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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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| In the Matter of | ) | |
| PACIFIC GAS AND ELECTRIC COMPANY | ) | Docket Nos. 50-275 O.L.<br>50-323 O.L. |
| (Diablo Canyon Nuclear Power Plant, Units 1 and 2) | ) | (Full Power Licensing Proceeding) |

# JOINT INTERVENORS' BRIEF IN SUPPORT OF EXCEPTIONS


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## I. INTRODUCTION

Pacific Gas and Electric Company ("PGandE") is seeking a full power license to operate the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") located near San Luis Obispo on the coast of California.[1/] Although a Partial Initial Decision was issued by the Atomic Safety and Licensing Board ("Licensing Board") in September 1979, this proceeding was reopened in August 1981 to hear evidence with respect to significant safety

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1/ Diablo Canyon consists of two Westinghouse pressurized water reactors located on a 750-acre site in San Luis Obispo County, California. The units are designed to generate at steady state power levels of 3338 and 3411 megawatts (MWe) thermal with a net total electrical output of approximately 2120 MWe. PGandE is seeking authorization to operate both units.

issues arising out of the March 1979 accident at Three Mile Island Nuclear Power Plant near Harrisburg, Pennsylvania. Joint Intervenors now seek reversal of the August 31, 1982 Initial Decision issued by the Licensing Board in the reopened Diablo Canyon full power licensing proceeding.

This appeal presents the classic example of a licensing application rushed prematurely to hearing and judgment before the factual basis essential to licensing has been developed. Critical emergency plans have not been completed, federal agency reports required by law have not been prepared, environmental studies have not been initiated, and post-TMI testing has fallen behind schedule. Since September 1981, fundamental questions regarding the design and construction of the very facility sought to be licensed have been raised and remain unanswered, questions so significant and inescapable as to require the unprecedented suspension of the low power license previously authorized by the Licensing Board for the facility.

And yet, in disregard of applicable law and the Commission's own regulations, the Board has determined that licensing for full power operation should proceed virtually without pause. Compelled by some unspecified urgency, the Licensing Board has granted conditional approval of PGandE's full power application seemingly oblivious to the fact that the low power operating license which it authorized just over one year ago for the same facility has been suspended by order of the Commission for virtually its full term. The license suspension remains in effect today as an increasing number of significant design and

construction errors continue to be discovered at the facility previously found by the Board to comply with all applicable laws and regulations.

Given this background to the proceeding, the Licensing Board's cavalier disregard of the procedural and substantive requirements of the Commission's own emergency preparedness and environmental regulations defies simple logic and must be reversed. Specifically, the issues raised by this appeal include:

(1) whether Diablo Canyon will be licensed without allowing the parties an opportunity to rebut the still nonexistent FEMA "finding" regarding the adequacy of the State of California emergency response plan;

(2) whether Diablo Canyon, located within three miles of a major active earthquake fault, will be licensed despite the conceded failure of any of the relevant emergency plans to consider or allow for the complicating effects of a major earthquake on emergency response capability;

(3) whether Diablo Canyon will be licensed despite the conceded absence of emergency preparedness in substantial portions of the State of California emergency planning zones;

(4) whether Diablo Canyon will be licensed despite the uncontradicted evidence below of serious deficiencies in local emergency preparedness, including state preparedness, public education, standard operating procedures, public response, and emergency communications;

(5) whether, in the aftermath of the Class Nine accident at TMI and in disregard of the increased likelihood of such an accident in an area of high seismic risk, Diablo Canyon will be licensed without first requiring an analysis of the environmental effects of a Class Nine accident at the facility; and

(6) whether Diablo Canyon will be licensed despite the conceded fact that the design and qualification of critical reactor coolant system valves were erroneous.[2/]

The Licensing Board answered each of these questions in the affirmative. In its August 31, 1982 Initial Decision, the Board approved PGandE's full power licensing application and, subject to certain narrow conditions, authorized issuance of the requested license by the Director of Nuclear Reactor Regulation.

On September 16, 1982, Joint Intervenors filed 198 exceptions to the Initial Decision and other orders issued during the course of the reopened full power proceeding. This brief is filed in support of those exceptions.

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2/ Joint Intervenors challenge also the Licensing Board's denial of TMI-related contentions in its August 4, 1981 Prehearing Conference Order. Such denial has previously been briefed in Joint Intervenors' October 8, 1981 Request for Directed Certification and considered by this Appeal Board. Oral argument was heard on November 20, 1981, and, by order dated December 11, Joint Intervenors' application was rejected. Although for the record Joint Intervenors are appealing the denial of contentions, the merits of their claims are not reargued in detail here in light of this Board's prior decision. See Part III.D. infra.

## II. GENERAL HISTORY OF THE REOPENED FULL POWER PROCEEDING

PGandE applied in 1973 for licenses to operate Diablo Canyon at full power levels. Since that time, administrative hearings before the Licensing Board and the Atomic Safety and Licensing Appeal Board ("Appeal Board") have been held on a number of issues relevant to PGandE's applications, including, to a limited extent, the issues which are the subject of this appeal.

Before an Initial Decision had been issued, however, the most serious accident in the history of the United States commercial nuclear reactor program occurred at the Three Mile Island Nuclear Power Plant, Unit 2, ("TMI-2") in Pennsylvania on March 28, 1979.[3/] Recognizing the possible implications of that event for several of the issues under litigation in this proceeding, the Licensing Board deferred any decision on those issues and, in its September 27, 1979 Partial Initial Decision, stated that

> [i]t is not now known how the lessons learned from Three Mile Island-2 will impact on the Emergency Plan or Quality Assurance so these matters will be deferred and are not a part of this Partial Initial Decision.[4/]

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3/ Report of the President's Commission on the Accident at Three Mile Island, "The Need for Change: The Legacy of TMI" ("Kemeny Commission Report"), at 1 (October 30, 1979).

4/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Nos. 50-275, 323, Partial Initial Decision, at 9 (September 27, 1979).

In the aftermath of the TMI-2 accident, Joint Intervenors filed two separate motions to reopen the record in this proceeding, the first on May 9, 1979, regarding emergency response planning and Class Nine accident analysis,[5/] and the second on March 24, 1981, regarding seventeen individual contentions focusing on specific components, systems, and operator action and inaction determined upon investigation subsequent to the TMI accident to have caused or contributed to its occurrence and severity.[6/] On June 30, 1981, Joint Intervenors filed a Statement of Clarified Contentions, consolidating, updating, and eliminating certain of the contentions raised in the two motions. Following a prehearing conference on July 1, 1981, the Licensing Board issued its Prehearing Conference Order on August 4, 1981, admitting for hearing only the clarified contention regarding emergency response planning and rejecting the remainder.

On September 21, 1981, the Commission, in an order arising out of the low power test proceeding, directed the Licensing Board to include in the reopened full power hearing two contentions -- contentions 10 and 12, both filed in opposition to PGandE's application for a low power test license -- concerning the classification and testing of pressurizer heaters

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5/ Joint Intervenors' Request to Reopen or, in the Alternative, Request for Directed Certification (May 9, 1979).

6/ Joint Intervenors Motion to Reopen (March 24, 1981).

and reactor coolant system valves.[7] By Memorandum and Order dated September 30, 1981, the Licensing Board accepted the two contentions for hearing in the full power proceeding and established a schedule for discovery.[8] On October 8, 1981, Joint Intervenors filed a Request for Directed Certification seeking immediate review by the Commission of the Licensing Board's denial of contentions in the August 4, 1981 Prehearing Conference Order. That application was referred to the Appeal Board on October 29, 1981, and, after hearing oral argument on November 20, 1981, this Board issued a brief order on December 11, 1981 affirming the denial of contentions and clarifying the scope of the admitted low power contention 12.[9]

Following a second prehearing conference on December 16, 1981 to consider various preliminary legal matters, the Licensing Board issued a second prehearing conference order on December 23, 1981, holding, inter alia, (1) that in light of the Commission's December 8, 1981 decision in the San Onofre proceeding, "no licensing board, including this one, has jurisdiction to consider impacts on emergency planning of earthquakes which cause or occur during an accidental

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[7] In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-22, Memorandum and Order (September 21, 1981).

[8] Id., In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Nos. 50-275, 323, Memorandum and Order (September 30, 1981).

[9] See note 11 infra.

radiological release," and (2) that an interim memorandum by the Federal Emergency Management Agency ("FEMA") satisfied the regulatory requirement for a FEMA "finding" as to adequacy of the offsite emergency plans for the Diablo Canyon facility. 10 C.F.R. § 50.47(a)(1).[10/]

On December 21, 1981, PGandE and the NRC Staff ("Staff") filed motions seeking summary disposition of Joint Intervenors' contentions 10 and 12, regarding pressurizer heaters and valves. On January 7, 1982, Joint Intervenors filed a motion for summary disposition of contention 1, regarding emergency response planning. By orders dated January 18, 1982, the Licensing Board denied all motions and set the admitted contentions for hearing.[11/]

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10/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant), Nos. 50-275, 323, Memorandum and Order, at 1-3 (December 23, 1981).

11/ Those contentions provide as follows:

Contention 1. PGandE and the combined onsite, state and local emergency response plans and preparedness do not comply with 10 C.F.R. 50.33(g); 50.47 and revised Appendix E to Part 50.

Contention 10. The Staff recognizes that pressurizer heaters and associated controls are necessary to maintain natural circulation at hot stand-by conditions. Therefore, this equipment should be classified as "components important to safety" and required to meet all applicable safety-grade design criteria, including but not limited to diversity (GDC 22), seismic and environmental qualification (GDC 2 and 4), automatic initiation (GDC 20), separation and independence (GDC 3 and 22), quality assurance (GDC 1), adequate, reliable on-site power supplies (GDC 17) and the single failure criterion. The Applicant's proposal to connect two out of four of the heater groups to the present on-site emergency power supplies does not provide an equivalent or acceptable level of protection.

[Footnote continued]

Evidentiary hearings were held in San Luis Obispo, California on January 19 through 26, 1982. Proposed findings of fact and conclusions of law were submitted by all parties in March, and on August 31, the Licensing Board issued its Initial Decision. In essence, the Board concluded that the state of emergency preparedness for Diablo Canyon is adequate. In so doing, it ignored numerous deficiencies in the onsite and offsite emergency plans, including their failure to address the complications of earthquakes on emergency response, their failure to consider realistically the public response to a radiological emergency, the inadequacy of public education programs and emergency communications facilities, and the generally preliminary nature of the planning by state and local officials. The Board further concluded that the design and classification of relief and safety valves and pressurizer heaters are adequate to ensure safe operation of the facility. Finally, the Board found that, although the EPRI valve testing program scheduled for completion in 1981 has still not been completed, there is adequate assurance that such testing of Diablo Canyon

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[Footnote continued]

> Contention 12. Proper operation of power operated relief valves, associated block valves and the instruments and controls for these valves is essential to mitigate the consequences of accidents. In addition, their failure can cause or aggravate a LOCA. Therefore, these valves must be classified as components important to safety and required to meet all safety-grade design criteria.

In its December 11, 1981 Order, the Appeal Board ruled that this contention necessarily encompasses the issue of valve testing and verification. In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-____, Order, at 2-3 (December 11, 1981).

valves will be successfully completed and documented by July 1982. Accordingly, the Board authorized licensing subject only to the following conditions:

(a) the Director of Nuclear Reactor Regulation shall verify that the 12 deficiencies in the San Luis Obispo County emergency plan which have been noted by FEMA have been corrected;

(b) the Director of Nuclear Reactor Regulation shall obtain a written acquiescence by the appropriate state jurisdiction binding them to participate in those Standard Operating Procedures required to be followed by federal regulations;

(c) the Director of Nuclear Reactor Regulation must secure FEMA findings on the adequacy of the State of California Emergency Response Plan; and

(d) the Director of Nuclear Reactor Regulation must verify that tone alerts or equivalent warning devices are operational in schools, hospitals and other institutions.[12/]

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12/ Initial Decision, at 217-18. In response to a September 17, 1982 Motion for Clarification of Initial Decision filed by the Staff, the Licensing Board, by order served September 28, 1982, clarified its intention with respect to the four conditions and particularly with respect to condition (b). In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Memorandum in Response to NRC Staff's Motion for Clarification of the Licensing Board's Initial Decision Dated August 31, 1982, Nos. 50-275, 323 (September 28, 1982).

On September 16, 1982, Joint Intervenors initiated this appeal by timely filing exceptions to the Licensing Board's decision as well as to other orders issued during the course of the reopened full power proceeding.

## III. ARGUMENT

### A. The Licensing Board Erred in Concluding that the State of Emergency Preparedness at Diablo Canyon Complies with the Commission's Regulations

In its August 31, 1982 Initial Decision, the Licensing Board gave a premature and anticipatory approval to a radiological emergency planning process for Diablo Canyon which is far from complete. Indeed, at the time record was closed, none of the relevant plans had been completed, and essential local, state, and federal reviews and approvals remained no more than an expectation on the part of PGandE and the Staff. As a consequence, numerous deficiencies in each of the Commission's sixteen essential planning standards were established at the hearing below, including deficiencies in manpower, equipment, facilities, emergency communications, training, coordination, plan development, organization, and basic policy (e.g., the failure of any of the relevant plans to address the complications of a major earthquake on response to a radiological emergency). Moreover, because none of the responsible planning authorities has attempted to determine or allow for the probable public response to an emergency, there is insufficient basis upon which to find, as the regulations

require, that "adequate protective measures can and will be taken in the event of a radiological emergency."[13/]

For these and other reasons, discussed in detail below, the Licensing Board's decision regarding emergency preparedness at Diablo Canyon is erroneous as a matter of fact and law and must be reversed.

1. The Licensing Board's Approval of Emergency Preparedness at Diablo Canyon Absent FEMA Findings and Completed Offsite Plans Violates the Commission's Regulations

The Licensing Board's consideration and approval of the status of emergency preparedness at Diablo Canyon is at best premature because the existing emergency plans are incomplete in a number of critical respects. Seemingly in an effort to "clear the decks" for licensing of the facility, the Board has charged ahead to hearing and decision regarding still-uncompleted emergency plans, in the absence even of the required reviews and approvals by the Federal Emergency Management Agency ("FEMA"), the State of California, and the County of San Luis Obispo. Repeatedly, the Board has relied upon its expectation of adequate preparedness, to be achieved at some future date. In so doing, it has ignored both the spirit and letter of the Commission's emergency planning regulations promulgated in the aftermath of the TMI accident and has displayed a fundamental misunderstanding of both

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13/ 10 C.F.R. § 50.47(a)(1).

the reasons for and benefits of adequate emergency preparedness.

The recent history of the Commission's regulations illustrates the importance of requiring full development and review of workable emergency plans before a nuclear facility is permitted to operate. As one of its primary responses to the TMI accident, the NRC began, in June 1979, a formal reconsideration of the role of emergency planning in ensuring the protection of the public health and safety in areas around nuclear power facilities. The Commission began this reconsideration in recognition of the need for more effective emergency planning and in response to the TMI accident and numerous TMI-related reports issued by responsible offices of government, including the NRC's congressional oversight committees.[14/]

On December 19, 1979, the Commission published proposed amendments to its existing emergency planning regulations. In explanation of the rationale for the revision, the Commission stated:

> The proposed rule is predicated on the Commission's considered judgment in the aftermath of the accident at Three Mile Island that safe siting and design-engineered features alone do not optimize protection of the public health and safety.
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> * * *
>
> Emergency planning was conceived as a secondary but additional measure to be exercised in the unlikely event that an accident would

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14/ "Emergency Planning: Final Regulations," Preamble, 45 Fed. Reg. 55,402 (August 19, 1980).

> happen. The Commission's perspective was severely altered by the unexpected sequences of events that occurred at Three Mile Island. The accident showed clearly that the protection provided by siting and engineered safety features must be bolstered by the ability to take protective measures during the course of an accident.
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> * * *
>
> A conclusion the Commission draws from this is that in carrying out its statutory mandate to protect the public health and safety, the Commission must be in a position to know that off-site government plans have been reviewed and found adequate.15/

Thus, as a direct consequence of the TMI-2 accident, the Commission promulgated revised emergency planning regulations, effective November 3, 1980. These revised regulations reflect the Commission's conclusion that "adequate emergency preparedness is an essential aspect in the protection of the public health and safety," 45 Fed. Reg. at 55,404, and, as is explained in the introduction to the revised Appendix E to 10 C.F.R. Part 50, they establish "minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness." Id. at 55,411 (emphasis added).

As finalized, the upgraded regulations provide, inter alia, that

> [n]o operating license for a nuclear power reactor will be issued unless a finding is made by NRC that the state of onsite and offsite emergency preparedness provides reasonable

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15/ Notice of Proposed Rulemaking, "Emergency Planning," Preamble, 44 Fed. Reg. 75,167, 75,169 (December 19, 1979) (emphasis added).

> assurance that adequate protective measures can and will be taken in the event of a radiological emergency.16/

Such a finding by the NRC must be based (1) regarding offsite plans, on a review of findings and determinations by FEMA "as to whether State and local emergency plans are adequate and capable of being implemented," and (2) regarding onsite plans, on an assessment by the NRC "as to whether the applicant's onsite emergency plans are adequate and capable of being implemented."17/

The Commission's regulations further require that the onsite and offsite plans "must meet" the sixteen planning standards set forth at 10 C.F.R. § 50.47(b). Each standard is addressed by specific criteria in NUREG-0654, FEMA-REP-1, entitled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," which is referenced in the regulations themselves.18/ NUREG-0654 was prepared by the Joint NRC/FEMA Steering Committee as guidance for applicant, state, and local officials in developing radiological emergency plans and "will be used by reviewers in determining the adequacy of state, local, and nuclear power plant licensee emergency plans

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16/ 10 C.F.R. § 50.47(a)(1).

17/ 10 C.F.R. § 50.47(a)(2).

18/ NUREG-0654, as cited in the regulations, has been revised and superseded by NUREG-0654, FEMA-REP-1. Rev. 1 (November 1980).

and preparedness."[19/]

The role of FEMA in this regulatory scheme is critical because FEMA, not the NRC, is responsible for reviewing the offsite emergency response plans for compliance with the Commission's regulations and NUREG-0654. Based on that review, FEMA is required to issue a "finding" as to the adequacy of the state and local plans for the jurisdictions surrounding the nuclear facility. Once that finding has been issued, it forms the sole basis for the NRC's position that the offsite plans in question are or are not adequate and capable of being implemented.[20/] Thus, until (1) state and local governments have completed and submitted their plans, (2) FEMA has conducted its review, and (3) its "finding" has been issued, the NRC has no basis to conclude that the state of offsite emergency preparedness, as embodied in the relevant offsite emergency plans, is adequate.

Nor is it sufficient for licensing that a FEMA finding merely have been issued. The regulations state explicitly that "in any licensing proceeding, a FEMA finding will constitute a rebuttable presumption on a question of adequacy."[21/] Thus, once issued, the finding is not conclusive as to adequacy and hence must be subject to rebuttal by parties to the proceeding.

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19/ Id. at i.

20/ 10 C.F.R. § 50.47(a)(2).

21/ 10 C.F.R. § 50.47(a)(2) (emphasis added).

In order to be meaningful, that opportunity for rebuttal must be provided at a time when the decision regarding adequacy of the offsite plans can still be affected -- namely, at public hearings prior to a licensing decision.

In this proceeding, the Board disregarded this requirement in total and, in effect, nullified the role of FEMA by issuing its decision prior to FEMA's review of the State of California plan and prior to FEMA's review of the most recent version of the San Luis Obispo County plan. No finding had been issued regarding the state plan;[22/] only an interim memorandum from FEMA had been issued regarding an outdated version of the County plan.[23/] Thus, although the Board conditioned its decision on issuance by FEMA of a finding on the state plan, Joint

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22/ FEMA emergency management specialist and Region IX representative John W. Eldridge, Jr., the only FEMA representative present at the hearings below, testified as follows:

> MR. REYNOLDS: Has FEMA conducted any detailed review of the California State plan, since March of 1981?
>
> MR. ELDRIDGE: No. * * *
>
> MR. REYNOLDS: Is there a comparable finding for the state plan?
>
> MR. ELDRIDGE: No. There would not be. Our finding was directed toward Diablo Canyon, and thus our finding was made on the county plan as the appropriate one for that.

Tr. 12,708-10.

23/ FEMA Region IX Evaluation and Status Report on State and Local Emergency Preparedness Around the Diablo Canyon Nuclear Power Plant, at 3 (November 2, 1981). FEMA representative Eldridge testified that FEMA "did not feel it was fruitful to perform a detailed review of the [County plan] until the current revisions which are under way . . . are completed." Tr. 12,706.

Intervenors' right to rebut either FEMA finding was rendered meaningless by the fact that at the time of the hearing FEMA had not issued -- and, indeed, to this day still has not issued -- its formal finding as to the adequacy of the various offsite plans.

Absent the requisite FEMA findings, the NRC is without legal authority to approve offsite plans. 10 C.F.R. § 50.47(a)(1) requires that "[t]he NRC will base its finding on a review of the Federal Emergency Management Agency findings as to whether state and local plans are adequate and capable of being implemented" (emphasis added). Because NRC approval of the offsite plans and preparedness is a mandatory prerequisite to issuance of an operating license, the absence of FEMA findings precludes as a matter of law both (1) the requisite 50.47(a)(1) finding by the NRC of reasonable assurance that adequate protective measures can and will be taken in the event of an emergency and (2) the issuance of operating licenses for Diablo Canyon.

In other respects as well the still evolving nature of emergency planning for Diablo Canyon precludes the prescribed licensing findings. It is indisputable that virtually all of the affected jurisdictions are only beginning or are in the midst of the planning process and have not yet completed and adopted their emergency response plans. The existing State of California plan was prepared in March 1981, but the critical Standard Operating Procedures are only now being prepared, and, according to FEMA representative Eldridge, the full plan is not

expected to be completed and submitted for FEMA review until July 1982.[24/] Similarly, as of the date the record was closed, the San Luis Obispo County Plan was only in draft form, was undergoing continuing necessary revision and review, and had not been given final approval by local, state, or federal officials, including FEMA.[25/] Santa Barbara County did not begin its planning process until November 1981, and an emergency plan is not expected until July 1982 at the earliest.[26/] No further testimony was offered regarding the status or adequacy of emergency preparedness in Santa Barbara County, and no testimony whatsoever was offered regarding local preparedness, if any, in Monterey and Ventura Counties in the event protective actions are required in the ingestion pathway zones. Little testimony was presented regarding plans for such special state jurisdictions as California Polytechnic University at San Luis Obispo ("Cal Poly") and California Men's Colony ("CMC"), except to the effect that plans for emergency response at those institutions have not been completed.[27/]

At the county level in particular, a number of critical

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24/ Tr. 12,708. The record in this proceeding does not reflect whether the schedule suggested by Mr. Eldridge has actually been met.

25/ Tr. 12,242-43, 12,249, 12,250, 12,256 (McElvaine); Tr. 12,449-50, 12,454-57, 12,463-64, 12,565-66 (Ness); Tr. 12,711 (Eldridge).

26/ Tr. 11,818-20 (Skidmore); Tr. 11,940-42 (Santa Barbara County Board of Supervisors resolution).

27/ Tr. 12,242-43 (McElvaine); Tr. 12,392 (Urbanik).

elements of a workable emergency response organization are currently missing. For example, numerous Standard Operating Procedures ("SOP") have not been prepared, letters of agreement to assure the availability of necessary resources and offsite support do not exist, essential equipment has not been acquired or installed, and the public has little, if any, understanding of what to do in event of an emergency because the County has failed to implement a public education program.[28/]

The Licensing Board's approval of emergency preparedness at Diablo Canyon cannot logically be reconciled with the preliminary and developing character of the state and local planning to date. The Commission's regulations prescribe an orderly plan development process requiring methodical review and approval by responsible jurisdictions and government agencies. The premature and anticipatory approval given by the Licensing Board violates that process and the regulations by which it was established. Accordingly, the decision below must be reversed.

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28/ Tr. 11,802-04 (Potter); 12,240-56 (McElvaine); 12,445, 12,457, 12,566 (Ness); 12,719-20 (Eldridge); Gov. Brown Ex. 10. For a more detailed discussion of the deficiencies in County planning, see the discussion infra at Part III.A.4 and Joint Intervenors' Proposed Findings of Fact and Conclusions of Law, at 32-61 (attached hereto as Ex. A).

2. The Licensing Board's Refusal to Consider Evidence Regarding the Effects of a Major Earthquake on Emergency Response Violates the Due Process Clause of the United States Constitution, the Atomic Energy Act, and the Commission's Regulations

In its December 23, 1982 Prehearing Conference Order, the Licensing Board ruled that the impacts on emergency planning of earthquakes which cause or occur during an accidental radiological release were beyond its authority to consider.[29/] Based on that ruling, the Board refused to allow any evidence regarding the failure of the Diablo Canyon emergency plans to address earthquake effects on emergency response. In so doing, the Board deprived Joint Intervenors of their right to a hearing on an issue of safety significance unique to Diablo Canyon. Its decision must, therefore, be reversed.

The right to a hearing at a meaningful time and in a meaningful manner is guaranteed both by the Due Process Clause of the United States Constitution, Armstrong v. Manzo, 390 U.S. 548, 85 S.Ct. 1187 (1965); Goldberg v. Kelly, 397 U.S. 266, 90 S.Ct. 1011 (1970), and by 189(a) of the Atomic Energy Act, Brooks v. Atomic Energy Commission, 476 F.2d 924, 926 (D.C.Cir. 1973) (per curiam); Westinghouse Electric Corporation v. U.S. Nuclear Regulatory Commission, 598 F.2d 759, 772-73 (3d Cir.

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29/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Nos. 50-275, 323, Memorandum and Order, at 1-2 (December 23, 1981).

1979).[30] Moreover, the Commission's emergency planning regulations explicitly require a factual demonstration by the applicant prior to licensing that the level of preparedness is adequate to ensure that the various emergency plans can be implemented:

> No operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that adequate protective measures can and will be taken in the event of a radiological emergency.

10 C.F.R. § 50.47(a)(1). NUREG-0654, which is referenced in the Commission's regulations as official guidance in developing emergency plans, makes clear that this regulatory requirement applies even in the event of adverse environmental conditions, and hence it mandates that state and local plans include "[i]dentification of and means for dealing with potential impediments. . . to use of evacuation routes, and contingency measures."[31]

Given the recognized risk of significant seismic activity at and around the Diablo Canyon site, these provisions bear obvious relevance in this proceeding to the issue of whether the

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[30] 42 U.S.C. § 2239(a) provides, in pertinent part, as follows:

> In any proceeding under this chapter, for the granting . . . of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. * * *

[31] "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG-0654, Protective Response, II.J.10.k, at 63 (November 1980).

various emergency plans can be implemented in the event of a radiological emergency occurring proximate in time to a major earthquake. Indeed, in a December 1980 memorandum, the NRC itself requested that PGandE evaluate "the potential complicating factors which might be caused by earthquakes which either initiate or follow the initiation of accidents," and it specifically noted the possibility of "disruption of communications networks and transportation routes."[32/] In addition, the NRC requested FEMA to review the adequacy of state and local capabilities with respect to emergency response to a radiological accident during earthquakes.[33/] No such review has been accomplished for Diablo Canyon.

The Licensing Board did not even acknowledge these legal requirements or the Staff's concerns. Instead, relying upon the Commission's December 8, 1981 decision in the San Onofre proceeding,[34/] the Board summarily concluded that "under the Commission's ruling no licensing board, including this one, has jurisdiction to consider impacts on emergency planning of earthquakes which cause or occur during an accidental radiological release."[35/] The Board failed, however, to make any

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32/ Letter, R.L. Tedesco to M. Furbush (December 16, 1980).

33/ Memorandum, Grimes to McConnell, "Request for FEMA Assistance to Review Effects on Earthquake and Volcanic Eruption on State/Local Emergency Plans" (November 3, 1980).

34/ In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-81-33, Memorandum and Order (December 8, 1981).

35/ See note 29 supra.

finding regarding the safety significance of the concerns, the factual basis for its ruling, or the existence or likelihood of generic proceedings to resolve these concerns.

Even assuming that the Licensing Board was correct in considering itself bound by the San Onofre decision, its reliance upon the ruling is erroneous as a matter of law. By a three-to-two vote, the Commission, without providing any factual basis for its decision, reversed the San Onofre licensing board's finding that the complicating effects of earthquakes constituted a significant safety issue in that proceeding and held as follows:

> [T]he Commission has decided that its current regulations do not require consideration of the impacts on emergency planning of earthquakes which cause or occur during an accidental radiological release. Whether or not emergency planning requirements should be amended to include these considerations is a question to be addressed on a generic, as opposed to case-by-case basis. Accordingly, the licensing board is hereby directed not to pursue this issue in this proceeding.

In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-81-33, Memorandum and Order, at 1-2 (December 8, 1981). The Commission concluded further that "the proximate occurrence of an accidental radiological release and an earthquake that could disrupt normal emergency planning appears sufficiently unlikely that consideration in individual licensing proceedings pending generic consideration of the matter is not warranted." Id. at 2-3.

Commissioners Gilinsky and Bradford dissented. In separate views concurred in by Commissioner Bradford, Commissioner Gilinsky stated:

> It appears the Commission will go to any length to avoid having a Licensing Board deal with the question the Board itself had raised.
>
> The San Onofre Board asked, in effect, whether the applicant and NRC staff had considered the possibility that an earthquake which damages the reactor might simultaneously disrupt evacuation routes and sever offsite communication. Such an earthquake need not necessarily exceed the limiting earthquake considered in the safety review process. It seems a reasonable question to ask about a nuclear plant in an earthquake-prone area.
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> * * *
>
> If past practice is a guide: Interagency meetings will be held. Memoranda will be written. The Commission will be briefed. Contracts to study the question will be awarded to national laboratories. Increased budget requests will be received from our staff. The Commission will be drawn into ponderous rulemaking. But the most elementary steps to assure public protection will not be taken. An all too familiar story.

Id., Separate Views of Commissioner Gilinsky Regarding the San Onofre Sua Sponte Issue, at 1 (emphasis added).[36/]

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36/ In his own Separate Views, Commissioner Bradford noted the disturbing tendency of the Commission to curtail investigations of issues perceived as unfavorable to the applicant and to deny requests which would expand safety or environmental reviews:

> [T]he Commission has had a number of opportunities over the last three years to review ongoing proceedings to correct problems arising from Licensing or Appeal Board decisions or from staff 2.206 denials. When it has stepped into proceedings in progress, it has curtailed investigation of issues unfavorable to the applicant; the Commission has stayed its hand

[Footnote continued]

To date, Commissioner Gilinsky's prediction has been proven correct. No rulemaking has been instituted, no notice of proposed rulemaking has been published, and not even "the most elementary steps to assure public protection" have been taken at Diablo Canyon. Consequently, this is not an instance where safety issues have properly been diverted from individual licensing proceedings to ongoing generic rulemaking proceedings. As such, it is substantially similar to the situation held unlawful in Natural Resources Defense Council v. Nuclear Regulatory Commission, 547 F.2d 633 (D.C.Cir. 1976), rev'd on other grounds sub nom., Vermont Yankee Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 98 S.Ct. 1197 (1978),

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[Footnote 36 continued]

> when that action upholds Board or staff conduct favorable to the applicant. It has rarely required a Board or the staff to expand safety or environmental considerations.
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> This case presents an especially unfortunate manifestation of that tendency. Despite a recent demonstration of the value of sua sponte review, the Commission is telling a Board that has had the foresight to uncover "a serious safety matter" within the meaning of 10 CFR 2.760a that it may not inquire into the matter further, even though the Board apparently doubts that it has "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency (10 CFR 50.47)." The result of this action could easily be an inadequacy in San Onofre emergency planning that goes unremedied for a long time.

Separate Views of Commissioner Bradford Regarding the San Onofre Sua Sponte Issue, at 1 (December 8, 1981) (emphasis added) (footnotes omitted).

on remand, 685 F.2d 459, (D.C.Cir. 1982). There, the D.C. Circuit Court of Appeals reversed the exclusion by the Commission of the issue of waste disposal from licensing hearings and its diversion to generic proceedings. In so doing, the court observed that

> [w]hat the agency may not do, consistent with NEPA, is to fail to give these issues adequate consideration in either forum. Thus, until an adequate generic proceeding is held . . . these issues will be ripe in individual licensing proceedings.

547 F.2d at 641 n.17.[37/]

Nor is the Commission's glib, unsupported assertion that the "proximate occurrence of an accidental radiological release and an earthquake" is "unlikely" a valid justification for failing to consider the issue in the context of individual licensing proceedings. On remand in Natural Resources Defense Council v. Nuclear Regulatory Commission, supra, the Court of Appeals for the D.C. Circuit rejected identical reasoning as follows:

> [E]ven if the probability that environmental damage will occur is very low, the risk is nonetheless significant if the potential damage is sufficiently severe. These risks . . . must be considered in the NEPA inquiry. * * *
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> An agency could state in an EIS, as a matter of factual prediction, that a particular environmental effect will not have to be endured as a result of a proposed action. Of course, if

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37/ On appeal to the United States Supreme Court, the decision of the Court of Appeals was reversed on the ground that the generic proceeding there in issue was, contrary to the view of the Court of Appeals, procedurally adequate. On remand, the Circuit Court noted, however, that the "Supreme Court did not disturb this court's ruling that, in the absence of a valid generic rule, the environmental impact of the fuel cycle must be dealt with in individual licensing proceedings." Natural Resources Defense Council v. Nuclear Regulatory Commission, 685, F.2d 459, 470 n.38 (1982).

> it believes that to be the case, it can omit entirely any discussion of the would-be effect . . . [T]he agency may treat an environmental effect in this manner only if it finds that there is no significant risk that the environmental effect will occur. It may not do so if it finds only that the effect is unlikely to occur.

Id., 685 F.2d 478-79 (emphasis added).[38/]

Equally meritless is the Commission's finding in this proceeding that the occurrence of disruption of emergency response due to an earthquake is "unlikely." No factual basis for this conclusion was provided in its decision nor has any been supplied subsequently, either by the Commission or the Licensing Board. Having failed to supply an independent factual basis for its ruling which might cure the Commission's omission, the Licensing Board's refusal to consider the evidence in question is indefensible and cannot be allowed to stand.

Moreover, although generic consideration of discreet issues may be appropriate under certain circumstances,[39/] it is plainly

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[38/] Although this decision pertains specifically to an inquiry under the National Environmental Policy Act, the principle established -- namely, that relevant safety issues must be considered in individual licensing decisions -- applies equally in the context of the Atomic Energy Act, which prohibits licensing absent the emergency preparedness findings required by 10 C.F.R. § 50.47(a)(1). See 42 U.S.C. §§ 2233(d), 2236(g), 2337; 10 C.F.R. § 50.57(a).

[39/] Generic consideration has generally been upheld with respect to issues affecting all or most nuclear plants uniformly, thereby avoiding needless repetition and the possibility of differing resolutions of identical problems. See, e.g., Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 98 S.Ct. 1197 (1978) (nuclear waste disposal); Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069 (D.C.Cir. 1974) (Interim Acceptance Criteria for emergency core cooling systems); Siegel v. Atomic Energy Commission, 400 F.2d 778 (D.C.Cir. 1968) (foreign attacks on nuclear facilities).

inappropriate where, as here, the issue of concern -- seismic safety -- is and has always been of unique importance to an individual facility -- Diablo Canyon -- and largely irrelevant to others. The increased risk of seismic activity associated with a facility such as Diablo Canyon, mistakenly sited less than three miles from a major active earthquake fault, demands special consideration of the complications likely to result from such activity, whether relating to onsite or offsite planning. Particularly is this true with respect to emergency preparedness, a fundamental principle of which is that one must not only seek to prevent accidents, but must assume that they will happen and prepare to respond.[40/] By improperly diverting the issue in question to nonexistent generic proceedings, the Commission has chosen to ignore the unique dangers associated with Diablo Canyon in the hope that they will never come to pass. Discredited at TMI, such an approach to emergency preparedness is a patently improper justification for diversion to generic proceedings of a significant safety issue unique to facilities located on the California coast.

It is an established principle that an administrative agency's interpretation of its own regulations is entitled to great weight unless such interpretation is inconsistent with the

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40/ Kemeny Commission Report, at 17; NUREG-0578, TMI Lessons Learned Task Force, Status Report and Short-Term Recommendations, at 2-7 (July 1979).

regulations themselves or the underlying statutory authority for those regulations. United States v. Larionoff, 431 U.S. 864, 873, 97 S.Ct. 2150, 2155 (1977); Pacific Gas and Electric Company v. United States, 664 F.2d 1133, 1136 (9th Cir. 1981); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 801 (1965). That is precisely the case here. The Commission's emergency planning regulations were promulgated pursuant to its mandate under the Atomic Energy Act to protect the public health and safety. 42 U.S.C. § 2012. Central to that purpose is the regulatory requirement that emergency plans be capable of implementation, taking into consideration local conditions and site characteristics. 10 C.F.R. § 50.47(a)(1); NUREG-0654, II.J. 10.k.

The Commission's San Onofre decision excluding consideration of the complications of earthquakes on emergency response cannot be reconciled with those provisions. Given such inconsistency, the Commission's ruling is "out of harmony with the statute" and is, therefore, "a mere nullity." United States v. Larionoff, 431 U.S. at 874 n.12, 97 S.Ct. at 2156 n.12. Accordingly, the Licensing Board's refusal to consider evidence regarding earthquakes and emergency planning must be reversed by this Appeal Board.

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3. The Licensing Board's Failure to Require Emergency Preparedness Throughout the State Emergency Planning Zones Violates Established Principles of Federal-State Comity

In its August 31 Initial Decision, the Licensing Board listed five emergency planning zones ("EPZ") applicable to Diablo Canyon: (1) the California Basic EPZ; (2) the California Extended EPZ; (3) the California Ingestion Pathway EPZ; (4) the federal plume exposure EPZ; and (5) the federal ingestion pathway EPZ. Initial Decision, at 11. In reviewing the adequacy of emergency preparedness, however, the Board considered only the federal zones and the California Basic EPZ, which is almost entirely within the federal plume exposure EPZ.[41/] In so doing, the Board reasoned as follows:

> The State of California has established its emergency planning zones (EPZ's) around Diablo Canyon in a manner which differs substantially from the Federal zones defined in 10 C.F.R. § 50.47c(2) . . . . The Board did not inquire into the technical basis for the California zones since they are larger than the Federal zones and encompass them. We concluds, without considering technical validity, that the State acted within its responsibility set by 10 C.F.R. 50.47 when it established its emergency planning zones. (Findings 16-20)

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41/ The federal plume exposure pathway EPZ extends to a radius of approximately 10 miles from the reactor; the federal ingestion pathway EPZ extends approximately 50 miles. The State Basic EPZ is an irregular shape reaching slightly beyond the federal plume exposure zone; the State Extended EPZ covers up to approximately 20 miles north and south of the reactor; and the State Ingestion Pathway EPZ extends southward through Santa Barbara County into Ventura County. PGandE Ex. 80, at I.5.

> We conclude that the Federal requirements are minimum standards for planning and not inflexible targets which must not be exceeded. This Board, however, has no authority to enforce state standards which exceed those required by Federal regulations. That is for the State to do. (Findings 21, 22)

Id. at 11-12.

The Board failed to supply any legal analysis in support of its conclusion that it was without jurisdiction to review the status of emergency preparedness within the state EPZ's. In fact, the Board's conclusion contravenes established principles of federal-state comity grounded not only in long recognized judicial decisions[42/] but in the Atomic Energy Act itself. The fundamental notion of cooperation between federal and state jurisdictions to ensure that the valid interests of both are protected has been codified in § 274 of the AEA, which provides, in part, as follows:

> (a) It is the purpose of this section --
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> (1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

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42/ See, e.g., Younger v. Harris, 401 U.S. 37 (1971), and its progeny. In Younger, the Court explained:

> What this concept does represent is a system in which there is sensitivity to the legitimate interests of both State and national governments, and in which the national government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Id. at 44.

(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials; . . .

* * *

42 U.S.C. § 2021.

This provision indicates a clear recognition by Congress of the need for cooperation between state and federal levels of government and of the importance of an orderly regulatory scheme which protects, rather than subverts, the legitimate concerns of each. The plain language of the statute anticipates not simply passive tolerance by one governmental entity of another's regulatory priorities, but affirmative steps by both to further the goals of the AEA. While seeking to avoid duplicative or conflicting regulation,[43/] Congress plainly did not intend "to leave certain hazards beyond the scope of any control whatsoever." People of State of Illinois v. Kerr-McGee Chemical Corp., 677 F.2d 571, 583 (7th Cir. 1982).

The Licensing Board's refusal in this proceeding to consider the level of preparedness within the state EPZ's and, if necessary, to defer licensing until such preparedness is

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43/ See, e.g., People of State of Illinois v. Kerr-McGee Chemical Corp., 677 F.2d 571 (7th Cir. 1982); Pacific Legal Foundation v. State Energy Resources Conservation & Development Commission, 659 F.2d 903 (9th Cir. 1981); Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd mem., 405 U.S. 1035, 92 S.Ct. 1307 (1972).

adequate effectively subverts the legitimate interests of the State of California, pursuant to the police power, to protect the health and safety of the public, to safeguard the quality of the environment, and to prevent the widespread adverse economic consequences which inevitably would result from a major radiological emergency at Diablo Canyon. Significantly, this is not an instance where the state seeks unreasonably to obstruct the licensing of a nuclear facility by refusing to cooperate. To the contrary, in addition to participating in the licensing proceeding itself, the State of California has undertaken and completed a voluminous study of the site-specific characteristics of Diablo Canyon and the surrounding areas, including their topographical, demographic, meteorological, and geographic conditions, in order to determine the appropriate dimensions of EPZ's for the facility. This study, received in evidence as Governor Brown's Exhibit 8, is far more extensive than anything prepared by the NRC, FEMA, or any other federal agency to determine the federal zones for Diablo Canyon. Thus, it is the most appropriate basis for a determination of the areas in which emergency preparedness is necessary.

The Board's assumption that the state can enforce its own emergency preparedness requirements is simply unrealistic in light of the fact that the NRC has sole responsibility for licensing of the facility. Most important, however, is the apparent legislative intent in § 274 of the AEA that the NRC cooperate with the states to see that their interests are respected. In this proceeding, that cooperative spirit can only

be served by the Licensing Board reviewing the level of preparedness not only within the federal EPZ's but throughout the State EPZ's as well.

This is not a situation where the subject of state concern has been preempted by federal law. At issue here is the legitimate exercise by the State of California of its police powers to ensure that the public health, safety and environment are protected. Although the AEA has been interpreted to preempt state laws regulating radiation hazards,[44/] "the consistent position of the NRC, the AEC, and the courts [is] that states are permitted to regulate in such areas as economics and the environment." Pacific Legal Foundation v. State Energy Commission, 659 F.2d at 922. Recently, the Court of Appeals for the Seventh Circuit refused to draw an arbitrary line between radiation and non-radiation hazards, concluding instead that a decision regarding preemption should be made based on the facts of the particular case and a determination whether the state law in question constitutes "direct regulation" of radioactive materials. People of State of Illinois v. Kerr-McGee Chemical Corp., 677 F.2d at 582.

California's legitimate interest in emergency preparedness is grounded in economic, safety, and environmental concerns. Its focus is not the regulation of Diablo Canyon itself or of

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44/ See Pacific Legal Foundation v. State Energy Resources Conservation & Development Commission, supra; People of State of Illinois v. Kerr-McGee Chemical Corp., supra.

radioactive materials, but of the local communities and their residents in surrounding counties. That interest is consistent with that of the federal government under the AEA, and, thus, it is both appropriate and beneficial for the NRC to further that interest along with its own. The only effective forum in which to do so is this licensing proceeding. Because the jurisdictional ruling of the Licensing Board undermines the legitimate state interest in adequate emergency preparedness, its decision must be reversed.

4. The Licensing Board's Authorization of Licensing Despite Numerous Significant Deficiencies in Compliance with the Commission's Emergency Planning Standards Constitutes an Abuse of Discretion

In authorizing issuance of a full power license for Diablo Canyon, the Licensing Board ignored substantial evidence of significant deficiencies in compliance with each of the Commission's 10 C.F.R. § 50.47(b) planning standards. Reviewed in detail in Joint Intervenors' Proposed Findings of Fact and Conclusions of Law, at 34-61 (attached hereto as Ex. A), these deficiencies undermine the essential finding by the Board of reasonable assurance that the various emergency plans "can and will be implemented in the event of a radiological emergency" at Diablo Canyon, 10 C.F.R. § 50.47(a)(1); thus, they necessitate reversal by this Board of the Licensing Board's decision. Although to some extent related to the general need for further

plan development discussed supra at Part III.A.1, a number of the deficiencies are so significant as to warrant additional discussion here. Joint Intervenors submit that each of the deficiencies discussed below in and of itself belies the Licensing Board's finding that the state of emergency preparedness complies with the Commission's regulations. PGandE's application for a full power license to operate Diablo Canyon must, therefore, be denied.

(a) State Preparedness. Not only has FEMA not yet reviewed and issued any finding regarding the adequacy of the State of California emergency response plan, PGandE and the Staff failed completely to demonstrate that the plan is complete and "capable of being implemented." 10 C.F.R. § 50.47(a)(2). In fact, neither party even bothered to call a witness having first-hand familiarity with the current status of state planning, much less a witness from the State of California Office of Emergency Services ("OES") which is responsible for preparation of the state plan.[45/] Instead, PGandE chose to rely upon the few brief and conclusory references by its own personnel to the incomplete State plan, and the Staff presented only the testimony of FEMA representative Jack Eldridge, who conceded that he had never reviewed the most recent version of the plan.[46/] None of these witnesses even attempted to

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45/ Prior to the hearing, PGandE listed State Office of Emergency Services Director Jack Kearns as a witness. During the course of the hearings, however, PGandE informed the Board that it had decided not to call Mr. Kearns.

46/ Tr. 12,708-10.

demonstrate compliance with the over 100 NUREG-0654 criteria applicable to the State plan. Such failure constitutes a serious failure by PGandE to meet its burden of proof.

Moreover, the Board ignored the testimony of San Luis Obispo County Emergency Services Analyst Tim Ness that plans for special state jurisdictions within San Luis Obispo County -- such as Cal Poly San Luis Obispo, with 16,000 persons on campus on an average school day, and California Men's Colony, with 2,400 inmates -- have not been completed.[47/] Similarly, the Board disregarded the complete absence of testimony regarding preparedness in counties other than San Luis Obispo despite the fact that Monterey, Santa Barbara, and Ventura Counties lie within the federal Ingestion Pathway EPZ and may as a consequence be called upon to play a supporting role in the event of an emergency.[48/] The Board's conclusion that no county planning is required within the federal Ingestion Pathway zone beyond the Plume Exposure Pathway EPZ (or State Basic EPZ) is without legal or factual basis, and it undermines the need recognized in NUREG-0654 for integration among emergency response organizations.[49/] Without question, PGandE has failed to meet its burden of proof regarding planning by the State of California and Santa Barbara, Monterey, and Ventura Counties.

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47/ Tr. 12,495-97.

48/ Tr. 11,794-99, 11,800-01, 11,818-20 (Skidmore, Shiffer); Tr. 12,723 (Eldridge); Hubbard-Minor, at 7.

49/ Initial Decision, at 15.

(b) County Standard Operating Procedures and Letters of Agreement. Although acknowledging that the "elements of planning importart to an actual emergency response are incorporated into standard operating procedures,"[50] the Board approved the state of preparedness in San Luis Obispo County despite the uncontradicted testimony of the County officials responsible for plan development that none of the 31 necessary SOP's had been approved or adopted and eleven remained incomplete.[51] Further, the Board failed even to mention that the City of San Luis Obispo, which is the largest population center in San Luis Obispo County, had already requested additional time to amend or replace its "completed" SOP with another to be prepared "which more fully reflects the City's resources and capabilities."[52]

Analogous to SOP's are letters of agreement from a broad range of organizations and services likely to be called upon for support in the event of an emergency. According to County Emergency Services Analyst Ness, their purpose is "to provide

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50/ Id. at 18.

51/ Tr. 12,458-59, 12,505-06 (Ness). Included among the incomplete SOP's were those for several cities, fire departments, school districts, Cal Poly San Luis Obispo, and the County Agriculture Commissioner. Tr. 12,545-55 (Ness); PGandE Ex. 81

52/ Letter, Mayor of San Luis Obispo to Board of Supervisors of the County of San Luis Obispo (January 13, 1982) (Joint Intervenors' Ex. 122).

support that would be necessary in an accident situation."[53/] Not only has the County failed to prepare any such agreements, it has not yet even identified the number or the nature of the agreements considered necessary.[54/] Once again, the Board discounted this complete absence of preparedness, first by mischaracterizing their function as "noncritical" and second by relying upon its expectation that such letters will be obtained by the County at some future date.[55/] Neither justification is supported by substantial evidence in the record. Even assuming, however, that the record could support such justifications, neither addresses the fundamental fact of the County's failure to comply with the requirements prescribed by 10 C.F.R. § 50.47(b)(1), (2), and (10) that such agreements be prepared and incorporated into the various plans.

(c) Public Education. 10 C.F.R. § 50.47(b)(7) requires that the State and County have implemented a public information and education program. Neither the State of California nor the County of San Luis Obispo has done so, and, as a consequence, the public understanding of essential emergency response information is conceded by all parties and the Board to be

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53/ Tr. 12,457 (emphasis added).

54/ Id.

55/ Initial Decision, at 17-18.

virtually nonexistent.[56] Given the recognized relationship between an adequate public education program and effective emergency response,[57] the absence of ongoing and demonstrated public education programs sponsored by the state and county constitutes a significant deficiency in preparedness. More so than any other of the Commission's planning standards, the requirement for public education on a periodic basis should be complied with before licensing and operation of the plant in order to allay public concern, achieve the widest possible dissemination of information, and facilitate public response to an accident by eliminating uncertainty as to the appropriate actions to be taken The low level of public awareness among

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[56] Tr. 12,249-51 (McElvaine); Tr. 12,566 (Ness); Tr. 12,719-20 (Eldridge). On cross-examination, County Board of Supervisors member William McElvaine, called by PGandE as a witness, described as follows the widespread lack of public education in San Luis Obispo County concerning emergency response to a nuclear accident:

> MR. REYNOLDS: [W]ould you agree that the vast majority of the residents of the County really don't know what the evacuation routes are?
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> MR. McELVAINE: I'd say that that's probably a safe assumption.
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> MR. REYNOLDS: And . . . they really wouldn't have any idea what to do in the event of an emergency then? At this point?
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> MR. McELVAINE: I'm sure there are some people, but I would say that your comment, probably the majority right now, are not familiar with what the procedures would be.

Tr. 12,251-52.

[57] Tr. 12,421 (Erikson); 12,719 (Eldridge).

San Luis Obispo County residents is not only an indictment of the County's failure to comply with planning standard (b)(7), but it belies the confidence of PGandE and Staff witnesses and of the Board that the County's plan can be implemented at all.

(d) Public Response and Plan Implementation. The Commission's regulations are explicit that emergency plans must not only exist, but be capable of implementation. 10 C.F.R. § 50.47(a)(1),(2). To this end, Joint Intervenors presented the testimony of two eminent experts in the field of public response to emergencies, Dr. Kai Erikson, Professor of Sociology at Yale University and Editor of the Yale Review, and Dr. James Johnson, Professor of Geography at the University of California at Los Angeles and co-author of a major study of public response to the TMI accident. Relying upon examples of other emergencies (including, most importantly, TMI), both testified that a social and psychological profile of the population in the evacuation zones is necessary in order to determine the probable public response to a radiological emergency at Diablo Canyon. Based on that profile, more precise planning would be possible and a more thorough education program directed to the specific needs of the affected population could be developed. Absent such a study, Drs. Erikson and Johnson testified, the requisite reasonable

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assurance that the various emergency plans can be implemented does not exist.[58/]

The Licensing Board rejected virtually in total the testimony of Drs. Erikson and Johnson, relying instead on the single witness offered by PGandE, Dr. Dennis Mileti, Professor of Sociology at Colorado State University.[59/] Most disturbing, however, is the Board's unjustified legal conclusion that

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58/ Dr. Erikson addressed specifically a series of critical but unjustified assumptions made in the San Luis Obispo County Plan, including that: (1) emergency workers who reside within the danger zone can be counted on to report for duty whether or not their own families have assembled and evacuated; (2) emergency workers who reside outside the danger zone will move into it if asked to do so; (3) parents of school-age children will be willing to evacuate without first-hand reassurances that their offspring are being safely conveyed out of the danger zone in "preferred evacuation directions"; and (6) drivers will have no other object in mind than to vacate the danger zone along the given roads rather than having particular destinations in mind. (Erikson, at 6-10.)

59/ Although Dr. Mileti expressed confidence in the ability of the public to respond during a radiological emergency, he conceded that he had no Diablo-specific information to support that confidence (Tr. 12,146-47), that he had no personal knowledge whether PGandE was a credible source of information likely to be believed by the public (Tr. 12,156-57), and that the body of knowledge upon which he based his conclusions was derived almost exclusively from non-nuclear emergencies. Indeed, he did not even address the failure of the Diablo Canyon emergency plans to incorporate the findings of Dr. Johnson and others regarding the public's response to the only example of public evacuation from a nuclear power plant accident that Dr. Mileti could cite -- the TMI accident. (Mileti, Tr. 12,145-46.) On the other hand, Dr. Mileti agreed that the kind of survey suggested by Drs. Erikson and Johnson was feasible. (Tr. 12,157), that studies of intended behavior do have a purpose (Tr. 12,165), and that some emergency workers may leave their jobs during an emergency to accompany their families. (Tr. 12,265.)

"NUREG-0654 presumes that citizens will act reasonably on the information that is provided to them." Initial Decision, at 46-47. No such assumption appears in NUREG-0654 nor is there any apparent factual basis for it. To the contrary, the experience at TMI demonstrated graphically that the public does not necessarily respond reasonably and, thus, that some effort must be made to predict and plan for the most likely behavior by the public.[60/] Incredibly, the Board, in its decision, simply ignored the TMI experience.

The Commission's regulations recognize the importance of workable plans. Without the understanding of likely public response which the data called for by Drs. Erikson and Johnson would provide, there is no basis for confidence that the plans for Diablo Canyon are in fact implementable. The Licensing Board's willingness to assume a reasonable and predictable response is inconsistent both with past experience and with the Commission's regulations.

(e) Emergency Communications. The evidence was uncontradicted that the San Luis Obispo County emergency communications system is deficient in numerous respects.

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60/ With respect to the experience at TMI, Dr. Johnson cited specifically (1) the evacuation of a far greater percentage of the population than was advised to evacuate (144,000 people evacuated, 2,500 advised to do so) ("evacuation shadow phenomenon"); (2) the failure of the majority of evacuees to utilize evacuation shelters; and (3) the various subjective factors which affect the willingness of evacuees to follow orders regarding evacuation routes, evacuation destinations, and direction of evacuation. (Johnson, at 2-5.)

Initial Decision, at 137. In addition, county officials and PGandE witnesses agreed that certain essential communications equipment has neither been acquired nor installed.[61]

Most telling, however, are the uncontradicted findings and recommendations of the San Luis Obispo County Department of Technical Services in its Five Year Communications Plan (January 1982) (Gov. Brown Ex. 10) and PRC Voorhees in its November 17, 1981 Communications Report (Gov. Brown Ex. 9).[62] Those documents indicate numerous serious inadequacies in virtually every aspect of the County's communications system that is relevant to the Diablo Canyon plant. Microwave transmitters are inoperative (Gov. Brown Ex. 10, at 4), equipment has never been

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[61] Tr. 12,061-63 (Nevolo); 12,240 (McElvaine); 12,459 (Ness).

[62] Based on these exhibits, the Licensing Board found:

> The San Luis Obispo County radio communications network is complicated because of the problems imposed by mountainous terrain in the area which inhibits radio communication. In order for radio communication to reach the entire county, several mountaintop radio transmitters are used to broadcast the same message at one time. The message to be broadcast must be sent to the transmitters from the Sheriff's Department by way of a microwave transmitter system. The System would be vulnerable to failure if the Sheriff's microwave system failed or if one of the mountain repeater stations were to fail. The history of the microwave system reflects a number of both design and maintenance problems . . . . Having studied the problems in the County communications system . . . , the Board is convinced that the communication system contains a number of design and maintenance difficulties which should be upgraded.

Initial Decision, at 36-37 (emphasis added).

calibrated (id. at 5), repair equipment is characterized as "totally deficient" (id.), capacity is outdated (id. at 6), coastal radio coverage is spotty or nonexistent (id.), and the entire communications system is threatened by the failure of a single fuse (id.). The Sheriff's communications systems are described as "failure-prone" (id. at 10), and his dispatch center is only partially operable because parts have been "cannibalized" in order to maintain any operation at all (id. at 13). The local government UHF channel -- to be utilized by Health Physics teams in a Diablo Canyon emergency -- has only limited coverage in Avila Beach, the area of most likely and immediate impact in the event of an accident (id. at 19). Finally, as a result of added duties in connection with the Diablo Canyon plant, the county's communications maintenance facility is overburdened and understaffed (id. at 28).

Although conceding the existence of these deficiencies, the Licensing Board nonetheless found the County's communications system in compliance with the Commission's regulations, concluding that "the problems with the general system are of a noncritical nature for emergency response." Initial Decision, at 37. In so doing, the Board once again relied on PGandE commitments to supply improvements to the system at some future date. Id. at 37. Although acknowledging that a "major failure will occur" in the County's critical microwave system, id. at 139, the Board still was "unable to find the system inadequately reliable at present . . . ." Id. at 38.

The Board's conclusion is not supported by substantial evidence in the record. Its denigration of the significance of pervasive and fundamental deficiencies in a communications system predicted to fail betrays a patent disregard for the potential serious harm to the residents of San Luis Obispo County in the event of such a failure during a radiological emergency. Its repeated reliance upon PGandE's commitments to correct certain of the deficiencies is an insufficient basis for licensing, particularly given PGandE's failure even to bring to the Board's attention the deficiencies revealed in Governor Brown's Exhibits 9 and 10.

The reliability of the offsite emergency communications system is a critical link in response to a radiological emergency at Diablo Canyon. Licensing of the facility cannot be permitted consistent with the Commission's regulations until the deficiencies in San Luis Obispo County's system have been corrected and its adequacy demonstrated. The Licensing Board's finding of compliance with 10 C.F.R. § 50.47(b)(6) cannot, therefore, be allowed to stand.

B. The Licensing Board Erred in Failing to Require Compliance with the National Environmental Policy Act Prior to Authorizing Full Power Operation.

The Licensing Board's authorization of full power licensing at Diablo Canyon violates the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., because the consequences of a Class Nine accident at the facility have never been addressed,

either by the Staff or by PGandE. Although Joint Intervenors requested such consideration on at least two occasions,[63] their requests were rejected, most recently by the Licensing Board in its June 19, 1981 Memorandum and Order Denying Joint Intervenors' Motion to Reopen Environmental Record for Consideration of Class Nine Accident. There, the Board ruled that a showing of special circumstances[64] was a necessary precondition to requiring consideration of Class Nine accidents as part of the environmental review and that, upon consideration of the circumstances in this proceeding, no such showing could be made. Relying upon the Appeal Board's approval of the seismic design of the facility,[65] the Board concluded that "even though Diablo Canyon is located in a region of known seismicity, the probability of it sustaining a 'class nine' accident is no greater than for any other reactor." Id. at 3.

The Board's decision cannot be reconciled with the mandatory requirements of NEPA. Although the Commission had in the past excluded consideration of core melt accidents on the premise that their occurrence was of such low probability that

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63/ See Joint Intervenors' Request to Reopen the Record, or In the Alternative, for Directed Certification (May 9, 1979); Letter, Fleischaker to Denton (October 17, 1980).

64/ In its Order, the Board listed four possible categories of special circumstances: (1) high population density around the site; (2) a novel reactor design; (3) a combination of a unique design and a unique siting mode; and (4) proximity of a plant to a man-made or natural hazard.

65/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, ___ NRC ___ (June 16, 1981).

neither NEPA nor the AEA required their consideration, the TMI accident destroyed that premise by demonstrating that Class Nine accidents are far more than a mere theoretical possibility. Indeed, on June 13, 1980, the Commission recognized this by issuing a Statement of Interim Policy requiring that environmental impact statements for nuclear facilities include consideration of Class Nine accident sequences.[66/] Characterizing as "erroneous" its former policy excluding such consideration, 45 Fed. Reg. at 40,103, the Commission's Interim Statement provided that henceforth environmental impact statements "shall include consideration of the site-specific environmental impacts attributable to accident sequences that lead to releases of radiation and/or radioactive materials, including sequences that can result in inadequate cooling of reactor fuel and to melting of the reactor core." 45 Fed. Reg. at 40,101 (emphasis added). Nonetheless, the Licensing Board refused to apply this new Commission policy to Diablo Canyon.

The Board's denial also ignores the applicable regulations of the Council on Environmental Quality, the federal agency charged with principal responsibility for the implementation of NEPA. Consistent with the statute's basic purpose to inform the public and the decisionmaking agencies of the potential consequences of federal proposals, CEQ has promulgated

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66/ Statement of Interim Policy, "Nuclear Plant Accident Considerations Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40,101 (June 13, 1980).

regulations specifically requiring an agency to prepare supplements to either draft or final impact statements if "[t]here are significant new circumstances or information relevant to environmental concerns, bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c). These regulations are entitled to substantial deference in the application of NEPA. Andrus v. Sierra Club, 442 U.S. 347, 358, 99 S.Ct. 2335, 2341 (1979).

The TMI accident was the most serious nuclear accident in the history of the United States commercial nuclear reactor program.[67/] As such, it constitutes critical "new circumstances or information relevant to environmental concerns, bearing on the proposed action or its impacts," specifically, full power licensing of Diablo Canyon. Consistent with CEQ's regulations, therefore, as well as tne Commission's Statement of Interim Policy, a supplement addressing such new circumstances or information is required as a matter of law in order to comply with the mandate of NEPA. The Licensing Board's denial of Joint Intevenors' request for such a supplement contravenes that mandate.

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67/ The Kemeny Commission described the accident as follows:

> In the minutes, hours, and days that followed, a series of events -- compounded by equipment failures, inappropriate procedures, and human errors and ignorance -- escalated into the worst crisis yet experienced by the nation's nuclear power industry.

The Board's finding in its June 19, 1981 Order that no special circumstances exist in this proceeding simply ignores the unique history of the Diablo Canyon facility. As described by this Appeal Board in ALAB-519 (January 23, 1979):

> We have here a nuclear plant designed and largely built on one set of seismic assumptions, an intervening discovery that those assumptions underestimated the magnitude of potential earthquakes, a re-analysis of the plant to take the new estimates into account, and a post hoc conclusion that the plant is essentially satisfactory as is -- but on theoretical bases partly untested and previously unused for these purposes. We do not have to reach the merits of those findings to conclude that the circumstances surrounding the need to make them are exceptional in every sense of that word.

Id. at 12. In essence, the siting of Diablo Canyon was a mistake, resulting in far greater exposure of the plant to precisely the kind of "natural hazard" which even the Licensing Board, in its June 19, 1981 Order, cited as a special circumstance previously noted by the Commission as justifying additional consideration of the effects of a Class Nine accident.[68/]

In relying upon this Appeal Board's ruling in ALAB-644 that Diablo Canyon's seismic design is adequate, the Licensing Board has effectively nullified the "natural hazard" category as a basis for requiring a Class Nine analysis. According to the Board's reasoning, any facility the seismic design of which is found adequate necessarily falls outside the natural hazard category regardless of how great the seismic risk may be. Thus, additional environmental review could never be justified on that

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68/ See note 64 supra.

basis because of the finding on seismic design. The Board's analysis is a classic example of "bootstrap" reasoning the effect of which is to circumvent unequivocal regulatory and policy requirements of the Commission and CEQ. Its conclusion must be overturned by this Board.

The federal courts have consistently prohibited licensing of nuclear facilities prior to compliance with NEPA in order to prevent "irretrievable commitments of resources which would serve to tip the balance away from environmental concerns and prejudice the final agency decisions." Natural Resources Defense Council v. United States Nuclear Regulatory Commission, 539 F.2d 824, 843-44 (2d Cir. 1976), vacated for reconsideration of mootness, 434 U.S. 1030, 98 S.Ct. 758 (1977); Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), cert. denied, 404 U.S. 942 (1972); Izaak Walton League of America v. Schlesinger, 337 F.Supp. 287 (D.D.C. 1971). More specifically, the courts have recognized that the Commission has a continuing obligation under the AEA and under NEPA to review information which may indicate a need to reconsider or modify a construction permit or an operating license. 42 U.S.C. § 2232(a); 40 C.F.R. § 1502.9(c); Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission, 449 F.2d at 1112; Public Services Co. of New Hampshire v. Nuclear Regulatory Commission, 582 F.2d 77 (1st Cir. 1978), cert. denied, 439 U.S. 1046 (1979); Ft. Pierce Utilities Authority of the City of Ft. Pierce v. Nuclear

Regulatory Commission, 606 F.2d 986 (D.C.Cir. 1979), cert. denied, 444 U.S. 842, 100 S.Ct. 83 (1979).

The Licensing Board's denial of Joint Intervenors' NEPA application contravenes these fundamental principles. As a result, the environmental effects of the class of accidents which pose the most serious threat of harm to the environment and public health -- an example of which occurred at TMI -- have not even been considered for Diablo Canyon. To remedy this patent violation of NEPA, the Licensing Board's denial of Joint Intervenors' request for a supplement EIS regarding the effects of a Class Nine accident at the facility must be reversed.

C. The Licensing Board Erred in Finding that the Power Operated Relief Valve Systems at Diablo Canyon Have Been Adequately Designed, Constructed, and Tested

By letter dated February 24, 1982, PGandE informed the Licensing Board that errors had been discovered at Diablo Canyon in the design and qualification of the power operated relief valves ("PORV") and block valves which were the subject of Joint Intervenors' contention 12 at the January 1982 hearings.[69/] Specifically, PGandE stated that "[a]s a result of the seismic reverification program PGandE recently has determined that the spectra for the 140-foot level used in the piping analyses may not have been conservative in respect to some of the piping above that level . . . " (emphasis added). The substance of this letter was confirmed by the Staff through Board

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69/ PGandE's letter is attached hereto as Ex. B.

Notification PNO-5-82-09.

On March 18, 1982, Governor Brown moved for deferral of any Board decision on licensing pending evaluation of the design errors disclosed by PGandE. On April 2, 1982, the Licensing Board issued a Memorandum and Order in response to the Governor's motion, stating:

> This Atomic Safety and Licensing Board is aware of the events referred to in Governor Brown's motion. . . .
>
> 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.70/

No evaluation or analysis has since been submitted to the Licensing Board by PGandE in response to this order, nor have the parties been informed of any independent evaluation by the Board of the newly discovered evidence.

Apparently ignoring its previously expressed concern, the Licensing Board nonetheless issued its August 31, 1982 Initial Decision authorizing full power licensing of Diablo Canyon. In support of its decision, the Board approved the design, qualification, and classification of the valves in question and explicitly found "that the PORV systems have been adequately designed, constructed and tested." Initial Decision, at 86. The Board made no reference either to its April 2 Memorandum and Order or to information or evidence addressing the questions

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70/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Memorandum and Order in Response to "Motion for Deferral of Board Decision Pending Evaluation of Newly Discovered PG&E Design Errors Involving Block Valves and Pressurizer Heaters," at 1-2 (April 2, 1982).

regarding valve design and qualification described in PGandE's February 24th letter.

Joint Intervenors submit that the Licensing Board's confidence in and finding regarding the adequacy of the design and qualification of the Diablo Canyon relief and block valves are unsupported by substantial evidence in the record in light of the concessions by PGandE and the Staff that the seismic design spectra used to qualify those components "may not have been conservative . . . ." Indeed, the revelations of the past year arising out of the ongoing Diablo Canyon audit serve only to undermine the assurance of proper design and construction which is a necessary prerequisite to issuance of an operating license. 10 C.F.R. § 50.47(a). Far from allaying concerns, the audit has uncovered a series of significant design errors which suggest the existence not only of seismic design errors, but nonseismic design and construction errors as well.

A reviewing court is required to "hold unlawful and set aside agency . . . findings . . . found to be . . . unsupported by substantial evidence . . . ." 5 U.S.C. § 706. Because the Licensing Board, without explanation, has ignored significant safety questions which it had previously recognized as requiring "thorough evaluation" prior to licensing, the conclusion is inescapable that the requisite evidentiary basis for the mandatory findings of reasonable assurance simply does not exist. That being the case, this Appeal Board must vacate the findings of the Licensing regarding Joint Intervenors' contention 12 pending a thorough evaluation of the significance

of the errors in question and completion of all plant modifications which are necessary to correct them.

D. The Licensing Board Erred in Denying Joint Intervenors' Right to a Hearing on Relevant Contentions Raising Significant Safety Issues

On March 24, 1981, Joint Intervenors filed a Motion to Reopen this proceeding for hearing on numerous significant safety issues arising out of the TMI accident.[71/] By order dated August 4, 1981,[72/] the Licensing Board denied all but one of those contentions without even acknowleding the vast majority of information cited by Joint Intervenors in their application.

On October 8, 1981, Joint Intervenors requested certification to the Commission challenging the Licensing Board's decision and requesting immediate intervention by the Commission.[73/] By order dated October 29, 1981,[74/] the Commission referred the application to this Appeal Board. Supplemental briefs were filed by all parties on November 6, and oral argument was heard on November 20. By order dated December

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71/ Joint Intervenors' Motion to Reopen (March 24, 1981).

72/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nucler Power Plant, Units 1 and 2), Nos. 50-275, 323, Memorandum and Order (August 4, 1981).

73/ Joint Intervenors' Request for Directed Certification and Response in Opposition to PGandE's Request for Reconsideration (October 8, 1981).

74/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Order CLI-___ (October 29, 1981).

11, this Board affirmed the Licensing Board's decision without detailed opinion, although explicitly disavowing the reasoning relied upon by the Licensing Board.[75/] No further opinion has been issued with respect to that application.

In light of this Board's prior decision, no purpose would be served by rearguing the issue here. However, Joint Intervenors continue to believe that the denial of their TMI-related contentions was arbitrary, capricious, and not in accord with law, and, for the record, they hereby appeal the denial. As discussed in detail in Joint Intervenors' October 8, 1981 Request for Directed Certification, incorporated herein by reference,[76/] the Board's action is inconsistent with the Administrative Procedure Act, the Atomic Energy Act, the Commission's December 18, 1980 Revised Statement of Policy, and the Commission's April 1, 1981 Order in this proceeding. Accordingly, Joint Intervenors submit that the Board's action must be reversed and the rejected contentions set for hearing, considered, and resolved before issuance of a license to operate Diablo Canyon.

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75/ In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-___, Order, at 2 n.1 (December 11, 1981).

76/ See also Joint Intervenors' Supplemental Brief in Support of Request for Reversal of Atomic Safety and Licensing Board's August 4, 1981 Memorandum and Order (November 6, 1981).

## IV. CONCLUSION

For the reasons stated above, Joint Intervenors respectfully request this Appeal Board (1) to reverse in all respects the August 31, 1982 Initial Decision of the Licensing Board, and (2) to reverse in the respects discussed above each of the other decisions of the Licensing Board issued during the course of this reopened full power proceeding and appealed herein.

DATED: November 8, 1981

Respectfully submitted,

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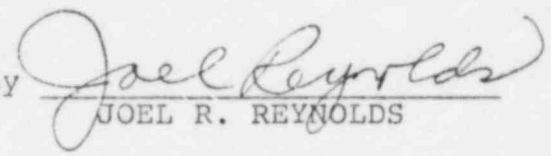
By 
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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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| In the Matter of | ) | |
| PACIFIC GAS AND ELECTRIC COMPANY | ) | Docket Nos. 50-275 O.L.<br>50-323 O.L. |
| (Diablo Canyon Nuclear Power Plant, Units 1 and 2) | ) | (Full Power Licensing Proceeding) |

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 1982, I have served copies of the foregoing JOINT INTERVENORS' BRIEF IN SUPPORT OF EXCEPTIONS, mailing them through the U.S. mails, first class, postage prepaid.

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