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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION ~~SEP~~ AUG 19 11:01

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
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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))	(Reopened Hearing --
)	Design Quality
)	Assurance)

JOINT INTERVENORS' REPLY ON CONTENTIONS
REGARDING DESIGN QUALITY ASSURANCE

On July 19, 1983, the Joint Intervenors filed their contentions regarding design quality assurance at Diablo Canyon Nuclear Power Plant ("Diablo Canyon"). They did so after having submitted literally hundreds of pages of supporting documentation, including extensive affidavits prepared by quality assurance expert Richard B. Hubbard, describing in detail the evidence disclosed since September 1981 establishing a widespread breakdown in design quality assurance at Diablo Canyon. On the basis of such evidence, Pacific Gas and Electric Company ("PGandE") and the NRC Staff conceded that the record should be reopened on the issue of design QA, and on April 21, 1983, this Appeal Board reopened the record.

Notwithstanding this background, PGandE and the NRC Staff filed responses to the contentions of the Joint Intervenors and of Governor Deukmejian as if no such evidentiary showing had ever been made. Completely ignoring the affidavits

and documents submitted by the Joint Intervenors and the Governor in support of reopening the record, PGandE and the Staff have contended that the basis for contentions must be established ab initio, that there has been no indication of what issues the Joint Intervenors and the Governor seek to litigate, and, in some instances, even that the standards for reopening the record and late-filing of contentions must be addressed again. Moreover, in a surprising change of position, both PGandE and the Staff have taken the position that the design verification program at Diablo Canyon -- e.g., the IDVP and/or the Diablo Canyon Project's ITP -- is essentially irrelevant to the reopened proceeding on design QA, and, therefore, that any contentions regarding the IDVP or ITP are outside the permissible scope of issues to be litigated. Finally, the Staff contends that any contention regarding compliance with GDC-1 of Appendix A is also outside the scope of this proceeding because the Licensing Board, in its July 17, 1981 Partial Initial Decision ("PID"), explicitly found compliance only with Appendix B.

Such responses are without merit. First, in contrast to the cases cited by PGandE and the Staff, the Joint Intervenors have already supplied a more than adequate basis for their contentions on design QA through their June 1982 Motion to Reopen the Record and subsequent filings related thereto. Having presented such evidence to the Board and all parties as part of the application for reopening, it would be nonsensical to require the Joint Intervenors to submit once again the same evidence in support of their contentions. Once a breakdown in

the design QA/QC program has been established and the record has been reopened based on that evidence -- as it has in this case -- the Joint Intervenor may properly rely on it in support of their design-related contentions. Particularly is this true in light of the uncontroverted evidence that PGandE's QA/QC program for seismic design was deficient in "policy, practice, and implementation" and that many of its subcontractors were not even required to implement a QA/QC program during periods of peak plant design and construction. Under these circumstances, the Joint Intervenor's contention that PGandE has failed to comply with specific regulatory requirements or to satisfy its licensing commitments has a plainly sufficient basis in the record.

Second, the claim that the adequacy of the design verification program is outside the scope of issues to be litigated in this reopened proceeding is surprising in that both PGandE and the Staff have repeatedly cited the IDVP and ITP as obviating the need for reopened hearings on design. Indeed, in PGandE's April 8, 1983 Response to the March 19, 1983 Affidavit of Richard B. Hubbard, at 2, previously filed with the Board, it conceded that the standards for reopening had been met as to design, and, further, it proposed the following contention, which focuses entirely on the adequacy of the design verification program:

The record in this proceeding may be reopened for the purpose of determining whether the verification program is an adequate remedy for the QA/QC deficiencies detected in design activities at Diablo Canyon.

Significantly, the NRC Staff's SER Supplement 18 relates in its entirety to the design verification efforts. For PGandE and the Staff now to deny its relevance seems inconsistent at best.^{1/}

Having said this, the Joint Intervenors agree with the assertion by PGandE and the Staff that the principal issue to be litigated is PGandE's compliance with the regulations, not the adequacy of the design verification program. That program becomes relevant, however, to the extent that any party chooses to rely on its reports or findings to support a position regarding compliance by PGandE with the Commission's regulations. Thus, it is clearly relevant if PGandE and the Staff intend to cite the IDVP and/or ITP as evidence that any design QA deficiencies have been corrected. Given (1) their past arguments that the proceeding need not be reopened in light of the ongoing design verification, (2) PGandE's proposed

^{1/} It is notable that even this Board, in its April 21, 1983 Memorandum and Order, at 7, regarding the Motions to Reopen, focused on the design verification program in highlighting the "three principal areas of concern with respect to the issue of design quality assurance":

First, there appear to be questions with regard to the scope of the IDVP (i.e., whether, as designed, the verification program is adequate). Second, there appear to be questions with regard to the adequacy of the execution of the IDVP (i.e., whether the IDVP, as designed, has been properly carried out by the applicant's contractors). And third, there appear to be questions with regard to the adequacy of the implementation of the IDVP findings (i.e., whether the "fixes" recommended or undertaken in response to the IDVP are sufficient).

contention, (3) the Staff's SER Supplement 18, and (4) the Board's suggested areas of concern, the Joint Intervenor's decision to include contentions regarding deficiencies in the IDVP and ITP is fully appropriate. For PGandE and the Staff to suggest the contrary carries with it the implication that the IDVP and ITP are irrelevant to the issue of whether design QA deficiencies have been corrected, which is a position plainly inconsistent with the views previously expressed by both PGandE and the Staff.

Third, the Staff's claim that the contention regarding GDC-1 of 10 C.F.R. Part 50, Appendix A, is outside the scope of the reopened proceeding is simply illogical. In its July 17, 1981 PID, the Licensing Board issued its full findings regarding quality assurance at Diablo Canyon. The fact that it failed to mention GDC-1 of Appendix A does not mean that that issue may not be litigated or was not raised by the Joint Intervenor in their Motion to Reopen. To the contrary, it establishes the need for further hearings because no explicit findings exist in the record on that aspect of QA/QC. In addition, the Joint Intervenor has sought -- and this Board has granted -- reopening of the record on design QA/QC. That necessarily encompasses the regulatory requirements relevant to that issue, including GDC-1 of Appendix A, and the Joint Intervenor has explicitly raised the GDC-1 question in several related filings with the Board. The contrary interpretation suggested by the Staff simply ignores our pleadings in this proceeding and makes light of the Commission's regulations.

Finally, the Joint Intervenor believe that the contentions submitted are supported by an adequate basis and are sufficiently specific to place all parties on notice as to the issues to be litigated. This is not a case where only limited deficiencies have been discovered; rather, the disclosures of widespread breakdowns have been continuous and significant, including failures in QA/QC policy, implementation, and management. Simply stated, there is no longer reasonable assurance to believe that the deficiencies are limited to a discrete area, particularly in light of the general failure of PGandE to implement or to require certain of its contractors to adopt any QA/QC program during the years of peak construction at Diablo Canyon. Under the circumstances, the burden is on PGandE to demonstrate on the record either that fully adequate programs did exist or, if not, that adequate compensating measures equivalent to compliance with Appendix B and Appendix A, GDC-1, have actually been taken. No such showing has yet been made.

Accordingly, for the reasons stated, the objections of PGandE and the Staff to Joint Intervenor's contentions on design QA/QC should be rejected.

Response to NRC Staff SER Supplement 18

On August 6, 1983, the NRC Staff issued Supplement 18 to the Diablo Canyon SER. Pursuant to the direction of this Board, the Joint Intervenor have reviewed the Staff's report and, based on this initial review, hereby amend their contentions regarding design quality assurance to include the following:

The NRC Staff review described in SER Supplement 18 further establishes the absence of reasonable assurance of compliance with all regulatory standards in the design and construction of Diablo Canyon. For example, the Staff documented the fact that numerous aspects of the continuing design verification program and of the Staff's own review of the verification effort for Diablo Canyon, Unit 1, are incomplete; that inadequate, nonstatistically-based sampling techniques were employed by the IDVP and relied upon by the Staff; that a breakdown in QA/QC for the design of Diablo Canyon has occurred, resulting in numerous significant and uncorrected deficiencies in the design and construction of Diablo Canyon; that all modifications to SS&C's important to safety have not been completed to date and will not be completed prior to full load and low power testing; that no detailed justification for the failure to require completion of all such modifications prior to fuel load has been provided to date; that PGandE and the IDVP have failed to expand the nonseismic sample to include 100% reverification of nonseismic SS&C's important despite the disclosure of significant deficiencies in the relevant design QA programs for such SS&C's; and that one of the root causes of the breakdown in QA/QC at Diablo Canyon was attributable to the failure of PGandE management to recognize the need to implement a rigorous and well-controlled redesign effort. The Staff's review itself, which is embodied in SER Supplement 18, fails to provide reasonable assurance that Diablo Canyon has been designed


and constructed consistent with all applicable regulations or that the design and construction errors at Diablo Canyon have been corrected sufficiently to ensure that the public health and safety will not be endangered by re-licensing and operation of Diablo Canyon.

DATED: August 16, 1983

Respectfully submitted,

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I hereby certify that on this 16th day of August, 1983, I have served copies of the foregoing JOINT INTERVENORS' REPLY ON CONTENTIONS REGARDING DESIGN QUALITY ASSURANCE, mailing them through the U.S. mails, first class, postage prepaid.

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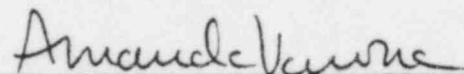
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