

8/01/83

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

NRC STAFF'S RESPONSE TO JOINT INTERVENORS'  
AND GOVERNOR DEUKMEJIAN'S CONTENTIONS  
REGARDING DESIGN QUALITY ASSURANCE

I. INTRODUCTION

By Order dated July 6, 1983, this Appeal Board ruled that the Joint Intervenors and Governor Deukmejian should "prepare their specifications of the precise matters they contest in the reopened proceeding (i.e., their "contentions") and serve them on all parties on July 19, 1983 at the hearing". Both the Joint Intervenors and the Governor filed their contentions on July 19, 1983, as specified by the Appeal Board. Pursuant to the schedule established by the Appeal Board at the hearing on July 22, 1983, the Staff sets forth below its position regarding the proposed contentions of the Joint Intervenors and Governor Deukmejian.

II. DISCUSSION

A. Legal Principles Governing Admissibility of Contentions

Generally, contentions may be admitted in a Commission licensing proceeding if they fall within the scope of issues set forth in the Federal Register notice of opportunity for hearing (Portland General

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Electric Co.; (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979); Public Service Co. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-1 316, 3 NRC 167, 170-71 (1976)). See, also, Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973), affirmed, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974)). The scope of this proceeding with respect to admissibility of contentions however is not defined by a Federal Register notice but rather, as a reopened proceeding, by the scope of the issue (and findings thereon) decided below to the extent reopening has been granted.<sup>1/</sup> In order to raise for the first time in a reopened proceeding an issue not previously decided, in addition to satisfying the long-recognized standards for reopening, the standards for admission of late-filed contentions, viz. 10 C.F.R. § 2.714(a)(1), must be satisfied Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1 and 2), CLI-82-39, 16 NRC \_\_\_\_ (December 23, 1982) slip op. at 4. In

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<sup>1/</sup> See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 465 (1982); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 707-709 (1979); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 20-21 (1978).

this instance the relevant Licensing Board determination which has been reopened is that:<sup>2/</sup>

Based on the uncontroverted testimony of both Applicant and Staff the Board finds that the Diablo Canyon quality assurance program for . . . the Design . . . phase . . . [has] been and . . . [is] in compliance with the requirements of 10 C.F.R. 50 Appendix B, and that the implementation [of the program] . . . is acceptable to the Board.

Also pertinent to this question is the Commission's Order suspending the license authorizing fuel loading and the conduct of tests up to 5% of rated power at the Diablo Canyon Nuclear Power Plant Unit 1, CLI-81-30, 14 NRC 950 and the Appeal Board's Order of April 21, 1983.

Pursuant to 10 C.F.R. § 2.714(b), petitioners are required to file "a list of contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." A petitioner who fails to file at least one contention which satisfies the requirements of § 2.714(b) will not be permitted to participate as a party. A contention must be rejected where:

- (1) It constitutes an attack on applicable statutory requirements;
- (2) It challenges the basic structures of the Commission's regulatory process or is an attack on the regulations;
- (3) It is nothing more than a generalization regarding the Intervenor's view of what applicable policies ought to be;
- (4) It seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The purpose of the "basis" requirement of 10 C.F.R. § 2.714(b) is (a) to assure that the matter sought to be put into question does not suffer from any of the infirmities set forth in Peach Bottom, supra, at 20-21, (b) to establish sufficient foundation to warrant further inquiry into the subject matter

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<sup>2/</sup> Pacific Gas and Electric Co. (Diablo Canyon Nuclear Plants, Units 1 and 2), LBP-81-21, 14 NRC 107, 116 (1981).

and (c) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20.

At the early stages of a proceeding initial contentions need only identify the reasons (bases) for each contention. See, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980). In addition, the basis stated for each contention need not "detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Accordingly, in examining contentions and the basis therefor, a board may not reach the merits of contentions. Id., Peach Bottom, supra, at 20. Nevertheless, the basis for a contention must be sufficiently detailed and specific (a) to demonstrate that the issues raised are admissible and that further inquiry into the matter is warranted and (b) to put the parties on notice as to what they will have to defend against or oppose.

In addition, a board is not authorized "to admit conditionally for any reason, a contention that falls short of meeting the specificity requirements." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982), vacated in part on other grounds, CLI-83-19, 18 NRC \_\_\_\_ (July 1, 1983). The NRC's Rules of Practice do not permit "the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff." Id., at 468.

Finally, a board has no duty to recast contentions offered by a petitioner to remedy the infirmities of the type described in

Peach Bottom, supra, for which they may be rejected, in order to make inadmissible contentions meet the requirements of 10 C.F.R. § 2.714. Commonwealth Edison Co. (Zion Station Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). Should a board nevertheless elect to rewrite a petitioner's inadmissible contentions so as to eliminate the infirmities which render the contentions inadmissible, the scope of the reworded contentions may be made no broader than the bases that were previously provided by the petitioner for the inadmissible contentions.

Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114-16 (1982).

B. Joint Intervenors' Proposed Contentions

Contention (a):

Pacific Gas and Electric Company ("PGandE") and its major subcontractors have failed to develop and implement in a timely fashion a Quality Assurance/Quality Control ("QA/QC") program for the design and redesign of structures, systems, and components ("SS&Cs") important to safety at Diablo Canyon, which QA/QC program:

- (a) meets the requirements of General Design Criterion ("GDC") 1 of Appendix A to 10 C.F.R. Part 50.

NRC Staff Response

This contention, aside from failing to state any basis and, therefore, being insufficient to satisfy the "basis" requirements of 10 C.F.R. § 2.714, also does not fall within the scope of this reopened proceeding. As discussed above, the finding of the Licensing Board below which has been reopened by the Appeal Board in its April 21, 1983 Order is confined to compliance with the requirements of 10 C.F.R. Part 50, Appendix B. Consequently, this contention must be viewed as a wholly new, late-filed

contention. The Joint Intervenors have failed to demonstrate that the Wolf Creek standards<sup>3/</sup> and the standards for a late-filed contention have been independently satisfied to warrant consideration of an issue new and distinct from any matter decided by the Licensing Board. Diablo Canyon, CLI-82-39, supra. Furthermore, to the extent that Joint Intervenors have relied upon the Commission's Order suspending the low power operating license, supra, in their motion to reopen, Attachment 1 to the Commission's Order makes clear that the Commission's concern is whether or not structures, systems and components identified as "safety related" meet the criteria of Appendix B to 10 C.F.R. Part 50. See "NRC Staff's Response to Joint Intervenors' . . . Motions to Reopen the Record on Construction Quality Assurance", dated June 6, 1983 at 14-15.

Contention (b):

Pacific Gas and Electric Company ("PGandE") and its major subcontractors have failed to develop and implement in a timely fashion a Quality Assurance/Quality Control ("QA/QC") program for the design and redesign of structures, systems, and components ("SS&Cs") important to safety at Diablo Canyon, which QA/QC program: . . .

(b) meets the following 10 C.F.R. Part 50 Appendix B criteria: . . .

#### NRC Staff Response

This contention is nothing more than a broad assertion of failure to comply with some of the criteria of Appendix B to Part 50. There is

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<sup>3/</sup> Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978).

absolutely no basis stated in support of this contention. Accordingly, the parties put on notice as to what they would have to defend against or oppose and there is no information upon which to judge whether further inquiry into the matter is warranted. Peach Bottom, supra at 20. See also Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC \_\_\_\_, (May 18, 1983) slip op. at 38, n. 73.

Contention (c):

Pacific Gas and Electric Company ("PGandE") and its major subcontractors have failed to develop and implement in a timely fashion a Quality Assurance/Quality Control ("QA/QC") program for the design and redesign of structures, systems, and components ("SS&Cs") important to safety and Diablo Canyon, which QA/QC program: . . .

- (c) assures that PGandE has met the license commitments set forth in its Final Safety Analysis Report ("FSAR") for Diablo Canyon as required by 10 C.F.R. Part 50.57(a) and 10 C.F.R. 50.34(b).

NRC Staff Response

This contention is nothing more than a broad statement of the ultimate finding that this Board would make as a result of the instant proceeding. It does not state a discrete litigable issue. Further, there is absolutely no basis stated in support of this contention.

Other Contentions:

1. Further, neither the Independent Design Verification Program ("IDVP") audit of seismic and nonseismic QA/QC at Diablo Canyon nor PGandE's Internal Technical Program ("ITP") has provided reasonable assurance of compliance with all applicable regulatory standards.

2. Finally, PG&E failed to systematically review and verify the validity of all results of tests previously conducted with respect to any Diablo Canyon SS&C which have been affected by the redesign conducted since September 1981. PG&E failed to identify and perform (in accordance with written test procedures as prescribed by Criterion II of 10 C.F.R. Part 50) the additional testing required to demonstrate that as redesigned and modified all Diablo Canyon SS&Cs will perform satisfactorily in service.

NRC Staff Response

1. At the outset, it must be noted that the requirement for and scope of the IDVP were outlined in the Commission's November 19, 1981, Order, supra, and in the letter from H. R. Denton, to Malcolm Furbush also of that date. The objective of the IDVP, contrary to the Joint Intervenors' assertion, is not, in and of itself, to provide the "reasonable assurance" required by the Commission's regulations but rather is to provide an independent mechanism to assure and confirm that all "safety related" design quality assurance deficiencies are in fact detected and resolved by PG&E. It is incumbent on PG&E, through its own programs, which, of course, may utilize the IDVP efforts, to demonstrate reasonable assurance that all applicable requirements have been complied with. Thus, for purposes of establishing regulatory compliance, it is the PG&E's Diablo Canyon Project activities and the quality assurance program being applied in conjunction thereto, to which one must turn. And in this regard, the Joint Intervenors are essentially silent.

In any event, although enumerating alleged deficiencies in the IDVP efforts, the Joint Intervenors have wholly failed to provide the requisite specificity and basis. In sum, none of the bases stated by the Joint Intervenors establishes sufficient foundation to warrant further inquiry into the subject matter and put the other parties sufficiently on notice

"so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra, at 20.

2. This contention lacks the necessary specificity. It is not clear what Joint Intervenors mean by "systematically review and verify." Nor is it clear what results of "tests previously conducted" they believe should be validated nor is it clear what specific structure systems and components they believe should be included in this contention. This contention is so broad that the parties do not know what they will have to defend against or oppose. Peach Bottom, supra, at 20.

C. Governor Deukmejian's Proposed Contentions on Design Quality Assurance  
Contention I.A.:

Pacific Gas and Electric Company ("PGandE") and its major subcontractors for Diablo Canyon Units 1 and 2 ("Diablo Canyon") failed to timely develop and implement a systematic quality assurance/quality control ("QA/QC") program for the design of safety related structures, systems and components ("SS&Cs"), including the recent new design work, which:

Complies with the quality assurance requirements of criteria 1, 2, 3, 4, 5, 6, 7, 10, 16, 17 and 18 of Appendix B to 10 C.F.R. Part 50 ("Appendix B"); and which . . .

NRC Staff Response

This contention is completely unsupported by any basis. Accordingly, it does not satisfy the requirements of 10 C.F.R. § 2.714. There is no indication how the Quality Assurance/Quality Control program for the design of safety related structures, systems and components, including the recent new design work, fails to satisfy the requirements of Appendix B to 10 C.F.R. Part 50. Absent such specificity

parties could not possibly be on notice as to what they what to defend against or oppose. Peach Bottom, supra, at 20.

Contention I.B.:

Pacific Gas and Electric Company ("PGandE") and its major subcontractors for Diablo Canyon Units 1 and 2 ("Diablo Canyon") failed to timely develop and implement a systematic quality assurance/quality control ("QA/QC") program for the design of safety related structures, systems and components ("SS&Cs"), including the recent new design work, which:

Assures that PG&E has complied with the license commitments set forth in the Diablo Canyon Final Safety Analysis Report ("FSAR") as required by 10 C.F.R. §§ 50.57(a) and 50.34(b).

NRC Staff Response

This contention must be rejected for failure to state basis with the requisite specificity to satisfy the requirements of 10 C.F.R. § 2.714. There is no indication how PG&E has failed to comply with license commitments set forth in the FSAR. Absent such a showing the parties would not be on notice as to what they would have to defend against or oppose. Peach Bottom, supra, at 20.

Contention II.:

The Independent Design Verification Program ("IDVP") has failed to provide assurance, equivalent to that which would have been provided if PG&E and its major subcontractors for Diablo Canyon had timely developed and implemented a design QA/QC program which met the requirements of Appendix B, that PG&E has complied with the license commitments for the design of such SS&Cs set forth in the Diablo Canyon FSAR as required by 10 C.F.R. §§ 50.57(a) and 50.34(b).

NRC Staff Response

The thrust of this contention is that the IDVP is, in essence, the replacement for PG&E's QA program and accordingly, must meet the requirements of Appendix B. This is not the case. As the licensee, it is PG&E's overall Diablo Canyon Project activities which will, in essence, be treated as the program upon which the NRC Staff will evaluate compliance with the requirements of Appendix B to 10 C.F.R. Part 50.

Thus, as discussed above in regard to the Joint Intervenors' contentions, the matters raised in the Governor's contention II are irrelevant to any decision which the Appeal Board will make and, consequently, do not state an appropriate contention. At most, these assertions may present challenges to the sufficiency of the evidence offered by any of the parties to the extent the IDVP is relied on in support of their position.

In any event, if viewed as a contention, contention II must be rejected, failing to provide the requisite basis and specificity.

In sum, the Governor has failed to state any relevant bases for Contention II that meets the specificity requirements of 10 C.F.R. § 2.714. All the statements of bases are so broad that the parties cannot possibly know at least generally what they have to defend against or oppose. Peach Bottom, supra, at 20.

Contention III.:

PG&E's Internal Technical Program ("ITP") does not provide assurance, equivalent to Appendix B compliance, that PG&E has and will meet its license commitments for the seismic design of SS&C's at Diablo Canyon.

NRC Staff Response

This contention is wholly unsupported. There is absolutely no basis stated for the contention. Furthermore it is overly broad and accordingly the parties would not be sufficiently on notice so that they would know what they would have to defend against or oppose.

Peach Bottom, supra, at 20.

Contention IV.:

PG&E and its major subcontractors failed to develop and implement in a timely fashion a QA/QC program for the design of important to safety but not safety related SS&Cs at Diablo Canyon which met the requirements of GDC-1 of Appendix A to 10 C.F.R. Part 50 ("Appendix A").

NRC Staff Response

The Staff's response to the Joint Intervenors' similar assertion (regarding compliance with the requirements of 10 C.F.R. Part 50, Appendix A), set forth above, is fully applicable to the Governor's proposed contention and need not be restated here.

Contention V.:

The IDVP has not and will not provide any assurance, equivalent to Appendix A compliance, that the design of important to safety but not safety related SS&Cs at Diablo Canyon meets the regulatory requirements for the design of such equipment.

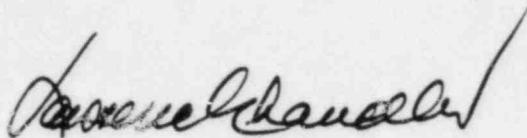
NRC Staff Response

As discussed above, this contention should be rejected as beyond the scope of this proceeding.

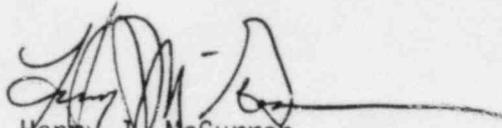
III. CONCLUSION

For the foregoing reasons the contentions proposed by both the Joint Intervenors and Governor Deukmejian fail to satisfy the requirements for admission of contentions and thus should be rejected.

Respectfully submitted,



Lawrence J. Chandler  
Deputy Assistant Chief Hearing Counsel

  
Henry J. McGurren  
Counsel for NRC Staff

Dated in Bethesda, Maryland  
this 1st day of August, 1983.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO JOINT INTERVENORS' AND GOVERNOR DEUKMEJIAN'S CONTENTIONS REGARDING DESIGN QUALITY ASSURANCE" the above-captioned proceeding has been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 1st day of August 1983:

John F. Wolf, Esq. Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Glenn O. Bright, Esq.  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Dr. Jerry Kline  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Elizabeth Apfelberg  
1415 Cozadero  
San Luis Obispo, CA 93401

Philip A. Crane, Jr., Esq.  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120

Richard E. Blankenburg  
Co-publisher  
Wayne A. Soroyan, News Reporter  
South County Publishing Company  
P.O. Box 460  
Arroyo Grande, CA 93420

Mr. Thomas H. Harris, Energy Writer  
San Jose Mercury News  
750 Ridder Park Drive  
San Jose, CA 95190

Mr. Gordon Silver  
Mrs. Sandra A. Silver  
1760 Alisal Street  
San Luis Obispo, CA 93401

Arthur C. Gehr, Esq.  
Snell & Wilmer  
3100 Valley Center  
Phoenix, AR 85073

Paul C. Valentine, Esq.  
321 Lytton Avenue  
Palo Alto, CA 94302

Mr. Frederick Eissler  
Scenic Shoreline Preservation  
Conference, Inc.  
4623 More Mesa Drive  
Santa Barbara, CA 93105

Mrs. Raye Fleming  
1920 Mattie Road  
Shell Beach, CA 93449

Joel R. Reynolds, Esq.  
John R. Phillips, Esq.  
Center for Law in the Public  
Interest  
10951 West Pico Boulevard  
Third Floor  
Los Angeles, CA 90064

David S. Fleischaker, Esq.  
P. O. Box 1178  
Oklahoma City, OK 73101

Richard B. Hubbard  
MHB Technical Associates  
1723 Hamilton Avenue - Suite K  
San Jose, CA 95125

Maurice Axelrad, Esq.  
Lowenstein, Newman, Reis and Axelrad  
1025 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Janice E. Kerr, Esq.  
Lawrence Q. Carcia, Esq.  
350 McAllister Street  
San Francisco, CA 94102

Michael J. Strumwasser, Esq.  
Susan L. Durbin, Esq.  
Peter H. Kaufman, Esq.  
3580 Wilshire Blvd., Suite 600  
Los Angeles, CA 90010

Bruce Norton, Esq.  
Norton, Burke, Berry & French, P.C.  
2002 E. Osborn Road  
P. O. Box 10569  
Phoenix, AZ 85064

Docketing and Service Section  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

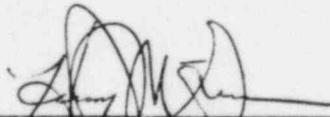
Atomic Safety and Licensing  
Appeal Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555 \*

Mark Gottlieb  
California Energy Commission  
MS-18  
1111 Howe Avenue  
Sacramento, CA 95825

John Marrs, Managing Editor  
San Luis Obispo County  
Telegram-Tribune  
1321 Johnson Avenue  
P.O. Box 112  
San Luis Obispo, CA 93406

Harry M. Willis  
Seymour & Willis  
601 California St., Suite 2100  
San Francisco, CA 94108

Mr. James O. Schuyler  
Nuclear Projects Engineer  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, CA 94016

  
Henry J. McGurven  
Counsel for NRC Staff