

DOCKETED
USNRC

'82 OCT -5 110:33

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD
4

OFFICE OF SECRETARY
DOCKETING & SERVICE

5 In the Matter of Pacific Gas)
6 and Electric Company) Docket Nos. 50-275
7 (Diablo Canyon Nuclear) 50-323
8 Power Plant, Units 1 and 2)
9 _____)

9 Reply Brief of Pacific Gas and Electric Company
10 Re Mootness of Low Power Contentions

11
12 In response to the Appeal Board Order of
13 September 2, 1982 as amended by its Order of September 14,
14 1982, Pacific Gas and Electric Company ("PGandE") on
15 September 24, 1982 filed a brief directed to the issue
16 whether the ASLB's Initial Decision on full power may have
17 mooted some or all of the issues on appeal from the July 17,
18 1981 Initial Decision authorizing issuance of a low-power
19 license for Diablo Canyon. This Reply Brief will respond to
20 various arguments of the other parties regarding the
21 mootness issue.

22 Emergency Planning Issue

23 Both Joint Intervenors and Governor Brown fail to
24 address either the recent rule change regarding the
25 applicable requirements for low power emergency response
26 preparedness or the Commission's policy decision regarding

1 the impact of earthquakes on emergency response planning. 1/
2 These actions provide the "law of the case" insofar as this
3 Board must determine the contemporary applicability of these
4 regulatory changes on the pending appeal as far as the
5 emergency preparedness issue is concerned. The legal and
6 practical effect is to moot this issue on appeal. 2/ Simply
7 ignoring these events will not breathe life into this
8 contention on appeal.

9 Relief, Block and Safety Valve Issue

10 The sole issue admitted as a contention in the
11 proceedings below was whether the tests on block valves
12 should be completed prior to fuel loading. Joint
13 Intervenors and Governor Brown essentially ignore this fact.
14 Instead they argue about new questions raised in the
15 Commission ordered Design Verification Program concerning
16 the seismic design and qualification of these valves -- a
17 matter not at issue in the low power proceeding. 3/ They

18
19 1/ See 47 Fed.Reg. 30232, (July 13, 1982) and Southern
20 California Edison Company (San Onofre Nuclear Gener-
ating Station, Units 2 and 3), CLI-81-33, 14 NRC 1091
(1982).

21 2/ PGandE has been notified that on September 27, 1982 the
22 San Luis Obispo County Board of Supervisors formally
adopted the County Emergency Response Plan.

23 3/ Significantly, the ASLB in its August 31, 1982 Initial
24 Decision (at 219) acknowledged that its Decision was
25 not intended to ". . . impinge in any way on the status
of the Commission's suspension of the Diablo Canyon
26 low-power license . . . or on the independent design
verification program."

1 have simply failed to discuss the mootness question in the
2 context of the specific low power contention at issue.

3 Proposed Contentions Denied by the ASLB

4 Both Governor Brown and Joint Intervenors make
5 only generalized arguments regarding the continued viability
6 of the proposed low-power contentions denied by the ASLB.
7 Nowhere do they analyze or compare contentions in the low
8 power proceeding against those advanced in the full power
9 proceeding which were, in turn, the subject of this Board's
10 December 11, 1981 Order. Clearly low power contentions 10
11 (classification of pressurizer heaters) and 12
12 (classification of relief and block valves as safety or
13 non-safety grade) were heard and decided in the full power
14 proceeding. As noted by both PGandE (Brief p. 6) and the
15 NRC Staff (Brief pp. 7 and 8) certain other low power
16 contentions were ruled on by this Board in its disposition
17 of proposed full-power contentions. This action in effect
18 mooted the low power appeal on the same contentions.

19 Conclusion

20 For these reasons, PGandE believes that the
21 August 31, 1982 Initial Decision on full power operation of
22 Diablo Canyon when considered in conjunction with applicable
23 amendments to the Commission's regulations and its decision
24 on the effects of earthquakes on emergency planning have
25 effectively mooted the emergency planning issues raised by
26 Joint Intervenors and Governor Brown. Furthermore certain

1 other admitted and proposed contentions have been mooted by
2 recent developments as well as by subsequent rulings of this
3 Board.

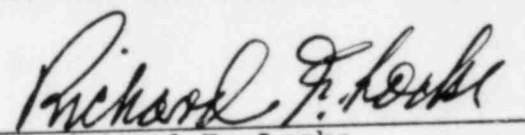
4
5 Respectfully submitted,

6 MALCOLM H. FURBUSH
7 PHILIP A. CRANE, JR.
8 RICHARD F. LOCKE
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, California 94120
9 (415) 781-4211

10 ARTHUR C. GEHR
11 Snell & Wilmer
12 3100 Valley Center
Phoenix, Arizona 85073
(602) 257-7288

13 BRUCE NORTON
14 Norton, Burke, Berry & French, P.C.
15 3216 N. Third Street
Suite 300
Phoenix, Arizona 85012
(602) 264-0033

16 Attorneys for
17 Pacific Gas and Electric Company

18 By 
19 Richard F. Locke

20
21 DATED: September 30, 1982.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

Docket No. 50-275
Docket No. 50-323

CERTIFICATE OF SERVICE

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

Judge John F. Wolf
Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Judge Glenn O. Bright
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Judge Jerry R. Kline
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mrs. Elizabeth Apfelberg
C/o Nancy Culver
192 Luneta Drive
San Luis Obispo, California 93401

Janice E. Kerr, Esq.
Public Utilities Commission
of the State of California
5246 State Building
350 McAllister Street
San Francisco, California 94102

Mrs. Raye Fleming
1920 Mattie Road
Shell Beach, California 93449

Mr. Frederick Eissler
Scenic Shoreline Preservation
Conference, Inc.
4623 More Mesa Drive
Santa Barbara, California 93105

Mrs. Sandra A. Silver
1760 Alisal Street
San Luis Obispo, California 93401

Mr. Gordon Silver
1760 Alisal Street
San Luis Obispo, California 93401

John Phillips, Esq.
Joel Reynolds, Esq.
Center for Law in the Public Interest
10951 W. Pico Boulevard - Suite 300
Los Angeles, California 90064

David F. Fleischaker, Esq.
P. O. Box 1178
Oklahoma City
Oklahoma 73101

Arthur C. Gehr, Esq.
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

Bruce Norton, Esq.
Norton, Burke, Berry & French, P.C.
3216 N. Third Street
Suite 300
Phoenix, Arizona 85012-2699

Chairman
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Chairman
Atomic Safety and Licensing
Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Section

Bradley W. Jones, Esq.
Office of Executive Legal Director
BETH 042
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Richard B. Hubbard
MHB Technical Associates
1723 Hamilton Avenue, Suite K
San Jose, CA 95125

Mr. Carl Neiberger
Telegram Tribune
P. O. Box 112
San Luis Obispo, CA 93402

Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Christopher B. Hanback, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street N.W.
Washington, DC 20036

Byron S. Georgiou, Esq.
Legal Affairs Secretary
Governor's Office
State Capitol
Sacramento, CA 95814

*Judge Thomas S. Moore
Chairman
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555

*Judge W. Reed Johnson
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555

*Judge John H. Buck
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555

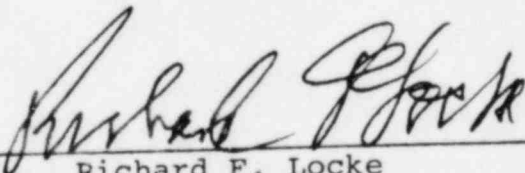
Commissioner Nunzio J. Palladino
Chairman
U. S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, DC 20555.

Commissioner John F. Ahearne
U. S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, DC 20555

Commissioner Victor Gilinsky
U. S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, DC 20555

Commissioner James K. Asselstine
U. S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, DC 20555

Commissioner Thomas M. Roberts
U. S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, DC 20555


Richard F. Locke
Pacific Gas and Electric Company

Date: September 30, 1982

*By Courier