

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore



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

Docket Nos. 50-275 OL  
50-323 OL

RULING ON INTERVENOR'S OBJECTION TO SECOND  
PREHEARING CONFERENCE ORDER

May 1, 1980

A question before us at the prehearing conference held on April 2, 1980 involved the conditions under which confidential information about the licensee's physical security plan for its Diablo Canyon facility -- "protected information" -- might be made available to intervenor's counsel and expert witness for their use in this proceeding. We summarized our ruling on the point at page six of our Second Prehearing Conference Order of April 11, 1980, as follows:

One matter, however, could not be resolved by agreement [among the parties]. The [protective] order and affidavit [of non-disclosure] allows the recipients of "protected information" to discuss it only with "authorized persons" (terms defined in the affidavit and not in dispute). The question arose whether intervenor's counsel and expert witness could nevertheless discuss protected information publicly with outsiders

where they had obtained such information from other sources, i.e., other than by disclosure under the terms of the protective order. Over intervenor's objection, we ruled that such discussion would not be permitted.

Intervenor's counsel object to that paragraph. <sup>1/</sup>

They perceive it as unjustifiably creating "an inference" that either they or intervenor's expert "wished to discuss 'publicly with outsiders' protected information which they might have obtained other than by disclosure under the terms of the protective order." Counsel disclaim any such desire. Rather, they explain that they object to the condition for other reasons, objections that they are now pressing before the Commission itself. <sup>2/</sup>

We have reviewed the licensee's and the staff's responses to intervenor's objection and carefully reexamined the transcript of the in camera prehearing conference of April 2nd, 1980. In our judgment, the statement that intervenor finds objectionable is not freighted with the sort of "inference" intervenor perceives. Rather that statement merely recounts what transpired

---

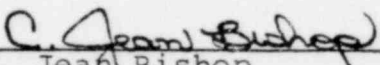
1/ Intervenor's letter of April 17, 1980 objecting to the Prehearing Conference Order. See 10 C.F.R. §2.752(c).

2/ On April 23, 1980, intervenor petitioned the Commission, among other things, "For Review of the Affidavit of Non-Disclosure Ordered by the Appeal Board."

at the conference proceeding. It therefore needs no emendation and intervenor's objection is overruled.

It is so ORDERED.

FOR THE APPEAL BOARD

  
\_\_\_\_\_  
C. Jean Bishop  
Secretary to the  
Appeal Board