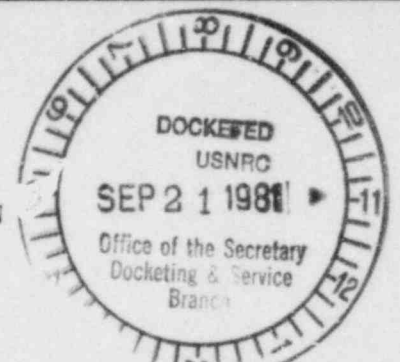
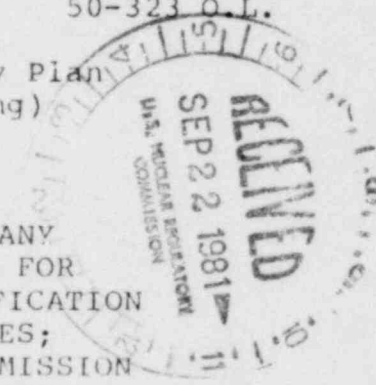


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



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



RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY  
TO MOTION OF GOVERNOR EDMUND G. BROWN, JR. FOR  
EXPEDITED COMMISSION IDENTIFICATION AND CLARIFICATION  
OF ALAB SECURITY DECISION REVIEW PROCEDURES;  
FOR TOLLING OF THE TIME PERMITTED TO SEEK COMMISSION  
REVIEW; FOR EXTENSION OF TIME; AND FOR COMMISSION  
GUIDANCE ON FILING PROCEDURES

On September 10, 1981, Governor Brown hand delivered to the Commission a Motion regarding procedure and time for review of ALAB-653, the Atomic Safety and Licensing Appeal Board decision concerning the security plan for Diablo Canyon. The Governor raises the following issues:

1. Whether 10 C.F.R. §2.762 or 10 C.F.R. §2.786 governs a petition for review.
2. A request that the time for filing a Petition for Review not start until this Commission rules on the Governor's motion.
3. Whether the Governor should have even more time after the Commission rules than that allowed under §2.762 or §2.786 for filing a Petition for Review.
4. What procedures should be used in this matter.

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I

SECTION 2.786 OF 10 C.F.R. IS  
APPLICABLE IN THIS MATTER

Governor Brown claims confusion over whether 10 C.F.R. §2.762 or §2.786 is to govern review of ALAB-653. He reaches this

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state of confusion by calling the Appeal Board's decision an "Initial Decision". It is indeed true that the Appeal Board vacated the Initial Decision of the Licensing Board (LBP-79-26, September 29, 1979) and conducted a de novo hearing resulting in the issuance of ALAB-653. However, that fact itself does not make the Appeal Board's decision an "Initial Decision". In fact, a reading of Sections 2.762 and 2.786 makes it abundantly clear that review of any action of the Appeal Board lies under §2.786. Section 2.762 falls under the heading "Initial Decision and Commission Review" and §2.786 is found under the heading "Atomic Safety and Licensing Appeal Board". Section 2.786(b)(9) states:

"Except as provided in this section and §2.788 no petition or other request for commission review of a decision or action of an Atomic Safety and Licensing Appeal Board will be entertained."

## II

### THE GOVERNOR SHOULD NOT REQUIRE AN EXTENSION OF TIME TO FILE A PETITION FOR REVIEW

The Governor complains that because of the additional restrictions placed on the Governor and Intervenor regarding where their work must be done that it is not possible for them to meet ordinary time limits. Unfortunately, the Governor does not indicate how much additional time is needed. Under §2.786, however, one is given 15 days to file a 10-page Petition for Review (§2.786(b)(1) and (2)). As ALAB-653 was issued on September 9, 1981, as of this writing the Governor has had in excess of one week to review the decision and start preparation of any Petition for Review he intends to file whether he assumes he is going to file under §2.762 or

§2.786. As discussed infra, Applicant has no objection to the 15-day period commencing upon Commission ruling on this motion provided that ruling is done in a timely fashion. It would seem then that the Governor and Joint Intervenors would have an abundant period of time to prepare a Petition for Review which, by regulation, is limited to no more than 10 pages.

### III

#### THE 15-DAY FILING PERIOD SHOULD COMMENCE AS SOON AS POSSIBLE

As stated above, the Governor and Joint Intervenors have 15 days to file a 10-page Petition for Review of ALAB-653. Applicant PACIFIC GAS AND ELECTRIC COMPANY has no objection to that 15-day period commencing upon decision of this Commission on the Governor's motion provided that decision is made in a timely manner.

### IV

#### PROCEDURES FOR REVIEW

As this Commission is aware, there have been difficulties in the past regarding procedures in handling the restricted material of the security plan. Applicant PACIFIC GAS AND ELECTRIC COMPANY has always maintained that no one outside of its organization, the Commission, the NRC Staff, and the Licensing and Appeal Boards should have access to the restricted data of a security plan. However, the Appeal Board disagreed with the Applicant's position and allowed Intervenor, and eventually Governor Brown, to participate in the security proceeding. (Pacific Gas and Electric Company, Diablo

Canyon Nuclear Power Plants, Units No. 1 and 2, ALAB-410, 5 NRC 1398; rev. den., CLI-77-23, 6 NRC 455 (1977); and Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Units No. 1 and 2, ALAB-600, 12 NRC 3, 8 (1980)). The Appeal Board, however, did recognize the sensitivity of the restricted information and imposed certain restrictions on the Intervenor and Governor Brown, specifically requiring the signing of a Non-Disclosure Affidavit by those participating and entering a protective order. (See, First Prehearing Conference Order dated February 25, 1980, at 4-5; Pacific Gas and Electric Company (Diablo Canyon Nuclear Plant, Units 1 and 2), ALAB-592, 11 NRC 746, 748-49, modified and remanded, CLI-80-24, 11 NRC 775, on remand, ALAB-600 12 NRC 3, 4-7 (1980); Third Prehearing Conference dated August 4, 1980, at 3-4 (unpublished)).

Despite the measures taken by the Appeal Board, there was indeed a breach of the non-disclosure affidavit and protective order. (See, Memorandum and Order dated December 30, 1980 (sealed and unpublished), aff'd on review by Commission sua sponte, Commission order dated February 20, 1980 (unpublished), with edited version of Appeal Board December 30, 1980 Memorandum and Order attached.)

Applicant PACIFIC GAS AND ELECTRIC COMPANY would therefore request that the Commission continue the protective order and procedures established by the Appeal Board with the obvious addition of the Commission itself to be served in the same manner as the Appeal Board below.

CONCLUSION

Applicant PACIFIC GAS AND ELECTRIC COMPANY would ask that this Commission enter an order at its earliest possible convenience that Governor Brown and the San Luis Obispo Mothers for Peace file, if they so intend, their Petitions for Review under §2.786 within 15 days of the Commission's ruling. It is further requested that this Commission order that all previous affidavits of non-disclosure and procedures designed to protect the restricted information of the security plan continue in full force and effect.

Respectfully submitted,

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DATED: September 17, 1981.

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 )  
(Diablo Canyon Nuclear Power ) (Security Plan  
Plant, Units No. 1 and 2) ) Proceedings)

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO MOTION OF GOVERNOR EDMUND G. BROWN, JR. FOR EXPEDITED COMMISSION IDENTIFICATION AND CLARIFICATION OF ALAB SECURITY DECISION REVIEW PROCEDURES; FOR TOLLING OF THE TIME PERMITTED TO SEEK COMMISSION REVIEW; FOR EXTENSION OF TIME; AND FOR COMMISSION GUIDANCE ON FILING PROCEDURES", dated September 17, 1981, have been served on the following by delivery to Federal Express for service on September 18, 1981, this the 17th day of September, 1981:

Nunzio J. Palladino, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Victor Gilinsky  
Commissioner Peter A. Bradford  
Commissioner John F. Ahearne  
U.S. Nuclear Regulatory Comm'n  
Washington, D.C. 20555

The Hon. Thomas S. Moore  
The Hon. W. Reed Johnson  
Atomic Safety and Licensing Appeal  
Board  
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San Francisco, CA 94108

Bruce Norton

\*Copies of this Response for the Commission, Appeal Board and Governor Brown have been delivered to Mr. Olmstead. A copy of this Response for Mr. Willis has been delivered to PGandE headquarters.