

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

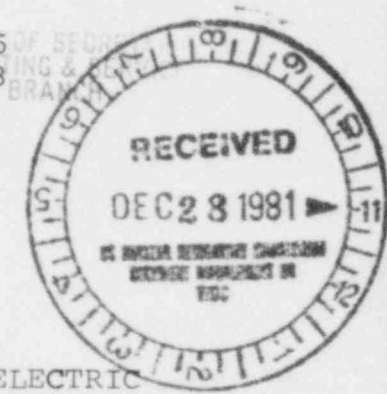
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket No. 50-275
50-323



PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION FOR SUMMARY DISPOSITION

Pursuant to 10 C.F.R. §2.749, PACIFIC GAS AND ELECTRIC COMPANY (PGandE) hereby moves for summary disposition with respect to Contentions 10 and 12 in the pending full power hearings on the grounds that there are no material issues of fact in dispute as respects those contentions. In support of this motion, PGandE submits the following Memorandum of Points and Authorities and attached affidavits which are incorporated herein as though set forth in full.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background

On December 3, 1980, Joint Intervenors proposed contentions 10 and 12, inter alia, for litigation in the low power proceeding. Those contentions were not accepted by this Board for litigation in the low power proceeding by order of February 13, 1981. On June 30, 1981, Joint Intervenors filed a statement of clarified contentions for the pending full power proceedings which comprised a renumbering, consolidation and/or withdrawal of the proposed contentions for the low power proceeding. Contention 10 from the low power proceeding was withdrawn and contention 12 was renumbered and consolidated to

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become "Contentions 8 and 9." This Board rejected "Contentions 8 and 9." However, the Commission, in an order dated September 21, 1981, ordered that this Board consider contentions 10 and 12 from the low power proceeding in the full power proceeding. Those two contentions are as follows:

"10. The staff recognizes that pressurizer heaters and associated controls are necessary to maintain natural circulation at hot stand-by conditions. Therefore, this equipment should be classified as 'components important to safety' and required to meet all applicable safety-grade design criteria, including but not limited to diversity (GDC 22), seismic and environmental qualification (GDC 2 and 4), automatic initiation (GDC 20), separation and independence (GDC 3 and 22), quality assurance (GDC 1), adequate, reliable on-site power supplies (GDC 17) and the single failure criterion. The Applicant's proposal to connect two out of four of the heater groups to the present on-site emergency power supplies does not provide an equivalent or acceptable level of protection.

"12. Proper operation of power operated relief valves, associated block valves and the instruments and controls for these valves is essential to mitigate the consequences of accidents. In addition, their failure can cause or aggravate a LOCA. Therefore, these valves must be classified as components important to safety and required to meet all safety-grade design criteria."

In an order dated December 11, 1981 the Atomic Safety and Licensing Appeal Board held that the Commission's order had the practical effect of admitting Intervenors' clarified contentions 8 and 9.

II. Argument

A. General

A motion for summary disposition must be granted by the presiding officer under 10 C.F.R. §2.749(d) where it is shown "that

there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." The regulation also provides that if the motion is properly supported by affidavit that

" . . . a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer . . . must set forth specific facts showing that there is a genuine issue of fact." (10 C.F.R. 2.749(b), emphasis added; see In the Matter of Virginia Electric and Power Company (North Anna Nuclear Power Station Units 1 and 2) ALAB-584, 11 NRC 451 (1980).)

The summary disposition procedure provided by §2.749 finds its judicial counterpart in Rule 56 of the Federal Rules of Civil Procedure. In the Matter of Alabama Power Company (Joseph M. Farley Nuclear Plant Units 1 and 2) ALAB 182, 7 AEC 210 (1974). To defeat a motion for summary disposition under the Federal Rules of Civil Procedure a party must present facts in the proper form; conclusions will not suffice. Pittsburgh Hotels Association, Inc. v. Urban Redevelopment Authority of Pittsburgh, 202 F. Supp. 486 (W.D. Pa. 1962), aff'd 309 F. 2d 186 (3rd Cir. 1962), cert. denied, 276 U.S. 916 (1963).

B. Contention 10

The clear thrust of Joint Intervenors' contention 10 is that the pressurizer heaters and associated controls at Diablo Canyon should be classified as "components important to safety." This contention is based on the false premise that the NRC staff "recognizes that the pressurizer heaters and associated controls are necessary to maintain natural circulation at hot standby conditions." Both the contention and premise are unsupportable.

There are no applicable NRC regulations which require the pressurizer heaters and associated controls to be classified as components important to safety. The NRC has made no such determination as is clearly shown by reading Item II.E. 3.1 of NUREG-0737 which is attached hereto as Exhibit I.

As set forth in the attached affidavits of John Hoch, Greta G. Harkness and Glenn E. Lang, the pressurizer Heater and associated controls at Diablo Canyon are not required to be classified as "components important to safety." The sixteen attestations of the Hoch affidavit set forth in detail why the contention must be dismissed.

It is respectfully requested that this Board grant summary disposition as respects contention 10 and dismiss the issue from these proceedings.

C. Contention 12 and Combined Clarified Contentions 8 and 9

The essence of Joint Intervenors' contention 12 and combined clarified contentions 8 and 9 is that the 3 power operated relief valves (PORV's) at Diablo Canyon and the 3 associated block valves, and the instruments and controls for these valves, must be classified as "components important to safety" and thus be required to meet all safety-grade design criteria.

As set forth in the attached affidavits of John Hoch, Edward M. Burns and Raymond J. Skwarek, while the valves in question are not required to be safety grade, all of the block valves, two of the PORV's and all of the instruments and controls for these valves

have been classified as components important to safety and do meet applicable safety-grade design criteria. The third PORV, which is not entirely safety-grade, is non-essential and provides no safety-related function.

From the attached affidavit of John Hoch, seventeen facts lead to summary disposition.

Based on the above, PGandE respectfully submits that contention 12 and combined clarified contentions 8 and 9 should be summarily dismissed.

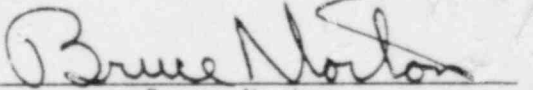
Respectfully submitted,

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