UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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' REPLY
TO PGandE and NRC STAFF ANSWERS
TO PETITION FOR REVIEW
OF ALAB-756

On January 26, 1984, both PGandE and the NRC Staff filed answers to the Joint Intervenors' Petition for Review of ALAB-756. This brief reply is filed for the sole purpose of correcting certain factual misstatements by PGandE and the Staff which, if left uncorrected, will mislead the Commission as to the true state of the record in this proceeding.

1. Standard of Review

Both in its Answer to the Joint Intervenors' Petition and to that of the Governor, PGandE asserts that the requirements for late filing of contentions are applicable but were "totally ignored" by the Joint Intervenors.[1/] In fact,

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1/ PGandE Answer to Joint Intervenors, at 10-11; PGandE Answer to Governor Deukmejian, at 4-5.

those 10 C.F.R. § 2.714(a)(1) criteria were explicitly addressed by the Joint Intervenors in Part IV of their May 10, 1983 Motion to Reopen the Record on the Issue of Construction Quality Assurance, at 22-25, out of which the instant Petition for Review of ALAB-756 arises. Neither the Board nor the Staff has even suggested that those criteria have not been satisfied in this case.

2. IDVP Review of Construction Quality Assurance

a. PGandE and the Staff cite the limited IDVP audit of two of twelve construction contractors as evidence that construction practices at Diablo Canyon were adequate. However, with regard to the high percentage of discrepancies found by the IDVP -- 20 to 45% for Wismer and Becker, as estimated by expert Richard Hubbard -- PGandE asserts that "at the hearing it became clear that Mr. Hubbard obtained this figure by misreading the ITR's and basing his number on the raw, unevaluated data."[2/]

As is evident from the following excerpt from the record, however, PGandE failed to mention two critical points: (1) that Mr. Hubbard testified that he had recalculated the percentages using the final, evaluated data and found the results essentially identical, and (2) that the Board, when so informed by Mr. Hubbard, refused to permit him to provide the final percentages for the record:

2/ PGandE Answer to Joint Intervenors, at 6.

JUDGE BUCK: This is raw data. You don't explain this. What I am saying is, here you have got here "Items observed, unsatisfactory."

You don't say anywhere through here that I recall, that the IDV management group reviewed these and found there were a lot of the items should not have been considered unsatisfactory.

MR. HUBBARD: Well, I have recalculated this --

JUDGE BUCK: I'm talking about this table. Is this not --

MR. HUBBARD: It is not misleading at all.

JUDGE BUCK: Why is it not?

MR. HUBBARD: What is misleading is to say that we looked at 3000 things and we found nine EOIs. I think that is very misleading.

JUDGE BUCK: I'm talking about what you said here. Is this not misleading in that you don't state that the IDV management group determined that a large number of the 573 that were marked unsatisfactory here, were, in fact, satisfactory?

MR. HUBBARD: Well, they were not, in fact, satisfactory. They were noncompliances that were acceptable for some other reason.

JUDGE BUCK: As I recall, sir, there were a lot of them that the inspection group actually made a mistake, or they didn't have the right data there at the particular time.

MR. HUBBARD: That's what I am trying to tell you, that I did go back and look at all the ones that were declared invalid. And we calculated the table, taking out the ones that were invalid. And the results are essentially the same, it doesn't change a great deal.

> JUDGE BUCK: I think I would like to see your calculations. May I have your calculations on that, sir, because the ones -- let me see just a moment. [Note: Witness moves to get calculations.] Just sit still for a second.
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> * * *
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> MR. REYNOLDS: Mr. Chairman, before we close, I would very much like to see added to the record the calculations that were mentioned by Mr. Hubbard in response to Dr. Buck's questions. Apparently, Mr. Hubbard has those, and if he could read those into the record I think it would provide a fuller response to the questions raised by Dr. Buck.
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> JUDGE MOORE: Dr. Buck does not want any further information. The witness is excused.[3/]

Thus, in its Answer, PGandE neglected to mention that Mr. Hubbard had specifically addressed the point in question in his testimony, had recalculated the data, and had concluded that the results were identical. Inexplicably, however, the Board denied the Joint Intervenors' request that the recalculated data be made a part of the record, ruling that it "[did] not want any further information."[4/]

3/ Tr. 197-99, 206 (July 19, 1983) (emphasis added).

4/ Id. The Appeal Board's failure to address Mr. Hubbard's testimony is indefensible. PGandE's "justification" for the Board's action -- see PGandE's Answer, at 3 -- ignores (1) PGandE's own refusal to provide access to its construction procedures and those of its construction contractors (Tr. 186-89); (2) the refusal by the NRC and PGandE throughout this proceeding to permit discovery on the issue of construction quality assurance; (3) PGandE's own expert's testimony that a quality assurance expert "absolutely" could rely upon written reports -- i.e., NRC Notices and Reports and IDVP audit reports -- by persons with narrower expertise in

[Footnote continued]

b. PGandE defends the limited scope of the IDVP review, saying that "arguments about the scope of the IDVP construction quality assurance review have nothing whatsoever to do with the issue before the Commission. . . ."[5/] In fact, the scope of the audit is critical because of the Board's reliance upon the IDVP as a basis for confidence that PGandE's construction quality assurance program as a whole was adequate. Because the audit's scope was narrowly confined only to documentation review and visual inspection of just two contractors (Tr. 879-80), the validity of its conclusions is limited in terms of extrapolation to other contractors.

3. Appendix A -- Important to Safety

PGandE asserts that the Joint Intervenors' reliance upon recent NRC decisions in the TMI and Shoreham proceedings is misplaced and, more specifically, that those decisions stand for the proposition that "there is no regulatory requirement for classification and qualification of systems important to

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4/ [Cont'd]

construction methods (Tr. 522); and, most important, (4) Mr. Hubbard's almost 20 years of experience in quality assurance in the nuclear industry, including manager of quality assurance for General Electric Company.

While the NRC Staff contends that "the substance of [Mr. Hubbard's] voluminous affidavits and testimony is encompassed by the [Board's] decision," Staff Answer, at 7, it fails to note that the Board's substantive conclusions are necessarily premised on its blanket rejection of Mr. Hubbard's testimony and opinions at the outset.

5/ PGandE Answer, at 7; see also Staff Answer, at 9-10.

safety. . . ."[6/] In fact, they hold explicitly to the contrary. After citing GDC-1 of Appendix A as just such a requirement, the Shoreham Board held as follows:

> Because of the obvious disagreement by LILCO with the definition of "important to safety" meaning that this class of equipment is larger than the class of safety-related equipment, and our conclusion, together with the similar conclusion reached by the Appeal Board in ALAB-729 . . ., that this difference is real, . . . we impose a condition on any operating licensing for Shoreham that this distinction be acknowledged and adopted by LILCO, insofar as the classification and qualification of structures, systems and components are concerned.

Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, at 176-77 (1983) (emphasis added). Because the Appeal Board's decision below cannot be reconciled with this holding, Commission review is necessary and proper.[7/]

6/ PGandE Answer, at 10.

7/ The suggestion by PGandE, the NRC Staff, and the Board that this issue could have been raised years ago and, therefore, is not a proper subject for reopening, is erroneous. While PGandE's FSAR definitions have been available for years, it was not until PGandE filed interrogatory answers during the summer of 1983 that the parties became aware that PGandE was not applying its quality assurance program to nonsafety-related SS&C's important to safety. See Applicant PGandE's Answers to Governor George Duekmejian's Second Set of Interrogatories, at 5 (July 25, 1983). In those answers, PGandE acknowledged for the first time that:

> For purposes of its compliance with General Design Criterion 1, PGandE considers that the term "important to safety," as used in Appendix A to 10 CFR 50 is synonymous both with the term "safety-related" as used in other sections of NRC rules and regulations and with "PGandE Design Class I."

4. NSC Audit and Foley Deficiencies

Both PGandE and the NRC Staff simply reiterate their view that the Board correctly decided the facts in their favor with regard to the 1977 NSC audit and the allegations of deficiencies in the Howard P. Foley quality assurance program.[8/] In so doing, however, they miss the critical point that the Board's resolution of such factual issues in order to deny reopening of the record is a blatant violation of the Commission's standards as set forth in Vermont Yankee. If the Board has the authority to dismiss significant new evidence on the basis solely of conclusory, often self-serving affidavits by NRC Staff and utility witnesses disputing that evidence, then the right to a reopened record -- and the attendant right to discovery and hearing -- is worth little to the proponent of that evidence. The Appeal Board -- as well as PGandE and the Staff in their respective Answers -- ignored this basic principle, and its decision must be reversed.

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8/ Notably, neither PGandE nor the Staff mentioned the numerous recent allegations of deficiencies in the Pullman and Foley quality assurance programs. These allegations seem to confirm the NSC audit findings and the allegations by former Foley Quality Control Manager, Virgil Tennyson, in striking contrast to the Board's decision below with respect to that evidence.

CONCLUSION

For the reasons stated herein and in their January 9, 1984 Petition for Review, the Joint Intervenors request that review be granted and ALAB-756 be reversed.

Dated: February 3, 1983

Respectfully submitted,

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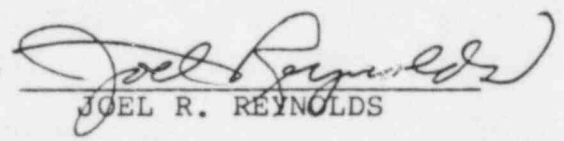
By 
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 1984, I have served copies of the foregoing JOINT INTERVENORS' MOTION FOR LEAVE TO FILE REPLY; JOINT INTERVENORS' REPLY TO PGandE and NRC STAFF ANSWERS TO PETITION FOR REVIEW OF ALAB-756, mailing them through the U.S. mails, first class, postage prepaid.

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