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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES
John F. Wolf, Chairman
Glenn O. Bright
Jerry R. Kline

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant,
Unit Nos. 1 and 2)

Docket Nos: ~~50-275-0L~~
50-323-0L
(Low Power Test
Proceeding)

April 30, 1981

MEMORANDUM AND ORDER
(GRANTING PG&E'S AND NRC STAFF MOTIONS FOR
SUMMARY DISPOSITION OF JOINT INTERVENORS'
CONTENTIONS 5 AND 13; DENYING THEIR MOTIONS
AS TO CONTENTIONS 4 AND 24)

The Atomic Safety and Licensing Board having jurisdiction of this matter has considered the NRC Staff motion for Summary Disposition of Joint Intervenors Contentions, dated April 1, 1981, the NRC Staff motion for Summary Disposition of Governor Brown's Subjects, dated April 1, 1981, and the Pacific Gas and Electric Company's (PG&E) Motion for Summary Disposition, dated April 3, 1981, as well as Governor Brown's and Joint Intervenor's responses.

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The Board's decision and the basis therefor is set out below:

In the Board Prehearing Conference Order, dated February 13, 1981, it admitted Joint Intervenor's Contentions 4 and 5 dealing with emergency response planning "insofar as they pertain to issues related to fuel loading and low power testing"; Joint Intervenors' Contention 11 was admitted as "relevant to this proceeding and specifically related to new requirement for licensing", i.e., item II.E.3.1 of NUREG-0737.^{1/} Contention 13 was admitted as a TMI-related issue with the understanding that only the time of the installation of the indicator would be at issue. Contention 24 was admitted with the understanding by the Board that under NUREG-0737 at II.D.1 RV and SV Tests must be completed before fuel load but as to block valve tests Applicant and Intervenor differ whether tests should be completed prior to fuel loading. Intervenor challenges NUREG-0737 requirements, i.e., whether tests should be completed before fuel loading or July 1, 1982, whichever is later.

The question of the summary disposition of each of the admitted contentions will be treated separately.

^{1/} Contention 11 was withdrawn by Joint Intervenors in their Response in Opposition to NRC Staff and Pacific Gas and Electric Company Motions for Summary Disposition. See Footnote 1, page 2 of said Response.



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Contention 4.

Numerous studies arising out of the accident at TMI Nuclear Power plant have shown the need for upgrading emergency response planning. Based upon these studies, the Commission promulgated revised emergency planning regulations effective November 3, 1980. The Applicant has failed to demonstrate that the combined Applicant, State and local emergency response plans for Diablo Canyon comply with those revised regulations ("Final Regulations on Emergency Planning," 45 Fed. Reg. 55402 (August 19, 1980)).

After the full-power hearings held on Diablo Canyon in February 1979, the Board issued a partial initial decision but deferred its decision on the adequacy of emergency planning. This course was taken because the Board concluded that ruling on emergency planning issues should await the results of the investigation of the TMI accident.

After assaying the lessons that could be learned from the accident at TMI on emergency planning requirements, the NRC published a number of documents that contained upgraded requirements for emergency planning. These requirements were adopted as regulations which became effective November 3, 1980 (10 CFR §50.47). The NRC also published jointly with Federal Emergency Management Agency (FEMA) NUREG-0654, FEMA Rep. 1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants"



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in November 1980. These regulations and guidance taken together with the clarification contained in NUREG-0737 now control emergency planning for nuclear power plants.

Contention 4 asserts that the Applicant has failed to demonstrate that the combined Applicant, State and local emergency response plans for Diablo Canyon comply with these regulations. The Staff and Applicant agree that the emergency plan does not meet all requirements as set forth in NUREG-0654 but argues that under 10 CFR §50.47(c)(1)^{2/} that Applicant has demonstrated to the satisfaction of the Commission that deficiencies in the plan are not significant for the plant in question.

Joint Intervenors and Governor Brown in their opposition to the motions for summary disposition contend that NUREG-0737, "Clarification of TMI Action Plan Requirements," requires compliance with the revised emergency planning regulations as a fuel load requirement. They contend further that no exception under 10 CFR §50.47(c)(1) has been granted and that there has been no factual demonstration that the exception guidelines are satisfied.

^{2/} Failure to meet the standards set forth in paragraph (b) of this subsection may result in the Commission declining to issue an Operating License; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.



Governor Brown and Joint Intervenors in support of their argument have submitted a number of affidavits from local government officials and local residents alleging inadequacy of the emergency planning at Diablo Canyon.

The Board finds that Governor Brown's and Joint Intervenors' arguments and accompanying affidavits are sufficient to establish that there are issues of material fact to be litigated regarding emergency planning.

Motion for summary disposition of Contention 4 is denied.

Contention 5.

The Applicant has failed to demonstrate that the combined Applicant, State and local emergency response plans for Diablo Canyon comply with the requirements of §§ III.A.1.1 and III.A.1.2 of NUREG-0694.

NUREG-0694 constituted an interim Commission response to the accident at TMI. NUREG-0694 has since been superseded by NUREG-0737, "Clarification of TMI Action Plan Requirements," which together with applicable regulations now constitute the full and adequate Commission response to the accident at TMI. Specific requirements of NUREG-0694 referenced in Contention 5 have now been incorporated into NUREG-0737 and emergency planning requirements are now covered by 10 CFR §50.47 and NUREG-0654.

The Board finds that the requirements cited in Contention 5 are now incorporated in the regulations and guidance of the Commission. Contention 5 therefore addresses substantially the same concerns as Contention 4. It presents no new issues of material fact for litigation. Motion for summary disposition of Contention 5 is therefore granted.



Contention 13.

NRC regulations require instrumentation to monitor variables as appropriate to ensure adequate safety (GDC 13) and that the instrumentation shall directly measure the desired variable. IEEE 279, Section 4.8, as incorporated in 10 C.F.R. 50.55a(h), states that:

To the extent feasible and practical protection system inputs shall be derived from signals which are direct measures of the desired variables.

Diablo Canyon has no capability to directly measure the water level in the fuel assemblies. The absence of such instrumentation delayed recognition of a low-water level condition in the reactor for a long period of time. Nothing proposed by the Staff would require a direct measure of water level or provide an equivalent level of protection. The absence of such instrumentation poses a threat to public health and safety.

The Board found that this contention lacked specificity at the prehearing conference of January 28, 1981. However, the Board accepted it after clarification by Joint Intervenors that their concern was that the indicator be installed prior to fuel loading and low power testing rather than January 1, 1982, as provided by Item II.F.2. in NUREG-0737. The Applicant in its motion for summary disposition dated April 3, 1981, provided an affidavit certifying that Item II.F.2. of NUREG-0737 will be complied with prior to fuel load at Diablo Canyon. The Board therefore finds that Contention 13 as clarified presents no issue of material fact since the required indicators will be installed by the Applicant on the schedule specified by Joint Intervenors in their clarification. Motion for summary disposition of Joint Intervenors' Contention 13 is granted.



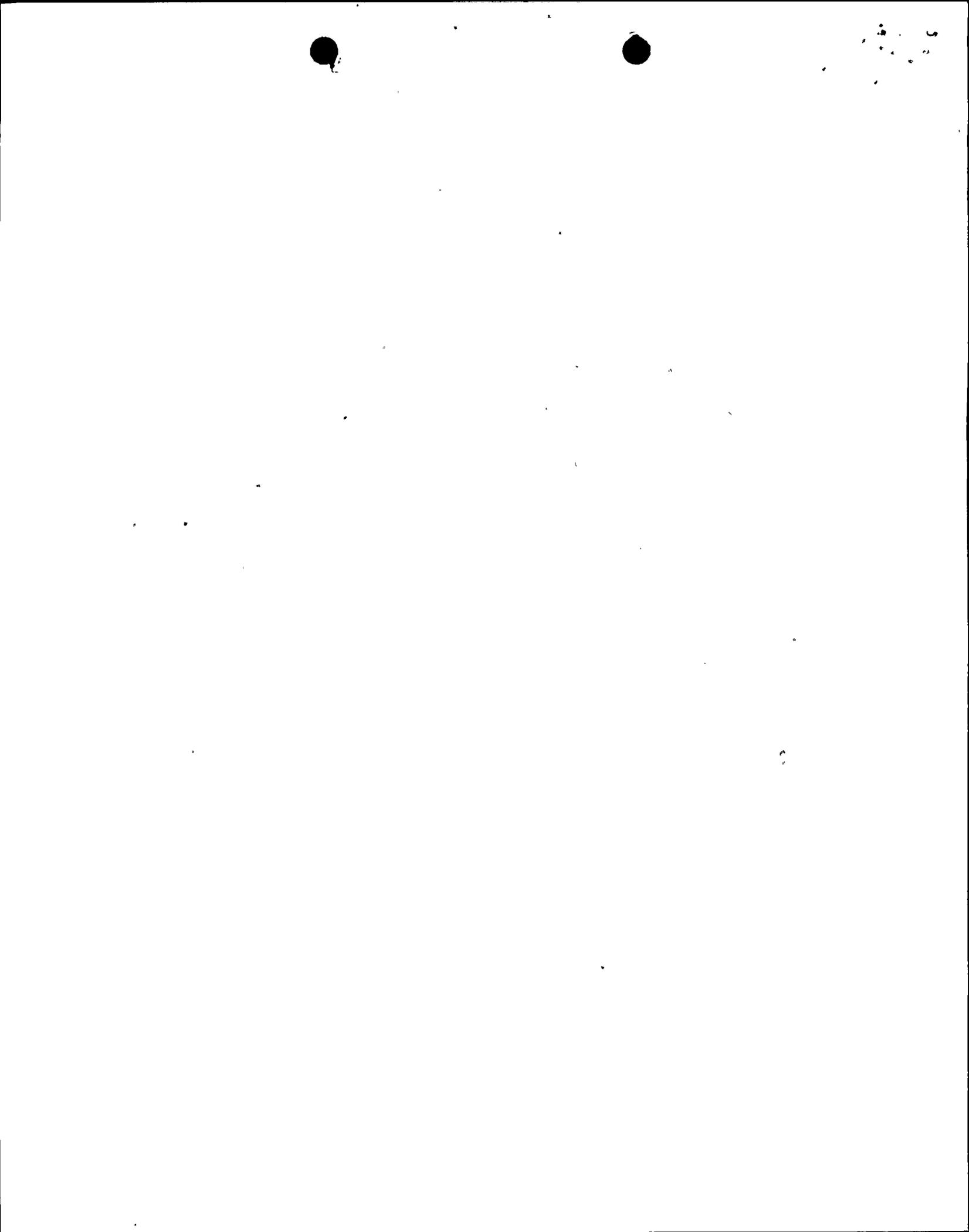
Contention 24.

Reactor coolant system relief and safety valves form part of the reactor coolant system pressure boundary. Appropriate qualification testing has not been done to verify the capabilities of these valves to function during normal, transient and accident conditions. In the absence of such testing and verification, compliance with GDC 1, 14, 15 and 30 cannot be found and public health and safety are endangered.

The Board accepted this contention after clarification by Joint Intervenors that they were concerned that all tests on reactor coolant system relief valves, safety valves and block valves be completed prior to fuel loading and low-power testing instead of on dates specified by item II.D.1 of NUREG-0737.

Staff and Applicant are in agreement that such testing need not be completed prior to fuel load. In support of its position the Staff has stated that the valves at Diablo Canyon meet all applicable codes and standards; that PG&E is participating in an EPRI testing program; that there is no evidence that relief and safety valves at Diablo Canyon will not operate properly during anticipated transients which produce transition flow and solid fluid flow and that core uncovering will not occur even if all three PORVs remained completely open at Diablo Canyon.

The Applicant states that none of the valves tested at Diablo Canyon have failed. Governor Brown and Joint Intervenors, however, have asserted that the EPRI testing program has resulted in the failure of 3 of 7 block valves which failed to close when operating under a differential pressure



of between 750 and 1500 psi. Neither the staff nor applicant has addressed the safety significance of such failure. Neither has it been shown on their record how many Diablo Canyon valves have yet to be tested in the existing program. Thus the Board finds that Contention 24 does contain at least one issue of material fact, i.e., whether fuel loading and low power testing can commence at Diablo Canyon while the complete results of valve testing are as yet unknown. Motion for summary disposition of Contention 24 is denied.

The Board notes, however, that Governor Brown and the Joint Intervenors in their opposition to the motions for summary disposition took the opportunity to go beyond the contention to attack the EPRI testing program itself. This is not appropriate, and the Board puts the parties on notice that it expects them to litigate the issue as specified above.

For the reasons stated above on this 30th day of April, 1981, it is

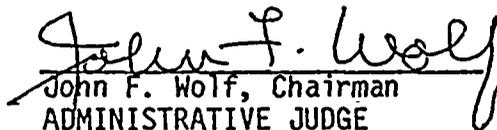
ORDERED

That summary disposition is granted as to Contentions 5 and 13.
Summary disposition as to Contentions 4 and 24 is denied.



According to the limitations in the regulations pertaining to parties admitted under 10 CFR § 2.715(c), Governor Brown may participate in the proceedings to begin on May 19, 1981, in this matter, only within the scope of Contentions 4 and 24.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


John F. Wolf, Chairman
ADMINISTRATIVE JUDGE

Issued at Bethesda, Maryland,
this 30th day of April, 1981.

