December 18 revised policy statement adopting NUREG-0737, the staff's publication in 1981 of the SER supplement with respect to the TMI issues.

It is really not until this year that the Commission has begun to once again license reactors and to actually apply the Lessons Learned at Three Mile Island. The Board deferred any consideration of the Diablo Canyon proceeding of TMI-related issues in a partial decision issued in 1979 where they specifically stated that emergency response planning and quality assurance issues would be deferred until there had been some study of how those issues would be affected by the TMI accident.

Therefore, it is somewhat dismaying to have the motions which we submitted characterized as untimely or simply as delaying maneuvers. We feel that it is critical that the lessons of TMI be applied at Diablo Canyon, and that is really the fundamental purpose of both of the motions to reopen.

In fact, motions to reopen of this kind were specifically contemplated by the Commission in the December 18 policy statement and in the April 1 guidance. Although the staff and PG&E, in their responses to our motions, have emphasized possible differences between the B&W reactor at TMI and the Westinghouse reactor at Diablo Canyon, we feel it is far more appropriate to emphasize the similarities, particularly since the issues which are raised in these motions are the kind that go to all PWR's.

In fact, the TMI action plan which the staff

developed in light of the TMI accident goes not only to PWR's but BWR's. So it covers a fairly broad range of reactors. Certainly a broader range than simply the B&W plant at TMI and the Westinghouse reactor at Diablo Canyon.

The issues raised are matters which, prior to the accident, would not have been entertained in a licensing proceeding. They would have, in all likelihood, been rejected as challenges to the regulations themselves. Once the accident occurred, however, it gave a new understanding as to the questions of safety and the relevance and importance of these various issues.

Therefore, we feel it is critical that we be given an opportunity to discuss and take evidence with respect to these issues prior to any decision by the Board on the licensing of the Diablo Canyon plant.

Now, as far as the April 1 guidance by the Commission and the various categories which were set up in that, the statement of clarified contentions states explicitly for each contention which regulations or which general design criteria are affected by that contention or implicated by that contention. And it is our belief that where a general design criteria is violated, that will fall within the Commission's first category. And that is where there is significant new evidence indicating that a regulation was violated; therefore, no connection is

necessary with respect to 0737 or 0694.

In addition, in the motion to reopen, the March 24 Motion to Reopen, it is stated under each of the old contentions which requirements in NUREG-0737 and 0694 relate to the particular contention. As far as those are concerned, it is our belief that the contentions relate to the same safety concern underlying the NUREG-0737 requirements, and therefore, that would fit also in that category of the Commission's April 1 guidance.

Finally, the Commission discusses a petition for an exception under 10 CFR 2.758, and there are perhaps one or two instances where we feel that particular avenue, if necessary, would also be applicable.

One example perhaps is the hydrogen contention where under the 10 CFR 50.44, there are certain assumptions which are made with respect to the amount of the cladding which reacts with water to form hydrogen. And the purpose of that regulation, as we understand it, is to assure that the combustible gas control systems are adequate to insure the health and safety of the public. However, the limiting assumption in that regulation was discredited by the accident at TMI, in view of the large amount of cladding which reacted to form hydrogen.

Therefore, it is our contention that that particular limiting assumption would no longer apply, and

therefore, the purpose of the regulation would not be served by requiring continued compliance with it. So that is one example of 2.758.

I think rather than go into explicit detail on each one, I think it is perhaps better to rely on the discussion which has been done in the motions themselves, and also in the contentions themselves, particularly, the statement of clarified contentions of yesterday.

CHAIRMAN WOLF: Thank you, Mr. Reynolds. Mr. Norton, do you care to respond to that?

MR. NORTON: To perhaps, Your Honor, keep the ping-pong effect of this hearing down, shouldn't perhaps the Governor go next so that we can respond to what both the intervenors and the Governor say, rather than back and forth? That is the way we have done it in the past, I believe, on these same issues. Hear the people are on one side and then hear the people on the other side.

MR. BROWN: I do not believe, Judge Wolf, that that is how we have done it. But I prefer to have Mr. Norton just go first now ahead of us, and then we will go ahead.

CHAIRMAN WOLF: We will give you a chance to rebut, if necessary, Mr. Norton.

MR. NORTON: Thank you. Your Honor, first of all, I think we have to approach this on a two-level basis. As I

understand it now, they have withdrawn contentions 1, 5, 6, 7, 10, 12 and 13. As Mr. Reynolds stated, this document was apparently filed last night; we did not see a copy until when I checked into the hospital, at approximately 8:30 there was a copy waiting for me at the desk.

Unfortunately, I had gone out to dinner and I have not read it very thoroughly, but I have read it enough to know that contrary to what it says on page 2, it says, the essential content of the contentions has not been changed. Their precise relationship to Diablo Canyon has been further specified and the issues of particular concern have been more narrowly focused and, where possible, consolidated.

I think that statement is untrue, in my reading of it, at least as to some of the contentions. And so I am not really sure whether I am addressing the so-called new contentions in this document of June 30, or the old contentions that were submitted in the filing that this pre-hearing conference was called for.

So first, I would like to point out -- and I do this with a word of caution -- I have literally done this in the last 15 minutes, have reviewed the so-called new contentions versus the old and indeed, some of them are very different indeed. And I would like to point those out that I have been able to pick that up on.

On page 6 of the June 30 filing, the consolidation

of contentions 2 and 3, the contention apparently starts in the second paragraph where it says, "Joint intervenors contend..." The first two sentences apparently are basically a rewording of the previous contention, but from that point on, which consists of literally a full page, the bottom slightly 40% say of page 6 and the top half of page 7, is entirely new. That is not anywhere to be found in the contentions 2 and 3 that were previously submitted.

So it makes it very difficult, of course, for me to spontaneously respond to that new information. Obviously, I have not had a chance to really study it or talk with technical people about it or anything else.

Similarly, the decay heat removal contention 4 is totally different than their previous contention. It is the same subject matter but the contention itself is different.

Contentions 8 and 9 on relief block valves, that is new. Again, noplace in the old contentions 8 and 9 did they talk about classification of Diablo Canyon relief valves and associated block valves. That was not in the previous contention.

Unfortunately, at this point is where I started running out of time. I know contention 14 I looked at very quickly. At the bottom of page 11, that is different. You do not find that contention in the old contention 14. Again, the subject matter, the name, Environmental

Qualifications, is the same, but the language, if you read it, is again totally -- the word "totally" is a little overstated, but it is quite different.

I did note that contention 11 appeared to be the same except for very minor differences.

Finally, contentions 15 and 16 again are new, quite different than the old contentions 15 and 16.

Now, getting to the Commission's policy statement, I would like to quote very briefly, quickly if I might, from CLI 81-5, which was the Commission's clarification of their December 18 policy statement, and I quote, "The record should not be reopened on TMI-related issues relating to either low or full power absent a showing by the moving party of 'significant new evidence not included in the record that materially affects the decision'".

This is in accord with longstanding Commission practice and they have a citation, I believe. We emphasize that bear allegations of simple submissions of new evidence is not sufficient. Only significant new evidence requires reopening, and the Commission went on to say that there must be compliance with 10 CFR 2.714.

Again, we argued that position at the prehearing conference for the lower power hearings. The intervenors said no, that was not necessary. And if you look at the transcript from the lower power hearing conference, which I

have here, indeed, that is what they said: no, that is not necessary at all.

But the Commission came down and clarified their policy, and what I just said, what I quoted, is exactly what they said. The intervenors have not attempted to do that. They have simply continued to go on just by submitting contentions. There is no new evidence that they are showing.

In 0737 TMI is not in itself significant new evidence. The Commission was very clear in their decision about that. The intervenors think they can just simply submit all the contentions they want, and as long as they somehow say the magic word, TMI, it is admitted. And we would submit that that clearly is not the case.

If that, indeed, were the case, this case could go on forever, and ever and ever. And, of course, that is exactly what they would like but that is clearly not the policy statement of the Commission, nor the clarification in CLI 81-5.

We would ask that the Board very carefully review all these contentions in that respect because I do not believe in any of them that they have shown any significant new evidence. And those are the key words. The Commission stated it twice: significant new evidence requires opening. That is all.

If you look at the contentions that we have here,

there is no significant new evidence. There is not even any suggestion of it. There are no affidavits, there is no pointing to documents outside the record. Again, with some minor exceptions, they do indeed refer to some other documents on occasion but they do not say, this is a significant new piece of evidence; this is why it is important to Diablo Canyon.

For example, Mr. Reynolds in his opening remarks said that the staff and the applicant keep saying that TMI was a BWR and Diablo Canyon is a Westinghouse, and we think we should emphasize the similarities. But they do not that. Mr. Reynolds said that, but they do not do that anyplace. They do not say anyplace why this particular issue or this proposed contention is a significant problem at Diablo Canyon; why it might be. It is just a generic thing; gee, it might have been a problem at TMI, so it might be a problem in Diablo Canyon. Although they do not say might; they say it is. But they do not tell you why, they do not present any evidence to that effect. And I think that is very critical in a reading of the Commission's guidance in CLI 81-5.

Now, I would like to very briefly go over each of the contentions, and I am really addressing the contentions that were filed prior to last night. And I do not know whether these arguments are applicable to these new

contentions because again, I just have not had the time to match that up.

But contentions 2 and 3, the Board ruled on that in low power, and they construed the arguments set forth by the intervenors as a new argument that was not contained in 0737. Now, the contention that we had up until last night was precisely the same contention that the Board previously ruled on in that respect, and I do not see how the status of that has changed. Full power or low power makes no difference in that respect.

Now, in the new language they may have tried to get around the Board's previous ruling on their contentions 2 and 3, which in the low power, incidentally, were 6 and 17, respectively; proposed contentions 6 and 17 in the low power hearing are 2 and 3 in this hearing, the same identical contentions.

I believe I said that on a lot of the language in consolidated 2 and 3 was new, so they may have tried to get around your previous ruling by that new language. I just have not obviously had an opportunity to make that determination. They obviously should not be allowed to do that at this late hour.

Contention 4 which was natural circulation, again, was not a requirement of 0737 and was so ruled by this Board for the low power hearing. Again, no difference between low

power and full power as with respect to that ruling.

Contention 8 -- that, of course, was litigated at the low power hearing. I really do not understand why we are now having the same contention over again, although they have rewritten it, and I am not sure whether there is a substantial difference in their June 30 submittal or not, but we just litigated that. They did not produce any witnesses, they did not produce any affidavits, they did not do anything except cross examine the witnesses we had.

I cannot understand what there is to litigate again. It was the same contention, and we just litigated it. Again, I do not see any distinction between full power and low power.

This Board is fully aware of the testimony, the uncontested testimony I might add, regarding the insignificance of those contentions at Diablo Canyon. By insignificance I do not mean to say they have no importance at all, but the testimonies of Minch and Gotchel, et al regarding those valves that was educed before this Board clearly ought to tell this Board that that is not a contention we should have in a future hearing.

Contention 9 is also valve testing. That was contention 24 in the low power hearing.

Now, contention 11 was a LOCA analysis; it was contention 14 in the low power hearing, and this Board ruled

that it was not required under 0737, and also, that it was not specific enough. Again, they may well have rewritten it to get around the Board's previous ruling. Again, there is no distinction between low power and full power here as to that contention.

Contention 14 -- it was contention 18 at low power. The Board ruled regarding that contention as follows. "NUREG-0737 at Roman II.B.2 considers added requirements for shielding against and qualification tests for the radiation to be expected in a TMI-2 situation. To this extent, the contention appears to be related to a NUREG-0737 requirement.

"However, the stated contention, as well as the discussion which took place at the low power pre-hearing conference at transcript 272-74 is totally lacking in any specific issues which might be litigated in this proceeding. Even the three defects in environmental qualifications at TMI were not shown to connect in any recognizable way with Diablo Canyon. And even if so alleged, are too diffused to constitute a litigable issue."

Well again, the intervenors, I think, have rewritten this to get around the Board's previous ruling. Ag again, I have not spent the time that it takes to state that with absolute certainty, but that is certainly my impression by reading their new 14. Again, they cannot be

allowed to do that at this late hour.

Fifteen and 16 -- 15 was 20 at the low power hearing, and 16 was 23 at the low power hearing. In both instances, this Board ruled that there was no relationship whatsoever between those contentions and 0737. That has not changed.

Seventeen -- again, not an 0737 requirement. There is no 0737 requirement even related remotely to that contention. And this Board so ruled for low power hearing. It was contention 21 at the low power hearing.

That is all I have at this time.

CHAIRMAN WOLF: Thank you, Mr. Norton. Mr. Brown?

MR. BROWN: Judge Wolf, I am going to make a few introductory remarks, and then Mr. Lanpher will go into some detail on each of these.

I would like first, however, to dispel a notion which was put forth a moment ago that anything that was done -- that anything conceivably done in the low power test proceeding or rulings therein might have pertinence to what we are doing here.

I think the Board will recall that at the aggressive insistence of PG&E and the staff, everything in that proceeding was limited to low power. So we are only speaking of any issue with respect to its potential effects at 5% operation, and a great deal of argument went on and a

great deal of limiting of issues and a great deal of testimony indeed was devoted explicitly to that bifurcation. So any rulings and any testimony, decisions or behavior of the parties on issues at low power has no pertinence here. We are dealing with separate issues. We are talking about power operation at different levels. And I think as a fact, everybody would stipulate to the consequences. The aspects of operation are categorically different.

Secondly, I think it is important for us at the outset to stipulate the importance of this proceeding, and perhaps just to eliminate from further discussion, we would prefer not to hear allegations of delay. This proceeding is, in fact, the unique nuclear proceeding. The Board is sitting on not only the most significant case now before the Commission, but in one way, surely the most significant case that has faced the NRC or AEC in all its years.

The consequences are very severe. The people have a statutory and, indeed, constitutional right, and a right under the regulations to be represented by Mr. Reynolds and Mr. Fleischaker and what they are doing is very serious. It has nothing to do with dilatory tricks to try to string this out. It is to get a resolution on the issue, to make a record and to move on. We are sitting here in pursuit of a specific statutory provision, Section 2.74 of the Act, and

we would like to address those issues and not belabor inconsequential collateral points.

The fact is, to our way of looking at the clarification that Mr. Reynolds submitted, it is really a service to the Board and the parties. What he has done is explained in greater detail and with further language exactly what is of interest and concern to the joint intervenors, and at the very minimum, it ought to be looked upon as something which will expedite this proceeding rather than causing the parties to linger on words that, to some extent, do not fully, in their own right, necessarily mean the same thing to everyone else.

This is a means of resolving that. It is a clarification. It ought to be taken warmly I think by all the parties as an opportunity to move forward.

Next, there is an enormous amount of new information that these contentions are predicated upon that comes right out of the Three Mile Island accident. They are, in fact, each and every one a product of that. They are explained here and I think the continuing discussion of Mr. Lanpher and Mr. Reynolds, presumably in reply to what has been said by Mr. Norton, will explain that, to whatever extent these very words are not self-evident.

The statement that was made a moment ago that there were rulings at low power control here, as I mentioned

a moment ago, cannot hold because there is a bifurcation of those two proceedings. And what was true at low power may or may not be true here. The Board is called upon now to rule.

I would like generally just to mention the importance of several points, pieces of information that we are waiting for which is new. At the last hearing we had, and indeed, in sworn testimony, a report dealing with the complication of earthquakes was promised by mid-May. It is now the first day of July and it is five to seven weeks, depending on how one looks at mid-May, late.

But I have an educated fear this may come in at the eleventh hour, and may lead to a lot of argument among the parties as to what kind of review of that document we are entitled to and how it should be used. So I would like at the outset to state for the record that it is five to seven weeks late; the document related to earthquake complications. We would like that now, assuming it has been completed on time. If it has not been completed on time, we would like a direct statement of when it will be completed and a promise that we will have it promptly.

With that, I would just mention and then turn it over to Mr. Lanpher, with respect to emergency planning, of course, the newness of the information is stipulated by fact itself. Section 50.47 of the regulations was not

promulgated until after the Three Mile Island accident and after the original contention. It is absolutely new.

By operation of law, one would have to conclude that the contention which embraced the old Appendix E automatically embraces the new regulation simply by operation of law.

Secondly, the PG&E plan, pursuant to the new regulation, was not even conceived of prior to the time the new regulation was promulgated. So we have absolute new evidence in that case, too.

I will let Mr. Lanpher now go into some of the details.

CHAIRMAN WOLF: Thank you, Mr. Brown.

MR. LANPHER: Just to follow up briefly -- and I'm gong to be making reference to the revised contentions that were submitted yesterday, but I will make cross reference to the previous numbers. But with respect to the emergency preparedness contention, I believe there is very significant new information which has been brought to bear in this contention by the joint intervenors.

They mention the regulation, they contend it is not complied with. This is a regulation which, pursuant to the Federal Register notice of August 19, 1980, must be satisfied for full power operation. I do not believe there is any argument on that, and joint intervenors have gone to

great lengths to specific specific Diablo Canyon-related deficiencies which they allege, which clearly, if true, would lead in our view to a rejection of the full power license application.

That, of course, raises factual issues which would have to be litigated, but I believe they satisfy all applicable reopening criteria.

Now, as the staff has pointed out in their response I believe of April 13, 1981, the emergency preparedness issue was promptly brought to the Board's attention after the TMI accident. There is no question that it was timely brought. I believe the history of the TMI accident and other information cited by joint intervenors make it clear that there is a full satisfaction of the reopening criteria; significant new information, and it would compel or result in rejecting the license application.

Moving along, with respect to revised contentions 2 and 3, that is the one that is called the hydrogen contention. There is, from my reading, new information added to this contention at the bottom of page 6 and the top of page 7, but that new information really should come as no surprise to anyone.

This information follow naturally from the 50.44 requirement that the Commission has recognized in the TMI reopening proceeding, that regardless of 50.44, under Part

100 the analyses which are performed there may not be acceptable. I believe this is what the contention goes to -- acceptable if the design basis or 1%-5% hydrogen generation is assumed. I believe it is clear under the TMI restart rulings of the Commission and of the Licensing Board in fact, that such a contention is litigable in a licensing proceeding. I believe that is what joint intervenors are attempting to do.

I believe that it does present significant new information really in the sense negative. There were post-TMI requirements dealing with hydrogen, but there is no information provided by PG&E that they will have a hydrogen control mechanism which could deal with the kinds of hydrogen generation which were experienced at TMI.

There are accident sequences, for instance, at PWR 1, 2 and 3 from WASH-1400 which could result in such hydrogen generation. Accordingly, I believe this is a proper contention.

I would like to comment briefly on the last part of that contention, which is new, and I cannot tell what the Joint Intervenors motives were, but under the River Bend and North Anna decisions, where there is a generic unresolved safety issue I believe it is clear that the staff has an obligation to set forth in an SER supplement what the status of that issue is, what the plan and schedule is for resolution, and what measures of the reactor in question are proposed or necessary or whatever to deal with that issue in the interim until the generic safety issue is solved.

With respect to the hydrogen contention, and really the same with the decay heat removal contention, that is, Revised Contention 4, the SER supplements which we are aware of do not satisfy River Bend and North Anna, and I believe the Board itself would want those supplements to be issued so that the Board would have a full record in front of it pursuant to those ALAB decisions.

That is also true, I believe, for Contentions 15 and 16, just to jump ahead, that having to do with systems interaction. That has been identifed by the Commission as an unresolved generic safety issue. That is Task A-47. And

there again, I believe it is a requirement under the ALABs that were cited, that the staff addressed those in an SER supplement. Maybe they are planning to do so. Maybe Mr. Olmstead will be able to address that.

Moving ahead to Contentions 8 and 9, which are entitled "Relief and Block Valves," I would just like to reiterate what Mr. Brown stated, that in the low power proceeding we were sharply constrained as to what was proper for litigation, and in a full power proceeding, the importance of relief and block valves are certainly clearly set forth in light of the TMI experience.

I believe Mr. Norton may have misspoken somewhat when he said old Contention 8 did not relate at all to classification of the valves. The last sentence of old Contention 8 says, "Therefore, these valves must be classified as components important to safety and required to meet all safety grade design criteria." So I believe there is not new information in that respect.

I believe that Joint Intervenors have also done a service with respect to Contentions 8 and 9. They have narrowed their focus. They have deleted a contention relating to safety valves and have focused it on relief and block valves.

Now, this revised contention relates directly to the adequacy of the qualification program which was directed

to be carried out pursuant to NUREG-0737.

I would like to briefly also comment that I believe it was Mr. Norton, when he was talking about the Commission's April 1 additional guidance, CLI-81-5, and the requirement for new information, the new information requirement can in fact be satisfied directly from NUREG-0737 at page 6 -- well, I have the slip opinion of that Commission guidance.

It says in addition the proponent of reopening the record must present significant new information, a requirement which could be satisfied by reference to new information in NUREG-0737. So NUREG-0737 is a place that this Board can look to for such new information.

With respect to Revised Contention 10, there is significant new information which has become available just recently to Joint Intervenors on this contention. It was not until early this year -- I may have the dates wrong, maybe it was in February, maybe it was in January -- that the proposed PG&E solution for a reactor vessel level instrumentation system was first produced. That information is still not fully available because of alleged proprietary data.

This contention alleges that the adequacy of that system proposed by PG&E is not satisfactory, and it gets very specific in allegations as to what the specific

deficiencies are. I believe that falls right within the additional guidance from the Commission.

Going ahead to Contention 14 relating to environmental qualification, there is significant new information which came to our attention and, I assume, Joint Intervenors' attention just this month, and that is set forth starting at page 12 of the revised contentions.

In a June 10, 1981 letter from PG&E to the staff which enclosed a very substantial document, among other things there was a status report of their qualification program for safety-related electrical equipment. As set forth in the revised contention, there is a great deal of qualification remaining to be done. There are areas of deficiencies which are set forth, and in our view the statements of reasons provided by PG&E for its belief that these deficiencies are not significant are mere conclusions. There is no underlying analysis which supports that.

Accordingly, we believe it is necessary for the Board and for all the parties to litigate the seriousness of these deficiencies. These are specific Diablo Canyon-related deficiencies which are not made clear from PG&E's own document.

With respect to Revised Contentions 15 and 16, that is, the systems interaction, just briefly, there is a

developing record with respect to systems interaction. The documents are referenced in the revised contention which show that more and more concern is being focused on the need for careful analysis of the relationship between safety sytems and nonsafety systems.

I believe PG&E served a very useful purpose in the limited analysis which was performed for seismically-induced failures and the systems interaction of seismically-induced failures. It indicated literally hundreds of interactions that needed to be analyzed, and some were remedied. In view of the positive results of that, I believe the contention clearly sets forth a compelling reason for further analysis to identify the other interactions so that proper remedies can be proposed.

As I mentioned earlier with respect to systems interaction, that is a generic safety issue that is not mentioned in the contention; but for the Board's sake and everyone's sake, I think that should be made part of the record, that there is no SER supplement dealing with that unresolved generic safety issue, and it was Task A-47, and under the River Bend and North Anna decisions there needs to be a statement of status of that.

Finally, on Contention 17, the documentation deviations, this is a situation where Diablo Canyon for various reasons has gone through a long and extensive

licensing proceeding. Much of the review was performed even before the standard review plan was first adopted, I believe in 1975.

It is our position that somewhere in this record the staff needs to set forth and PG&E should set forth in its FSAR precisely how compliance with the regulations which currently apply is demonstrated and on the basis of what documents.

Thank you very much.

MR. NORTON: Excuse me, Mr. Wolf. The staff I know wants to go last. May we rebut Governor Brown at this point in time? We will be very brief.

MR. REYNOLDS: I wounder if perhaps we could have Mr. Olmstead go and then we could start again. That would be a more orderly way to do it.

MR. WOLF: Yes, I think that would be better.

Mr. Olmstead, would you proceed?

MR. OLMSTEAD: I feel that it is necessary to put a few of these remarks that I have heard this morning in context. I think the first thing to point out before I get to the Commission's policy statement on reopening the record here is that there are essentially motions to reopen that we are talking about. The staff views one of them as timely filed and one of them as not timely filed.

The motion that was filed in May of 1979 was

timely filed following the Three Mile Island accident. The motion that was filed on March 24 of this year we view as late filed, and I think that in order for the contentions that are contained within that motion to be addressed by this Board, they must meet not only the standards set forth in the Commission's policy statement but they must require some justification for late filing of that motion because the Commission's policy statement had been issued some nine months before that, and I do not think there is any reason to have waited that long to file that particular motion.

Turning now to the motion of May 9, 1979, it raised essentially two issues in a broad sense. One was emergency planning, the other was Class 9 accidents. Now, this Board has issued an order dispending with the motion to reopen on Class 9 accidents, so that leaves us the emergency planning requirements. As to those contentions related to emergency planning, the staff's position is that that motion to reopen was timely filed upon receipt of significant new information.

The Commission's policy statement sets forth two tests that the staff thinks are particularly important. The first test is that as to TMI-related matters which address subjects that were unrelated to prior contentions or issues in the proceeding, parties seeking to reopen the record must meet the late filed contention requirement of 2.714.

The staff has consistently taken this position. The Joint Intervenors have consistently not addressed those requirements, and the staff's objection to those types of contentions will continue to be pressed.

As to the motion to reopen the record, both types of conetentions, those related to prior contentions of the party and those new contentions, must meet the standard for reopening the record. Namely, they must show significant new information and they must also show how the result obtained in the Board's initial decision would be changed, because otherwise we cannot meet the second standard of the reopening showing, a material change in result. That standard has consistently not been addressed here. So the staff in its filing in response to the various motions here has pointed that out, and we continue to insist that those standards must be demonstrated.

This is particularly true, I think, for the latest motion to reopen the March 24, 1981 motion because essentially what we see happening is as the staff conducts its review, there is an attempt to bootstrap additional contentions of the basis of that review. That is not significant new information. The staff putting out an SER is not significant new information. The information is contained in NUREG-0737, and contentions based on those issues in NUREG-0737 should have been filed at a proper time

following the issuance of the Commission's policy stated in 1980. That was not done.

I particularly am troubled by the continued effort to refine these contentions. It bothers me for two reasons. One is that I see new subjects coming up all the time, and second is I see us neglecting more and more the record that was developed in 1979 before this Board in the first place.

For instance, you have heard a lot of argument, both by Joint Intervenors and Governor Brown this morning, to the effect that suddenly they have discovered River Bend, and it requires the staff to address unresolved safety issues, and they feel the staff has inadequately done that. And now if the Board will remember, those issues were addressed by affidavit in this record prior to the record closing in 1979. I do not think they can come in here and say because these issues are not addressed in an SER supplement, therefore the Board must admit contentions in these areas.

This is particularly applicable to subjects like systems interaction and environmental qualifications. I want to get to those more specifically in a moment.

The second general issue I would like to address is the allegation that somehow all of the contentions that the Board admitted, disposed of by summary disposition or

heard evidence on last month connected with low power testing are now again before the full power proceeding because everybody knows low power -- the contentions are not related.

I think that argument may have some merit as to emergency planning because, as you know, the staff's position was low risk associated with low power testing. However, I fail to understand what the difference is in the operability of a valve at low power testing versus at full power testing. So I think that if they are going to make that argument, they have to be able to show this Board why the testimony that was taken in May is only applicable to low power, and that showing has not been made here.

The next general item that I would like to draw to the Board's attention is that on May 27, 1981, 46 Federal Register 28535, the Commission in its statement on policy on conduct of licensing proceedings suggested in Paragraph III.H. that the Board could in its discretion use a combination of devices to expedite the orderly presentation by a party of its case, and it included a suggestion that plans be submitted to the Board which can be done to the Board alone indicating what witnesses, what type of testimony, and what cross is planned on a particular issue.

The reason I raise this is because we went to great expense to go to San Luis Obispo and put on testimony

on a number of issues where the only witnesses appearing were the staff and the applicants and the testimony was all of one opinion. There was not a contested issue there when we got there. And after two days of cross-examination, we were still in the same shape.

We have valve testimony that went on, and when it went off it was the same valve testimony we have filed before. So I think it would be useful to the Board to require that type of plan if there is indeed contentions admitted in this proceeding to ensure that we do in fact have a contested issue of material fact before we go to hearing.

Having made those general comments, I would like to go to a couple of the contentions that I would like to comment on further. One is there was a statement with regard to the systems interaction contention that it had not been covered in the staff's safety evaluations. I think you will find the discussion of systems interaction in Supplement 10. As to the River Bend criteria, the unresolved safety issues, I do not have the cite here with me today but I know that those matters were covered in an affidavit filed before this Board in 1979 before the record closed.

I have also been handed a note saying that seismic systems interaction matters are covered in Supplement 11

rather than Supplement 10. As to the specifics of these contentions, I would hope that we are going to discuss them in some more detail later with regard to those that are most likely to impact the schedule, namely, the emergency planning contentions, and go through those item by item. I have not heard anybody go into any detail beyond what is in the filings, and certainly as to the filings that we have, I stand by what we said.

I have looked over the clarified contentions, and although I find it somewhat irregular to get this just before the prehearing conference, I do think that had Joint Intervenors wanted to clarify the contentions in this way, they could have read this to the Board and accomplished the same purpose.

So as we go around in the rebuttal, I will attempt to address specific items as they are raised.

MR. WOLF: Thank you.

Mr. Reynolds.

MR. REYNOLDS: Let me address first some of the comments made by Mr. Norton. First, generally I am kind of amused to hear both Mr. Norton and Mr. Olmstead refer to the similarities between low power and full power because we spent so much time at the last prehearing conference hearing how different low power was from full power and how therefore you did not need to consider a lot of these issues

at low power. But now all of a sudden we hear that any decision with respect to low power also encompasses any full power request that we might make.

I would note that for the Board because I think it is basically inconsistent. The first thing, there is no question that in these clarified contentions there is new language, and in looking at them, Mr. Norton comments that there are substantial differences in terms of language. There is no question that there is, and the purpose of that is simply for the convenience of the Board. It is a question of making things clearer from our standpoint in providing greater detail to the information with which we are concerned and upon which contentions are based.

So I would stand by what is on page 2 of that recent filing with respect to the content of these clarified contentions. There are several contentions where there is new information, and I will deal with that as I go through.

First of all, let me discuss the emergency planning contention. It is substantially longer, the Board will notice, than anything that was before because the initial 1979 filing did not actually specify a contention. It requested the Board reopen the proceeding to examine the adequacy of emergency planning at Diablo Canyon.

Emergency planning was one of the issues most clearly implicated by the accident. Prior to that time it

was considered a low priority. Certain kinds of accidents which would require significant off-site preparedness were viewed as incredible. That conception was destroyed by the TMI accident.

Following the accident there was a general recognition of the importance of upgrading emergency planning, particularly off-site. The Commission responded to that and to the numerous studies by promulgating new regulations which became effective on November 3.

These new regulations were based on the understanding that there was a need to have a demonstrated capability and a coordinated off-site response which was coordinated with the on-site response. Also required by the new regulations is a finding by FEMA concerning the adequacy of the off-site plans.

No such finding has been made in this case, and we expect perhaps that it will be made following the completion of revisions of the various plans. That is another response to the accident. The off-site local and estate plans were viewed as clearly inadequate after TMI, and substantial revision was instituted. The on-site plan was also revised. It is still in the process of being revised.

So at the present time we do not have plans which will be applicable during full power at Diablo Canyon. It is imperative that we have an opportunity to examine those

plans for adequacy and that we do so at a point when the examination would have some realistic benefit. At this point it seems premature. There is no state plan, there is no local plan which would be in effect during full power.

Really, until Revision 3 comes out of the on-site plan, we do not know exactly what we are going to be operating on for the on-site plan either. The FEMA finding with respect to adequacy of the plans is stated in the regulations to be a rebuttable presumption. It would be absurd, I think, to have a hearing before FEMA makes its finding because the hearing is precisely the time when we would want to rebut that finding if we feel that it is incorrect.

So therefore we would certainly request that the hearing for emergency planning be scheduled at some time following the completion of relevant plans and also the issuance of the finding by FEMA.

The clarified contention -- I am trying not to repeat some of the things that Mr. Lanpher stated, but what we have done is simply specify on the basis of the information that we have some of the critical deficiencies in the plan. That is purely for the convenience of all parties and for the Board to put them on better notice as to what we are concerned with. So to that extent, I would not think that anybody would object to it.

So, hydrogen. Again, there is new language in this contention, but it is directed towards specifying exactly what we are concerned with. There is the element with respect to the exposure guidelines in Part 100. It is our contention that operation of the plant under present circumstances would violate those revisions. Therefore, that would fall within the category of significant new evidence demonstrating that a regulation would be violated by operation of the plant.

As far as the decay heat removal, any references to the need to discuss generic unresolved safety issues, I think the critical point is whether or not we have a contention admitted requiring the staff to address those issues in the SER. That is the staff's legal obligation. So regardless of whether or not we get a contention in, it is their obligation to do that. Until they have done that, operation of the plant would be unlawful.

Mr. Norton also made some general comments concerning the policy statement issued by the Commission or the guidance issued by the Commission on April 1, and he repeated the language that mere bare allegations are an insufficient basis for reopening the record. We would certainly agree with that, but in this proceeding we have done far more than submitting mere bare allegations or new contentions.

This is the March 24th submission. There is far more in here than simply bare allegations. In addition, there is the May 1979 submission. It seems clear that we have done far more than simply submit new contentions and make bare allegations. The fact that the Board may have made some decision during the low power hearing on various of these contentions -- Mr. Norton mentioned several -- should have no res judicata effect on the full power hearing.

The issues are different, the risk is different. I remember one example that I believe it was either Mr. Olmstead or Mr. Norton who mentioned concerning valves, how could valves be different at low rather than full power. One example is I asked a question at the previous hearing concerning pressures during the anticipated transient without scram. There was an objection by staff counsel on the ground that we wanted to know the information with respect to full power. That objection was sustained by the Board. It is that kind of difference.

There are differences in the operation of the plant between low and full power, and that is why it is necessary to litigate these issues about full power at this time.

Environmental qualification has also been expanded. The reason for that is the PG&E submission on June 10, it certainly seems that PG&E cannot complain about

new information coming out of something which they themselves have only submitted about two weeks ago, information which they have provided the staff and certainly constitutes new information.

We have tried to be extremely specific, having gone through that filing, and have tried to point out areas in it which are of concern to us. Again, this is something which is for the convenience of the Board and for all parties.

Systems interaction is reworded. It is not in substance changed. I think if the Board reviews the discussion in the motion to reopen the transcript of the prior prehearing conference, they will find that all that information is in the record. We have put it into this form here to make it easily accessible to the Board, and for that reason it seems that there can be no complaint of surprise or just springing new information on the parties.

Mr. Olmstead considers the second motion to be late, and we do address that in the March 24 motion to reopen, but let me just go over that briefly. I think probably the princial reason why we consider this not to be untimely, in other words why we consider it to be timely is that the Board itself at the staff's request has deferred any consideration of TMI-related issues until this year.

We filed our first motion to reopen in 1979. The

Board issued an order saying it would defer consideration until completion of certain staff reports. Those reports were completed in early 1981, and that now the Board is proceeding on those TMI-related issues. The reason, I assume, that the Board did that was because it felt its decision would be better if it waited to find out what the conclusions might be on the various studies which were being done, to get a better picture of the information as it developed to get some idea of what the Commission's response to the accident would be.

It seems unfair, therefore, to on the other hand require Intervenors to come forward with a motion to reopen in final specific form without also giving them the opportunity and the benefit to be derived from those subsequent reports, filings, decisions by the Commission.

One very good example of that is the fact that 0737 came out at the end of 1980. The Commission's December 18 revised policy statement adopted that. That was the first clear indication that 0737 was going to be the Commission's response. We filed our motion within about three months following that. It seems in view of the complexity and the number of the issues, that it would be unfair really to say that our motion can be just regarded as being untimely.

One other factor, I think, which bears on this is

the number of other things that are going on in this proceeding have been going on ever since 1979. Since the initial decision was issued in September, we have been involved in appeals, we have been involved in seismic hearings, we have been involved in low power testing. Only recently the Appeal Board issued its decision on the reopened seismic hearing. That was part of the reason why we were, unfortunately, unable to get these clarified contentions to the Board before yesterday and to all parties. We obviously would have preferred to have them earlier, but there are just so many things going on it is very difficult to get it all done.

So the point is that we have not been sitting on our hands in this proceeding. We have been diligent and we have been continuing to litigate things ever since 1979, and to that extent I think it bears on the timeliness issue and indicates that we have gotten this in in a timely fashion.

The next claim is that we have not addressed the late filing requirements, and again, I would disagree with that. It is in the March 24, 1981 motion to reopen, but let me just review them quickly.

The first is that under 2.714(A), a party must demonstrate good cause. It is our position that the occurrence of the TMI accident and the numerous subsequent studies and the rulemaking proceedings after the submission

of original contentions and after the litigation of those contentions constitutes good cause for late filing of any contentions which the Board might consider to be late filed.

The TMI accident was the most serious accident in the history of the U.S. nuclear reactor industry. It undercut fundamental assumptions of the regulatory process. Following that accident there was in effect a moratorium on licensing of plants. That indicates the Commission's understanding of how severe the accident actually was. It fundamentally is good cause for filing of late contentions that are related to that event, and all of our contentions are related to that event.

The second factor is the availability of other means to protect the Petitioner's interest. There is no other means to protect our interest in this proceeding. We are the Intervenors submitting these contentions. If we do not do it, basically no one will. And we do not feel that the staff, being another party to this proceeding in the same status essentially as we are, can represent our interests. I do not think -- I think the record will demonstrate that they have not done it in the past and there is no assurance to us that they would do so in the future.

The third factor, I think, that is related to the second one is whether our participation can reasonably be expected to assist in developing a sound record. We have

been in this proceeding now for many, many years. We have been diligent. We have done it in good faith. I think the record can attest to the value of our participation in this proceeding. We have not attempted to delay things.

All of our contentions and the issues we have attempted to litigate have been based in fact and have been directed towards assuring safe operation of the plant, so I think the record in this proceeding attests to the value of our participation.

The fourth is the extent the Petitioner will be represented by others. I think that was covered under the second aspect of it. Our position is there is nobody here who would represent our interests. We are the only party that is going to do it.

The final factor is the extent which admitting the contentions would broaden the proceeding or delay the proceeding. I think what we are talking about here is a matter of only a few months. This has been a long proceeding. It has been a very complicated proceeding, and in light of that, the extent which would be required to consider these issues is really quite small.

Second, it would only be broadened to the extent required by the TMI accident. Obviously, it is a very important event and it justifies certainly some delay in this proceeding. These are all discussed in the motion to

reopen, but I thought I would just bring them to the Board's attention here.

Again, Mr. Olmstead states that we do not consider the reopening standards, the Wolf Creek standards. We cite Wolk Creek in our brief, we quote the standard, we deal with the standard. We have dealt with it many times. In fact, in the March 24 motion to reopen there are some 40 pages which are directed towards those standards in discussing each of the contentions and the basis for the contentions.

In our clarified contentions we have gone for 20 pages. We try to give for each contention the basis for it to give the Board some idea of what the basis for our claim of significance is, and also that the outcome of the proceeding because of that significance could be changed.

So again, that is something which we have done and it is in the record.

The comment by Mr. Olmstead that he was somewhat chagrined to go out to San Luis Obispo and have to put on a case when we did not put on direct testimony ourselves, I would simply remind him of the law in NRC proceedings that intervenors may properly build their case on cross examination. There is a burden of proof which the applicant has in nuclear licensing proceedings that will sometimes require the applicant and perhaps the staff, too, to the extent they agree with the applicant, to put on evidence, even though the intervenors may rely solely on cross examination.

That is what we did in San Luis Obispo most recently, but that is our right under established law. And to the extent that that is an inconvenience to the staff, there is nothing that can be done about that. And for the moment, that is all that I have.

CHAIRMAN WOLF: Thank you. I plan to call a recess for lunch at 11:30 because of the difficulty of finding places to eat in this neighborhood. But I would like to ask Mr. Norton to proceed at this time.

MR. NORTON: Yes, Your Honor. I think we are back to something I saw in the proposing findings of facts in low power, and that is somehow rubbing your hand over something and making it change. I think in low power, both the intervenors and Governor Brown said inventory equals

release. Those words were interchangeable, and so they presented all kinds of proposed findings based on the fact that inventory equals release, which the Board fully well knows is not the case.

MR. BROWN: I object. We are not going to engage in argument on low power assertions.

CHAIRMAN WOLF: Just a moment, Mr. Norton has the floor. He will continue without any interruption by anyone.

MR. NORTON: I thought I was back in San Luis Obispo for a moment.

CHAIRMAN WOLF: Strike those remarks; they are extraneous. Please.

MR. NORTON: Excuse me, I lost my point as to where I was when I was interrupted.

CHAIRMAN WOLF: I will give you time to recover.

MR. NORTON: Yes. Okay. Mr. Lanpher repeated twice; not once but twice, when he started talking about how the intervenors hd presented new information. In fact, he said new information the first time. The second time he said significant new information, and he was addressing the language on the bottom of page 6 and the top of page 7 regarding contentions 2 and 3, and that was quoted as being significant new information to require the reopening of this record. And I would like to read the significant new information that Mr. Lanpher has addressed to the Board.

And it says, "Finally, joint intervenors contend that the applicant has also failed to demonstrate that structures, systems and components important to safety, includig the internal recombiners, the containment spray system and the containment shell and associated penetrations, can withstand the pressures, heat and related environmental conditions resulting from combustion of the amounts of hydrogen generated in a severe LOCA. Since for the foregoing reasons, the applicant has failed to demonstrate operation of safety-related systems under all postulated accident conditions, joint intervenors also contend that the applicant has not demonstrated that releases of offsite radiation in excess of 10 CFR Section 111, I-A(2) exposure guidelines will be prevented."

"Joint intervenors also contend that the staff has failed to address the hydrogen issue in an SER supplement. Since hydrogen generation is an unresolved safety issue, NUREG-075, the staff under North Anna and River Bend must specify inter alia the present status of the generic studies, including the plan and schedule for resolution and the measures employed at Diablo Canyon to compensate for lack of answers sought in generic studies.

Not once, but twice Mr. Lanpher said, see, now that is the new information the intervenors are presenting to you. That is not information at all; it is a bare

allegation by the intervenors. It is not information.

Mr. Reynolds said oh, we comply with 2714, and he goes through 1 through 5 and says there is nobody else to take our place there and so on and so forth. What he ignores, what he does not address is the additional requirement that they present significant new information. It is not just new information; it has to be significant new information, plus it has to result in a different outcome.

They have made no attempt, either in oral argument or in their filings to do that. They just keep waving their hands saying all this is new information. You see. Applicant just filed this great big document on electrical equipment; environmental qualification of electrical equipment. See, we have new information, but they do not tell you how it is significant new information. And the word significant is therefore a reason, and they do not tell you how it is going to change the outcome of the record that is already closed.

They must do that. They cannot just wave hands and say it is magic; because it is new, it must be significant. And because we say so, it must change the result. That is not the way it works.

The first time I addressed this I did not, for some reason, -- I thought they had withdrawn contention 10 and I did not address it. They have not withdrawn

contention 10. I think I stated on the record that they had.

Contention 10 deals with water level indicator. I find that a very strange contention in that it was a contention for the low power proceeding. The staff and applicants submitted a motion for summary judgment and in their response to the motion for summary judgment, they withdrew the contention.

MR. REYNOLDS: I must interject.

CHAIRMAN WOLF: Just a moment.

MR. NORTON: This Board stated that it was withdrawn and did not rule on it. The contention was, indeed, withdrawn from the low power hearing and now it is back again. For the same reasons that were argued before, it should be rejected.

Contention 17, unfortunately, only Judge Bright, myself and Mr. Crane and Mr. Hubbard will remember what I am going to say about contention 17 because nobody else in the room, except perhaps some other people watching, were involved. But it was back in 1976 when different counsel was appearing for the joint intervenors. Governor Brown was not in the proceeding, and I think Judge Bowers -- and I forget who the other member of the Board was at that time. But it was not Dr. Kline.

The intervenors brought this contention up, if you read the new 17, the one I am looking at now, they brought

this up in 1976. We argued at the same time they brought up quality assurance. I'm sure Mr. Hubbard remembers it. We argued it in superior court in Los Angeles. I say 1976; it could have been late 1976, early 1977, but I believe it was 1976. And that contention, as I reread this new 17, that contention was not accepted by this Board in 1976. And here it is back again.

I am sure because this is rewritten, it is what brought back that memory to me. It was at the same time, Dr. Bright, that we looked at the quality assurance contention back in Los Angeles.

Now, for a moment I would like to go back to the low power versus full power. Mr. Brown got very excited about what I said about that, and so did Mr. Reynolds. I was only talking about one thing; that was the valve issue, and indeed, I think if you read the Westinghouse testimony very carefully, the written testimony, and if you look at the answers on cross examination they tell you that the pressures, et cetera, of those valves are no different at low power than they are at full power. The pressures are exactly the same. The Board can clearly examine the record to that effect.

What I said about all the other contentions, though, was that whether something is in 0737, I do not care whether you are talking about full power or low power, it is

either in 0737 or it is not in 0737. If this Board made a determination six months or nine months ago that a certain allegation, that nothing about that was in 0737, well, whether you're talking about full power or low power, it is not going to change that. If it is not there, it is not there. So I do not understand what the criticism is of saying oh gee, this is full power so you have to look at it all over again. If it is not there, it is not there.

Now, I would like to say one last thing about the significant new information resulting in a different outcome. The burden is on the intervenors to come forward with that information. It is not on the staff, it is not on the applicant. They have to make a prima facie case that their significant new information would result in a different outcome. They have that burden. They have not met it. They have not even attempted to meet it.

All they have done is say here is a new memorandum; here is this, here is that. They have to come forward and tell you why that is significant, how it is significant and how it would affect the outcome.

Along those lines, they have criticized the staff on two occasions for not including in an SER Sup generic issues. I think they are taking the legal position that for the life of the plant, everytime a generic issue comes up the staff must put out an SER sup on every plant for which

there is a license covering that generic issue.

That is not the requirement. The record is closed. There will always be new generic issues coming up. But the staff is not required to put out an SER sup on every plant in the country every time a generic issue comes up. And that is what the intervenors would have as a result of the way they are reading that regulation.

That is all I have. Excuse me, just a moment. I have one other thing. Let me check my notes on contention 10 again. All right, I have to look in my notebooks. I may have misspoken.

(Pause.)

Excuse me, Your Honor. With respect to contention 10, which was contention 13 low power, I did mis-speak. It was not withdrawn. The Board granted summary disposition in the low power hearing. We filed a motion for summary disposition and it was admitted as a contention. It was disposed of by summary disposition. I'm sorry, I misspoke when I said it was withdrawn. It was not.

CHAIRMAN WOLF: Thank you. Mr. Brown?

MR. BROWN: Perhaps I could make a proposal that during the recess counsel, after a brief lunch, get together and see if there is a way to stipulate some of these, Your Honor. Because I have the impression from what has transpired that there is reason to believe that we are not

going to have an argument over emergency planning insofar as the legitimacy of that issue is being agreed to, and that that will in fact be stipulated by the parties.

If so, we could perhaps put that behind us, and any others, and when we come back after lunch we might find that there would be a substantial focusing of precisely what this Board was being called upon to rule upon.

CHAIRMAN WOLF: If you wish, Mr. Brown, you may do that.

MR. BROWN: I can approach other counsel at the break.

Secondly, both Mr. Olmstead and Mr. Norton have failed to respond to a question that I asked earlier. We considered it very important that we have an understanding of where the earthquake study stands, which in the earlier testimony, the sworn testimony stated it would be the middle of May, and we would very much like to have a statement precisely of when we are going to have that.

Other than that, my inappropriate moment there when I broke in was not to try to create a state of excitation here, but really to express the fact that I do not think it is appropriate for anyone to be re-arguing what we went through a month ago here. To the extent that caused the Board to be concerned that my motives were something different.

That is all. I withdraw my comment with whatever apology the Board deems appropriate. Mr. Lanpher is going to handle the details on this.

MR. LANPHER: I just have a couple of comments with respect to Mr. Olmstead's comments. I am not going to provide any rebuttal to the rebuttal of Mr. Norton. I think my statments with respect to hydrogen are in the record; the Board, of course, will be able to review those and find out what, in fact, I said.

With respect to unresolved safety issues, I am somewhat confused. Maybe Mr. Olmstead over lunch can look into this. The three unresolved safety issues that are referenced in the revised contentions of joint intervenors were only set forth as unresolved safety issues I believe in March or February of 1981, so I do not understand how, by affidavit or otherwise, they could have been addressed in 1979 by the staff. If I am mistaken, I would certainly welcome some clarification.

I do not believe it is -- I took an opportunity to review the North Anna decision just briefly, which was cited in the revised contentions. To the extent that the revised contentions state that unresolved safety issues need to be addressed in a formal SER supplement, that possibly is not accurate. I think it has to be addressed somewhere. They mentioned in North Anna by affidavit. That would probably

be adequate, also. I do not think we have to go through the formality necessarily of a supplement, but I believe the staff's views have to be shown on the record as to such information.

And the reason for that would be so that parties will have an opportunity to test the adequacy of the staff's statements. Until the staff has presented its decision, one really does not know where the staff stands.

Second, Mr. Olmstead in discussing policy statement or the further information provided by the Commission on April 1 has stated in broad terms that no significant information was presented to show that the results would be different.

Well, I attempted to do that as I went through. I believe the written submissions, particularly by Mr. Reynolds do show how results would be different. I would like to point out that in my oral presentation before I pointed out very clearly that on emergency preparedness, the results would be completely different if the allegations of the joint intervenors -- and they are both specific allegations -- were found to be correct. It would compel the denial of the license.

The third point I would like to make is that with respect to revised contention 14; that is, the environmental qualification of safety-related electrical equipment, new

information was presented in the revised contentions. New information came from the June 10 letter of PG&E, and that new information supports the previous contention that the environmental qualification program of PG&E was not adequate.

I think it is incumbent upon joint intervenors when they do come across such information which will make their contentions more clear, that they bring it to the Board's attention. Maybe that could have just been cited as opposed to being set forth in three or four pages. Having set it forth I think is an additional assistance.

Finally, the last point I would like to make is that there has been criticism of joint intervenors for delay or not filing their March 1981 motion earlier. Mr. Reynolds pointed out there has been a lot going on in this case for a number of years, and I would just like to point out that this affects everyone.

The staff, in Supplement 9 which I believe is dated June 1980, stated that by February 1981, it would issue an SER supplement relating to environmental qualification of safety related electrical equipment.

In a Supplement 13, page 7-1, it states that this evaluation would be issued in mid-May 1981. In Supplement 14, the mid-May 1981 date was again expressed. That is at page 3-8 of Supplement 14. To my knowledge, that evaluation still is not forthcoming, and we are a month and a half

beyond mid-May now, so this proceeding does present a lot of issues and it has been difficult for a lot of parties, and it is not just the joint intervenors -- the joint intervenors have not been able to meet as early a date as some people would like.

Those are all my comments. Thank you, sir.

CHAIRMAN WOLF: Thank you. As I said earlier, we will adjourn for lunch at this time and re-assemble at 1:00 o'clock.

(Whereupon, at 11:30 a.m. the conference recessed for lunch, to reconvene at 1:00 p.m. the same day.)

AFTERNOON SESSION

1:00 p.m.

CHAIRMAN WOLF: Mr. Olmstead?

MR. OLMSTEAD: Yes, Mr. Chairman. I would like to respond to the last round of comments that we heard just before lunch concerning the remarks that I had made in my first statement on the joint intervenors' contentions.

I think, first of all, we need to make the point that what we are talking about, the motion to reopen the record, is entirely different than what we would be talking about if we were in a new proceeding in which we were defining the issues to be litigated in the first instance.

I do not think the staff would disagree that a good number of the contentions that the joint intervenors are putting forward might meet the requirements of 2.714 if this were an intervention following a notice of hearing.

However, this is not an intervention following a notice of hearing; this is an attempt to reopen a record and something more is required than merely stating a good contention. It must meet the Wolf Creek reopening standard and the late-filed contentions standard.

That means that the joint intervenors must come forward with some significant factual material indicating that there is some matter of record which would significantly change as a result of further hearings on

these particular issues.

I think a review even of the latest filing which the staff, of course, contends is late, would show that there is no affidavit in support, no factual support for the contentions that are put forward. They are merely representations of counsel in the form of new contentions.

For instance, if we were to look at the hydrogen contentions, the staff in one of the TMI supplements addressed the hydrogen matter in NUREG-0737 and 0694, indicating that there were hydrogen recombiners in the Diablo facility.

Joint intervenors have not addressed this other than to say in their opinion, that is not adequate. They do not tell you why it is not adequate, they do not show you technical evidence to the effect that is not adequate, and as such, I think that is insufficient.

One of the other points joint intervenors made in rebuttal was at the staff's request, this Board deferred action on TMI issues until the SER supplement issued. That is true, but I would remind the Board that that SER supplement issued in August of 1980, and at that time, the staff filed a pleading with the Board indicating they thought it was appropriate to go forward on TMI-related issues except for Class 9. That is the position that the Board followed, and they set a definite date for filing

contentions.

Joint intervenors asked for an extension of that; an extension was granted and they filed contentions in December of 1981. I do not think that justifies coming along in March, four months later, and attempting to bootstrap additional contentions related to the TMI event, which at that point was over two years old.

I do not think they can meet the reopening standard as to that part of the contentions which, in essence, leaves the emergency planning and Class 9 matters, and the Board of course disposed of the Class 9 matters. So it leaves the emergency planning contentions as ones which were promptly filed in accordance with the Commission's June 1980 policy statement.

The second point I would like to make is there was reference to the fact that new matters were raised in NUREG-0737. Now of course, there is not anything in NUREG-0737 that was not in NUREG-0694, which was issued in early 1980. So I do not think that argument washes.

The third point they made was their workload associated with other matters in this proceeding made it impossible to address the matters that were in the Commission's policy statement; namely, the late-filed showing that was required and the significant new information showing that was required. I do not think that is the type of

showing that the Commission anticipated a party would make when they start to reopen an otherwise closed record.

I would also like to address the matters that joint intervenors raised with regard to 2.714, the late-filed contention requirements. 2.714, late-filed contention requirements that relate to those subjects that joint intervenors are seeking to raise now for the first time ever in this proceeding, they did not have contentions in the previous record in 1976 and 1979 before this Board. And now they are trying to raise new issues.

I pointed out repeatedly that I do not think they have made the showing they are supposed to make under 2.714. For instance, on good cause, I do not think it's enough to say well, TMI occurred; therefore, we ought to be able to raise a bunch of new subjects. I think they have to show a nexus to the matters that they have placed in controversy as affecting their interests in this proceeding. I do not think that has been done.

They then indicate that their participation will assist in developing a sound record and point out to the Board that they have a right, under case law, to develop their case by cross examination. I do not dispute that in a proceeding that is starting fresh. But this is a reopened proceeding, and the obligation is to come forward with some significant new factual information. That means that they

have to do more than just represent that they think if they cross examine an expert someplace they are going to educe some new information. They have to point to the new information. This they have not done.

And then I think it goes without saying that on the question of whether their participation would delay or broaden the issues in the proceeding, if we are talking about issues that were not previously raised, they clearly broaden the issues in the proceeding. I just do not think there is an argument that one can raise that mitigates against the application of that factor.

On the unresolved safety issues, I think if you will look at the Supplement 9, Appendix B on page B-1, it gives you the history of the unresolved safety issues in this case.

Now, Governor Brown, as to decay heat and hydrogen, indicates that those issues were not on the original list of unresolved safety issues for which River Bend applies. However, these matters were addressed in subsequent supplements; hydrogen being the recombiner issue that I mentioned earlier. And I think the parties have an obligation to indicate what it is they feel is inadequate about that treatment.

Finally, I would like to talk about the outstanding staff request for analysis in emergency planning

concerning earthquakes that Governor Brown raised. He said the staff and PG&E did not answer his question with regard to earthquakes.

I point out what he was asking for is a document that is being generated for the Pacific Gas & Electric Company, not for the staff. There is no way I can help him as to what the consultant may or may not have said to PG&E about that subject. I think it is of record that the staff has asked for an analysis of the effects of earthquakes on accidents at the facility as a part of the emergency planning package that is undergoing preparation and review at the present time.

I do not have any further comments.

CHAIRMAN WOLF: Thank you. Is there any sur-rebuttal on the part of joint intervenors?

MR. REYNOLDS: I just wanted to make very quick comments. I will not respond on things that have already been discussed before lunch.

The first thing is Mr. Olmstead's reference to a filing by the staff in August 1980 which was their TMI submission, which the Board had been waiting for. If I am not mistaken, and correct me if I am wrong, there was a filing in early January 1981 -- I think the 12th of January -- by the staff in response to a Board request concerning whether or not they should continue to defer a resolution of

the emergency planning and Class 9 issues. And the staff's response on that in January 1981 was as far as low power was concerned, there was no reason the Board could not go ahead. But as far as full power, the Board should continue to wait.

Then, subsequently, in early 1981 -- I do not have the date on it -- the Board again requested that the staff inform them as to the status of their investigation concerning TMI-related issues and whether or not the Board should then go ahead and resolve that 1979 motion to reopen. Now I'm sorry I don't have the date, I could not bring my entire file with me this time. But that is my recollection of the record.

So I would take issue with Mr. Olmstead's statements that August 1980 was the date.

MR. OLMSTEAD: Mr. Chairman, if I might, the filing he is referring to is the staff's response to Licensing Board's order for status of request to defer ruling. That was filed on January 12, 1981.

MR. REYNOLDS: All right. Second, I do not think there is any requirement that I'm aware of anyway that -- necessarily in support of a motion to reopen, that it be based on affidavits. My understanding is you can make a showing for reopening; you can use affidavits, you can also use other sources as well.

Certainly, as far as the TMI accident goes, that has genereated numerous studies by numerous different groups, and to require now that we would come in and independently justify using affidavits seems to me would be unnecessary in this proceeding.

Certainly, in our motion to reopen and the original contentions and now in the clarified contentions as well, there are many, many citations to different sources. And it seems to me sufficient to justify the showing of significant new information.

CHAIRMAN WOLF: Thank you. Mr. Norton, do you have any sur-rebuttal to things that have been said since your last chance?

MR. NORTON: No, I have no sur-rebuttal at this point.

CHAIRMAN WOLF: Mr. Brown?

MR. BROWN: May I, Your Honor, ask through the Board that Mr. Norton respond to the question when the earthquake study relating to complicating effects of earthquakes will be, in fact, submitted to us?

CHAIRMAN WOLF: Do you have any approximate idea when that will be completed?

MR. NORTON: I think Mr. Olmstead stated it correctly. My memory of the hearing record was that Mr. Olmstead stated in the record that when he received the

analysis that the NRC staff had requested of PG&E, he would, of course, forward it on to Governor Brown. We were not a participant to that stipulation or anything else.

Now we have a request from the staff to do an analysis, and it has to do with what effect an earthquake would have on emergency response planning, and we have a consultant who is doing work on that. When the analysis that the staff has requested is done, it will be forwarded to the staff and I presume Mr. Olmstead will abide by his stipulation and forward a copy to Mr. Brown. Other than that, I have nothing to say.

MR. BROWN: Just so the record will be - I am sorry. Does Mr. Olmstead have anything to say further?

MR. OLMSTEAD: I do not have a copy of it so I cannot forward it.

MR. BROWN: Just so the record is clear, it is very important that everyone understand that we consider that a very significant document. Whether the scope of it turns out to be satisfactory from our point of view or the content or the slant or direction it takes is something we reserve the right to take a position on, and we will have to have time to review that.

There was a statement made in the record that the document was due in the middle of May.

MR. NORTON: Maybe I can clear that up. That is

where the problem lies. There was no statement made by our witness; I believe it was Mr. Sears who said that his understanding is that the consultant would submit some sort of a report by the middle of May, but that is not the analysis that is going to the staff.

The staff has requested an analysis from PG&E, and that May 15 date has nothing to do with that analysis. So you are talking about two different things and putting them together as one. I think that's where the problem lies.

MR. BROWN: Fine, I accept what you said for clarification. I would like to continue, though, just so we do not run into a situation a month from now or six weeks from now or whenever the documents become available to the Board and all the parties, that we consider that a very important document and we necessarily are going to require time to look at it, to comment on it and to take a position on it, one way or another. And I would not want anyone to have any basis to suggest that we waived our rights with respect to that important consideration or that we should have done something earlier or that we are engaging in some delay or dilatory tactic.

We want to be very forthright that it, to us, is a very important document. We want to have an intelligent opportunity to look at it.

Now just to comment very, very briefly on a couple

of things stated by Mr. Olmstead, I believe that Mr. Olmstead has characterized a rule of law unsoundly in suggesting that the intervenors could not proceed through cross examination.

There may, in fact, be some staff dissatisfaction in this proceeding with the rule of law and how it is to be applied. But the rule of law is that the burden of proof is on the applicant, and though there is dissatisfaction and though it may not be convenient or it may cause discomfort, the fact is that the intervenors have the legal right to proceed precisely as Mr. Reynolds has stated.

And secondly, I think Mr. Reynolds has again accurately stated that there essentially can be no more significant new evidence than the Three Mile Island accident and how it relates here. And to the innumerable studies which have been done, his citations to those and the persuasive argument, we should tie those together in support of his contentions certainly would seem to cross any legitimate threshold for the admissibility of these contentions.

Thank you.

CHAIRMAN WOLF: Do you have anything further?

MR. OLMSTEAD: I'm sure you do not want to hear it, but I will make this point one more time. I do not think that people are fully understanding. I do not fully

disagree the burden of proof is on the applicant. However, this record is one in which the applicant went forward with the burden of proof and the Board issued an initial decision and the record was closed.

The burden is on the party seeking to reopen the record to show that there is evidence to support that motion to reopen, and here you have to do more than file a good 2.714 contention. You have got to point to some evidence that tends to support your view that there would be a significant change in the result, and that is what I do not think has been met with regard to the contentions that are in the March filing.

MR. NORTON: Excuse me, Mr. Wolf, I would like to respond to Mr. Brown, also. Whether Mr. Brown thinks some document that is going to come out in the future or not is significant is fine. He is certainly entitled to that, but it does not change this proceeding nor his rights. His rights are under the regulations and when and if some document comes along that he likes or does not like he can do with it as he wants. He can file another motion to reopen, he can do whatever he wants. This hearing -- excuse me, this prehearing conference does not hinge on that document at all

In respect to him saying the applicant has the burden of proof as to the motion to reopen, that is absurd.

The regulation is very clear that the proponent of the motion to reopen has the burden of showing that there is significant new information which will change the outcome of this Board's initial decision. We have no burden whatsoever in that regard. It is totally on the proponent.

CHAIRMAN WOLF: We have discussed pretty thoroughly the situation here this morning. I think we have exhausted all the comments that we could expect on the contentions at this time. So I would like to move on to the question of the schedule of a possible hearing in this matter.

Does anyone have an estimate of the time that will be necessary in order to go forward with the matter after we get out our order on this prehearing conference, or conference of counsel?

MR. NORTON: Your Honor, we were assuming that if worst came to worst and there had to be a hearing, that it would be someplace around October 1. Now, my understanding was that you submitted a schedule showing, I think, September 22. That was based on the 45 days prior to hearing to file motions for summary disposition.

However, that rule as I understand it has now been changed, and I have received quite a few modifications in the rules. But my understanding is that you no longer have to have the 45-day period prior to the start of hearing in

which to submit a motion for summary disposition. That can be done two or three weeks, for example, in front of it. Obviously, it cannot be done the day of the hearing or the day before.

I think the comments to that new regulation pointed that out. It certainly can be done a couple or several weeks before. So we see no reason not to stick with Mr. Olmstead's schedule, sometime between September 22 an October 1.

But I did point out this morning that we have a motion to make to this Board that we would like to have a rule in your prehearing conference order following this conference, and that is, the location of the hearings. If you want to take that up now, I think it is going to take us a little bit of time to dispose of it.

CHAIRMAN WOLF: Very well. The Board will, perhaps not in its order regarding the prehearing conference but at an early time after that, set a schedule for hearings, and if that schedule raises a major problem with a party, we will be willing to consider that problem if you notify us of it.

However, I think the suggestion that has been made by Mr. Norton regarding the beginning of the hearing sometime at the end of September, perhaps in accordance with the schedule previously submitted by the staff, is a good

one and we will attempt to bear toward that.

Mr. Brown, did you -- .

MR. BROWN: We gave some thought, Your Honor, to the schedule, and after looking at the elements, the date on which we have the hearing commencing in our schedule, which we would like to put on the record for the Board's consideration, is the 1st of December. And that is predicated upon the following elements.

The first is an assumption that somewhere in the range of the 15th of July -- .

CHAIRMAN WOLF: I do not want to interrupt you, but I think it would be better if you would submit that in the form of a motion or a suggestion to the Board regarding scheduling.

MR. BROWN: That is fine.

CHAIRMAN WOLF: Setting forth the schedule you would find acceptable and the reasons for it. It would save us some time here, and I do not think that we would gain anything by putting time in on that matter right now.

We are ready to hear the motion regarding the place of hearing.

MR. NORTON: Your Honor, I am going to try to choose my words carefully here because I do not want to offend anyone, including the Board. Most especially the Board, I should say.

But my client, myself personally, were very distressed at the week of hearings that were recently held in San Luis Obispo. The Board is aware of the incidents that occurred there, as well as we are, perhaps. On Tuesday, the first day, a microphone was taken away from an attorney, and a ten or 15-minute speech was made by someone who should not have had a microphone in their hand. On the last day of the hearings, Friday morning, the hearing was totally disrupted. It was obviously a staged event. I am sure the Board noticed all the TV cameras and all the reporters and everybody started milling in around 11:00 o'clock in the morning and we went from a crowd of perhaps 30 or 40 people to a crowd of 150 people in a half an hour. At 11:30 we were totally disrupted where we had to actually abandon the auditorium and turn it over to a mob.

And during the course of the hearings, although it is not reflected in the transcript, anyone that was there would have to admit that there was constant hissing and some booing, but constant hissing every time staff or -- not every time, but the vast majority of times that staff or applicant's counsel made an objection or made an argument. And whenever testimony was given by staff or applicant witnesses that people in the audience did not like, there was a constant hissing.

It did not show up in the transcript, as did wild

applause, which appears in the transcript a number of times, and applaus, which appears in the transcript a number of times whenever intervenors' counsel or Governor Brown's counsel made an objection or a speech, or their witnesses gave testimony.

In addition to that, I have witnesses who were literally threatened leaving and coming into the auditorium. They were threatened both personally and intimidated by remarks such as how many kids have you killed today, whose baby are you going to wipe out tonight, and things like that.

I had at that hearing I think four witnesses who had never testified in any hearing in their lives, and I think after the hearing three of those four witnesses will never testify in another hearing the rest of their lives, just because of those threats and intimidations. The hissing, the applause and so on, the fascinating part about that is the intimidating effect that it has on witnesses and, even to some extent I must admit, counsel.

Every time you open your mouth you are hissed by people sitting literally five feet behind you in large numbers. It does tend to make you, you know, feel intimidated that well, I am going to let that one go because I do not want to incur the wrath of these people that are breathing down my neck. I tried not to let it intimidate,

but I am afraid it may well have.

There were many times -- it is hard to say because there are times during a hearing when your first reaction is to object to a question and you go like that and then you think well, I am not going to object, it is not worth it. So you don't know whether it's the hissing that makes you withdraw and not make the objection, or whether it is that you would not have made the objection under normal circumstances.

In any event, I talked very carefully with some of the witnesses and they, indeed, felt intimidated by the hissing, and that, coupled with the threats as they came in and out of the hearing room.

Frankly, this hearing has been going on in San Luis Obispo but I have been involved in it since 1975. December of 1975 I think was the first environmental hearing I attended. There were people who made limited appearances back in those days literally by the hundreds, and a few of them threatened. I can remember in 1975 one or two comments about well, if we cannot stop you legally, we will stop you some other way. And it is in the record.

But the tone was different in those days. Unfortunately, we have had a change of counsel I think all the way around the room with the exception of Mr. Crane and myself, but Mr. Bright was there, and I think he would agree

with me that the tone was a little different. When you went outside the hearing room for breaks or for lunch or at the end of the day, you actually had some friendly encounters with the other side, some joking, and some camaraderie, if you will, of people who were wrapped up in the same question.

Frankly, the last couple of hearings that tone has totally disappeared. At the last hearing I felt on several occasions, particularly Friday morning when your clerk, who as somebody said, may be brave, they were not sure whether he was brave or not very bright for doing what he did, but I thought he showed a lot of courage. But one young man came running across the room; when your clerk tried to remove the guy who was interrupting the proceedings, and he was within two or three feet of me, and he grabbed a hold of your clerk by the elbow, but then he apparently thought better of it and let go and kind of backed off.

But I thought for a very brief minute there that we were going to have some physical situations on our hands. And as you know, there was not a police officer within sight, and there was a mob of about 150 people and there could have been serious damage.

I frankly fear for the safety of the Board, I fear for the safety of the staff and the witnesses, the attorneys and last but not least, I fear for my own children because they need me and I want to be around to continue to raise

them. And the setting we had last time is not conducive to that kind of safety.

We would ask -- and I think we would insist -- that these hearings be held in either San Francisco, Los Angeles or Washington in a federal courthouse with proper security in the future. There is no way that you can have property security in that auditorium where we have had this hearing for the last several years.

I do not think there is anyplace in San Luis Obispo to ensure proper security. Apparently, the Veterans' Memorial Building is the only place that we can have a hearing out there that has any size. The only other place we have been other than that is in the bottom of a motel two or three times; we were in the San Luis Bay Inn, which is much less secure than the Veterans Building, and then we were in the Madonna Inn in the wine cellar for those environmental hearings, which did not work out real well, either.

I think this Board has no choice in this matter. I think the last time those people who disrupted that hearing and who sat there all week long hissing and booing just went that one step too far. I appreciate this -- I do not mean this as a criticism of the Board because it was a very difficult situation. Once it got going, I don't think there was any way for you people to do anything about it without calling in a large number of law enforcement people

and clearing the room and creating a bigger spectacle than we already had.

I think the only way to avoid that unfortunately, in the future, is to have this in a federal district courtroom in Los Angeles or San Francisco which are not that far from San Luis Obispo. Certainly, the clients of the joint intervenors who want to attend can do that. There is no problem; it is a couple of hours drive. In fact, I always drive in; all of our people always drive from either L.A. or San Francisco to those hearings, and they can, too.

I think the safety of the people and the intimidation of witnesses is the part that really disturbs me. A lot of our witnesses just felt like they wanted to say yes or no and just get the heck off the stand. They were very uncomfortable up there. They were particularly uncomfortable when they had to walk in and out of that auditorium. Thank you.

CHAIRMAN WOLF: Of course, as you well know this Board does not condone any of that action. We abhor it, and we will take your motion under consideration. Whether or not we can change the site will depend upon how we analyze the situation when we take it under consideration.

Are there any further things?

MR. REYNOLDS: I would like to respond to the motion briefly, if I may.

CHAIRMAN WOLF: It will have to be brief, Mr. Reynolds. I think we are well aware of the problem.

MR. REYNOLDS: I certainly would like to state for the record our very strong feeling that the hearing should be held in San Luis Obispo. It is established NRC practice that the location of a hearing be near the site of the plant.

It is certainly indisputable that there are very strong feelings on both sides of this licensing question. I doubt whether there is anyplace in the country where this hearing could be held, other than perhaps in PG&E's own building, where there would not be members of the audience who feel very strongly about the questions.

But the fact remains that PG&E built the plant in San Luis Obispo. The people most affected by the location of the plant are in San Luis Obispo; they are the ones who have a right to a public hearing, whose right it would seem to me greatest under the Atomic Energy Act.

It is our strong feeling and we strongly urge the Board to deny the motion and to set the hearing in San Luis Obispo. There are other measures if audience noise or demonstrations become a problem. Certainly, the Board has powers to deal with that other than simply refusing to hold the hearing near the location.

Disruptions I think are not an uncommon thing. It is my understanding anyway that there have been disruptions

in other NRC proceedings as well. That is something which seems to me can be expected when any issue which is surrounded by so much controversy is considered.

And I am not going to comment on Mr. Norton's statements of fact, although it is my opinion that there is a certain amount of hyperbole with respect to the audience comments which went on. I do not believe it was constant, although there was some comment. We would urge the Board to deny the motion.

MR. BROWN: I briefly would like to say, Judge Wolf, that unfortunately and regrettably, the burden is going to be on the Board's should to deal with whatever extent of a security problem it deems is presented. But the practice and rule is going to require us to be in San Luis Obispo, and the requirement that it be a public hearing is derived directly from the Constitution, under a variation of the Great Seal of the United States that is sitting above your head right now. So I do not believe there is any choice with regard to a site-specific hearing.

There is a great deal of discretion given to the Board in determining how to deal with legitimate problems, and the Board does have very strong powers in that regard in the conduct of the hearings. So we think the fact is inevitably, the hearing does have to be in San Luis Obispo.

The real question before the Board is going to be

how to deal with whatever legitimate concerns have been raised.

CHAIRMAN WOLF: Thank you. Mr. Olmstead?

MR. OLMSTEAD: Yes, Mr. Chairman. I would like to offer to you some brief comment. I certainly agree with the applicant that disruptions are not to be expected in these proceedings. These proceedings are federal proceedings to be conducted with all the decorum necessary to an adjudication in a federal proceeding.

It is also not true that the place of the hearing has to be the location of the plant. It is Commission policy. However, following a remand from the Court of Appeals in the Consumers' Power Midland proceeding, joint intervenors' counsel in that particular case approached the bench during a bench conference and, for reasons that the Board can find in the record of that proceeding, requested that the hearing be moved to Chicago, and that request was accommodated.

So it is possible to move the proceeding when there is reason to do so, because of one or another of the parties representations to the Board.

MR. NORTON: Excuse me, Your Honor, I would like to say one very brief thing. And that is both the intervenors and Governor Brown somehow stated that a public hearing means that it has to be in San Luis Obispo. That is

not what a public hearing means under the law at all.

I think the chief judge of this panel well knows that. A public hearing means it is as this hearing is; it is open to anybody, newspaper reporters, whoever wants to come in and sit down and listen, as opposed to behind a locked door where nobody knows what is going on. A public hearing does not mean you have to hold it in San Luis Obispo and have all the people who live there attend. That is not what a public hearing is at all.

CHAIRMAN WOLF: There was one statement made that I think the Board should comment on. Namely, that we have to expect disruption. That just is not true.

The criminal laws of the United States forbid interruptions and disruption of agency hearings, and provide a fine and imprisonment for it. And it is very, very serious to do what was done out in San Luis Obispo. And if I am the chairman, when there is another meeting it will not go on.

MR. REYNOLDS: I do not want the Board to misunderstand me. That was not the implication of anything that I said. What I meant to do was to suggest to the Board that there are other measures which the Board can take to deal with that kind of thing. I do not think there is anybody in this room who condones the kind of disruptions that go on or went on.

But what I meant to suggest to the Board was simply that short of moving the hearing, there are certainly a number of powers which you have to deal with that.

CHAIRMAN WOLF: We understand. Are there any further comments or matters that we should discuss at this time?

(Board conferring.)

We have noticed in some of the papers that -- I think the staff has referred to Unit 1 and not Unit 2. Is there some reason for that, Mr. Olmstead?

MR. OLMSTEAD: Do you mean in some of the SER supplements or some of the filings?

CHAIRMAN WOLF: Some of the filings here.

MR. OLMSTEAD: I do not think -- .

CHAIRMAN WOLF: I do not have one right now to show you. But isn't that true, Mr. Bright?

DR. BRIGHT: In your conclusions of law at the end of your initial decision you make an explicit statement there about Unit 1.

MR. OLMSTEAD: I think that is an oversight, Mr. Chairman. I suspect, in looking at what that is, what we have had to do to make sure we were being consistent with the low power licenses that the Commission has been issuing at the facilities, is they were tracking some of those right off of those licenses. And I suspect that the secretary

just copied that without making the Unit 2 addition.

But if it is other than that, I will certainly inform you. It is not our intention for this proceeding to be only as to Unit 1 and not as to Unit 2.

CHAIRMAN WOLF: We did not know whether there was some reason for that or not.

MR. OLMSTEAD: I think, though, in licensing the facility we probably will do it one unit at a time when the license is issued, and these are the conditions that would normally go in that authorization from the director once the Board has issued a favorable decision. So I do not want to mislead you. I think we do it one unit at a time.

CHAIRMAN WOLF: Yes, right. Anything further?

(No response.)

Very well, then. We thank you for coming, and we appreciate the help you have given us. We will get out an order in due course; perhaps in the next two to three weeks. The meeting is adjourned.

(Whereupon, at 1:40 p.m. the prehearing conference adjourned.)

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 & Electric Co., Diablo Canyon Nuclear Power Plant Units No. 1 & 2

Date of Proceeding: July 1, 1981

Docket Number: 50-275 & 50-323

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

David S. Parker

Official Reporter (Typed)

(SIGNATURE OF REPORTER)