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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

'82 SEP 27 110:49

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

JOINT INTERVENORS' BRIEF IN  
RESPONSE TO SEPTEMBER 2 ORDER

By order dated September 2, 1982, the Atomic Safety and Licensing Appeal Board ("Appeal Board") requested all parties to the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") licensing proceeding to address the following question: Whether the pending appeals from the July 17, 1981 Partial Initial Decision authorizing issuance of a low power operating license at Diablo Canyon are moot in light of (1) the August 31, 1982 Initial Decision authorizing full power licensing of the facility and (2) the November 19, 1981 suspension by the Commission of the low power operating license. For the reasons stated below, Joint Intervenors submit that the pending low power appeals are not moot.

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In response to the Appeal Board's order, we have reviewed the issues raised and extensively briefed in Joint Intervenors' September 2, 1981 Brief in Support of Exceptions. Those include:

(1) whether by its rejection of contentions the Licensing Board improperly denied Joint Intervenors' right to be heard under the Administrative Procedure Act, the Atomic Energy Act, and the Commission's December 18, 1980 Revised Statement of Policy and April 1, 1981 Order;

(2) whether the Licensing Board erred in failing to require compliance with the Natural Environmental Policy Act prior to authorizing low power operations;

(3) whether the Licensing Board's summary disposition of Joint Intervenors' contention thirteen regarding reactor vessel level indication was arbitrary and capricious;

(4) whether the Licensing Board's conclusion regarding relief and safety valve testing was clearly erroneous; and

(5) whether the Licensing Board erred in ruling that the state of emergency preparedness at Diablo Canyon complies with the Commission's revised emergency planning regulations.

In its August 31, 1982 Initial Decision regarding full power licensing, the Licensing Board considered contentions

regarding (1) emergency preparedness and (2) the classification of certain reactor coolant system valves and pressurizer heaters. The issues considered related only to full power licensing; thus, their resolution by the Board did not by its terms dispose of pending low power issues. The question posed by the Appeal Board is, in essence, whether the Licensing Board's findings regarding full power licensing may have some bearing on aspects of the low power proceeding appeal.

The first three low power appeal issues listed above are obviously unaffected by the Licensing Board's recent full power findings because they relate to matters outside the scope of the Initial Decision. Indeed, the Appeal Board, in footnote 2 of its September 2 order, explicitly recognized that the question of a denial of contentions is a separable issue and will be dealt with accordingly. Similarly, the low power appeal issues relating to the failure to require compliance with the National Environmental Policy Act were not addressed by the Licensing Board in its recent decision on full power licensing and hence have not been mooted. Finally, Joint Intervenors' claim on appeal that the Licensing Board improperly granted summary disposition of low power contention 13 is a question relating only to the low power proceeding. The Licensing Board's full power decision is, therefore, irrelevant to that issue.

The fourth issue on appeal in the low power proceeding challenges the Licensing Board's findings regarding the status of relief and safety valve testing. Because such testing was discussed briefly by the Licensing Board in its August 31 Initial Decision, its factual findings are potentially relevant to the low power appeal to the extent that subsequent events may have eliminated the factual basis for Joint Intervenors' appeal. Significantly, however, in its Initial Decision, the Licensing Board has again based its approval of valve qualification and testing on results and documentation which "will" be submitted at some future date after the record has been closed. Initial Decision, at 84, 214. Thus, the Board is once again premising its decision on the expected submittal of test results by EPRI and the expected submittal of plant-specific reports by the applicant. Such expectation does not provide adequate assurance for licensing of Diablo Canyon at any level of power.

Moreover, questions regarding the seismic design and qualification of the relief and safety valves have been raised as part of the ongoing design verification program, questions yet unresolved. It is inappropriate, therefore, for the Licensing Board to authorize licensing for low or full power operation until the proper design and qualification of these valves has been verified. The relevance of EPRI test results and, more generally, the basis for the necessary assurance of safety cannot be established either as a factual or legal

matter until such verification has been completed. Hence, Joint Intervenors' contention on appeal regarding valve testing and qualification is not moot.

Emergency preparedness at Diablo Canyon is a primary focus both of Joint Intervenors' low power appeal and of the Licensing Board's full power licensing Initial Decision. However, in some respects -- for example, the failure of the various emergency plans to address the complications of an earthquake on emergency response -- the Initial Decision is clearly irrelevant to the low power appeal because that issue was not addressed. Indeed, the Licensing Board refused even to allow testimony on the issue in the full power proceeding. Its failure, therefore, to require that the various Diablo Canyon emergency plans consider the effects of earthquakes must be reviewed by the Appeal Board as part of the low power licensing appeal.

More broadly, Joint Intervenors' challenge to the adequacy of emergency preparedness at Diablo Canyon remains unchanged. The factual findings upon which the Licensing Board relied in authorizing low power licensing remain the "law of the case"; the Commission's decision to issue the low power license in September 1981 was predicated on those same findings. Because they constitute the sole basis for the agency's final action, Joint Intervenors' challenge to those findings on appeal remains a live controversy which has not been mooted by the Licensing Board's full power decision.

Moreover, 10 C.F.R. § 2.764 establishes that an Initial Decision becomes effective only once the Commission has reviewed it and determined that it should become effective immediately. The Commission conducted such a review in the low power proceeding and based its decision to issue a license on that review. No similar review of the Licensing Board's August 31 Initial Decision on full power licensing has been conducted. Thus, the decision is not yet effective and cannot provide the basis for licensing at either low or full power. The critical findings for purposes of the low power appeal continue to be those contained in the July 17, 1981 Partial Initial Decision, which was reviewed by the Commission prior to issuance of the now-suspended license.

Nor do the more recent factual findings of the Board regarding emergency preparedness, set forth in the August 31 Initial Decision, supply a basis sufficient to justify licensing even for low power operation. At both the low and full power hearings, numerous deficiencies in compliance with the Commission's regulations were established, deficiencies so significant that denial of either of PGandE's license applications is warranted as a matter of law. While the development of emergency plans is now progressing, they are far from complete, particularly with respect to critical standard operating procedures, letters of agreement, public education programs, and the installation and/or repair of essential communications equipment. See Joint Intervenors'

Proposed Findings of Fact and Conclusions of Law (March 19, 1982); Joint Intervenors' Exceptions to the Licensing Board's August 31, 1982 Initial Decision (September 16, 1982). PGandE has failed to demonstrate a level of preparedness for licensing at any level of power. Thus, even considering the most recent findings of the Licensing Board regarding PGandE's full power licensing application, Joint Intervenors' appeal of the Licensing Board's authorization of a low power license is not moot.

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Accordingly, for all of the reasons stated, Joint Intervenor submit that the August 31, 1982 Initial Decision of the Licensing Board does not render moot their pending appeal of the Commission's authorization of licensing for low power operation.

DATED: September 23, 1982

Respectfully submitted,

JOEL R. REYNOLDS, ESQ  
JOHN R. PHILLIPS, ESQ.  
Center for Law in the  
Public Interest  
10951 W. Pico Boulevard  
Los Angeles, CA 90064  
(213)470-3000

DAVID S. FLEISCHAKER, ESQ.  
P. O. Box 1178  
Oklahoma City, OK 73101

By   
JOEL R. REYNOLDS

Attorneys for Joint Inter-  
venors  
SAN LUIS OBISPO MOTHERS FOR  
PEACE  
SCENIC SHORELINE PRESERVATION  
CONFERENCE, INC.  
ECOLOGY ACTION CLUB  
SANDRA SILVER  
ELIZABETH APFELBERG  
JOHN J. FORSTER



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

I hereby certify that on this 23rd day of September, 1982, I have served copies of the foregoing JCINT INTERVENORS' BRIEF IN RESPONSE TO SEPTEMBER 2 ORDER, mailing them through the U.S. mails, first class, postage prepaid.

\*Thomas S. Moore, Chairman  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

Dr. W. Reed Johnson  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Malcolm H. Furbush, Esq.  
Vice President & General  
Counsel  
Philip A. Crane, Esq.  
Pacific Gas & Electric Company  
Post Office Box 7442  
San Francisco, CA 94106

\*Dr. John H. Buck  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

\* By Express Mail

\*Docket & Service Branch  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Bradley Jones, Esq.  
Donald F. Hassell, Esq.  
Lawrence Chandler, Esq.  
Office of the Executive Legal  
Director - BETH 042  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Herbert Brown, Esq.  
Lawrence Coe Lanpher, Esq.  
Alan Dynner, Esq.  
Hill, Christopher &  
Phillips  
1900 M Street, N.W.  
Washington, D.C. 20036

Byron Georgiou, Esq.  
Legal Affairs Secretary to  
the Governor  
State Capitol Building  
Sacramento, CA 95814

Jance E. Kerr, Esq.  
Lawrence Q. Garcia, Esq.  
J. Calvin Simpson, Esq.  
California public Utilities  
Commission  
5246 McAllister Street  
San Francisco, CA 94102

David S. Fleischaker  
Post Office Box 1178  
Oklahoma City, OK 73101

MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, CA 95725

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

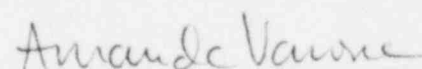
Virginia and Gordon Bruno  
Pecho Ranch  
Post Office Box 6289  
Los Osos, CA 93402

Sandra and Gordon Silver  
1760 Alisal Street  
San Luis Obispo, CA 93401

Bruce Norton, Esq.  
3216 N. Third Street  
Suite 202  
Phoenix, AZ 85012

Nancy Culver  
192 Luneta  
San Luis Obispo, CA 93401

Carl Neiburger  
Telegram Tribune  
Post Office Box 112  
San Luis Obispo, CA 93402

  
AMANDA VARONA

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\* By Express Mail