

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

JOINT INTERVENORS' REPLY
TO BRIEFS RE MOOTNESS

On September 24, 1982, all parties to this proceeding filed briefs regarding the status of the pending appeals from the authorization of low power operation at Diablo Canyon Nuclear Power Plant ("Diablo Canyon"). Having reviewed the briefs filed by Pacific Gas and Electric Company ("PGandE") and the NRC Staff, Joint Intervenors continue to believe that their appeal is not moot and hence that a decision on the merits by this Appeal Board is necessary. The purpose of this brief reply is to respond to several points raised by the Staff and PGandE.

A. Emergency Preparedness

1. Both PGandE and the Staff cite a revision of the Commission's regulations regarding emergency planning as

their primary ground for contending that Joint Intervenors' appeal of the Licensing Board's emergency preparedness findings is moot. As the Staff notes in footnote 6 of its brief, however, the Commission itself acknowledged in the Statement of considerations underlying the regulatory change that at least seven of the 10 C.F.R. § 50.47(b) standards regarding offsite planning must be considered prior to low power operation. Joint Intervenors' contention on appeal is that the Licensing Board failed to consider and address explicitly the conceded noncompliance of the combined applicant, state, and local emergency plans to comply with even one of the § 50.47(b) standards. Under either the regulations in effect at the time the Licensing Board's decision was issued or the regulations as described by PGandE and the Staff, that contention is viable and cannot be dismissed as moot.

2. PGandE and the Staff cite the San Onofre decision as the basis for their claim that Joint Intervenors' contention regarding earthquakes and emergency planning is moot. Both parties have mischaracterized that decision's effect. It was issued and is binding only in the San Onofre proceeding and under the facts specific to that particular case. Its relevance to the Diablo Canyon proceeding is simply as precedent which this Board may consider if applicable in its review of Joint Intervenors' appeal. Whether or not this Board determines that the Licensing Board erred in refusing to require planning for the complication of earthquakes on

emergency planning, the issue has clearly not been mooted by the decision. Indeed, Joint Intervenors continue to believe that the failure of the relevant plans to address earthquake emergency preparedness is a uniquely significant deficiency in planning at Diablo Canyon in light of the recognized seismic risk associated with the siting of the facility less than three miles from a major active earthquake fault.

B. Relief and Safety Valve Testing

1. Although the EPRI valve testing program has progressed since the Licensing Board's decision was issued in July 1982, even the Staff concedes that the documentation which constitutes the critical link between EPRI's program and Diablo Canyon -- reports showing the applicability of the EPRI test results to the Diablo Canyon valves -- is not expected to be submitted until late November 1982 at the earliest. Until that time, the requirements of NUREG-0737, Item II.D.1, will not have been satisfied. Throughout the low power proceeding, Joint Intervenors urged the Licensing Board to require the submittal of all test results and documentation prior to licensing. Particularly in light of the delays in completion of the tests, the mere expectation of timely compliance with the documentation requirements is an insufficient basis for licensing.

2. The importance of the plant-specific documentation is heightened also by the uncertainties

regarding valve design and qualification arising out of the ongoing design verification program at Diablo Canyon. PGandE has conceded that errors in seismic design and qualification of the relief valves were made, and the significance of those errors has not yet been determined. Until the audit has progressed sufficiently to resolve these questions of valve design, a ruling that Joint Intervenors' appeal of the Licensing Board's valve findings has been mooted would be plainly inappropriate.

C. Denial of Contentions

As noted in Joint Intervenors' initial brief regarding mootness, the Appeal Board explicitly excluded the Licensing Board's denial of contentions from the instant question of mootness. September 2 Order, at 2 n.2. In addition, however, the Staff has conceded in its brief that at least eight of Joint Intervenors' contentions denied in the low power proceeding have not been mooted by the August 31 Initial Decision. The factual basis for one of those, regarding quality assurance, has subsequently been established by the continuing, still accumulating evidence of significant and widespread breakdowns in the Diablo Canyon quality assurance/quality control programs. Now the subject of a motion to reopen the record filed with the Appeal Board, these errors demonstrate the absence of an adequate factual basis for the Licensing Board's rejection of Joint Intervenors' proposed contention on quality assurance. Thus, the appeal of the Licensing Board's denial of contentions is not moot.

D. National Environmental Policy Act

The Staff acknowledges that Joint Intervenors' pending appeal of the Licensing Board's failure to require compliance with NEPA remains a live controversy. However, it has mischaracterized the scope of that appeal by limiting it to the need for a separate environmental impact statement (EIS) for low power licensing. Although that is one aspect of the contention on appeal, Joint Intervenors also challenged the failure of the Licensing Board to require the preparation of a supplemental EIS to consider the environmental effects of a Class 9 accident at Diablo Canyon. Neither element of Joint Intervenors' NEPA claim has been mooted by the August 31 Initial Decision. Thus, those issues must be determined on the merits by this Board.

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CONCLUSION

For the reasons stated herein and in Joint Intervenors' September 24 Brief in Response to September 2 Order, Joint Intervenors submit that their pending appeal of the Commission's authorization of licensing for low power operation is not moot.

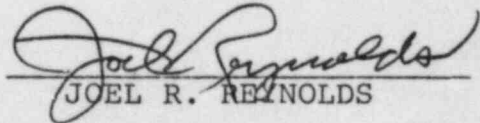
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Respectfully submitted,

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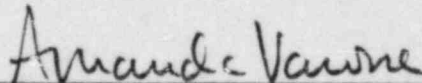
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