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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

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

50-275
50-323

SUPPLEMENTAL BRIEF OF GOVERNOR BROWN
PURSUANT TO BOARD ORDER OF SEPTEMBER 2, 1982

Pursuant to the Appeal Board's Order of September 2, 1982, Governor Brown hereby submits views as to whether any issues presented by the pending appeals from the Licensing Board's low power decision may be moot.

1. Of the issues briefed and submitted by the Governor on September 2, 1981, the only area in which the mootness question would seem germane is the Licensing Board's finding that adequate emergency preparedness exists to authorize low power operation of Diablo Canyon. However, in the circumstances of the Commission's issuance and then suspension of PG&E's low power license, there is no basis for finding the Governor's appeal of any emergency preparedness issues moot.

The Licensing Board's emergency preparedness findings have not lost their practical significance. The low power license

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was issued on the basis of those findings, and the license is pending before the United States Court of Appeals for the D.C. Circuit in part on the Governor's petition for review of those findings. Had PG&E's license not been suspended, the present situation would not have arisen, because the low power emergency preparedness issue would have been ruled on by the Court of Appeals. Either the case would have been remanded to the NRC, or the issuance of the low power license would have been judicially approved. However, here the suspension of the low power license has created the novel situation of the full power license being substantially approved while low power operation has been barred for reasons that also preclude full power operation.

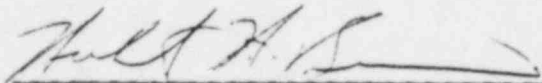
The result of this novel situation prevents mootness of the Governor's low power appeal, which still represents a continuing controversy between the parties. The Governor has contended in his brief to this Board dated September 2, 1981, that the Licensing Board unlawfully issued a low power license to PG&E. The foundation to support that license includes the Licensing Board's findings on emergency preparedness that the Governor continues to contest. From the standpoint of the Governor, therefore, the emergency preparedness findings in the low power decision have not lost their practical significance. Indeed, the Governor intends that such findings were made on the basis of unfounded, arbitrary, and capricious actions of the Licensing Board that remain in controversy.

Nevertheless, the fact is that the full power decision exists and the record it embraces is pertinent to the state of emergency preparedness at Diablo Canyon. It may, therefore, be appropriate for the Appeal Board to consider the full power record in tandem with the low power record and to render a decision which considers the appeals taken from both.

2. The Governor emphasizes that the issue concerning the Licensing Board's failure to consider the impacts of earthquakes on emergency planning and preparedness during low power operation is unaffected by the Licensing Board's full power decision.
3. The Governor notes that the Commission has not acted on the full power decision pursuant to 10 C.F.R. §2.764. Therefore, the low power license is the only license that has been given effectiveness, and the findings which support the license have legal vitality beyond that of the findings in the full power decision. This, at the least, suggests that the Appeal Board consider the issue raised in the Board's September 2 Order to be premature. Moreover, given the proliferation of errors at Diablo Canyon and the expanding disclosures of the current independent verification program, there would be no good reason for the Commission now to consider the full power decision under Section 2.764.

Respectfully submitted,

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September 24, 1982 .

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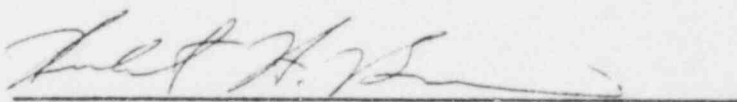
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