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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION 93 OCT 11 P3:01

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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Administrative Judges:

Thomas S. Moore, Chairman  
Dr. John H. Buck  
Dr. W. Reed Johnson

October 7, 1983

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 OL
	)	50-323 OL
(Diablo Canyon Nuclear Power	)	(Reopened Proceeding -
Plant, Units 1 and 2)	)	Design Quality
	)	Assurance)

ORDER

This order confirms our October 5, 1983 oral rulings, made during a telephone conference call with all parties, involving the reopened proceeding on the issue of design quality assurance.

1. In our order of September 7, 1983, we set forth a schedule for hearing commencing at 9:30 a.m. on Monday, October 24, 1983. We now have before us Governor Deukmejian's "Motion for Modification of Schedule" and request for expedited hearing of the motion, dated September 29, 1983, and the responses of the applicant and the staff dated October 4 and 5, respectively. We did not receive the joint intervenors response until October 6.

In light of all the circumstances, we grant the Governor's motion in part. A hearing on the issues set forth in our August 26 order and supplemented in this order

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shall now commence at 9:30 a.m. on Monday, October 31, 1983,  
at the San Luis Bay Inn, Avila Beach, California, i.e.,  
seven days later than previously scheduled. The hearing  
will continue on Tuesday through Friday, November 1 through  
November 4. There will be no recess on Friday, November 4,  
as previously scheduled. The hearing will then resume at  
the same location on Monday, November 7 and continue through  
Thursday, November 10. A one-day recess will be taken on  
Friday, November 11, because the hearing facility is  
unavailable. We will resume the hearing on Monday, November  
14 and continue through Friday, November 18. We will then  
continue with the hearing on Monday, November 21, Tuesday,  
November 22 and possibly Wednesday, November 23, for at  
least part of the day. If we are unable to complete the  
hearing by November 23, we will take a short recess and  
reconvene sometime after Thanksgiving, at an as yet  
undetermined location. At this time, it appears that no  
facility is available for that period in the immediate  
vicinity of the plant so we shall attempt to secure space in  
San Francisco, Santa Barbara, or Los Angeles. Failing to do  
so, we shall reconvene the hearing in the Washington, D.C.  
area.

2. In accord with this schedule modification, all  
prehearing items set forth in our September 7, 1983 order  
are now generally due one week later than indicated in that  
order. By agreement of all counsel, however, pre-filed,

direct testimony now shall be exchanged on October 17, 1983. The testimony shall be in a question and answer format, with specification of which issues it addresses. In addition, in those instances where expert witnesses will form a panel and the testimony is presented as that of the panel, the testimony shall indicate clearly the witness or witnesses sponsoring each part of the testimony. Parties shall also exchange on October 17 a full statement, in affidavit form, of the qualifications of each expert witness and the list of panel groups if witnesses are going to be put on the stand as a panel.<sup>1</sup> On this same date, the parties shall exchange an exhibit list indicating all documents and other items to be offered as exhibits at the hearing (except for purposes of impeachment and rebuttal) with a brief statement following each exhibit describing its purpose and the identity of the sponsoring witness, and all proposed exhibits, including all schedules, summaries, diagrams and charts to be used at the hearing. Each proposed exhibit shall be premarked for identification as either the

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<sup>1</sup> We request that the parties make every effort to keep the size of the panels below five. It has been our experience that the hearing process can be most efficiently and effectively conducted when panels consist of no more than four members. We appreciate that the nature and complexity of the subject matter may require in a rare or isolated instance a larger panel, so we do not mandate a particular size. We expect the parties, however, to make every effort to comply with this guideline.

applicant's, the staff's, the Governor's or the joint intervenors' exhibit.

Objections to proposed testimony and exhibits shall be filed<sup>2</sup> by October 21, 1983. Any party proposing to object to any expert testimony or exhibit shall file its objection with a full statement of the grounds for the objection. Any party proposing to object to a witness' expertise on any subject or subjects and who wishes voir dire questioning of the witness shall list the witness and each specific subject on which the party wishes to question the witness. The parties are expected to notify each other about such objections in advance of October 21 and to confer with respect to each such objection in a good faith effort to resolve the controversy before that date.

Responses to objections shall be filed by October 26, 1983. On the same date, the parties shall file their final estimates of the length of cross-examination of each witness or panel of witnesses, and a statement of any other anticipated or foreseeable procedural or evidentiary issues that may arise at the hearing.

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<sup>2</sup> For the purposes of this part of the order the words "file" or "filed" mean that the required papers must be in our hands and the hands of the other parties on the date specified in the order.

3. Formal discovery in this reopened proceeding, with the exception of discovery from the staff, has been available to the parties since April 21, 1983. Discovery from the staff has been open to the parties since July 18, 1983. At the August 23-24 prehearing conference, we ordered that all discovery should close on September 28. We now have before us, applicant's September 29, 1983 motion seeking the imposition of sanctions upon the Governor and joint intervenors for failure to supplement seasonably their interrogatory answers. Specifically, the applicant seeks to bar several of the expert witnesses of the Governor and the joint intervenors from testifying because such witnesses were identified in supplemental interrogatory answers just prior to, or after, the September 28 date, thereby foreclosing the applicant's opportunity to depose the witnesses. Alternatively, the applicant seeks leave to depose the newly named experts. In their responses, the Governor and the joint intervenors oppose the preclusion sanction and proffer explanations for their lateness in identifying the witnesses. The staff also opposes barring the witnesses from testifying at the upcoming hearing.

The applicant's motion for sanctions is denied. In the circumstances, the preclusion sanction is unwarranted. Rather, the Governor shall make immediately available to the applicant for depositions Mr. Richard B. Hubbard and Dr. George Apostolakis. Similarly, the joint intervenors shall

make immediately available to the applicant for depositions Dr. Peter Kempthorne and Dr. Francisco J. Samaniego. Such depositions shall be completed by October 12, 1983. In addition, the Governor and the joint intervenors shall supplement, by October 8, 1983, all previously filed interrogatory responses and document requests to account for the designation of the foregoing individuals as witnesses. Any failure on the part of the Governor and the joint intervenors to comply fully with these orders shall result in the exclusion of the witness or witnesses from the hearing.

4. Buried in its motion to modify the hearing schedule, the Governor also requests leave to depose, by October 11, some thirteen additional applicant, staff and IDVP witnesses. The Governor's request is in large measure denied. We have already delayed -- in part at the behest of the Governor -- the start of the hearing one week. Further delays are unwarranted. Moreover, the Governor's suggested schedule calling for the completion of thirteen additional depositions by October 11 is totally unrealistic in light of past discovery record of the parties to the proceeding. Therefore, the Governor may depose one additional witness of the applicant. The applicant shall make the witness available immediately to the Governor and the deposition shall be completed by October 12, 1983. There shall be no additional depositions of staff or IDVP witnesses.



5. The Governor and joint intervenors have filed a document entitled "Contentions on Design Quality Assurance," dated September 8, 1983. That filing purports to particularize further the issues they seek to raise in the proceeding in accordance with our August 26, 1983 order. The applicant objected to a number of these issues in a written response and we heard staff counsel's objections during the October 5 conference call. The following issues contained in the September 8 filing of the Governor and the joint intervenors do not meet the standard set forth in our August 26 order and are not, therefore, in issue in the proceeding: 3(a), 3(b), 3(h), 3(l) and 3(m).<sup>3</sup>

6. The Governor and the joint intervenors also filed on September 29 their "Additional Contentions on Design Quality Assurance," pursuant to the provisions of our August 26, 1983 order. In a response dated October 4, the applicant also objects to each of these issues. Once again, we heard staff counsel's objections during the October 5 conference. All the issues set forth in the Governor's and joint intervenors' September 29 filing may be litigated in the proceeding.

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<sup>3</sup> Although item 3(f) has not been excluded, it presents issues in controversy in the proceeding only insofar as those issues do not challenge the methodology and conclusions previously accepted in ALAB-644, 13 NRC 903, 936 et seq. (1981).


7. Any new issues by the Governor or joint intervenors dependent on any of the most recently filed ITR revisions must be filed by Wednesday, October 12, and must be accompanied by a full and complete explanation of why the issue could not have been previously raised based upon a prior ITR issuance. In addition, any such issue must be framed in conformance with the requirements set forth in our August 26 order. As we stated in that order,

[f]or each of these issues the Governor and the joint intervenors must particularize the critical facts upon which they base their claim. (Footnote omitted).

In other words, the Governor and joint intervenors are to state affirmatively all the critical facts which form the basis of the new issue and not merely object to the manner in which some action was conducted. Further, the new issues must identify the newly filed ITR which it concerns.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Shoemaker  
Secretary to the  
Appeal Board