UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

PACIFIC GAS AND ELECTRIC COMPANY'S
ANSWER IN OPPOSITION TO JOINT INTERVENORS'
MOTION TO AUGMENT OR, IN THE ALTERNATIVE,
TO REOPEN THE RECORD

On February 14, 1984, Joint Intervenors filed a motion to augment or, in the alternative, to reopen the record on design quality assurance. In support of that motion they submitted two affidavits of Charles Stokes (November 17, 1983, and February 8, 1984), a former pipe support designer at Diablo Canyon; the affidavit of John Cooper (January 23, 1984), a former instrument and control technician at Diablo Canyon; and several handwritten outlines presented by the NRC Staff at a January 31, 1984 public meeting regarding Mr. Stokes' allegations on small bore piping:

Pursuant to a February 23, 1984 Order of this Board, Joint Intervenors served a March 2, 1984 supplement to their February 14 motion addressing a transcript of the January 25, 1984 meeting between Charles Stokes and representatives of the NRC Staff. In these filings Joint Intervenors request the Board to augment or reopen the record to consider this "new

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information" as part of the reopened design quality assurance hearings. For the reasons set forth below, Pacific Gas and Electric Company (PGandE) respectfully requests that the motion be denied in its entirety.

Background

On June 8, 1982, Joint Intervenors filed a motion to reopen the Diablo Canyon record alleging deficiencies in the quality assurance program. After hearing argument on this and other matters on April 14, 1983, the Board issued an Order on April 21, 1983 (unpublished) granting the motion to reopen on the issue of design quality assurance only. In that Order the Board directed Joint Intervenors to refile their motion insofar as it sought reopening on construction quality assurance issues. Joint Intervenors complied with this directive on May 10, 1983. After an evidentiary hearing on July 19-22, 1983, the Board issued an Order on October 23, 1983, followed by a memorandum opinion on December 23, 1983, denying the motion. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC ___(1983).

Following months of discovery, the reopened hearings on design quality assurance were held at Avila Beach, California, commencing October 31, 1983, and ending on November 21, 1983. Following the final filing of proposed findings of fact and conclusions of law, but before this Board's decision on design quality assurance, the Joint Intervenors, through both their new (GAP) and old (Center for Law in the Public Interest) attorneys, have come forward with numerous eleventh hour allegations which have but one goal: to stop the licensing and operation of Diablo Canyon by obstructing and thwarting the administrative process.

Argument

The Principle of Administrative Finality Requires that the Motion be Denied

With almost clockwork precision, Joint Intervenors have conveniently filed yet another motion to present "new information" allegedly not previously considered by this Board in its review of design quality assurance issues for Diablo Canyon. Before addressing the substance of the affidavits accompanying the motion, this Board must resolve the larger and more complicated issue of the doctrine of administrative finality. Briefly stated, that doctrine is that with any administrative proceeding there must come a time when the evidentiary record is closed. Obviously, this principle must be applied in a reasoned manner if an administrative matter is ever to be brought to a logical and timely conclusion. As the United States Supreme Court has observed:

> "Administrative consideration of evidence ... always creates a gap between the time the record is closed and the time the administrative decision is promulgated (and we might add, the time the decision is judicially reviewed).
> If upon the coming down of the order, litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening. ICC v. Jersey City, 322 U.S. 503, 514, 64 S. Ct. 1129, 1134, 88 L.ed. 1420 (1944). Vt. Yankee Nuclear Power v. National Resources Defense Council, 435 U.S. 519 at 555, 96 S. Ct. 1197 at 1217 (1978).

The Appeal Board has had recent occasion to apply this principle. In the Matter of Union Electric Company, (Calloway Plant, Unit 1), ALAB 750A, 18 NRC ___ (decided December 9, 1983). In that case the Board was presented with new evidence of an alleged nonconservatism in the analysis of the loads on the manually welded embedded plates as a basis for reopening the record. In declining to reopen the record, the Board observed that:

> "Because the Staff has the matter under review, a final resolution of the question of the purported non-conservatism has not been reached. Thus, it is possible that new information bearing on the safety of the manually welded embeds will be forthcoming. But, particularly given the Staff's monitoring on an ongoing basis of the construction and operation of individual nuclear facilities, the potential for new developments affecting litigated issues always exists. Litigation must nevertheless at some point come to an end... Any new developments can be brought to the attention of either the Commission (if it still has jurisdiction over this proceeding at the time) or the Director of Nuclear Reactor Regulation. See generally Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 707 (1979); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261, 262 (1979); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 965-96 (1978)." (Calloway, supra, Slip opinion at 4-5).

See also, Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 994-95 (1981) refusing to reopen the record on seismic issues for a third time to review a new USGS report which had been recently issued, but which used underlying data that had been previously available and in fact relied upon by expert witnesses of the parties.

Joint Intervenors now seek to avoid this result by arguing that this is "new and timely information" meeting the standards for reopening a closed record. We disagree.

The "new information" offered by Joint Intervenors is neither new nor of such significance that it would change the result and it is not being presented in a timely fashion.1/ At the outset we note that the subject matter--design quality assurance--has been at issue before this Board for almost two years. As this Board well knows, the design and design quality assurance aspects of Diablo Canyon have been thoroughly reviewed for the past two years. Hundreds of engineers have spent hundreds of thousands of

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1/ Counsel for Joint Intervenors, and their key "whistleblower", have a keen appreciation for the tactic of leading one to falsely believe that the temporal relationship between events is other than it is. In Joint Intervenors' motion it is stated that Mr. Stokes' 11/17/83 affidavit was not served on the parties until December 27, 1983 (pp. 20-21), obviously implying that Joint Intervenors were not aware of this "new" information until that time. In fact, on February 2, 1984, Mr. Stokes testified, under oath, before the California State Assembly Utilities and Commerce Committee, that upon his termination on October 14, 1983, he went to the Mothers for Peace with his "story" and that they immediately put him in touch with GAP (whom the Mothers for Peace have retained) and Mr. Devine (Mr. Stokes', GAP's and the Mothers for Peace attorney) helped him prepare his complaint filed with the Labor Department on November 14, 1983, and the November 17, 1983 affidavit. For Joint Intervenors to attempt to lead this Board into believing they had no knowledge of the affidavit when in fact they obviously knew of Mr. Stokes' "story" either before or during the hearing on design quality assurance is, to say the least, strange behavior for a party who is engaging in a wholesale attack of the integrity of entire organizations and the individuals employed by those organizations.

Mr. Stokes employs precisely the same tactic in stating that "on October 5, 1983, I disclosed three...deficiency reports... which led to my subsequent layoff, effective October 17, 1983." In fact, Mr. Stokes first filed the three deficiency notices on handwritten DR forms on August 8, 1983, and was aware of the ongoing investigation and resolution of his concerns during August and September. See Attachments B and C.

man-hours looking at these issues, including a concentrated independent review of the IDVP. The issue of design quality assurance has been fully aired in lengthy hearings after all parties had ample opportunity to conduct full and complete discovery. In addition, the Board may take judicial notice of the fact that the public at large in the San Luis Obispo area was given prior notice of the design quality hearings last November. Obviously the affiants for Joint Intervenors were well aware of those hearings, yet they chose not to come forward at that time. Rather, they conveniently waited until after the hearings were completed and this Board was, presumably, prepared to issue its decision. All of the issues raised in the affidavits accompanying the motion relate to events and actions which took place prior to the reopened DQA hearings. Indeed, the factual information upon which the allegations are based was available to the parties during the discovery process. For example, Mr. Cooper was last employed at Diablo Canyon in March, 1983, and Mr. Stokes from November, 1982, to October, 1983. In their affidavits they recount actions and events purportedly related to design quality assurance issues which, if true, certainly could and should have been discovered during the months of discovery preceding the DQA hearings. In fact, it is difficult to think of a single factual predicate for any of the allegations upon which the motion relies that, if true, was not easily discoverable during the months preceding the DQA hearing.

The only thing "new" about these allegations is that they were cleverly packaged by Joint Intervenors' new set of lawyers and then paraded before the media and Nuclear Regulatory Commission. Admittedly, the documents are "new" i.e., they are dated from November 1983, to the present, but the

information on which they were based is not.[2/] Since all of the "new information" was available to Joint Intervenors during discovery conducted in the DQA hearings, they should not now be allowed to manipulate the administrative process by trotting out through a new set of attorneys their "new information" to augment/reopen the record. This manipulation, if allowed, will effectively obstruct the NRC administrative process. In effect, intervenors will be permitted to lay back until the eve of completion of the hearing process and then spring "new information" on a tribunal and demand that hearings be resumed to consider that information. A more effective impediment to the orderly functioning of the administrative process would be difficult to imagine. Justice and logic demand that such a result be precluded.[3/] See, In the Matter of Cincinnati Gas and Electric Company, et. al. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982) where the Commission refused to allow new QA contentions to be admitted when, as in the instant case, the standards for reopening had not been met (timeliness) and the QA allegations were currently under investigation by the

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2/ During discovery for the DQA hearings all internal PGandE and Project DQA audits were produced for inspection and copying by Joint Intervenors. These audits documented certain discrepant conditions at the Onsite Project Engineering Group (OPEG) and corrective action which was implemented. Joint Intervenors chose to ignore or negligently failed to pursue this matter further during discovery or at hearing. Similarly ITRs 60 and 61 dealing with small bore piping and deficiencies in calculations were available to Joint Intervenors for review and further action through discovery and hearing had they so desired. Many other issues raised by Mr. Stokes were also actually litigated by the parties.

3/ Counsel for GAP has boasted at NRC meetings that he can continue filing 100 allegations per month for six months. Under this scenario the Board could not close the record and render a decision until Joint Intervenors/GAP decide to end their submittals, the likelihood of which appears slim.

NRC Staff. The Commission emphasized the proper role of the Boards and the Staff. The former are to adjudicate issues; the latter to review, monitor, inspect, and take enforcement action, if necessary. This is just such a case. The instant allegations are under review by the Staff and will presumably be fully addressed and appropriate action, if necessary, will be taken. Accordingly, further hearings are not only unwarranted but would constitute an absolute abomination of the administrative process.

A. Stokes Allegations

The vast majority of the Stokes' allegations are addressed substantively in the Breismeister, et. al., affidavit ("Breismeister affidavit") covering some 58 false charges (identified by roman numerals I through LVIII in the Breismeister affidavit) from the 11/17/83 and 2/8/84 affidavits and the 1/25/84 transcript (Attachment A). Responses to allegations concerning Mr. Stokes' perception of why he was laid off are contained in the affidavits of Mr. Tressler, et. al., ("Tressler affidavit") and that of Mr. Mongoba (Attachments B and C). Mr. Stokes' false charges regarding deceitful assignment of calculational packages is addressed in Attachments A and B and the affidavit of Mr. Schusterman (Attachment D). The allegations concerning qualification of QC inspectors to AWS code, their alleged inability to read weld symbols, and the allegation that welders did not possess copies of welding procedures is addressed in both Attachment A and Mr. Etzler's affidavit (Attachment E). Mr. Stokes' mistaken belief that Bechtel's contract for Diablo Canyon was for a fixed price is addressed in Mr. Friend's affidavit (Attachment F). Mr. Stokes' erroneous assertion that Mr. Curtis could not answer questions from OPEG engineers regarding drawing 049243 and never got back with answers is addressed in Mr. Curtis' affidavit (Attachment G).

The Stokes' allegations, as contained in his affidavits of 11/17/83, 2/8/84, and the 1/25/84 transcript of his meeting with NRC Staff members, fall into one or more of four basic categories. Those categories are as follows:

1. The factual predicates of the allegation are, as a matter of law, demonstrably incorrect; 4/
2. The factual predicates of the allegation are substantially or partially correct from which an inference or conclusion is drawn but, upon examination of all of the relevant facts, the alleger's preferred inference or conclusion is, as a matter of law, demonstrably incorrect; 5/
3. The factual predicates of the allegation are substantially or partially correct, but lead to an inference or conclusion of little or no safety significance; 6/

4/ The allegations which fall into these categories are identified by roman numeral as set forth in the attached Breismeister, et. al., affidavit or by written description as they may be addressed in other affidavits. The allegations which fall in this category are: VI, VII, XII-XV, XVII-XXV, XXVIII, XXXI, XXXII, XXXVIII, XL, XLI, XLIII, L, LI, LIV, LV, LVII. In addition, the allegations addressed in the Mangoba, Shusterman, Etzler, Friend, and Curtis affidavits (Attachments B-G).

5/ The allegations which fall in this category are: I-V, VII-XI, XIII-XVI, XIX, XXII, XXVI, XXVII, XXIX, XXX, XXXII, XXXV, XXXVI, XXXIX, XLI, XLIV, XLVI, XLVII-XLIX, LI, LII, LIII, LVI, LVIII. In addition, there are some factual predicates in those allegations addressed by Attachments B-G which are at least partially correct but, when viewed in light of all the facts, do not lead to the conclusions proffered by the alleger.

6/ The allegations which fall in this category are: I, II, III, XII, XV, XXIV, XXXII, XXXV, XLV, LI, LIII, LVIII.

4. The allegation is based on hearsay or speculation thereby lacking sufficient foundation. 7/

1. Demonstrably Incorrect Factual Predicates

A large number of Mr. Stokes' accusations fail when the factual predicates for those accusations are examined and are found to be incorrect. For example, Mr. Stokes alleges that Bechtel normally would not mind finding errors in the small bore piping review because:

> "Bechtel has always had a cost plus ten percent basis contract. They don't care if they have to---They are very adamant, if they aren't doing original design for you and you tell them that you want it done right and you keep insisting on it and you have your own people to monitor, well, hell, if they do it wrong they'll cut it out and do it again because it's cost plus ten.
>
> Diablo Canyon is the first job I know of where they stuck their neck out and bid lump sum to prove that plant was okay, and when they got close to the end -- and I'll tell you how they did it." (1/25/84 Transcript at 22)

The fact of the matter is that Mr. Stokes is incorrect. As set forth in the affidavit of Mr. Friend, Bechtel's contract for Diablo Canyon is not a fixed price, but rather, a cost-plus basis contract.

Another example of patent incorrectness is Mr. Stokes' accusation that management hired people it could control by threat of deportation:

> "I believe that management helped to enforce questionable design practices by hiring aliens on "green cards" who were afraid to disagree with superiors due to the risk of being dismissed and subsequently deported if they could not maintain their jobs. I personally know of many

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7/ The allegations which fall in this category in whole or part are: III, VI-IX, X, XIII, XX, XXI, XXIX, XXXI, XXXII-XXXIV, XXXVII, XLII, XLIII, XLV, XLVI, L-LII, LIV, LV, LVII. In addition, many of the factual predicates or bases offered for the allegations addressed in Attachments B-G fall in this category.

> Indians brought over from the Catawba nuclear pla[illegible] in South Carolina who felt this way. One Indian who was a friend became so disheartened that he just signed off anything, whether it was right or wrong, That is unfortunate, since he was a good engineer. The combination of management intimidation and the large number of errors simply were too much, and he lost his spirit." (Stokes, 2/8/84, p. 2)

An examination of the facts shows that Mr. Stokes is again unequivocably mistaken. Green card holders are permanent residents of the United States and have all the rights of a United States citizen except the right to vote. 8 U.S.C.S. Sections 1101, 1251. Employment status has no bearing on their being allowed to remain in the United States. As set forth in the Breismeister affidavit, paragraphs 91-92, the means for the alleged intimidation simply did not and do not exist.

Two of Mr. Stokes' more serious and insidious charges, that of purging of records with the intent of covering up dishonest acts, and the alleged dischonest acts themselves fall squarely in this category. The facts are simple and straightforward.

First, the dishonest conduct never occurred. Calculations were never assigned to accomplish qualification outside design criteria. (Schusterman aff.; Breismeister aff., par. 40-43, 51-53). If dishonest conduct did not occur then obviously no coverup of that conduct is possible. In this case the factual predicate of purging the records, which serves as the basis for the inference of a coverup, is also simply not true. No files or records have ever been purged. (Breismeister aff., par. 177)

Along more technical lines is Mr. Stokes' allegation that the Bechtel in-house STRUDL was limited to 80K memory thereby limiting its ability

to qualify pipe supports. (Stokes, 1/25/84 Tr., pp. 27, 38-39) As set forth in the Breismeister affidavit, the Bechtel STRUDL computer program allows the analysis of problems up to 262K memory. In fact, Bechtel has never experienced a case, at Diablo Canyon or elsewhere in which STRUDL memory limitations prevented the analysis of any pipe support frame. (Breismeister aff., par. 168-173.) In fact, it was apparently Mr. Stokes' lack of knowledge (as opposed to his professed superior knowledge) about STRUDL which led him to this erroneous belief. (Id.)

A detailed reading of Attachments A thru G, and I, are necessary to fully appreciate both the large number and gravity of factual inaccuracies in Mr. Stokes' allegations. We respectfully submit that a fair reading of the documents submitted with Joint Intervenors' motion and the attachments to this response can lead to only one conclusion: Mr. Stokes' concerns are directed at something other than safety.

2. Demonstrably Incorrect Inferences or Conclusions

Many of Mr. Stokes' allegations contain one or more correct, or substantially correct, factual predicates which, when viewed in isolation, lead to what appear to be logical conclusions or, to apparently reasonable inferences. However, when all relevant facts are brought to bear on the allegation, the conclusion or inference becomes illogical or unreasonable and the substance of the allegation disappears. By way of example, Mr. Stokes alleges that QC inspectors could not read welding symbols because they were not consistent[ly] qualified to the AWS code and were not issued the AWS symbols. ([illegible]. 2/8/84, p. 8) Mr. Stokes' factual predicates that the QC

inspectors were not qualified to the AWS code and were not issued AWS symbols is correct enough, but the apparently logical conclusion that they therefore could not read welding angle, effective throat symbols, and related instructions from the design drawings, is simply incorrect. As set forth in Attachment A, paragraph 135:

> The AWS Structural Welding Code did not, when Diablo Canyon started, and does not today, require AWS qualified inspectors. Inspectors need not be issued the AWS weld symbols. Knowledge of these symbols, like much other material, is part of an educational, experience or training background. These symbols are commonly available in references and need not be issued to inspectors.

Another example of this type of allegation occurs when Mr. Stokes correctly states that Mr. Mangoba spent several days approving many calculation packages. This factual predicate is followed by the inference that the calculation packages were not properly reviewed. The additional facts that change that inference are that Mr. Mangoba had instructed five other senior experienced engineers to perform a detailed technical content review of the calculational packages over and above the required and normal checking procedures, as a part of his approval.

Those serious charges of Mr. Stokes' that do not fall exclusively in category 1 above fall in this category. For example, Mr. Stokes' charge of being terminated for filing discrepancy reports (DR) has some true, or partially true, factual predicates to it, e.g. Mr. Stokes was indeed laid off on October 14, 1983. When all of the facts and documentary evidence are viewed, it is obvious that Mr. Stokes was laid off in a normal, scheduled reduction of forces. His DRs were, for all material purposes, filed in August, not October. (Mangoba affidavit; Tressler aff., par. 14-18).

3. Insignificance of Inferences or Conclusions

Mr. Stokes' allegations also seem to contain accusations which are either substantially or partially correct but when pursued to a logical conclusion, amount to little or no safety significance. For example, Mr. Stokes alleges that engineers were put to work designing pipe supports without first receiving training. (Stokes, 11/17/83, p. 2) As set forth at length in the Breismeister affidavit, only experienced, technically qualified engineers were hired to work in the small bore pipe support group. (Breismeister aff., par. 1-7) In addition, they did receive additional training, albeit not always in as timely a fashion as would be optimally desirable. More importantly, there was no correlation between errors made in calculations and the timeliness of training received. (Anderson aff., Exhibit 1, p. 35)

Another example is that of Mr. Stokes' allegation that Bechtel issued out-of-date STRUDL manuals to engineers in the seismic design review. The allegation, while partially true (Breismeister aff., par. 161-166) simply does not give rise to any significant concern. The basic STRUDL user's manual has not changed in 16 years. (Id. at 163) The changes that Mr. Stokes claims were late in arriving are simply changes to make it easier for the user. (Id. at 164) Mr. Stokes' concern is largely academic. (Id. at 165)

4. Speculation and Hearsay

While all of Mr. Stokes' allegations fit into one of the three categories described above, many of the factual predicates are speculation and/or rank hearsay. An allegation cannot, and should not, be used as the basis for any motion when there is absolutely no foundation to support the factual predicates as legally admissable evidence. For example, Mr. Stokes

speculates that an operator might have difficulty operating the plant (Stokes, 1/25/84, pp. 115-116) and then, piling hearsay on top of speculation, Mr. Stokes claims that "there are other allegations that I have read, concerning whether the operators could indeed operate the plant safely." (Id. at 116)

Other examples of allegations which are rife with speculation and/or hearsay are those concerning "green card" holders (Stokes, 2/8/84, p. 2), the Bechtel contract (Stokes, 1/25/84, p. 22), why Mr. Stokes was laid off (see Attachments A and B), and management's motives for various and sundry other alleged evils.

Mr. Stokes has brought a new dimension to these proceedings. After literally a decade of adversarial proceedings with years of discovery, endless days of hearings, and uncountable numbers of pages of evidence, the Joint Intervenors have been unable to show that anything of safety significance is wrong at Diablo Canyon. The documents provided to them in discovery alone amount to tens of thousands, if not hundreds of thousands, of pages. Now they have Mr. Stokes, who, while working for the licensee, was able to steal about in the night ransacking files seeking what he perceived to be damaging information. Mr. Stokes freely admits:

> "I knew I'd better start getting some information to back up my allegations. I knew if I didn't get something they would just squash me like a bug. So during those times occasionally when my workload was low, like when they had a bomb threat at 9:00 o'clock on Friday night and everybody left because it was approved, so-called, leave time, nobody came to see me from 9:00 o'clock on. I was working until 2:00 o'clock. So I just strolled around the plant and looked at hangers. I worked on my DRs during those times.
>
> I made up a list of about 200 angle frames which failed just outright. The unbraced angle without even doing a calc.

> I also visited the trailer that Mr. Mangoba occupied during the day because the maintenance people who had to open the door tended to leave it unlocked occasionally. I had free access to all books without anyone looking at me, other than occasionally the sweeper. It allowed me to take the document out of the book, over to the Xerox machine and make a copy of it, put it right back in the book and nobody knew I'd ever looked at it. I got those copies of those documents, and those are the ones I gave Isa and the guys at the site." (Stokes, 1/25/84, p. 94)

Although it is most painful to know of Mr. Stokes' conduct, it is reassuring to know that an engineer as obviously dedicated to finding damaging information as he was, and who essentially had free access to all records, cannot identify any safety significant items. Each and every one of his allegations, when investigated thoroughly, results in the conclusion that either the allegation was false, its conclusion or inference incorrect, or, when correct, of little significance.

B. Cooper Allegations

The affidavit of John Cooper (Exhibit F of the motion) seems to have been tacked on to Joint Intervenors' motion as an afterthought, and is given very little attention in the body of the motion. This is not surprising. The information in the affidavit is neither significant nor relevant to design quality assurance, nor is it timely.

Joint Intervenors' motion is premised on the assertion that the supporting affidavits, including the Cooper affidavit, "bears directly on the issue of design quality assurance at Diablo Canyon," (motion at 2) is of "undeniable relevance," (motion at 3) and "goes to the very heart of the seismic redesign of the plant and the verification program undertaken by the DCP and the IDVP," (motion at 3). When we examine the only two pages in the

motion which discuss the Cooper affidavit, we find the statement by counsel that Mr. Cooper portrays "a seriously flawed design practice." Counsel then goes on to refer to the items recounted in Mr. Cooper's affidavits as "quality assurance deficiencies," (motion at 18). These statements, as they apply to the Cooper affidavit, constitute an egregious and questionable misrepresentation by Joint Intervenors to this Appeal Board.

When Mr. Cooper worked for PGandE, he was not a design engineer and was not a part of any design engineering organization. He was not a QA engineer. He was an inspection maintenance technician and construction field engineer, and neither his duties nor his activities as described in his affidavit bear any relationship whatsoever to design quality assurance. Indeed, Mr. Cooper himself does not even claim that his allegations relate to design QA--the relationship seems to be purely an unexplained figment of Joint Intervenors' imagination.

As explained in the affidavit of J.D. Shiffer, et al., ("Shiffer affidavit") (Attachment H), the Cooper affidavit centers around an interesting and positive aspect of project administration at Diablo Canyon--the encouragement by management employees to raise safety concerns, irrespective of the employees' organizational affiliations or job description. (Shiffer aff., par. 18-25) Mr. Cooper, on several occasions, brought to the attention of management and the NRC, concerns related primarily to the design of the residual heat removal (RHR) system. In each and every case his concerns were actively considered and formally dispositioned (Id., par. 26-31). Mr. Cooper's concern--satisfaction of single failure criterion and prevention of spurious closure of valves between the RHR system and the reactor coolant system by unanticipated electrical signals--have been fully resolved by PGandE

in a manner specifically approved by the NRC. The decay heat removal function meets the applicable licensing criteria for Diablo Canyon, and the potential for unwanted valve closings has been eliminated (Id., par. 3-17).

Mr. Cooper's complaint is, in essense, that the matter was not resolved to his satisfaction. Certainly he is entitled to his opinions, but the concerns he raised were duly taken into consideration by PGandE management in arriving at an acceptable resolution. His concerns, though, clearly show no characterization whatsoever of inadequate design QA.

Mr. Cooper also cites several instances of what he considers to be management retaliation or punishment for, in his own words, being a "whistleblower." As explained in the Shiffer affidavit, paragraphs 51-70, there has been no punishment, retaliation, or even threats of punishment or retaliation against Mr. Cooper.[8/] Significantly, nowhere in his affidavit does Mr. Cooper allege that he sought redress at a higher level of management at PGandE with regard to any alleged or perceived harassment, intimidation, or retaliation.

Joint Intervenors make a number of allegations which they assert are supported in the Cooper affidavit. (motion at 18) However, they offer no explanation of how such support is to be gleaned from the affidavit. In fact, the allegations are extraordinarily misleading, particulary since they are characterized as "quality assurance deficiencies."

8/ This is not to say that isolated acts of intimidation, harassment, or retaliation cannot or have not occurred on a job as large as Diablo Canyon. Rather, the question to be asked is --- "Has management ever encouraged or condoned such actions once brought to its attention?" As noted, PGandE has had a stated policy for many years of not allowing harrassing, intimidating, or retaliatory conduct. (Shiffer aff., par. 18-20, 53, 54).

The alleged "failures of corrective action" involved only a failure of the corrective action Mr. Cooper would like to have seen taken. There was indeed corrective action taken, and it did not fail (Id., par. 13-14).

Similarly, the dramatic accusation of document destruction involved legitimate removal of unofficial documents which had nothing to do with QA or the design process (Id., par. 47). There was no retaliation, intimidation, or threats (Id., par. 51-70). The "violation" of internal administrative controls was a single de minimus lack of a signature of no substantive significance, (Id., par. 48-50) and there was no "refusal" to correct an erroneous FSAR description, (Id., par. 35). The other allegations in the Cooper affidavit are similarly without substance. (Id., see generally par. 16, 32-52).

In short, the allegations are of little substance, bear no relationship to design QA, and cannot be considered as support for the extraordinary action of reopening or augmenting the record following the conclusion of hearings.

C. NRC Staff January 31, 1984 Meeting Handouts

All of the questions which were raised in the NRC Staff handouts at the January 31, 1984 meeting have been addressed in PGandE's February 7, 1984 submittal. (Exhibit 1 to Attachment I) In that submittal, PGandE responded to each and every question and concluded that there is reasonable assurance that the as-constructed small bore piping meets all design criteria. PGandE believes these answers are fully responsive to the Staff's questions and will assist the Staff in its ongoing investigation.

D. Conclusion

Joint Intervenors' motion must not be considered in a vacuum. Rather, it must be viewed in light of the hundreds of thousands of manhours of review that the design of Diablo Canyon has received during the past year and the evidence this Board has received on the subject of design quality assurance at Diablo Canyon. It must also be seen as it relates to the regulatory framework under which plants such as Diablo Canyon are to be designed and built. As they argued at the DQA hearings, Joint Intervenors are of the view that the regulations require absolute assurance of absolute perfection in each and every instance. Anything less than absolute perfection is fatal. The adoption of such a view by this Board would, of course, prevent Diablo Canyon, or any other plant, from ever being licensed or operated. It is respectfully submitted that is indeed the goal of Joint Intervenors.

The test here must be whether Diablo Canyon is designed and constructed to reasonably assure protection of the public health and safety. PGandE is confident that this Board has that reasonable assurance as a result of the evidence presented to it during the DQA hearings. A thorough review of Joint Intervenors' motion, its Exhibits, this response and the affidavits attached hereto should not intrude upon that reasonable assurance. It is respectfully requested that the motion be denied in its entirety.

Dated: March 6, 1984

Respectfully submitted,

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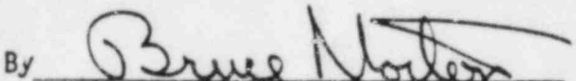
Dated: March 6, 1984

By 
Bruce Norton

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket No. 50-275
	)	Docket No. 50-323
Diablo Canyon Nuclear Power Plant, Units 1 and 2	)	
	)	

CERTIFICATE OF SERVICE

The foregoing document(s) of Pacific Gas and Electric Company has (have) been served today on the following by deposit in the United States mail, properly stamped and addressed:

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