UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20655

ADJUDICATORY

August 1, 1980

SECY-A-80-114

COMMISSIONER ACTION

For: The Commission

From: James A. Fitzgerald
Assistant General Counsel

Subject: ALAB-600 (In the Matter of Pacific Gas and Electric)

Facility: Diablo Canyon, Units 1 and 2

Review Time Expires: August 15, 1980

Purpose: To advise the Commission of an Appeal Board decision for which review has not been sought and which, in our opinion,

Discussion: In ALAB-600 the Appeal Board decided an issue that an equally divided Commission had remanded to the Board to resolve: whether individuals who had signed affidavits of non-disclosure could publicly discuss or disseminate protected physical security information gained outside the NRC hearing process without first demonstrating to the Appeal Board that the information had been obtained from an independent source. The Appeal Board concluded that its clearance was not required, but that it would rule on individual requests for clearance upon request. The Board reached this conclusion after the NRC staff, the intervenors and the applicant had filed a joint pleading with the Board stating that in their view no prior clearance should be required. In accepting the recommendations of the parties, the Appeal Board noted its surprise with the decision of the staff and the applicant to adopt intervenor's position, in light of the fact that during the prehearing conference they had called for greater restrictions.

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The Board also adopted revised language to be incorporated into the affidavits of non-disclosure The Board directed that intervenor's counsel shou execute new affidavits of non-disclosure and file them with the Board no later than July 25. In its order of June 12 (CLI-80-24) the Commission stated that it would not review the Appeal Board's decision on this matter.

The Appeal Board also addressed two other matters. It noted Governor Brown's untimely submission of a notice of intent to participate in the physical security hearing and stated that there was no lega impediment to the Governor's late entry into the proceeding. However, the Board asserted that Governor Brown had to take the proceeding as he found it and could not challenge rulings that had already been issued by the Board or the Commissior The Governor's counsel will be required to execute affidavits of non-disclosure before being granted access to the sanitized physical security plan. Finally, the Board outlined a schedule for comple ing the necessary prehearing procedures and pro- cedures for resolving disputes regarding how much of the physical security plan should be made available to intervenors.

Recommendation:

James A. Fitzgerald
Assistant General Counsel

Enclosure:
ALAB-600

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Friday, August 15, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT August 8, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. W. Reed Johnson
Thomas S. Moore

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

Mr. Bruce K. Norton, Phoenix, Arizona, for the Pacific Gas and Electric Company, applicant.

Mr. Yale I. Jones, San Francisco, California, for the San Luis Obispo Mothers for Peace, intervenor.

Mr. Herbert H. Brown, Washington, D.C., for the Governor of California.

Messrs. James R. Tourtellotte and William J. Olmstead for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

July 15, 1980

(ALAB-600)

I.

PROTECTIVE ORDER

1. In our Second Prehearing Conference Order[1/] we directed applicant to grant access to a "sanitized" version of the Diablo

1/ Order of April 11, 1980, ALAB-592, 11 NRC ___.

Canyon physical security plan to intervenor's counsel and (potentially) its expert witness, subject to the terms of a protective order which incorporated an "affidavit of non-disclosure." Clause 8(b) of that affidavit precluded one given access to the security plan from "publicly discuss[ing] or disclos[ing] any protected information * * * receive[d] by any means whatever." Both the applicant and the intervenor sought Commission review, the former contending that no disclosure of its security plan was warranted and the latter that the protective order was overly restrictive. On April 21, 1980, the Commission stayed disclosure of the security plan pending its further order.

On June 11, 1980, the Commission denied applicant's petition, reaffirming "that intervenors in Commission proceedings may raise contentions relating to the adequacy of the applicant's proposed physical security arrangements, and that the Commission's regulations, 10 C.F.R. 2.790, contemplate that sensitive information may be turned over to intervenors in NRC proceedings under appropriate protective orders." CLI-80-24, 11 NRC ___, ___ (slip opinion at 2-3). The Commission then directed PG&E to make the sanitized version of the security plan available to the intervenor. Ibid.

At the same time, the Commission accepted intervenor's argument that the restrictions on public discussion of protected information in clause 8(b) of the non-disclosure affidavit contravened the First Amendment. Nevertheless, it cautioned that those subject to the protective order are "prohibited from corroborating the accuracy or inaccuracy of outside information by using protected information gained through the hearing process." Id. at ___ (slip opinion at 4).

2. The protective order and non-disclosure affidavit must be modified to reflect the Commission's ruling, but how we should do so is complicated by a disagreement. Chairman Ahearne and Commissioner Hendrie took the position "that before intervenors publicly disseminate protected information gained outside the hearing process they should be required to establish to the satisfaction of * * * the Appeal Board * * * that the information was in fact gained outside of the hearing process." 11 NRC at ___ (slip opinion at 4). Commissioners Gilinsky and Bradford, however, were opposed on the ground "that any such clearance procedure is an unconstitutional prior restraint." Ibid. (The remaining Commissioner -- whose

term has since expired -- had voluntarily recused himself.) In light of this division, the Commission remanded the issue to us with instructions to select one of those options on the basis of our reading of the law and to modify the protective order and non-disclosure affidavit accordingly. 11 NRC at ___ (slip opinion at 4-5).

In response to our request for their views, the staff reported that it, the applicant and the intervenor were all prepared to stipulate (a) that clause 1(a)(2) of the non-disclosure affidavit be amended to define "protected information" as "information obtained during the course of these proceedings dealing with or describing details of [the security] plan" (new matter underscored); (b) that clause 8(b) be deleted from that affidavit; and (c) that no further protection of the confidentiality of the security plan was needed.[2/] By letter dated July 10th, however, intervenor's counsel advised us that, while intervenor was agreeable to items (b) and (c) of the stipulation as reported by the staff, item (a) did not correspond precisely to his understanding of

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2/ Counsel for the staff informed us by telephone on July 3 that he had spoken to Governor Brown's lead counsel who expressed no objections to the stipulation.

the stipulation. (Apparently the stipulation was negotiated over the telephone.) Intervenor's version appears in the margin below.[3/] The disagreement about the precise wording to one side, however, it is evident that the parties have opted for the approach favored by Commissioners Gilinsky and Bradford.

3. We are surprised at the applicant's and staff's acquiescence in this position. At the prehearing conference in San Luis Obispo on April 2nd and in their presentations to the Commission, they argued that far greater restrictions were needed to protect the security plan -- arguments that carried the day before us.

Be that as it may, we now face a narrower question: whether those receiving the security plan may publicly discuss protected information without first demonstrating to us

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3/ "1. As used in this Affidavit of Non-Disclosure
(a) 'Protected Information' is (1) any form of the physical security plan for the licensee's Diablo Canyon Nuclear Power Plant, Units 1 and 2; or (2) any information obtained from applicant or the Commission by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the security plan."
(New matter underscored.)

that they obtained it outside the hearing process. Whether or not such a demonstration could be required in some circumstances,[4/] we do not write on a clean slate. The applicant and staff have performed a volte-face. They no longer contend it necessary to preclude public discussion of protected information before it is shown to come from outside sources. We do not feel justified in imposing such a restraint on our own initiative. Therefore, we will modify the non-disclosure affidavit essentially as the parties suggest. In this connection, however, neither of the suggestions put forward precisely reflect what the Commission's ruling intended. The version transmitted by the staff is too broadly drawn. It does not exclude information obtained during the course of the proceeding but outside the hearing process. On the other hand, we can envision circumstances in which protected information may be provided to A and not to B. Intervenor's phraseology could be read to permit public disclosure of that

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4/ For example, such a restraint might be appropriate where (1) the information would likely be classified were it of government rather than private origin; (2) public disclosure could jeopardize the physical security of a nuclear power plant and subject the public to extreme danger; (3) only a very narrow class of individuals would be affected; (4) a prompt administrative remedy subject to judicial review would be available, and (5) there exists no alternative means of protecting the public health and safety less intrusive on the right of public expression. See, In re Halkin, 598 F.2d 176, 191-96 (D.C. Cir. 1979); cf., Alfred A. Knopf, Inc. v. Colby, 509 F.2d 1362, 1370-71 (4th Cir. 1975).

information where B obtained it from A and not directly "from applicant or the Commission," even though it had been released by virtue of these proceedings. Without suggesting that this is a likely occurrence, there is no occasion to leave that loophole open. Accordingly, we will amend the non-disclosure affidavit to conform to the intervenor's suggestion but omitting the phrase "from applicant or the Commission." This should make clear that "protected information" is that provided "by virtue of these proceedings," i.e., pursuant to our order and not otherwise in the public domain.[5/]

We think it important, however, to reemphasize the Commission's warning: those subject to the protective order may not corroborate the accuracy (or inaccuracy) of outside information by using protected information gained through the hearing process (see p. 3, supra). We substitute that caveat for the present clause 8(b).

Moreover, some elaboration of this caveat is useful. Rumors, gossip and speculation abound and sometimes get into print. It is one thing for a reporter to speculate or guess that something is so or quote an undisclosed source to the

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5/ The non-disclosure affidavit is appended to this order in the amended form.

same effect. It would be quite another, however, for an individual who is known to possess the facts to repeat what otherwise would be only rumor, gossip or speculation. In the latter instance, his doing so may make his statements corroborative of the actual facts. This follows because reports from undisclosed and uncertain sources are likely to be treated skeptically, but the same information announced by an individual in a position to know is liable to be credited.

Similarly, receipt of protected information may position the recipient to gather and collate from the public domain otherwise useless bits and pieces of information into a reproduction of the security plan. In such circumstances, simply the public revelation of the information as a coherent mass may corroborate protected information.

These examples are obviously not exhaustive. But they point up the caution those receiving protected information must exercise in making public utterances about the security plan for the applicant's facility. We therefore stress to those who receive protected information that rumors and gossip from uninformed or unauthorized sources do not necessarily mean that protected information has become public knowledge to the extent that they are free to join in discussing it publicly. Cf., Alfred A. Knopf v. Colby, 509 F.2d

1362, 1370-71 (4th Cir. 1975). We add our caution to the Commission's and urge that all privy to the security plan exercise the utmost restraint in discussing its contents lest it be compromised. And it should be unnecessary to remind all counsel again of the American Bar Association Canons restricting statements made during the course of an administrative proceeding. See ABA Disciplinary Rule 7-107.

Finally, we note that at the prehearing conference intervenor's counsel articulated only one objection to a complete ban on discussing protected information. This was a fear that the prohibition might somehow handicap their defense, should they be charged with improper disclosure of protected information. We do not attempt to judge the reasonableness of that concern. However, a procedure whereby counsel demonstrate that they obtained protected information outside the hearing process (and that their intended public utterances are not corroborative of it) would serve to shield them against charges of unauthorized disclosure. We therefore stand ready to rule on whether protected information was in fact obtained from independent sources should counsel wish to submit that question to us.

The Protective Order on Security Plan Information issued April 3, 1980, and the form of non-disclosure affidavit are hereby amended and reissued in the form annexed. Intervenor's counsel should execute new affidavits of non-disclosure and file them with this Board no later than July 25, 1980.

II.

PARTICIPATION OF THE GOVERNOR OF CALIFORNIA

The Licensing Board rendered its partial initial decision covering security plan issues on September 27, 1979. LBP-79-26, 10 NRC 453. The Governor of California later sought leave to intervene before that Board pursuant to 10 C.F.R. §2.715(c) as the representative of "an interested State." The Board below admitted the Governor for that purpose on November 16, 1979, with the direction that he "take the proceeding as he finds it."[6/]

The Governor did not participate in the appeal of the security plan issues (which we heard in San Francisco on January 22, 1980) or in any of the other proceedings before us that followed in the wake of our February 15th decision on that appeal. ALAB-580, 11 NRC 227 (1980). On June 11, 1980, the Governor submitted a notice of his intention to participate in the de novo security plan proceeding we have been conducting. Notwithstanding the belatedness of his decision to do so, the staff responded on June 25th and the

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6/ We understand that the Governor was placed on the service list at that point and his counsel has been receiving copies of the documents filed and issued in this case.

applicant on July 7th that they had no objection to the Governor's participation provided that no delay resulted therefrom.

There appears to be no legal impediment to the Governor's becoming a party. However, as is apparent from this memorandum, the Commission's decision in CLI-80-24, supra, and our Second Prehearing Conference Order of April 11th (ALAB-592, supra), many matters have been considered and decided since we took up the security plan issues at the beginning of the year. We note that, in analogous circumstances, the Commission ruled that "allowance of a late intervention need not disrupt established discovery schedules and other preparations for hearing. A tardy petitioner with no good excuse may be required to take the proceeding as it finds it. For * * * 'any disadvantage which it might suffer in terms of the opportunity for trial preparation would be entirely of its own making.'" Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 276 (1975)(on application of a county government to participate).

Accordingly, the Governor may participate as the representative of an interested state, "taking the proceeding as he finds it"; he may not, however, complain of rulings made or procedural arrangements settled prior to his participation. Subject to the protective order and provided that their non-disclosure affidavits in the form attached are executed and filed with us by July 25, 1980, the Governor's counsel may examine the "sanitized" security plan to the extent and under the terms and conditions afforded the intervenor's representatives. The protective order provisions, including those governing the service of documents containing sensitive material, and the schedule set forth in part III, below, shall henceforth apply to the Governor as well as to the other parties.

III.

FUTURE PROCEEDINGS

Our April 11, 1980 Second Prehearing Conference Order stated that we would issue a schedule for completing the necessary prehearing procedures after we had had an opportunity to review the staff and applicant's version of the sanitized security plan. We did not anticipate, however, the long delay between our April order and this one occasioned by the parties' various petitions for review filed with the Commission. Now that the Commission has confirmed that the applicant must make the sanitized security plan available to the intervenor it is time to move ahead. Accordingly, unless modified by subsequent order, the following timetable will control the remainder of the prehearing security plan proceedings.

1. Our April 11 order required that any depositions for the purpose of determining the qualifications of proffered expert witnesses must be completed by April 17, 1980. Only one deposition, that of Jermiah P. Taylor, has been filed with us.

Any objection or other motion concerning the qualifications of the expert witnesses shall be filed so that it is in our hands by July 28, 1980. Any response shall be filed so that it is in our hands by August 4, 1980. We will rule promptly on any motions. If we find the proffered expert witnesses qualified, the applicant shall then make the sanitized security plan available to the expert witnesses and to those attorneys who have executed and filed appropriate affidavits of non-disclosure.

In the absence of any timely filed objections or motions, all counsel and witness who have executed and filed affidavits of non-disclosure shall be entitled to access to the sanitized security plan beginning July 30, 1980.

2. Because the Commission determined that a portion of the affidavit of non-disclosure previously executed by intervenor's counsel was overbroad, counsel for all intervening parties must execute new affidavits as provided in part I, above.

3. Any objections to the sanitized security plan and motions for disclosure of additional information must be in our hands by August 11, 1980; responses must be in our hands

by September 2, 1980; and replies in our hands by September 15, 1980. All objections, responses, and replies shall follow the procedures and format set forth below.

(a) Any objection to the sanitized security plan and motion for disclosure of additional information must identify the chapter, page, section, subsection and subject matter of each item of information sought. The motion shall succinctly state the reason why the deleted information is relevant and refer to any applicable section of the Commission's site security regulations. 10 C.F.R. Part 73. We recognize that the movant cannot know the precise content of the information sought. Nevertheless, the index to the sanitized security plan, the content of the surrounding information, and the applicant's general description of the deleted information appearing in the plan, when combined with the Commission's site security regulations, should enable the movant to state with reasonable specificity why disclosure of the withheld information is necessary.

The applicant and staff should respond to each specific objection by identifying the chapter, page, section, subsection and subject matter of each item of information sought. As

the parties seeking to withhold the information, the applicant and staff shall explain in response to each particular objection: (1) the full nature of the information withheld (without revealing its exact content); (2) specifically why in light of the standards of ALAB-410, 5 NRC, 1398, 1405-06 (1977), it should be withheld; (3) the particular manner in which the information could be used to compromise the security plan; and (4) in response to movant's objections, why such information is not necessary to movant and should not be released. Assertions that release of any information would compromise the security plan must be supported by affidavits from knowlegeable individuals. Such affidavits should establish the affiant's expertise in the subject matter at issue and explain precisely how the information sought could be used to compromise the security plan.

Movant shall then file a reply in the same format as its initial objection and applicant's and staff's responses. Although the information withheld will still be unknown, those responses and accompanying affidavits will enable the movant to argue the case for disclosure with much greater particularity than in the initial objection. All assertions that disclosure of particular information is necessary must be supported by affidavits of an expert authorized to examine the sanitized plan.

Again, such affidavits must establish the affiant's expertise in the subject matter at issue, explain why the information withheld is essential, and demonstrate why other information or more general information already disclosed would not suffice.

We are cognizant that the procedures set forth are burdensome. We are also painfully aware of the burden placed upon us in determining what (if any) further information need be included in the sanitized plan, should objections to that plan be filed. But the adversary nature of normal adjudicative proceedings is necessarily distorted by the movant's ignorance of the withheld information and the usual process for dispute resolution will not serve. The procedures outlined are modelled on those adopted by the courts for use in analogous circumstances. They are designed to help us determine what, if any, further information need be disclosed by providing as much illumination of the issues as possible in the circumstances. See, e.g., Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), certiorari denied, 415 U.S. 977 (1974).

(b) Dr. Johnson has suggested an alternative to the foregoing procedures for the parties' consideration. As will be evident, it would be less burdensome on all concerned should a substantial number of objections to the plan be filed. Because of obvious legal contraints, however, this suggested alternative is practicable only if all parties are agreeable to stipulate to it and to be bound by the results. See 10 C.F.R. §2.753.

Dr. Johnson suggests, in the event objections to the sanitized security plan are filed, that this Board resolve them after conferring in camera with an expert witness named by each party and found qualified by us. In other words, for purposes of determining whether further information should be made available for use in this proceeding, qualified experts named by the parties would advise us in camera of their respective opinions concerning the need for each item of information sought to be disclosed. Obviously, the "outside" expert witness would have to be given access to each item of withheld information as necessary to fulfill his responsibility to us as an advisor. Of course, movant's experts would not be permitted to record the in camera advisory conference and any notes concerning the plan would have to be turned over to us. No counsel for any party would be present. Our decision on this matter would be final and binding on all parties. Cf., The Toledo Edison Company (Davis-Besse Station), ALAB-300, 2 NRC 752, 764-68 (1975).

If the parties accept this alternative, the more burdensome and time consuming procedures we previously outlined in point 3(a) could be avoided and the timetable for concluding

the remaining prehearing procedures shortened considerably. We instruct all counsel to confer promptly about Dr. Johnson's suggestion and, if it is acceptable, to file an appropriate stipulation, containing any additional details deemed necessary by August 4, 1980. We will make every effort to accommodate the schedules of the parties' expert witnesses concerning the date and location of such an in camera advisory conference.

If, after conferring, the parties are unable to agree on Dr. Johnson's suggested alternative procedure, they should tell us so promptly and the procedures and timetable previously set forth will control the proceedings. However, we will entertain suggestions for less burdensome alternative procedures that the parties are able to agree upon if filed by August 4, 1980.

4. In the absence of objections to the sanitized plan, amended contentions particularizing the exact aspects of the plan that are being challenged shall be filed no later than August 11, 1980. If objections are filed, then one week from the date of our order disposing of those objections the applicant shall revise and make available the sanitized plan. Two weeks thereafter amended contentions addressed to the revised plan shall be filed.

5. At the April 2, 1980 prehearing conference we requested that the parties attempt to reach agreement on the order for presenting direct testimony and the deadlines for filing such testimony. (Tr. 116-117). Within seven days of the filing of the amended contentions, the parties shall submit a schedule covering both the timing and order for filing direct testimony, bearing in mind that, in our judgment, more than 30 days for preparing direct testimony would not be appropriate in the circumstances of this case. If the parties are unable to agree on a schedule by that date, we will set one ourselves.

6. All direct testimony shall be filed in question and answer form. The use of this format should remind counsel and their witnesses to avoid broad and general answers to vague and general questions. Rather, specific, narrowly drawn questions and precise answers should be the watchword. Expert witnesses who will present opinion evidence are to be reminded by counsel that they are not advocates. Rather, such witnesses should retain their professional objectivity during cross-examination and during questioning by us. A witness' views which differ from those of his colleagues should be acknowledged with appropriate explanations for those differences.

7. Once a schedule for filing direct testimony is established, we will set the hearing dates for the in camera hearing on the adequacy of the applicant's security plan.

8. Two final matters. First, counsel are reminded that any security plan information and similar sensitive material should not be sent through the mail but must be hand-delivered.[7/] Counsel attending the April 2, 1980 pre-hearing conference were asked to work out the details for accomplishing hand delivery and to inform us of those procedures. (Tr. 112-114). By letter dated May 2, 1980, the Secretary to the Appeal Board requested applicant's counsel to take the lead in this matter. It was there requested that, after consultation with other counsel, he submit a stipulation to govern future service of security plan materials. We still have received no word on the subject. Accordingly, we instruct all counsel to turn their attention to this matter immediately and file a stipulation by July 28, 1980, governing the service of documents containing protected information. We would prefer an agreed-upon procedure to one imposed by us, but the absence of an appropriate stipulation will leave us no choice.

7/ Should an occasion arise where hand-delivery would be too burdensome, mailings containing protected information, at a minimum, should be made from the facility furnished by the Pacific Gas and Electric Company.

Second, the admonition contained in our first prehearing order is even more appropriate today: requests for extensions of time or postponements will be viewed with disfavor; unexcused delays will not be permitted.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Bishop
Secretary to the
Appeal Board

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. W. Reed Johnson
Thomas S. Moore

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

AMENDED PROTECTIVE ORDER ON SECURITY PLAN INFORMATION

(July 15, 1980)

Counsel and witnesses for Intervenor San Luis Obispo Mothers for Peace (Intervenor) and for the Governor of California (Governor) who have executed an Affidavit of Non-Disclosure in the form attached, shall be permitted access to "protected information"*/ upon the following conditions:

1. Only Intervenor's and the Governor's counsel and Intervenor's experts who have been qualified in accordance with the requirements of our decision in Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), and our subsequent orders

*/ As used in this order, "protected information" has the same meaning as used in the Affidavit of Non-Disclosure, annexed hereto.

in this proceeding may have access to protected information on a "need to know" basis.

2. Counsel and experts who receive any protected information (including transcripts of in camera hearings, filed testimony or any other document that reveals protected information) shall maintain its confidentiality as required by the annexed Affidavit of Non-Disclosure, the terms of which are hereby incorporated into this protective order.

3. Counsel and experts who receive any protected information shall use it solely for the purpose of participation in matters directly pertaining to this security plan hearing and any further proceedings in this case directly involving security matters, and for no other purposes.

4. Counsel and experts shall keep a record of all documents containing protected information in their possession and shall account for and deliver that information to the Commission official designated by this Board in accordance with the Affidavit of Non-Disclosure that they have executed.

5. In addition to the requirements specified in the Affidavit of Non-Disclosure, all papers filed in this proceeding (including testimony) that contain any protected information shall be segregated and:

(a) served on lead counsel and the members of this Board only;

(b) served in a heavy, opaque inner envelope bearing the name of the addressee and the statement "PRIVATE. TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked.

6. Counsel, experts or any other individual who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Bishop
Secretary to the
Appeal Board

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

AMENDED AFFIDAVIT OF NON-DISCLOSURE

I, _____, being duly sworn, state:

1. As used in this Affidavit of Non-Disclosure,

(a) "Protected information" is (1) any form of the physical security plan for the licensee's Diablo Canyon Nuclear Power Plant, Units 1 and 2; or (2) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the security plan.

(b) An "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Appeal Board ("Appeal Board"), has executed a copy of this affidavit; or (3) a person employed by Pacific Gas and Electric

Company, the licensee, and authorized by it in accordance with Commission regulations to have access to protected information.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else.

3. I will not reproduce any protected information by any means without the Appeal Board's express approval or direction. So long as I possess protected information, I shall continue to take these precautions until further order of the Appeal Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

(a) my use of the protected information will be made at a facility in San Francisco to be made available by Pacific

Gas and Electric Company.

(b) I will keep and safeguard all such material in a safe to be obtained by intervenors at Pacific Gas and Electric Company's expense, after consultation with Pacific Gas and Electric Company and to be located at all times at the above designated location.

(c) Any secretarial work performed at my request or under my supervision will be performed at the above location by one secretary of my designation. I shall furnish Pacific Gas and Electric Company, the Board and Staff an appropriate resume of the secretary's background and experience.

(d) Necessary typing and reproduction equipment will be furnished by Pacific Gas and Electric Company.

(e) All mailings by me involving protected information shall be made from the facility furnished by Pacific Gas and Electric Co.

5. If I prepare papers containing protected information in order to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information in order to help me prepare those papers has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Appeal Board before I reveal any protected information to any such person.

6. I shall use protected information only for the purpose of preparation for this proceeding or any further proceedings in this case dealing with security plan issues, and for no other purpose.

7. I shall keep a record of all protected information in my possession, including any copies of that information made by or for me. At the conclusion of this proceeding, I shall account to the Appeal Board or to a Commission employee designated by that Board for all the papers or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding, I shall deliver those papers and materials to the Appeal Board (or to a Commission employee designated by the Board), together with all notes and data which contain protected information for safekeeping during the lifetime of the plant.

8. I make this agreement with the following understandings: (a) I do not waive any objections that any other person may have to executing an affidavit such as this one; (b) I will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information gained through the hearing process.

_____

Subscribed and sworn to before me
this ____ day of _____, 1980.

_____
Notary Public