UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

GOVERNOR GEORGE DEUKMEJIAN'S REPLY TO THE RESPONSES OF PACIFIC GAS AND ELECTRIC COMPANY AND THE NRC STAFF TO HIS CONTENTIONS ON DESIGN QUALITY ASSURANCE

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Pursuant to the schedule established by the appeal board at the hearing on July 22, 1983, Governor George Deukmejian hereby replies to the responses of Pacific Gas and Electric Company ("PG&E") and the Nuclear Regulatory Commission ("NRC") staff to his contentions on design quality assurance ("DQA").

I.

INTRODUCTION

The responses to the Governor's contentions on DQA filed by PG&E and the NRC staff seek to deny what has previously been conceded and to challenge what has already been decided. Apparently unhappy with their own

stipulations and the board's April 21, 1983 ("April 21 Order") order reopening the record on DQA, both have argued as if nothing of significance with respect to these contentions has transpired in this proceeding.

PG&E and the staff appear anxious to litigate only the question of the extent to which PG&E and its contractors did not have DQA programs which met the requirements of Appendix B to 10 C.F.R. Part 50 ("Appendix B") and to bar this board from considering whether the substitute for those programs -- the design verification program, consisting of the Independent Design Verification Program ("IDVP") and the Diablo Canyon Project ("DCP") -- will be effective. PG&E and the staff would reduce the upcoming DQA hearing to little more than a moot court exercise.

Neither PG&E nor the NRC staff are entitled to avoid the consequences of their own past admissions or to ignore the plain meaning of the board's previous order on DQA. As the board recognized in its April 21 Order (at p. 7), the principal issue in this proceeding with respect to Appendix B is not the extent to which PG&E and its contractors failed to have QA programs in compliance with that regulation but rather whether their substitutes, in terms of "scope," "execution," and "implementation" are effective.

The Governor does not seek to preclude PG&E from trying to prove that Diablo Canyon was designed with the assurance of quality that compliance with Appendix B is

supposed to insure. If PG&E thinks it can overcome the hundreds of documented errors, requiring thousands of modifications, it is entitled to the chance -- at least until a motion for summary disposition can be decided. But the reality of this case is that if the quality of design is to be assured, the assurances will have to come from outside the PG&E QA program -- mainly from the IDVP.

Appendix B has required that PG&E have in place since 1970 an effective QA program. Taken literally, the regulations can be met only by a satisfactory program at the time of design. However, the Governor has always agreed that compliance can be achieved after the fact, by verification of the quality of design. Only if PG&E tries to rely on its original QA program to compensate for the deficiencies of the IDVP will it be necessary to litigate the adequacy of the PG&E QA program. Contention I is provided for that contingency.

It is no answer to suggest, as the NRC staff has, that it is sufficient and appropriate to simply review the design modifications performed by the DCP and the QA program under which they were performed and to ignore the IDVP's analysis of how much work needs to be reviewed and redesigned. As the staff itself states in its August 6, 1983, Diablo Canyon Safety Evaluation Report, Supplement 18 ("SSER 18"):

"The Diablo Canyon Unit 1 verification effort consists of two major programs: (1) the IDVP, Phase I

and Phase II . . . and (2) the Diablo Canyon Project (DCP) Internal Technical Program (ITP), which was formulated by PG&E in early 1982 to provide the necessary information to the IDVP and the appropriate actions to address and resolve issues identified by the IDVP, including reanalysis, redesign, and physical modifications for the plant, as necessary." (Footnote omitted.) (SSER 18 p. C.1-2.)

In short, the substitute for PG&E's failed QA program with respect to Appendix B compliance is the verification program consisting of both the IDVP and the ITP. To evaluate one without the other is to cripple the hearing.

The goal of the verification program is to provide what a proper QA program would -- reasonable assurance that the design of Unit 1 meets PG&E's license commitments and the commission's regulatory requirements. To the extent the verification program has failed to perform its function it may be challenged through contentions just as any QA program could.

PG&E and the NRC staff have also challenged the Governor's ability to propound a contention on the question of PG&E's compliance with the requirements of General Design Criteria 1 (GDC-1) of Appendix A to 10 C.F.R. Part 50 ("Appendix A"). Here too, both have sought to avoid the consequences of their own stipulations with respect to the reopening of the record on DQA. Despite the fact that the Governor's motion alleged that there was newly discovered

evidence that PG&E had not complied with the requirements of Appendix A, PG&E and the staff failed to exclude the subject of Appendix A compliance from their stipulations. Consequently, these contentions as well are properly within the purview of the board.

In the discussion to follow it will be demonstrated that there is ample basis in the record for each of the contentions raised and that with respect to the contentions which need to be litigated in the hearing each is in fact concrete and litigable.

One further matter needs to be mentioned before the discussion proceeds. As PG&E affirmatively points out, the Governor is not an ordinary party in this proceeding but rather the representative of an interested state pursuant to 10 C.F.R. section 2.715(c). As such, his right to participate in this proceeding is not contingent upon the filing of a contention or demonstrating a basis for any contention in accordance with the requirements of 10 C.F.R. section 2.714(b) but rather is based upon the provisions of 10 C.F.R. section 2.715(c), which merely require that the Governor set forth with reasonable specificity the subject matters on which he desires to participate. The rules of commission practice do not require that a representative of a state bear the full burden of an ordinary party. (See Pacific Gas and Electric Company (Diablo Canyon Units 1 and 2) ALAB-583 (1980) 11 NRC 447, 449; Gulf States Utility Company (River Bend Station, Units 1 and 2) ALAB-317 (1976)

3 NRC 175, 176, 180.) As a result, though the Governor, as indicated below, has met the requirements of 2.714(b), the claim by PG&E and the NRC staff that the Governor's contentions do not state the basis upon which they have been made or are not specific enough to be litigable is actually irrelevant. Because the Governor is the representative of an interested state, all that is relevant is whether the subject matter of each of the Governor's contentions is properly before the board.

II.

THE EVIDENCE SUPPORTING THE GOVERNOR'S MOTION TO REOPEN THE RECORD ON QA PROVIDES A MORE THAN SUFFICIENT BASIS FOR HIS CONTENTIONS

In his motion to reopen the record on quality assurance, the Governor presented newly discovered evidence:

a.) that PG&E and its major subcontractors did not adopt or implement a DQA program which met the requirements of Appendix B;

b.) that PG&E did not have a DQA program which met the requirements of Appendix A;

c.) that the scope, execution, and implementation of the IDVP were inadequate; and

d.) that the ITP's design product and quality assurance/quality control (QA/QC) program were deficient.

The Governor's case with respect to Appendix B was supported in part by the affidavits of Richard B. Hubbard, detailing (1) the conclusions of Robert F. Reedy about the

failings of the PG&E QA program, and (2) the scores of PG&E QA/QC non-conformances identified by the IDVP, PG&E and the NRC staff. The Governor's position with regard to Appendix A likewise was supported by the Hubbard affidavits. These documents described PG&E's programmatic failure even to confront the question of compliance with the requirements of that regulation and the NRC's admission that it never inspected for such compliance. These conclusions have in turn been substantiated by the recent testimony of PG&E and the NRC staff at the hearings on construction quality assurance.

Insofar as the Governor's conclusions about the IDVP are concerned, the board itself has recognized that their genesis lies in the affidavits of Richard B. Hubbard.[1/]

Finally, the Governor's case with respect to the ITP was supported by the detailed description in the Hubbard affidavits of the design product and QA/QC failings of the ITP reported by Brookhaven National Laboratory and the

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1. The Governor's contentions II.B.1(a)-(t) are in addition based upon advice given to the Governor by Dr. Jose Roesett. Given that the Governor as the representative of an interested state did not believe himself bound by the requirements of section 2.714(b) he did not identify Dr. Roesett as the source of these contentions or provide his affidavit in support of them. However, the Governor will be prepared to provide such an affidavit should the board desire it.

IDVP.[2]

In the face of this evidence, PG&E and the NRC staff abandoned their challenge to the showing on which the motion to reopen was based. Under the rule enunciated in Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station) ALAB-138 (1973) 6 AEC 520, 523, the showing necessary to support a motion to reopen is equivalent to the showing necessary to defeat a motion for the summary disposition of a contention. Thus, in stipulating to the Governor's motion, PG&E and the staff were stipulating that the evidence in support of the motion was sufficient to defeat summary disposition of the contentions contained in the motion.

As the staff concedes, there is no requirement that evidence supporting a contention be detailed before it will be admitted. (Mississippi Power and Light Co. (Grand Gulf Nuclear Station Units 1 and 2) ALAB-130 (1973) 6 AEC 423, 426.) It is also clear that a contention need not be proven strong enough to survive summary disposition before it will be admitted. (Houston Lighting and Power Company et al. (South Texas Project, Units 1 and 2) LPB-79-10 (1979) 9 NRC 439, 449; (Houston Lighting and Power Company (Allens Creek

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2. Dr. Roesett's advice has also formed the basis of the Governor's contention III with respect to the ITP. Inasmuch as the ITP is the source of the design product which Governor's contention II B 1(a)-(t) challenges, the Governor regards contention III as incorporating all the previous challenges to the IDVP made in contention II.

Nuclear Generating Station, Unit 1) ALAB-590 (1980) 11 NRC 542, 550.)

In the present case, the Governor's contentions on DQA are precisely the same as the contentions raised in his motion to reopen the record. As a consequence, in stipulating to the reopening of the record based on the evidence supporting those contentions, PG&E and the NRC staff have already conceded that there is more than an adequate basis for the Governor's contentions here.

To the extent that the Governor may be required to provide a "basis" for his contentions, the evidence already proffered amply satisfies the requirement. It should be abundantly clear that the basis requirement of section 2.714(b) and the decisions cited by PG&E and the staff simply have no application to contentions advanced after a motion to reopen the record has been granted.

III.

THE BOARD'S ORDER HAS ESTABLISHED NOT ONLY THAT CONTENTIONS WITH RESPECT TO THE IDVP ARE APPROPRIATE BUT THAT THEY ARE THE PRINCIPAL ISSUES IN THIS PROCEEDING

In their responses, PG&E and the staff have suggested that the Governor's contentions with respect to the scope, execution, and implementation of the IDVP are wholly inappropriate to this proceeding. Their position in this regard is quite remarkable in light of this board's order reopening the record on DQA.

In its April 21 Order, the board made it abundantly

clear not only that contentions such as these have an identifiable basis in the affidavits of Richard B. Hubbard but that these contentions in fact formed the three principal issues with respect to DQA which the Governor was making in his motion to reopen (April 21 Order, p. 7). The Governor has simply adhered his contentions to the outline that the board identified in its order.

Furthermore, as discussed above, it is no answer to suggest, as the staff has, that contentions in this proceeding can only be directed at the ITP and not the IDVP. As the staff notes in its SSER 18, the IDVP and the ITP function together as the design verification program. (SSER, p. C.1-2.) The goal of the program is to assure that the PG&E licensing commitments for the design of Unit 1 have been met (Id., p. C.1-3) and that any deficiencies detected are appropriately corrected (Id., p. C.1-2). The IDVP's purpose is to evaluate the performance of PG&E's DQA program and the design product it produced. (Ibid.) The ITP, on the other hand is to perform the appropriate corrective action and redesign recommended by the IDVP. (Ibid.) As a result, to review the one without the other is to consider only half the problem.

After disclosure of the mirror image error and the revelations of the Reedy reports, it became clear that no reasonable assurance about the design of Unit 1 could be obtained from reliance upon PG&E's QA program. Consequently, the design verification program has become the

key to providing that missing assurance and it, in its totality, must therefore be subject to the kind of adjudicatory review to which the QA program it is replacing was supposed to be subjected.

IV.

APPENDIX A IS AT ISSUE BY VIRTUE OF BOTH THE 1981 LICENSING BOARD FINDING AND THE RECORD ON THE MOTION TO REOPEN

In addition to challenging the appropriateness of a contention on the IDVP, the staff has also questioned whether Appendix A compliance is a fit subject for this proceeding. Its argument in this regard appears to be based on the premise that Appendix A compliance was not an issue in the proceeding below and therefore may not be raised in this proceeding absent a showing that the standards for a late-filed contention have been met. (Response of the NRC Staff pp. 5-6.)

The Governor disputes the staff premise that the issue of Appendix A compliance was not raised below. Under the commission's regulations the licensing board was compelled to make a finding on this question. (See 10 C.F.R. section 50.57(a).) Indeed, the licensing board's 1981 finding asserted compliance with all regulations, implicitly including GDC-1.

However, even if the licensing board had made no such finding, the standards for a late-filed contention have already been met -- those standards having been required of the motion to reopen itself. (See Pacific Gas and Electric

Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-81-5 (1981) 13 NRC 361.)

In the present case, the Governor in his motion to reopen the record on DQA made it abundantly clear that Appendix A compliance was an issue and that the standards for a late filed contention had been met. Neither PG&E nor the staff can now argue that the subject of Appendix A compliance for DQA is not properly before this board.

V.

CONCLUSION

The parties are evidently in fundamental disagreement over the nature of the upcoming hearing on DQA. In accord with the board's order, the Governor believes that the principal focus of that hearing will be the effectiveness of the IDVP and, to a lesser extent, the ITP. As a result, the proferred contentions concentrate on the IDVP. To the extent there is a separate contention on the ITP, it is intended that the IDVP contentions be considered applicable to it as well.

PG&E and the NRC staff have not seriously contended the IDVP contentions are not concrete and litigable. Even a cursory reading of them demonstrates that they in fact lend themselves to discrete resolution.

However, PG&E and, to a lesser extent, the NRC staff have contended that the litigable nature of these contentions is not relevant because the IDVP itself is not at issue at all in this proceeding. Instead, for them the

only issue to be considered by this board is the number of deficiencies in PG&E's DQA program which have existed and do now exist. (Response of PG&E, p. 7.)

It comes as a surprise to learn that PG&E wants to litigate the fact that gave rise to the IDVP itself -- that PG&E's DQA program was deficient. While PG&E may be entitled to a hearing on this issue, it has no right to limit the inquiry to that issue.

Indeed it is the purpose of the IDVP to plumb the depths of PG&E's DQA failures and to recommend the action necessary to provide the public with the protection the law requires and PG&E originally failed to supply. As a consequence, for this board and the parties to limit themselves to the errors identified by the IDVP, without evaluating the adequacy of the IDVP itself, scarcely assures the adequacy of the design. To the contrary, the more pressing need is for an examination of the effectiveness of the IDVP in meeting its objectives.

What the hearing process should decide, and what the Governor's contentions propose, is a resolution of the question of whether the IDVP and the ITP together are providing the public with the level of assurance about the safety of Diablo Canyon which the law requires. This is the

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question to which the law requires an answer and to which the public looks to this agency to address.

DATED: August 16, 1983.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused copies of the foregoing "GOVERNOR GEORGE DEUKMEJIAN'S REPLY TO THE RESPONSES OF PACIFIC GAS AND ELECTRIC COMPANY AND THE NRC STAFF TO HIS CONTENTIONS ON DESIGN QUALITY ASSURANCE" served on the following by U.S. Mail, first class, postage prepaid.

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