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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	Docket Nos. 50-275-OLA - Z
Pacific Gas and Electric Company)	50-323-OLA
)	(Construction Period
(Diablo Canyon Nuclear Power)	Recovery)
Plant, Units 1 and 2))	
)	

PACIFIC GAS & ELECTRIC COMPANY'S
RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE
MOTION TO COMPEL RE: CONTENTION I

I. INTRODUCTION

Continuing its recent barrage of ill-founded filings, on March 24, 1993, the San Luis Obispo Mothers for Peace ("MFP") filed a Motion to Compel responses to interrogatories and requests for production of documents related to Contention I (Maintenance) in this proceeding.^{1/} Pacific Gas and Electric Company ("PG&E") herein responds. As discussed in PG&E's previous response to the specific discovery requests at issue, the requests are broad, completely unfocused, and encompass a vast amount of material.^{2/}

^{1/} "Intervenor San Luis Obispo Mothers for Peace Motion to Compel Pacific Gas and Electric Company to Respond to the First Set of Interrogatories and Requests for Production of Documents Filed by San Luis Obispo Mothers for Peace (Re: Contention I)," dated March 24, 1993 ("Motion to Compel").

^{2/} See generally "Pacific Gas & Electric Company's Response to First Set of Interrogatories and Request for Production of Documents Filed by San Luis Obispo Mothers for Peace (Re: (continued...))"

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Nevertheless, in a good faith attempt to be responsive, PG&E has identified responsive information and, consistent with the Commission's regulations, invited MFP to the site to review and copy any of the documentation MFP desires. MFP has barely availed itself of that opportunity. It also appears from the face of the Motion to Compel that MFP has not even reviewed the documents and responses provided to it. For this reason, the Motion to Compel is unwarranted and disingenuous.

II. DISCUSSION

The Motion to Compel is primarily directed at MFP's document requests. Even those aspects of the Motion to Compel that address interrogatories, in most cases, now boil down to requests for more or specific documents. MFP's requests for documents to date and in the Motion to Compel have broadly covered procedures, vendor manuals, nonconformance reports ("NCRs"), licensee event reports ("LERs"), equipment qualification ("EQ") files, and the like. None of this material is brief. MFP's requests have also generally been non-specific (i.e., for "all" documents in a given, and usually broadly defined, class).

Faced with this all-inclusive approach to discovery by MFP, PG&E in its prior response simply did its best to cite specific responsive references. PG&E stated expressly, in writing and

^{2/}(...continued)
Contention I)," dated March 12, 1993 ("PG&E's Response"), at 2-5.

orally, that the referenced material would be produced pursuant to 10 C.F.R. 2.741(a)(1) at the Diablo Canyon plant for review and copying. See, e.g., PG&E's Response at 3. It should also be noted that since 1986, MFP has been on the Diablo Canyon Distribution List for regulatory correspondence. That is, copies of all incoming and outgoing correspondence between PG&E and the NRC have been sent to MFP (full text, attachments included). PG&E has no idea what MFP has been doing with all of these documents. However, many of the MFP document requests could be answered by MFP's review of its own "files."

MFP's Motion to Compel seems premised on the erroneous notion that the discovery process requires only a vague request; then, approximately 15 days later, copies of documents will arrive in MFP's mailbox, all expenses paid. The Commission's regulations, however, provide for nothing of the sort. With respect to requests for production of documents, the rules require that PG&E "[p]roduce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents." 10 C.F.R. 2.741(a)(1); see also 10 C.F.R. 2.741(d). PG&E in some cases as a convenience to itself and to MFP made and provided copies of specific documents to MFP.^{2/} However, where the document requests were especially broad or undefined, PG&E did not and will not undertake such a burdensome endeavor. PG&E attempted to identify

^{2/} See PG&E's Response at Attachment 1 (listing the documents provided).

specific responsive documents, provided lists of documents potentially of interest to MFP, and attempted to describe relevant material generally. PG&E stated that MFP could review the responses provided and inspect and/or copy whichever specific documents it wished at the plant.

As clearly stated during a conference call with the Licensing Board regarding discovery matters on March 11, 1993, PG&E set aside both March 16 and March 17, 1993, for the MFP site visit and document discovery. MFP did ultimately arrive at the site on March 16, 1993, to review and copy documents. However, MFP stayed for only approximately five hours. Apparently, in the brief time MFP was at the site it was unable to sate its appetite for documents. PG&E expressly indicated at the conclusion of the visit that MFP was welcome to return the next day, or another day, to continue the document production task -- as long as that return visit was within the April, 12, 1993, date established by the Licensing Board for completion of discovery.^{4/} MFP has thus far declined to do so. Instead, evidencing an interesting allocation of resources, the Motion to Compel ensued. Suffice it to say here, all of the specific documents referenced in the Motion to Compel are available to MFP at the site for inspection and copying. PG&E

^{4/} MFP's lethargic approach thus far to the document discovery should certainly not constitute good cause for extending this date. MFP has complete control over whether or not it will complete discovery within the previously adopted discovery completion date.

remains willing to schedule a return visit prior to the April 12, 1993, deadline.

PG&E offers the following additional responses to MFP's specific arguments.

Interrogatory 1: The documents requested are available. They were not provided previously because MFP either did not ask for them or MFP left the site before the documents (particularly DCM T-20, DCM T-12 and DCM T-15) could be retrieved from records storage.

Interrogatory 3: PG&E believes it has answered this question.

Interrogatory 4: PG&E has answered this rather vague question to the best of its ability. The document now requested to "complete the response" is available to MFP at the site.

Interrogatory 5: PG&E reads this interrogatory as very similar to Interrogatory 4. The response to Interrogatory 4 addresses the question in a truthful and reasonable fashion.

Interrogatory 6: The document now requested by MFP was identified in PG&E's Response. It was and is available to MFP for inspection and copying at the site. According to PG&E's records, MFP did not request this document when at the site.

Interrogatory 7: PG&E continues to object to this interrogatory. As modified, MFP seeks "information on safety-related structures, systems and components that have been unavailable due to maintenance or surveillance which **exceeded** plant Technical Specifications." This request in effect addresses

information that is available in LERs and NCRs otherwise requested by MFP. (Note that conditions in excess of technical specification allowances are reportable by LER. 10 C.F.R. § 50.73(a)(2)(i)(B).) PG&E should not be required to perform MFP's review of discovery materials, particularly materials already distributed to MFP and also available in the local Public Document Room ("PDR").

Interrogatory 8: INPO 90-008 was identified by MFP in its original question. MFP did not request a copy either in that request or during its site visit. Nonetheless, a copy is being provided to MFP herewith.

Interrogatory 12; Document Requests 20 and 24: PG&E continues to object to these requests, to the extent they would go beyond the answers already provided, for the reasons stated in PG&E's Response. The requests are completely unfocused. MFP effectively seeks all NCRs, quality assurance audits, and other reports and self-assessments related to maintenance or surveillance for the life of the plant. To call this type of discovery a "fishing expedition" would flatter it; such terminology implies that there might be fish to be caught or that the fisherman has a clue as to what he or she is fishing for. Neither is true here. MFP is merely "worried" that it might be missing something.^{5/}

^{5/} This discovery request, as do many others on Contention I, illustrates exactly the danger inherent in contentions where there is no independent basis or evidence offered by the intervenor. MFP in its proposed contention alleged a pervasive pattern of tardy or ineffective maintenance based only on the public record of isolated events -- many of which actually illustrated that the program was working. Now, in an attempt to find support for the bald assertion, MFP is
(continued...)

Given the breadth and nature of the requests, and given the nature of the contention here admitted (focusing on the comprehensiveness and effectiveness of the current maintenance and surveillance programs), PG&E believes it has been responsive. Several documents have been provided. In addition, PG&E provided lists of numerous other documents such as NCRs and quality assurance audits. Those documents and lists that PG&E indicated would be provided at the March 16, 1993, site visit were in fact provided. The documents identified in the lists were, and remain, available for inspection and copying by MFP through April 12, 1993. If MFP does not avail itself of that opportunity, PG&E cannot be faulted. It certainly seems odd that MFP should conduct its discovery in a perfunctory fashion, and then complain that it has not been given enough documents.

Document Request 2: PG&E's position on this discovery request is unchanged. MFP provides no persuasive reason that the documents requested are germane to Contention I or, if even they were, that access at the local PDR is insufficient. Moreover, as noted previously, MFP has since 1986 been on the Distribution List for all correspondence between NRC and PG&E.

^{2/}(...continued)

approaching discovery in the most expansive manner possible. Cf. 54 Fed. Reg. 33,168, 33,171 (1989) (the Commission's revised rules in 10 C.F.R. 2.714 were intended to preclude admission of issues where the "intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant facts") (emphasis added).

Document Request 12: PG&E continues to object to this request for the reasons previously stated. There is no basis for the proposition that "the maintenance of equipment not safety-related can indicate the general health of the maintenance program." Moreover, the discovery request is completely unfocused. A request for even a list of all "policies, procedures, and instructions" encompasses a large amount of material.

Document Request 13: PG&E responded to this request as it did because the question is not directly addressed in the Final Safety Analysis Report Update ("FSAR Update"). Therefore, PG&E cannot provide the requested Updated FSAR references.

Document Request 14: PG&E continues to object to this request for the reasons stated in PG&E's Response. PG&E is hardly attempting to "prevent evaluation of their maintenance program." PG&E has provided a significant amount of material (including internal audits and self-evaluations of the maintenance program), as well as made available at the plant an almost limitless supply of maintenance information. This specific document request, for "a list of the structures, systems, and components which are safety-related but which are known . . . to have a qualified design life that is less than the duration of the current plant license," and for "procedures and instructions" applicable to the equipment on the list, is vague, unfocused, overbroad, and largely irrelevant to an evaluation of the maintenance program.

Interrogatory 19 and Document Request 22: For reasons stated above and in PG&E's Response, broad requests such as these for

documents related to events over the entire life of the plant are overbroad and not reasonably calculated to lead to admissible evidence. See 10 C.F.R. 2.740(b)(1). Moreover, as defined in PG&E's Response, the lists of LERs and NCRs are complete. All documents on those lists were made available to MFP at the site. In fact, during that visit MFP requested and received copies (at no charge to MFP) of a subset of the listed NCRs and LERs. PG&E provided the summary report for the NCRs requested by MFP, and explained that all other documentation referenced therein was available for inspection and copying by MFP upon request. MFP did not request any NCR backup documents, left the site after only a few hours, declined to return to continue its discovery, and now complains in a Motion to Compel.

Document Request 27: This request is for EQ files and for records of ambient conditions. PG&E continues to object to production of EQ files. To the extent MFP is interested in maintenance of equipment within the scope of the EQ program, there is no need to review EQ files and MFP has requested the wrong documents. As specified in Administrative Procedure D-756 (a copy of which was provided to MFP on March 16, 1993), specific maintenance measures recommended to maintain qualification of an equipment item are translated into specific maintenance activities and procedures for that equipment. In addition, procedures exist for maintaining normal ambient conditions for equipment. PG&E would have made, and will make, available for inspection and copying by MFP any specific component maintenance procedures and

histories for EQ equipment, if requested by MFP. These files will be available at the site through the April 12, 1993, end of the discovery period.^{2/} Likewise, PG&E would have made, or will make, available records of ambient conditions for specific valves identified by MFP, to the extent that information is relevant and available.

III. CONCLUSION

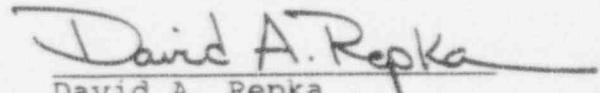
For the reasons stated above and in PG&E's Response to the discovery requests at issue, MFP's Motion to Compel should be denied. All of the specific documents identified in the Motion to Compel have been available to MFP for inspection and copying at the Diablo Canyon site.

Furthermore, it is now more than two months since the beginning of discovery in this proceeding. MFP has not adequately availed itself of the clear opportunity (or, indeed, pursued its clear obligation) to conduct document discovery. Especially given the scope of documentation involved, MFP's decision to conduct document discovery by Motion to Compel is completely inefficient -- from the standpoint of both effort and time. MFP should have appeared at the plant and stayed (or returned) for whatever time was necessary to complete the document production task. MFP should not be rewarded for a lack of a diligent discovery effort. Nothing

^{2/} There is no good cause here for extending the deadline. If MFP asks for irrelevant information, it cannot expect more time to refine its requests.

presented in the Motion to Compel constitutes a reason to extend the discovery completion date in this proceeding.

Respectfully submitted,


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Dated in Washington, DC
this 8th day of April, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 93 APR -9 P3:45

In the Matter of:)
Pacific Gas and Electric Company) Docket Nos. 50-275-OLA
(Diablo Canyon Power) 50-323-OLA
Plant, Units 1 and 2) (Construction Period
) Recapture)
)

OFFICE OF SECRETARY
GENERAL INVESTIGATIVE
DIVISION

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS & ELECTRIC COMPANY'S RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE MOTION TO COMPEL RE: CONTENTION I" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk (*), by deposit for Federal Express overnight delivery, or as indicated by the (†) symbol, by hand delivery, this 8th day of April, 1993. A copy of the document referenced in the response to Interrogatory 8 is being provided to the parties indicated by the (‡) symbol.

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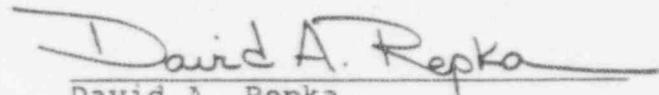
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