



II.

Argument

A. Revised Contention 4

CCLC contends that Vepco has not shown that its physical protection system satisfies the NRC requirements in 10 C.F.R. § 73.37. Setting out the basis for this Contention, CCLC contends that Vepco's "Spent Fuel Transportation Routing Plan For Transshipment from Surry . . . to North Anna . . ." <sup>1</sup> is inadequate in that it does not:

- include procedures for coping with circumstances that threaten deliberate damage to a spent fuel shipment and with other safeguards emergencies, as required by 10 C.F.R. § 73.37(b)(2) . . . .
- include instructions for each escort for dealing with threatened emergencies, as required by 10 C.F.R. § 73.37(b)(3) . . . .
- provide that arrangements have been made with local law enforcement agencies for dealing with emergencies, as required by 10 C.F.R. § 73.37(b)(6) . . . .
- provide a description of the immobilization device or devices to be used on transport vehicles, as required by 10 C.F.R. § 73.37(c)(4).

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<sup>1</sup>The "Spent Fuel Transportation Routing Plan for Transshipment from Surry Nuclear Power Station, Units 1 and 2 to North Anna Nuclear Power Station, Units 1 and 2" (the Plan) was submitted to NRC on July 13, 1982 by Vepco with Vepco's request for NRC's advance approval under 10 C.F.R. § 73.37(b)(7) of its proposed shipping routes. The Plan is Vepco's effort to comply with the route approval requirements set out in NUREG-0561, entitled Physical Protection of Shipments of Irradiated Reactor Fuel (June 1980) at page 20. The Plan does not purport to constitute or describe the entire physical protection system required under 10 C.F.R. § 73.37, nor is it required to.

We will describe briefly 10 C.F.R. § 73.37 and then discuss the disposition we recommend.

B. 10 C.F.R § 73.37

This provision requires Vepco, in connection with its shipments of spent fuel, to establish, maintain and implement a physical protection system. Section 73.37(a) sets out performance objectives, § 73.37(b) sets out general requirements and § 73.37(c) sets out particular requirements for shipments by road, which Vepco contemplates for its Surry-to-North Anna shipments.

Although NRC approval is required in advance for the shipping routes (§ 73.37(b)(7)), nothing in § 73.37 requires advance approval of the overall physical protection system by NRC. Moreover, for all that appears on the face of § 73.37, it is satisfied so long as the physical protection system is established before shipping starts. Thus, to the extent any portion of Vepco's system may not be complete,<sup>2</sup> Vepco is not in default under § 73.37.

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<sup>2</sup>In fact Vepco's physical protection system is now complete in all respects save one: the choice of vehicle immobilization device must await the selection of the transporter for the spent fuel shipping casks.

C. Consideration of the Contention Should be Deferred Briefly Pending Reconsideration by CCLC.

This Contention is a challenge to the adequacy of a system that CCLC has been unable to review in its entirety. Obviously, if CCLC is to evaluate and challenge effectively the portions of the physical protection system described in its Revised Contention 4, it must have access to them. Those portions, however, are "safeguards information" and thus the subject of special NRC requirements.

Section 73.21(a) requires:

Each licensee who . . . transports, or delivers to a carrier for transport . . . more than 100 grams of irradiated reactor fuel . . . [to] insure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system . . . .

In connection with physical protection in transit--the subject of Revised Contention 4--§ 73.21 describes the "information to be protected" as:

(iii) Details of vehicle immobilization features, intrusion alarm devices, and communication systems.

(iv) Arrangements with and capabilities of local police response forces . . .

. . .

(vi) Procedures for response to safeguards emergencies. § 73.21(b) (2)

Thus, each portion of the Vepco physical protection system that CCLC would have to review in order to pursue its Revised Contention 4 effectively is "information to be protected" under § 73.21 of Part 10. Section 73.21(c) limits the classes of persons who may have access to such information. The only exception that might apply to CCLC is found in § 73.21(c)(vi), which permits access by "an individual to whom disclosure is ordered pursuant to § 2.744(e) of [Part 10]."

Section 2.744 of Part 10, which deals on its face only with the production of NRC records and documents, permits disclosure of information dealt with in § 73.21 where disclosure "is found by the presiding officer to be necessary to a proper decision in the proceeding . . ." The Atomic Safety and Licensing Appeal Board, moreover, has indicated that the guidelines governing the production of safeguards information from an applicant and those governing production of NRC's protected information are the same. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Station, Units 1 and 2), ALAB-410, 5 NRC 1398, 1402 (1977).

The terms under which a security plan for an operating station would be disclosed to an intervenor were the subject of the litigation in Diablo Canyon. There the Appeal Board rejected the argument that access to a security plan by an intervenor is inappropriate, but the Appeal Board said:

Nevertheless, as we have indicated, security plans are indeed sensitive . . . . [T]hey are clearly not to be made available to the public at large. And while they must be released to interested parties under appropriate conditions, that does not mean that in all cases they need be released in their entirety or to anyone selected by the intervenors or without protective safeguards.  
(Id. at 1403-04.)

The Board went on to say:

If and to the extent released, the plan may - and in most circumstances probably should - be subject to a protective order. See 10 CFR § 2.790(e) and § 2.740(c).  
(Id.)

Moreover, the Appeal Board held that:

A security plan need not be revealed to a witness who lacks relevant expertise for evaluating it. Access to the plan or portions thereof should be given only to witnesses who have been shown to possess the technical competence necessary to evaluate the portions of the plan which they may be shown. Any other course would contravene the requirement that access be afforded only to 'persons properly and directly concerned' (10 CFR § 2.790(b)(6))  
. . . . (Id.)

The Appeal Board added that the party sponsoring the expert witness has the burden of demonstrating his expertise. Id. at 1405.

In a later decision in the same proceeding, the Appeal Board issued a protective order pursuant to which a "sanitized" copy of the Diablo Canyon security plan was to be released, along with a required Affidavit of Non-Disclosure that was to be executed by any person given access to the

plan under the Protective Order. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Station, Units 1 and 2), ALAB-592, 11 NRC 746 (1980). Copies of the Protective Order and the Affidavit are attached hereto as Attachment 1.

A cursory review of the attached documents and the cases cited above suggests that a good deal of effort, and perhaps significant expense, will result for CCLC if it pursues its Revised Contention 4.

This same set of circumstances arose in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-17, 15 NRC 566 (1982). There, the intervenor alleged in general terms that the applicant had not developed and demonstrated an adequate security plan. The Licensing Board acknowledged that the contention was not specific, but it recognized that the intervenor could not reasonably be required to advance specific contentions about the security plan because he had never seen it. The Board disposed of the matter this way:

We could now find that disclosure of the plans is 'necessary to a proper decision in the proceeding.' . . . However, we are uncertain whether [the intervenor] is fully aware of the procedural complexities and cost associated with pursuing security plan issues under the Commission's case law and new regulations. For one thing, we would condition a disclosure order on [the intervenor's] having obtained the services of a qualified security plan expert. Beyond that, access would be conditioned as to time, place, note-taking, and the like. A copy of the protective order entered in the Diablo

Canyon case is enclosed as illustrative of these restrictions . . . .

A logical next step, then, is for [the intervenor] to consider the matter further and inform us, within ten days of receipt of this Order, whether it wishes to gain access to the Cawtaba security plan, subject to the kinds of conditions we have indicated. If it wishes to proceed, we will then hear from the other parties and consider what further procedures are appropriate. (Id. at 590.)

Veeco believes that this is the disposition the Board should make of Revised Contention 4 in this proceeding. CCLC may decide to go forward with its Revised Contention 4. On the other hand it may be that CCLC simply seeks assurance that a complete physical protection system is in fact in place before shipping begins; in that event a solution well short of time-consuming and expensive litigation may be possible.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

By /s/ Michael W. Maupin  
Michael W. Maupin, Counsel

Of Counsel

Michael W. Maupin  
Marcia R. Gelman

HUNTON & WILLIAMS  
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Richmond, Virginia 23212

Dated: August 27, 1984



CERTIFICATE OF SERVICE

I hereby certify that I have this day served Applicant's Response to CCLC's Revised Contention 4 upon each of the persons named below by depositing a copy in the United States mail, properly stamped and addressed to him at the address set out with his name:

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attention: Chief Docketing and  
Service Section

Sheldon J. Wolfe, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Jerry Kline  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

By /s/ Michael W. Maupin  
Michael W. Maupin, Counsel  
for Virginia Electric and  
Power Company

Dated: August 27, 1984

APPENDIX

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Selzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore

In the Matter of

Docket No. 50-2750L  
50-3230L

PACIFIC GAS AND ELECTRIC  
COMPANY  
(Diablo Canyon Nuclear Power  
Plant, Units 1 and 2)

PROTECTIVE ORDER ON SECURITY PLAN INFORMATION

Counsel and witnesses for Intervenor San Luis Obispo Mothers for Peace (Intervenor) who have executed an Affidavit of Non-Disclosure, in the form attached, shall be permitted access to "protected information" upon the following conditions:

1. Only Intervenor's counsel and Intervenor's experts who have been qualified in accordance with the requirements of our decision in *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), and our Order of February 25, 1980 in this proceeding, may have access to protected information on a "need to know" basis.

2. Counsel and experts who receive any protected information (including transcripts of *in camera* hearings, filed testimony or any other document that reveals protected information) shall maintain its confidentiality as required by the annexed Affidavit of Non-Disclosure, the terms of which are hereby incorporated into this protective order.

\*As used in this order, "protected information" has the same meaning as used in the Affidavit of Non-Disclosure, annexed hereto.

3. Counsel and experts who receive any protective information shall use it solely for the purpose of participation in matters directly pertaining to this security plan hearing and any further proceedings in this case directly involving security matters, and for no other purposes.

4. Counsel and experts shall keep a record of all protected information in their possession and shall account for and deliver that information to the Commission official designated by this Board in accordance with the Affidavit of Non-Disclosure that they have executed.

5. In addition to the requirements specified in the Affidavit of Non-Disclosure, all papers filed in this proceeding (including testimony) that contain any protected information shall be segregated and:

- (a) served on lead counsel and the members of this Board only;
- (b) served in a heavy, opaque inner envelope bearing the name of the addressee and the statement "PRIVATE. TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked.

6. Counsel, experts or any other individual who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

It is so ORDERED.

FOR THE APPEAL BOARD

Richard S. Salzman, Chairman

Done at San Luis Obispo, California,  
this 3rd day of April 1980.

AFFIDAVIT

I, \_\_\_\_\_

1. As used in this Affidavit:  
(a) "Protected information" means information for the licensee's Disclosure or (2) any information  
(b) An "authorized person" means a person who, at the time of the hearing, was a member of the Appeal Board ("Appeal Board") or (3) a person employed by the licensee, and authorized by the regulations to have access to the information.

2. I shall not disclose the information to any unauthorized person, unless the information is in the public record or in written form (including this Affidavit, filed testimony or any other document) that it remains at all times confidential and not disclosed to anyone other than the authorized persons.

3. I will not reproduce or disseminate the information without the Appeal Board's consent. I shall not possess protected information until further order of the Appeal Board.

4. I shall similarly provide copies of protected information to the Appeal Board.

- (a) my use of the information in San Francisco to be made confidential;
- (b) I will keep and control the information by intervenors at all times at the hearing; and
- (c) Any secretaries or clerks shall be under my supervision and will be bound by these terms.

**AFFIDAVIT OF NON-DISCLOSURE**

I, \_\_\_\_\_, being duly sworn, state:

1. As used in this Affidavit of Non-Disclosure,

- (a) "Protected information" is (1) any form of the physical security plan for the licensee's Diablo Canyon Nuclear Power Plant, Units 1 and 2; or (2) any information dealing with or describing details of that plan.
- (b) An "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Appeal Board ("Appeal Board"), has executed a copy of this affidavit; or (3) a person employed by Pacific Gas and Electric Company, the licensee, and authorized by it in accordance with Commission regulations to have access to protected information.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected information in written form (including any portions of transcripts of *in camera* hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else.

3. I will not reproduce any protected information by any means without the Appeal Board's express approval or direction. So long as I possess protected information, I shall continue to take these precautions until further order of the Appeal Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

- (a) my use of the protected information will be made at a facility in San Francisco to be made available by Pacific Gas and Electric Company.
- (b) I will keep and safeguard all such material in a safe to be obtained by intervenors at Pacific Gas and Electric Company's expense, after consultation with Pacific Gas and Electric Company and to be located at all times at the above designated location.
- (c) Any secretarial work performed at my request or under my supervision will be performed at the above location by one secretary of

intervenor's designation. Interveners shall furnish Pacific Gas and Electric Company, the Board and Staff an appropriate resume of the secretary's background and experience.

(d) Necessary typing and reproduction equipment will be furnished by Pacific Gas and Electric Company.

(e) All intervenor mailings involving protected information shall be made from the facility furnished by Pacific Gas and Electric Company.

5. If I prepare papers containing protected information in order to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information in order to help me prepare those papers has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Appeal Board before I reveal any protected information to any such person.

6. I shall use protected information only for the purpose of preparation for this proceeding or any further proceedings in this case dealing with security plan issues, and for no other purpose.

7. I shall keep a record of all protected information in my possession, including any copies of that information made by or for me. At the conclusion of this proceeding, I shall account to the Appeal Board or to a Commission employee designated by that Board for all the papers or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding, I shall deliver those papers and materials to the Appeal Board (or to a Commission employee designated by the Board), together with all notes and data which contain protected information for safekeeping during the lifetime of the plant.

8. I make this agreement with the following understandings: (a) I do not waive any objections that any other person may have to execute an affidavit such as this one; (b) I will not publicly discuss or disclose any protected information that I receive by any means whatsoever.

Subscribed and sworn to before me this day of April, 1980.

ATOM

In the Matter

PENNSYLVANIA  
LIGHT CO  
ALLEGHENY  
COOPERATIVE  
(Susquehanna  
Station, U

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