

09/08/81

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)
Unit Nos. 1 and 2)

Docket Nos. 50-275 O.L.
50-323 O.L.

NRC STAFF RESPONSE TO GOVERNOR BROWN'S
FIRST DOCUMENT REQUEST

On August 7, 1981, Governor Brown filed a request for documents with the NRC Staff. The Staff is responding and enclosing documents pursuant to that request. The Staff, however, notes the following with respect to that request. "Request 1" asks for documents relating to earthquakes or other disasters as they effect the emergency plans at Diablo Canyon or any other power reactor. The reference to "other disasters" is totally undefined and the scope of the documents requested is, therefore, unascertainable. The request, therefore, is objectionable in that it fails to describe the category of requested documents with reasonable particularity as required by 10 C.F.R. § 2.741(c).

The December 16, 1980 NRC request for an analysis of the effects of earthquakes on the Diablo Canyon emergency plan, referenced by Governor Brown, was based on the guidance in NUREG-0654 to consider natural phenomena which might be projected to occur in the plant vicinity. If this is the "disaster" Governor Brown is referring to in his request for documents, it would require an extremely burdensome survey of all nuclear power plants to determine if such studies were conducted. This request is so broad as to

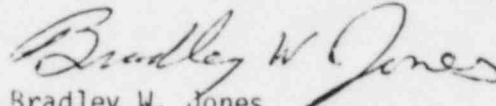
cover natural phenomena and events which can not reasonably be expected to occur at Diablo Canyon even though they may be relevant to some other plant. The Staff, therefore, will provide only those documents directly relating to the effects of natural phenomena on the Diablo Canyon emergency plan. The Staff objects to Governor Brown's "Request 1" to the extent it requests any additional documents.

In addition, under 10 C.F.R. § 2.740(b)(1) discovery may be had as to any matter, not privileged, which is relevant to the subject matter involved in the proceeding. Governor Brown's request covers all power reactors without providing any basis showing the relevancy of the emergency plans at those plants to Diablo Canyon. For this reason the request is objectionable and the Staff is limiting its response to documents discussing or referencing Diablo Canyon.

On August 13, 1981, Governor Brown filed a supplement to his request for document production against the Staff. This supplement requested the NRC Staff to continually update the response to Governor Brown's document request. Discovery against the Staff for production of documents is governed by 10 C.F.R. §§ 2.740 and 2.790. 10 C.F.R. § 2.740(e) states that; "A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired ..." That provision then goes on to list three (3) exceptions to the general rule that no duty to supplement exists. The NRC Staff will follow 10 C.F.R. § 2.740(e) as it applies to supplementing discovery responses. The Staff will also continue to maintain documents in the public document rooms. To the extent Governor Brown's supplement requests the Staff to take actions beyond section 2.740(e), the Staff objects to that request.

Subject to the above objections, all documents which the Staff has located, not already in Governor Brown's possession or control, which meet the Governor's first set of document requests will be voluntarily provided to Governor Brown.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bradley W. Jones".

Bradley W. Jones
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of September, 1981

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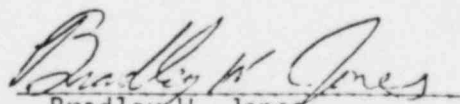
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Atomic Safety and Licensing Board
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