

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

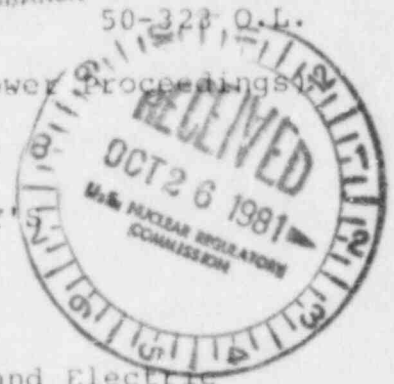
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
PACIFIC GAS AND ELECTRIC COMPANY)
(Diablo Canyon Nuclear Power)
Plant, Unit Nos. 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
DOCKET # BRP-81-50-275 O.L.
50-328 O.L.
(Full Power Proceedings)



APPLICANT PACIFIC GAS AND ELECTRIC COMPANY
MOTION TO COMPEL DISCOVERY AS
AGAINST GOVERNOR BROWN
AND JOINT INTERVENORS

On August 7, 1981, Applicant Pacific Gas and Electric Company served interrogatories on Governor Brown and Joint Intervenors pursuant to 10 C.F.R. §2.740b(a). On August 26, 1981, Governor Brown and Joint Intervenors filed their responses. This motion is being made pursuant to 10 C.F.R. §2.740(f) to compel answers to those interrogatories.

This motion is specifically directed at

(1) Joint Intervenors failure to answer interrogatories 10 and 11 and their failure to answer any interrogatories under oath or affirmation; and

(2) Joint Intervenors and Governor Brown's failure to fully answer interrogatory 12 or to supplement their answers to interrogatory 13.

A. Joint Intervenors' Failure to Answer Interrogatories Under Oath and Failure to Answer Interrogatories 10 and 11.

Section 2.750b(b) requires that:

"[e]ach interrogatory shall be answered separately and fully in writing under oath or affirmation" (emphasis added)

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None of Joint Intervenors' answers were under oath or affirmation. Section 2.740b(b) is not discretionary as the answers shall be under oath or affirmation.

Apparently Joint Intervenors desire to keep the other parties to this proceeding from learning anything through the discovery process. Interrogatory 10 asked Joint Intervenors to:

"[i]dentify each and every person supplying either answers to these interrogatories or information upon which answers were based. Also identify the specific interrogatories to which each such person contributed."

Joint Intervenors simply failed to respond to the question in any meaningful way by stating that:

"[t]hese responses were prepared by Joint Intervenors with the assistance of counsel. Without exception, they are based on documents of public record and testimony previously offered in this proceeding."

Similarly, Joint Intervenors ignored interrogatory number 11 which asked:

"As to the person(s) identified in the preceding answer to interrogatory, please state the (a) name, (b) occupation, (c) address, and (d) telephone number for each such person."

Equal to the task of giving a meaningless response, Joint Intervenors simply stated that:

"[t]he requisite information is a matter of record on this docket. See Response to Interrogatory No. 10."

It is respectfully submitted that Joint Intervenors have not answered interrogatories 10 and 11 nor have they

answered any interrogatories under oath or affirmation as required. It is requested that this Board order them to do so.

B. Joint Intervenors and Governor Brown Have Failed to Supplement Answers to Interrogatories as Required by 10 C.F.R. §2.740(e).

Applicant's interrogatories 12 and 13 as directed at Joint Intervenors and Governor Brown were precisely the same.

They were as follows:

"12. Identify each and every document upon which you base any answers to the preceding interrogatories and for each such document:

- (a) State the name, author, and date of the document.
- (b) Identify the interrogatory answer to which the document relates.
- (c) Identify the specific page(s) of the document which relates to the answer."

"13. As to each and every person you may call or subpoena as a witness to any hearing which may be had on the emergency preparedness contention as admitted by the Licensing Board in its order of August 4, 1981, please state:

- (a) The name, occupation, address and telephone number of each such person and whether that person may appear for you as a voluntary witness or as subpoenaed witness.
- (b) The field or science in which each such person is sufficiently schooled to enable him to express opinion evidence in this matter, if any.
- (c) Whether such witness will base his opinion:
 - (i) in whole or in part upon facts acquired personally by that person in the course of an investigation or examination as to the facts; or

- (ii) solely upon information provided that person by others.
- (d) The qualifications of each such person that would render that person, if possible, as an expert witness.
- (e) If any such witness has made a personal investigation or examination relating to any of the facts or bases set forth in the answers to preceding interrogatories, state the date(s) and nature of each such investigation or examination.
- (f) Each and every fact, and each and every document, photograph, report, item, or other tangible object supplied or made available to each such person in this matter.
- (g) Whether each such person has rendered written reports, regarding facts, bases, or opinions as respects your answers to the preceding interrogatories. If so, state:
 - (i) the date(s) of each such report; and
 - (ii) the name and address of the custodian of each such report."

Joint Intervenors' answer to interrogatory 12 was:

"Response to Interrogatory No. 12

The documents relied upon include, but are not necessarily limited to, those documents attached as exhibits to Joint Intervenors' April 27, 1981 Response in Opposition to NRC Staff and PGandE Motions for Summary Disposition (and those incorporated therein by reference), all documents marked for identification or offered into evidence by Joint Intervenors during the low power test hearing; and all documents cited by Joint Intervenors in their June 16, 1981 Proposed Findings of Fact and Conclusions of Law, filed in the low power test proceeding. This response is given without prejudice to Joint Intervenors' right to rely upon any documents subsequently discovered by them."

Joint Intervenors simply did not answer the question as asked nor did they object to it. Having failed to object to the

interrogatory and having answered it (however poorly), Joint Intervenors have waived any objection to any part of the interrogatory and must answer the question as asked. Skelton Co. v. Goldsmith, 49 F.R.D. 128 (D.C. N.Y., 1969), Herbst v. Chicago, R.I. & P.R. Co., 10 F.R.D. 14 (D.C. Iowa, 1950). In addition, if no objection to an interrogatory is interposed at or before the time when answers and/or objections are due, no motion for protective order or objection to the interrogatories may be filed. Lackawana Refuse Removal, Inc. v. Procter & Gamble Paper Products Co., 26 Fed.Rules.Serv.2d 375 (D.C. Pa., 1978).

Similarly, Governor Brown failed to answer interrogatory 12 as asked. His response was as follows:

"The documents relied upon are: Revision 2 to the PG&E Emergency Response Plan and all attachments thereto; Joint Intervenors' Exhibit 111; the Transcript of the Low Power Test Proceeding; the draft County Emergency Response Plan, dated May 1981; the September 1980 PG&E Evacuation Assessment; the 1981 revision to the State Emergency Response Plan; NUREG-0654, Rev. 1; NUREG-0696, Reg. Guide 1.97; June 14, 1981 PG&E letter; Reg. Guide 1.23, Rev. 1; and NRC regulations, particularly Sections 50.33(g) and 50.47."

Both Joint Intervenors and Governor Brown having failed to object to any part of interrogatory number 12 (even assuming it were objectionable, which it is not) must now answer each and every subpart of that interrogatory as asked. It is respectfully requested that this Board order them to do so.

As respects interrogatory 13, Joint Intervenors and Governor Brown basically answered in the same way which, in effect, was no answer at all. Joint Intervenors stated that:

"[a]t this time, Joint Intervenors have not decided what persons, if any, they may call or subpoena as witnesses at the hearing to be held on the admitted emergency preparedness contention."

Governor Brown simply responded that:

"Governor Brown has not identified any witnesses he may call or subpoena for the emergency preparedness hearing. In accordance with the requirements of NRC regulations, Governor Brown will supplement this response as soon as witnesses are identified."

Section 2.740(e) requires the following:

"(e) Supplementation of responses. 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, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony."

This interrogatory simply requests information as to what witnesses Joint Intervenors and Governor Brown may call at hearing in this matter. The interrogatory has been outstanding in excess of two months. The contention has been outstanding for many months. It is the desire and right of Applicant to

take the depositions of Joint Intervenors' and Governor Brown's witnesses as provided for in 10 C.F.R. §2.740a. Joint Intervenors and Governor Brown have an obligation under §2.740(e)(1) to supplement their responses to this interrogatory in a timely manner. It is respectfully requested that this Board order Joint Intervenors and Governor Brown to disclose their witnesses in sufficient time to allow the Applicant to take their depositions in an orderly and timely fashion prior to at least ten days before the time for filing of motions for summary disposition in this matter.

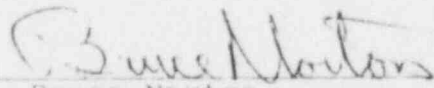
Respectfully submitted,

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DATED: October 16, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket Nos. 50-275 O.L.
PACIFIC GAS AND ELECTRIC COMPANY) 50-323 O.L.
)
(Diablo Canyon Nuclear Power)
Plant, Units No. 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO COMPEL DISCOVERY AS AGAINST GOVERNOR BROWN AND JOINT INTERVENORS", dated October 16, 1981, have been served on the following by deposit in the United States mail, postage prepaid, this 16th day of October, 1981:

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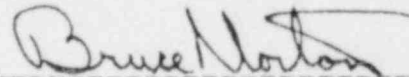
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