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, Unit Nos. 1 and 2)	)	(Full Power Proceeding)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO GOVERNOR BROWN'S MOTION TO REOPEN THE RECORD

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DATED: August 16, 1982

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY
TO GOVERNOR BROWN'S MOTION TO REOPEN
THE PROCEEDING TO TAKE EVIDENCE
ON QUALITY ASSURANCE

On August 2, 1982, attorneys for Governor Brown, representative of an interested state pursuant to 10 CFR 2.715(c), filed a motion requesting the Atomic Safety and Licensing Board to reopen the record in the full power Diablo Canyon licensing proceeding to take evidence on Pacific Gas and Electric Company's (PGandE) quality assurance programs for design and construction of the Diablo Canyon facility,[1/] and to perform a design review and physical inspection of structures, systems and components important to safety. PGandE respectfully requests that this Board deny Governor Brown's motion in all respects for the reasons set forth in the following Memorandum of Points and Authorities and the supporting material which is incorporated herein by reference.

MEMORANDUM OF POINTS AND AUTHORITIES

I

Introduction and Status of the Proceeding

On January 26, 1982, the hearing record of the Diablo Canyon full power licensing proceedings was closed subject to the filing of the usual closing pleadings. On February 24,

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[1/] A similar motion was filed with the Appeal Board by Joint Intervenors in the low power proceeding. The Appeal Board has certified certain questions to the Commission concerning the issue of whether the Appeal Board has jurisdiction to rule on the motion. (ALAB-681, July 16, 1982.)

1982, PGandE notified the Board and the parties that, as a result of the Independent Design Verification Program (IDVP), PGandE might have to perform additional analsyes of the power operated relief valves and their associated block valves to confirm their seismic qualification, and that, if necessary, modifications would be made to maintain their qualification. This was confirmed by the Staff in Board Notification PNO-5-82-09. On March 18, 1982, Governor Brown filed a motion requesting the Board to defer its decision pending evaluation of PGandE's letter and the Board notification. On April 2, 1982 the Board ruled that:

> "No final judgment will be taken in this matter until such time as a thorough evaluation can be made of any newly discovered, relevant information."

On May 13, 1982, Governor Brown filed yet another motion concerning the status of PGandE's investigation into the matters covered in Board Notification PNO-5-82-09. On June 14, 1982 this Board denied Governor Brown's latest motion for the reasons set forth in its order.

On September 28, 1981, PGandE notified the Regional Administrator of the NRC's Region V Office of Inspection and Enforcement of a potential problem in the analysis of piping systems contained in the annulus area of the containment building. In response, the Staff issued Board Notification No. 81-27 and scheduled the first of a series of meetings with PGandE to discuss the problem. On November 19, 1981, the

Commission issued its order suspending License No. DPR-76 (CLI-81-30). The Commission stated in its order that, contrary to PGandE's license application, errors in design and violations of 10 CFR Part 50, Appendix B, had occurred. On that basis, the Commission suspended the low power license and promulgated a two phase program to reinstate the low power license and to ascend to full power operation.

Meanwhile, PGandE had begun an independent design verification program, retaining Robert L. Cloud Associates, Inc. (RLCA) and, subsequently, submitted a program for Phase I (pre-fuel load) to the NRC Staff for its approval pursuant to Commission order. The Staff also expressed opinions on the various contractors involved and recommended that a contractor such as Teledyne Engineering Services, Inc. (TES) be given responsibility for the performance of the Phase I program. At a meeting on March 4, 1982, the Commission approved SECY-82-89 with certain revisions. On March 12, 1982, PGandE formally nominated TES as the contractor for the IDVP and on March 19, 1982, pursuant to Commission direction, the Staff approved this selection. RLCA and R. F. Reedy Inc. (RFR), a firm retained to investigate the design quality assurance programs of PGandE and its principal design consultants, act as subcontractors and report to TES under the IDVP.

Phase I of the IDVP was formally approved by the NRC Staff in a letter dated April 27, 1982. Phase II of the IDVP was submitted to the Staff for its approval on June 18, 1982.

Another design verification program is being conducted internally by the PGandE/Becthel Project Organization (Project). This program was also approved by the Staff's letter dated April 27, 1982. Pursuant to the Commission's Order dated November 19, 1981, the Project, TES, RLCA, and RFR have filed bi-monthly reports covering the work completed during the previously specified period. These reports have been distributed by the Staff to the NRC Commissioners, the parties and others by means of various Board notifications.

II

Facts

The Brown motion incorporates the Joint Intervenor's Motion to Reopen filed with the Appeal Board on June 8, 1982 and the Hubbard affidavit attached thereto as the primary factual predicate for their instant motion. The response of Pacific Gas and Electric Company to the Joint Intervenor's Motion dated July 2, 1982, and the attachments thereto, are incorporated herein as though set forth in full. As shown in our response before the Appeal Board (at pages 6-19), the allegations made in the Hubbard affidavit and previously filed motions consist in large part of mischaracterizations, misstatements of fact and conclusions and are, overall, seriously misleading.

In Governor Brown's most recent pleading, mischaracterization and misstatement of fact are once again the mechanism of persuasion. While ignoring the distinctions between the defined scope of Phase I and Phase II of the IDVP

and totally ignoring the Project's internal technical program, Brown refers to the IDVP as "narrowly limited" and as addressing "narrowly confined areas". He then compares the IDVP to the Brookhaven Report which he cites as "compelling evidence" leading to a need for evaluations of "implementation of design and construction QA" and "an evaluation of the actual quality of the as-built plant". The Brown motion also chooses to ignore the PGandE/Bechtel corrective action program which emanates from the IDVP and is subject to verification by the IDVP. Details of that program are set forth in the affidavit of Howard B. Friend which is attached hereto.

Governor Brown continues to mislead this Board by never discussing the overall requirements of the Commission Order, CLI-81-30, and the November 16, 1981 letter of Harold Denton which establish what is required to be accomplished by the IDVP. It is clear that when the Order and letter are taken together, the total IDVP program (Phases I and II) is intended to cover seismic and non-seismic design aspect of safety-related structures, systems and components, whether the design work was done by PGandE or by service-related contractors. This is hardly a program which is "narrowly limited" to "narrowly confined areas".

Perhaps the best example of Governor Brown's assailment of the facts can be seen in his continued reference to "generic" QA breakdowns. To cite the Brookhaven Report, which looked only at the annulus area, as authority for this

proposition is simply fatuous. As set forth in the affidavits of Bain and Raymond, et al., which accompanied PGandE's July 2 response, site QA/QC activities were, except where deficiencies were noted and corrected, in compliance with Appendix B at all times material hereto. Contrary to Governor Brown's bald assertions, there is no indication whatsoever that "breakdowns" occurred in site QA/QC activities at Diablo Canyon.

III

The Commission's Action of November 19, 1981 Establishing the Procedure for the IDVP Leaves This Board Without Jurisdiction to Accord Governor Brown's Requested Relief

In filing their motions to reopen before the Appeal Board, both Joint Intervenors and Governor Brown aimed their arguments at the suspended low power license and the low power proceedings. Our response was, therefore, based almost exclusively on the facts surrounding the suspension of that license and Phase I of the IDVP. Our argument that the Commission had assumed exclusive jurisdiction of the low power license was not however, as Governor Brown would have it, mutually exclusive. The Commission has assumed jurisdiction of any errors in design and violations of 10 CFR Part 50, Appendix B. Governor Brown attempts to further distinguish the motion before the Appeal Board from the instant motion by arguing that a license had issued in the low power proceeding while the full power license has not. What Governor Brown chooses to ignore however, is that in both cases the record is closed and the

facts surrounding the Commission's actions and the IDVP are the same. Indeed, in certifying the question to the Commission, the Appeal Board foresaw the commonality between the low power and full power proceedings and asked the Commission:

> Did the Commission intend its November 19, 1981 order suspending the low-power license for Diablo Canyon, Unit 1, and establishing and independent verification program to deprive the appropriate adjudicatory boards of jurisdiction to consider a motion to reopen the record based on the QA/QC questions regarding Diablo Canyon?
>
> If not, does the Commission now wish to relieve the adjudicatory boards of jurisdiction with regard to the QA/QC issues at Diablo Canyon?
>
> If the Commission has not divested, and does not intend to divest, the adjudicatory boards of jurisdiction over the QA/QC issues at Diablo Canyon what, if any, instructions does the Commission have with regard to timing or other matters raised by the motion to reopen? (ALAB-681 at 7, emphasis added.)

As stated earlier, the Commission has assumed jurisdicton over QA/QC violations and the design aspect of safety-related structures, systems, and components at Diablo Canyon. The Commission has ordered that it must be satisfied, through detailed procedures of verification and review, that Diablo Canyon is as stated in its application before it shall be allowed to load fuel, conduct low power tests and ascend to full power operation. That the Commission has the authority to do so is manifest.

The Appeal Board and the Licensing Board derive their jurisdiction and authority from the Commission. (See 10 CFR

2.721 and 2.785.) The proposition that the adjudicatory boards have limited authority and jurisdiction as determined by the Commission is well recognized. (42 U.S.C. 22.41; 10 CFR 2.721 and 2.785; Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-76-1, 3 NRC 73 (1976).) In this particular instance, the Commission has exercised its jurisdiction and authority by mandating a thorough and independent verification program and by so doing has precluded this Board from granting the requested relief. Indeed, the Commission has exercised discretion to withhold jurisdiction from adjudicatory boards in other recent cases. In a very recent case also involving violations of 10 CFR Part 50, Appendix B, the Commission stated:

> "The NRC has been investigating alleged quality assurance irregularities at Zimmer since January 1981. The investigations are still ongoing. The investigations have identified a number of quality assurance-related problems at the Zimmer site. An extensive review of the as-built plant is currently being performed. Before the plant can be licensed, a comprehensive quality confirmation program will have to be conducted and identified problem areas resolved. By itself, without factoring in any rework, the quality confirmation program will be both costly and time-consuming. The effect of this on the construction schedule of the plant remains to be determined.
>
> "The basis for the eight contentions which the Board has accepted as Board issues is simply a repetition of some of the problems revealed in the reports of the investigations which have already been released to the public. The Miami Valley Power Project (MVPP), an Intervenor, which filed an untimely request with the Board

> that these issues be considered, suggested that it had new information on these matters. MVPP did not in its motion to the Board or elsewhere sufficiently identify any new information, its source, or say when it became available. The NRC staff supported the motion to reopen. However, the staff recognized and the Board ruled that the legal standards for further hearings were not met.
>
> "As we have indicated above, the issues raised in the eight contentions are being dealt with in the course of the ongoing investigation and in the NRC staff's monitoring of the applicants' Quality Confirmation Program.
>
> "For these reasons, the Commission concludes that the Board has not set forth a sufficient justification supporting its order reopening the hearing record to consider the eight contentions as Board issues. Accordingly, the Board is directed to issue an appropriate order dismissing the eight contentions from the proceeding. . . ." (Cincinnati Gas and Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, ___ NRC ___, July 30, 1982.) See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147 (1979).

The Commission's Order ensures that all necessary actions to protect the public health and safety will be taken, obviating the necessity for a duplicative exercise of jurisdiction by this Board. Compare (South Carolina Electric & Gas Company, Virgil C. Summer Nuclear Station, Unit 1, Docket 50-395.)

In passing the Atomic Energy Act of 1954, Congress enacted "a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the

administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives." Siegel v. AEC, 130 U. S. App. D. C. 307, 319, 405 F.2d 778, 783 (1968). See also Public Service Co. of New Hampshire v. N.R.C., 582 F.2d 77, 82 (1st Cir.), cert. denied, 439 U.S. 1046, 99 S. Ct. 721, 58 L. Ed. 2d 705 (1978); North Anna Environmental Coalition v. N.R.C., 174 U. S. App. D. C. 428, 431, 432, 533 F.2d 655, 658-69 (1976). To further these statutory objectives, Section 161(p) of the AEA, 42 U.S.C. §2201(p) (1976), confers upon the NRC an unfettered mandate to issue "such rules and regulations as may be necessary to carry out the purposes of this Act." Section 103, 42 U.S.C. 2133 (1976), directs that commercial licenses shall be issued "subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Chapter."

PGandE's position is that the NRC, which is invested with extensive powers to effectuate its far-reaching mandate, may utilize its inherent discretion in assuming complete jurisdiction of the suspension proceedings when sound regulatory reasons exist for doing so. We believe this is consonant with the Supreme Court's approach in Permian Basin Area Rate Cases, 390 U.S. 747, 88 S. Ct. 1344, 20 L. Ed. 2d 312 (1968). The question there was whether the Federal Power Commission (FPC) had authority to impose a two and one-half year moratorium upon filings of rate schedules while it implemented a new regional

rate-making scheme. The Court noted that it "has repeatedly held that the width of administrative authority must be measured in part by the purposes for which it was conferred." 390 U.S. at 776, 88 S. Ct. at 1364 citing §16 of the Natural Gas Act, 15 U.S.C. §7170 (1976) which is similar in breadth to §161(p) of the AEA. The Court went on to say that "[s]urely the Commission's broad responsibilities therefore demand a generous construction of its statutory authority." 39 U.S. at 776, 88 S. Ct. at 1365.

The AEA does not preclude the Commission from the assumption of jurisdiction of QA/QC violations and the design aspects of Diablo Canyon nor does it require this Board to reopen the record. The width and breadth of the Commission's discretion is set forth in Power County Chapter v. Nuclear Reg. Comm'n, 606 F.2d 1363, 1369 (D.C. Cir. 1979).

> "Generally speaking, the law gives agencies wide discretion to determine the means of administration of pertinent regulatory standards, the techniques of interpretation, application, filling in of details and enforcement. As the Supreme Court has recently emphasized with reference to agency choice of procedures: 'Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.' Vermont Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519, 543, 98 S. Ct. 1197, 1211, 55 L. Ed. 2d 460 (1978). The agency is not bound to launch full blown proceedings simply because a violation of the statute is claimed. It may properly undertake preliminary inquiries in order to determine

> whether the claim is substantial enough under the statute to warrant full proceedings. The appropriate agency has substantial discretion to decline to initiate proceedings based on this review, at least where, as here, he gives reasons for denying or deferring a hearing."

It is the broad delegation of authority in the AEA which allows the Commission to determine the conditions, rules and regulations pursuant to which licenses shall be issued as well as the scope and format of licensing proceedings, to construe that statute's provisions as granting the Commission the authority to exercise complete jurisdiction of suspension and compliance proceedings and to refuse to reopen the record. Westinghouse Elec. Corp. v. U.S. Etc., 598 F.2d 759 (3rd Cir. 1979).

A. The Motion Does Not Address A Significant Safety Issue In Light Of The Commission's Ordered Review Procedure.

PGandE has embarked upon an extensive independent design verification program using independent reviewers as mandated and approved by the NRC. This program is designed to meet the requirements specified in the Commission's order and Staff letter, both dated November 19, 1981. The program provides for analysis of structures, systems and components of the plant, to be expanded as necessary, a plan for identification of any defects discovered and a program for correction of any such defects. Thus, there is no need for the Board to involve itself in this matter because the public health and safety are assured through operation of the Commission mandated

IDVP, subject to final review and approval of the Commission and NRC Staff. Thus, Board involvement could add nothing.

In this respect the situation is similar to the Summer case (South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), Docket 50-395, Memorandum and Order (April 28, 1982)). There, an intervenor proposed a new contention after the close of the record, based upon a Staff report critical of operating and emergency procedings at the facility.[2/] The Board noted that the contention was based on new information brought to intervenor's attention only after the close of the hearing, and that the proposed contention was filed shortly thereafter. Even so, the Board held that intervenor had failed to show the significance of the allegations within the context of that particular proceeding at that late stage:

> "To be sure, each of the alleged deficiencies with regard to Applicants' operating procedures contained in the [NRC Staff] report would have some significance to the safety of the plant if it actually exists and were to go uncorrected. But Intervenor has not alleged, nor do we see any support for such an allegation, that there is any danger that the alleged deficiencies will go uncorrected. The affidavits submitted by Staff and Applicants establish that the shortcomings to Applicants' operating procedures are being routinely handled by Staff, and Applicants have committed themselves to upgrade and

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[2/] Preliminarily, the Licensing Board ruled that the intervenor must satisfy the "stringent standards" for reopening a case in addition to the five-factor test set out in 10 CFR 2.714(a)(1) for late contentions. (Slip. op. at 2-3.)

> correct the operating procedures in accordance with Staff's suggestions. In the face of this established procedure for identifying the deficiencies and correcting them, their mere existence loses its significance in the context of this operating license proceeding. Were the Board to take this issue and determine that the alleged deficiencies actually exist, we could do no more than order that they be corrected and that the corrections be monitored by Staff - a procedure that is already in effect without Board intervention.
>
> "If we were to reopen the record every time that Staff discovered a safety defect and reported it to us, we could never bring the proceeding to completion. See ICC V. Jersey City, 332 U.S. 503, 514 (1944). We see no correlative benefit for further delay here, since Board involvement is unnecessary to assure the public health and safety." (Slip. op. at 3-4, emphasis added.)

Here, the IDVP guarantees that any identified deficiencies will be corrected if necessary, and this Board, even if it ordered the proceedings reopened, could do no more than order what has already been mandated by the Commission. Thus, the public health and safety are protected through implementation of the IDVP and no significant safety issues remain to be addressed. Therefore, the standard prescribed by the Commission regarding the need for a significant new safety issue to reopen closed records has not been met. (CLI-81-5, supra.)

B. The Motion Is Not Timely.

Governor Brown's motion is addressed to the adequacy of PGandE's quality assurance program. In his previously filed affidavit (page 98), Mr. Hubbard complained that he was not

allowed to testify during the 1977 ASLB full power hearings and that his previous efforts to introduce a QA contention had been denied. Mr. Hubbard's statements, while technically correct, are misleading if not placed in the proper context.

The original notice of hearing in this proceeding was published in the Federal Register on October 19, 1973. Joint Intervenors advanced a total of 47 proposed contentions (with some duplication), some of which were accepted for litigation purposes, and by March 11, 1974 the time to advance contentions expired, in accordance with the NRC's (then AEC) regulations. (10 CFR 2.714(b).)[3/] None of these proposed contentions concerned QA/QC. In pleadings dated March 3, 1977, Joint Intervenors sought to add, among others, a generalized and broad contention on QA. The motions were supported by affidavits of Mr. Hubbard dated March 10 and April 27, 1977. In an order dated May 25, 1977, the ASLB denied the contention

> ". . . on the basis of timeliness, not required by law or regulation, lack of specificity and unconscionable delay in the proceeding." (Order at 2.)

The order provided further as follows:

> "CLPI [attorneys for Joint Intervenors] requested at the prehearing conference that,

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[3/] 10 CFR 2.714(b) provides that a petitioner "must" file his contentions and the bases for each contention "set forth with reasonable specificity" not later than ". . . fifteen (15) days prior to the holding of the special prehearing conference pursuant to §2.751a . . . ." The first day of that prehearing conference in this proceeding was March 26, 1974.

> if the 'new' contentions were denied, those aspects of the contentions which relate to seismic design could be raised within the context of the previously accepted seismic contentions. The Board believes that applicable, specific aspects of any required backfitting or of Quality Assurance procedures or implementation would be appropriate for hearing insofar as seismic design of the plant is concerned. The Board will carefully consider any applicable, specific aspect of the seismic design that may be raised by CLPI. (Emphasis added.)
>
> "The Board, on its own motion, hereby directs PGandE and the Staff to present evidence on the Quality Assurance program at Diablo Canyon by having available witnesses who are knowledgeable on this matter at the scheduled hearing."

As requested by the ASLB in its order, PGandE and the Staff presented testimony on the Diablo Canyon Quality Assurance Program at the so-called "non-seismic safety hearings" October 18 and 19, 1977. Joint Intervenors did not choose to cross-examine the witnesses despite being specifically offered a chance to do so (Tr. 3609, 3618) and their proposed findings of fact on the subject were, at best, perfunctory. More important, despite the Board's invitation to do so, Joint Intervenors made no subsequent attempt whatsoever to litigate "Quality Assurance procedures or implementation . . . insofar as seismic design of the plant is concernned."

Several years later, Joint Intervenors attempted to once again raise a generalized QA contention in the low power proceedings, but such a contention was denied by the ASLB in its order dated February 13, 1981 on the following grounds:

> "Joint Intervenors did not take advantage of an opportunity to be heard on quality assurance matters in hearings raised by the Board on October 18-19, 1977. They have not demonstrated in their filings or oral argument a specific relationship between this contention and the additional requirements for fuel loading and low power testing arising from the accident at TMI as specified by the Commission in NUREG-0737. (Tr. 178). For these reasons and in accordance with the Commission Revised Statement of Policy of December 18, 1980 (at page 8) contention 3 is denied." (Order at 18.)

Joint Intervenors later voluntarily abandoned their identical QA contention in the post-TMI full power proceedings.[4/]

In addition, much of the material referenced in and attached to the Hubbard affidavit has been available in the various public document rooms literally for years -- some of it dates as far back as the 1960's. While the items being found under the IDVP and PGandE Technical Program are "new", many of the deficiencies in implementation of design QA were, as pointed out in the Hubbard affidavit and attachments, noted historically and available to parties in this proceeding. In any event, any party should have advanced its QA contentions years before the filing of the instant motion.

. . .

. . .

[4/] On March 24, 1981, Joint Intervenors filed a motion to reopen the full power proceedings. Contention 1 in that motion involved QA. On June 30, 1981, at the prehearing conference for the full power proceedings, Joint Intervenors filed a Statement of Clarified Contentions which withdrew Contention 1 of the March 24, 1981 motion.

C. A Different Result Would Not Have Been Reached If The New Information Had Been Considered By The Board.

The Commission has emphasized that to reopen closed records requires that the significant new evidence would have caused a different result had it been considered originally. (CLI-81-5, supra.) This test must include all of the new evidence, and not just the facts favoring one side. In addition to the fact that there have been open items, deviations and errors in the design effort and deficiencies in the area of quality assurance, the fact is undisputed that the Commission has mandated the IDVP. Further, that program, as established, will discover and correct any deficiencies. If this information were known to the Licensing Board when it issued any of its past or future decisions, the result would not be different. Certainly, the above-referenced facts would be cited but, again, the end result would be the same.

V

Governor Brown Does Not Meet The Tests Which Must Be Satisfied To Admit Late-Filed Contentions

As noted earlier, the time to file contentions[5/] in this proceeding expired in 1974. The requirements for late contentions are set forth in 10 CFR 2.714(a)(1) and (d). Each

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[5/] PGandE notes that Governor Brown has not technically submitted a specific contention. Thus, to the usual objections directed to lack of specificity as a defect in a contention in violation of 10 CFR 2.714(b), PGandE would also here add lack of substance.

is considered briefly below, and each is subject to the general observation that Governor Brown (and Joint Intervenors in their motion before the Appeal Board) has made no attempt to comply with any of them. This is fatal to the motion (CLI-81-5, 13 NRC 361, 364).

A. No Good Cause For Failure To File On Time Has Been Shown.[6/]

As indicated earlier, much of the material on which the motion is based is not new but has, in fact, been available to all parties for a number of years. During the period it was timely to propose contentions, Governor Brown or Joint Intervenors should have advanced one on QA but they did not do so. They have made no showing justifying a delay of almost eight years. A Licensing Board has already ruled that such a contention was late in 1977. (ASLB Order May 25, 1977.)

B. Other Means Exist Whereby Governor Brown's Interest Will Be Protected.

It is clear that the Commission and Staff can adequately protect Governor Brown's interest. The order and letter of November 19, 1981 require final Commission and Staff approval of the IDVP and resultant modifications to assure that Diablo Canyon Nuclear Power Plant is in compliance with the License Application. Governor Brown can add nothing to this.

[6/] The cases imposing this requirement are legion. (See, for example, Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3) 12 NRC 350 (1980).)

C. Governor Brown's Participation Will Not Assist In Developing A Sound Record.

The complete answer to Governor Brown's Motion is contained in the IDVP, the Project internal technical program, and the results thereof. With provision made for final Staff and Commission approvals, there is no need to develop any additional hearing record.

D. Governor Brown's Participation Will Broaden The Issues And Delay The Proceedings.

Governor Brown's Motion broadly requests that ". . . the record be reopened so that the Board can consider critical data relevant to . . ." QA programs for "design and construction" and to require a design review and physical inspection of structures, systems and components. For the reasons outlined in the Summer and Zimmer cases discussed previously, a reopened hearing would actually have nothing new to consider since the IDVP and the Project internal technical program have been developed and are being implemented. Thus, a reopened hearing could needlessly broaden the issues and prolong the proceeding since any evidence presented would only confirm arrangements presently in place.

V

Conclusion

Governor Brown's motion should be denied, or, in the alternative, certified to the Commission for consideration by . . .

that body in conjunction with the previously certified questions by the Appeal Board.

Respectfully submitted,

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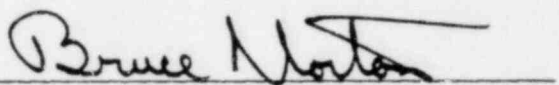
By 
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DATED: August 16, 1982.

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CERTIFICATE OF SERVICE

The foregoing document of Pacific Gas and Electric Company has been served today on the following by deposit in the United States mail, properly stamped and addressed:

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