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U.S. NUCLEAR REGULATORY COMMISSION

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	Docket Nos. 50-275 O.L. 50-323 O.L.

JOINT INTERVENORS' NOTICE OF OBJECTIONS TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF AUGUST 4, 1981

Pursuant to 10 C.F.R. §2.752, the SAN LUIS OBISPO MOTHERS FOR PEACE, SCENIC SHORELINE PRESERVATION CONFERENCE, INC., ECOLOGY ACTION CLUB, SANDRA SILVER, GORDON SILVER, ELIZABETH APFELBERG, and JOHN J. FORSTER ("Joint Intervenors") hereby file objections to the Atomic Safety and Licensing Board's order of August 4, 1981 in the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") full power licensing proceeding. Joint Intervenors object generally to the board's erroneous interpretation and application of the Commission's policy on litigation of TMI-related issues, as stated in its "Revised Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses," CLI-80-42, 45 Fed. Reg. 85236 (Dec. 18, 1980), and its April 1 Order (CLI-85-5) in this proceeding, and, more specifically, to the board's denial of Joint Intervenors' contentions 2, 3, 4, 8, 9, 10, 11, 14 (in part), 15, 16, and 17. DS03

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In the alternative, Joint Intervenors request that the board direct certification of the issues raised herein to the Commission for its immediate review.

For the reasons discussed at length in their March 24, 1981 Motion to Reopen, in their June 30, 1981 Statement of Clarified Contentions, and by their counsel at the July 1, 1981 prehearing conference held in this proceeding, Joint Intervenors submit that the board has thoroughly misconstrued the standards governing admissibility of contentions in the aftermath of the TMI accident. Each of the contentions rejected by the board arises out of the accident, is based upon significant new information recognized in numerous studies and reports issued since the accident (and cited extensively in Joint Intervenors' 76-page motion), and is intended to assure that such information is adequately considered and applied at Diablo Canyon prior to full power operation. Consistent with the Commission's TMI-related guidance, Joint Intervenors explicitly related each of the contentions not only to the TMI accident but also to specific NUREG-0694 and NUREG-0737 requirements bearing on the same safety concerns. In addition, to assure the requisite specificity of each contention, Joint Intervenors tied each contention to Diablo Canyon site-specific information, including, where relevant, the reactor design, NRC safety evaluation reports, and applicant submittals.

In its brief August 4, 1981 order, the licensing board accepted only one contention in its entirety (as well as part of another) and rejected the remainder without even acknowledging the vast majority of the information submitted and issues raised by

Joint Intervenors. Consistently, the board's rationale for denial of contentions bears no apparent connection to the Commission's prior guidance. Several examples are illustrative.

With respect to the combined hydrogen contention, the board ignored the TMI accident entirely in concluding that Joint Intervenors (1) "have not provided the board with any new significant new factual information regarding hydrogen generation" and (2) "have not supplied information of any kind which could be interpreted as a credible loss of coolant accident scenario." (August 4 Order, at 3.) Further, although the board is correct that "the matters addressed [by the contention] are not required by NUREG-0737," that is clearly not the proper test for admissability of a TMI-related contention. In its April 1, 1981 Order, at 3-5, the Commission explained that

> a party may challenge the sufficiency of an item in the NUREG documents. However, the scope of the inquiry. . . is limited to the particular safety concerns that prompted the specific requirements in NUREG-0694 and 0737. What we had in mind was allowing a party to focus on the same safety concern that formed the basis for the NUREG requirement and litigate the issue of whether the NUREG "requirement" is a sufficient response to that concern. (Emphasis added.)

* * *

Because the safety concern of hydrogen control underlies both the contention itself and the NUREG items cited by Joint Intervenors to the licensing board -- NUREG-0694, II.B.4, Analysis of Hydrogen Control, and NUREG-0737, II.E.4.1, Dedicated Hydrogen Penetrations -- the combined contention was properly admissible. Finally, it is notable that the contention was based on a similar hydrogen

contention drafted by the licensing board for litigation in the TMI-1 Restart Proceeding and admitted subsequently also by the licensing board in the Shoreham licensing proceeding. See In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station), No. 50-322-OL, Order Admitting Shoreham Opponents' Coalition (SOC) Contention 12, 3d Subpart (July 2, 1980).

Other contentions -- regarding valve performance testing and reactor vessel level instrumentation -- are, in fact, based on specific NUREG-0737 requirements. Nonetheless, both were rejected by the licensing board. With respect to valves, the board concluded that Joint Intervenors had failed to "bring forward new information" on the issue, notwithstanding the TMI-2 accident, the existence of a specific NUREG-0737 item on valve performance testing, and a recent NRC staff board notification that the NUREG-0737 item II.D.1 testing deadlines will not be met. Such a conclusion cannot be reconciled with the Commission's explicit directive that the requirement for significant new information "could be satisfied by reference to new information contained in NUREG-0737." (April 1 Order, at 6.) With respect to reactor vessel level indication, the board suggested that Joint Intervenors have placed too great an emphasis on the RVLIS, which is critical to PGandE's response to NUREG-0737 item II.F.2. On the contrary, PGandE itself has proposed the system to comply with the NUREG item; Joint Intervenors' contention seeks only to determine whether the RVLIS will satisfy that requirement. As such, it is obviously a properly litigable issue under the Commission's TMI guidance.

The board rejected in part contention 14, regarding environmental qualification. Its stated reason for doing so was its expectation that Diablo Canyon "will not be permitted to operate until the safety-related electrical equipment has been qualified in accordance with the mandates of the various general design criteria, as required by regulation." (August 4 Order, at 8.) That is an obviously improper basis for denial of the contention under any standard because compliance with the Commission's regulations is precisely the issue which Joint Intervenors seek to litigate. The basis for the contention, as clarified on June 30, is PGandE's June 10 submittal to the NRC regarding environmental qualification at Diablo Canyon. Upon review of that submittal, Joint Intervenors found significant deficiencies in PGandE's qualification program, each of which has been meticulously enumerated in the contention. Notwithstanding the board's expectation that Diablo Canyon will not be permitted to operate until the applicable regulations are met, the contention is clearly relevant, specific, and timely and should have been admitted.

Combined contentions 15 and 16, regarding systems interaction, allege noncompliance with GDC 2, 3, 4, 22, and 24 of Appendix A to 10 C.F.R. Part 50. As such, no connection with NUREG-0737 or NUREG-0694 need be demonstrated under the standards enunciated by the Commission in its April 1, 1981 Order, at 3-4. The contention is supported both in the March 24, 1981 Motion to Reopen and the June 30, 1981 Statement of Clarified Contentions by significant new information arising out of the TMI accident, by numerous citations to official reports, studies, and a recent

staff board notification on the issue, and by discussion of the serious inadequacies of the limited Diablo Canyon study conducted by PGandE. The contention is based on the recognized fact that the TMI accident demonstrated the need for a thorough study of systems interaction, particularly in an area of high seismic activity, to assure compliance with the regulations cited in the contention. Absent such assurance, licensing and operation of Diablo Canyon will violate the Atomic Energy Act. 42 U.S.C. §§2233(d), 2236(a), and 2237; 10 C.F.R. §50.57(a) and (c).

The licensing board also concluded that the Staff need not address decay heat removal, because it is a "new" unresolved safety issue. (August 4 Order, at 4.) This ruling is in direct violation of the River Bend and North Anna decisions cited in contention 4. Simply because an issue is "new" does not free the Staff from its obligation to address all unresolved generic safety issues in the manner prescribed by those decisions. Joint Intervenors discussed in detail the significance of the issue as demonstrated at TMI. This contention -- which seeks only to have the Staff fulfill its legal obligations prior to licensing of the reactor -- should have been accepted by the board.

In sum, Joint Intervenors object to the licensing board's August 4, 1981 order in the respects discussed above and request that the contentions previously denied be admitted herein. In the alternative, Joint Intervenors request that the board certify the issues raised to the Commission in order to permit the Commission to review immediately the propriety of the board's

order. Joint Intervenors believe that the board has distorted the Commission's TMI guidance beyond all recognition and, therefore, that its intervention is necessary immediately to set this proceeding back on track. Directed certification will avoid needless delay and expenditure of resources in this and other proceedings should the Commission ultimately take issue with the board's application of the TMI-related guidance here. That the provision in 10 C.F.R. §2.718(i) was intended for just such a circumstance has been recognized repeatedly in NRC decisions. In the Matter of Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-361, 4 NRC 625 (1976); In the Matter of Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975); In the Matter of Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975). Certification to the Commission is appropriate and necessary in this case and should be directed by the Board.

DATED: August 14, 1981

Respectfully submitted,

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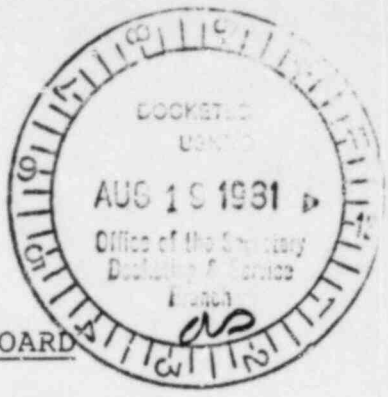

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In the Matter of	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 O.L. 50-323 O.L.
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	(Low Power Test Proceeding)

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 1981, I have served copies of the foregoing JOINT INTERVENORS' NOTICE OF OBJECTIONS TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF AUGUST 4, 1981, mailing them through the U. S. mails, first class, postage prepaid.

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