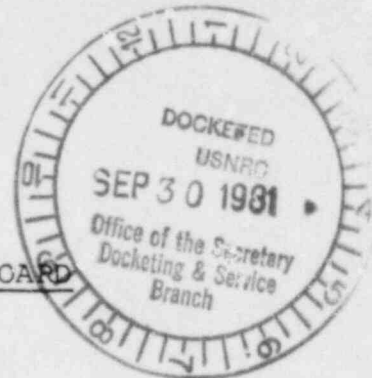


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE 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 O.L.
50-323 O.L.

MOTION OF GOVERNOR EDMUND G. BROWN JR. TO STRIKE
PORTION OF PG&E'S OPPOSITION TO STAY MOTION



In pleadings dated September 17, 1981, PG&E opposed the Governor's and Joint Intervenors' requests that the Appeal Board stay the effectiveness of the Diablo Canyon low power license.^{1/} In its opposition to Joint Intervenors' stay application, PG&E referred to and then attached as Exhibit B, a FEMA analysis of the August 19, 1981 Diablo Canyon emergency exercise and a memorandum of Ms. Joan Aron, NRC Office of Policy Evaluation, regarding the same exercise. In its opposition to the Governor's stay motion, PG&E requested this Board to refer to PG&E's arguments against the Joint Intervenors' stay application and thus to refer to the same FEMA materials and memorandum.

The FEMA analysis and the Aron memorandum are not part of the record in this proceeding. The Governor, therefore, moves the

^{1/} PG&E Opposition to Joint Intervenors' Application for a Stay; PG&E Opposition to Motion of Governor Edmund G. Brown Jr. for Stay of Effectiveness of the Diablo Canyon Fuel Loading and Low Power Operating License.

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Board to strike these extra-record documents and references to them from PG&E's filings and to render its decision on the stay motions only on the basis of the evidence of record.

The decision of this Board must be based only on the evidence of record. 10 C.F.R. Part 2, App. A, § V(e)(2). Indeed, the courts have repeatedly stated that adjudicatory decisions must be based upon the evidence of record. See, e.g., Marathon Oil v. EPA, 564 F.2d 1253, 1264-65 (9th Cir. 1977); Seacoast Anti-Pollution League v. Costle, 572 F.2d 872, 881-82 (1st Cir.), cert. denied, 439 U.S. 824 (1978).

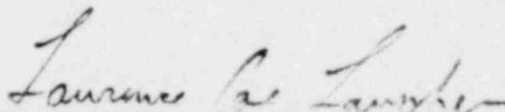
PG&E has acted improperly by referring to and enclosing the extra-record FEMA materials and the Aron memorandum. The record was closed in this proceeding on May 22, 1981. The FEMA materials and Aron memorandum date from September 1981, well after the record was closed. PG&E has not moved -- let alone made even the slightest effort toward the required showing -- to reopen the record for the purpose of including the new materials.^{2/} Accordingly, since the

^{2/} PG&E is surely well aware of the criteria for reopening closed records, since PG&E in the past has vigorously opposed motions to reopen by citing such criteria. See, e.g., "Response of PG&E to Motions of Intervenor, San Luis Obispo Mothers for Peace, to Augment the Record in the Security Proceedings with a Report of a Security Occurrence; and for Leave to take Depositions of NRC Staff Personnel and Applicant, PG&E," August 17, 1981.

materials are not part of the record, the Governor moves the Board to strike the materials from PG&E's filings.^{3/}

Respectfully submitted,

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September 29, 1981

^{3/} In the event that PG&E later moves to reopen the record to include the FEMA materials or the Aron memorandum, the Governor will demonstrate why these materials should not be included in the record. Further, if the Board, sua sponte, decides to consider these data, the Governor will need: (1) to depose FEMA and NRC personnel with knowledge of these materials; and (2) an opportunity to present the Governor's views on the materials. Such a situation, of course, would not be desirable because a more meaningful FEMA document (i.e., "findings") on offsite emergency preparedness at Diablo Canyon will be forthcoming, and such FEMA document is already slated to be a central feature of the full power hearing.

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_____)

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "MOTION OF GOVERNOR EDMUND G. BROWN JR. TO STRIKE PORTION OF PG&E'S OPPOSITION TO STAY MOTION" in the above-mentioned proceeding have been served to the following on September 29, 1981 by U.S. Mail, first class.

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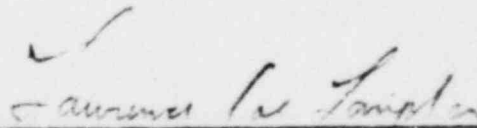
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