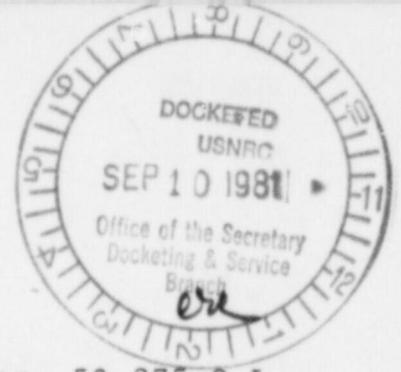


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY)
)
(Diablo Canyon Nuclear Power)
Plant, Unit Nos. 1 and 2))

Docket Nos. 50-275 O.L.
50-323 O.L.
(Security Plan Proceeding)

MOTION OF GOVERNOR EDMUND G. BROWN JR. FOR EXPEDITED
COMMISSION IDENTIFICATION AND CLARIFICATION OF ALAB SECURITY
DECISION REVIEW PROCEDURES; FOR TOLLING OF THE TIME
PERMITTED TO SEEK COMMISSION REVIEW; FOR EXTENSION OF
TIME; AND FOR COMMISSION GUIDANCE ON FILING PROCEDURES

On September 9, 1981, the Atomic Safety and Licensing Appeal Board issued ALAB-653, thereby ruling that the physical security arrangements for the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") comply with the Commission's regulations in 10 C.F.R. Part 73. Because ALAB-653 presents unprecedented and important legal, policy, and factual questions that center on the Appeal Board's interpretation and application of Part 73, Governor Brown, as representative of the interested State of California, will request the Commission to review this decision.

However, in order for the Governor to be able to request such review, the Commission first must: (1) identify and clarify which one of the two possible alternative review procedures should be followed herein; (2) toll the time-clock for filing requests for Commission review until the Commission acts on this Motion; (3) grant an extension of time for the filing of pleadings by the Governor and the Joint Intervenors who are constrained to work under severe restrictions that have not been applied to the Staff and

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PG&E; and (4) provide guidance on filing procedures and service of documents which contain protected information. The Governor requests an expedited decision by the Commission on this Motion, because the clock is now running against the filing deadline.

A. Procedures for Review

Although ALAB-653 was issued by the Appeal Board, this decision is the Initial Decision -- not the appellate decision -- on the adequacy of the Diablo Canyon security plan. The Licensing Board had issued an initial decision in the security plan proceeding. LBP-79-26, September 29, 1979. However, on February 15, 1980, the Appeal Board vacated the Licensing Board's decision and ordered that a de novo hearing be held. (One reason for vacating that decision was that the Licensing Board had not even taken into evidence the security plan that its decision approved.) The Appeal Board then decided to conduct the hearing itself, rather than remanding to the Licensing Board. See ALAB-580, CCH Nuc. Reg. Rptr. ¶ 30,451 (Feb. 15, 1980).

Given that ALAB-653 was the Initial Decision in this security proceeding, but was issued by the Appeal Board, it is not clear on the face of the regulations whether Commission review should be sought by the Governor pursuant to 10 C.F.R. § 2.762 (filing of exceptions to an initial decision) or 10 C.F.R. § 2.786 (petitions for review of an action of the Appeal Board). Accordingly, the Governor requests: (1) prompt clarification by the Commission so that the Governor may proceed to file for Commission review in the format and under procedures preferred by the Commissioners; and

(2) tolling of the time permitted for seeking Commission review until such date as the Commission acts on the Governor's instant Motion.

B. Extension of Time

The prescribed time for filing exceptions or a petition for review is 10 or 15 days after service of the decision, depending on whether Section 2.762 or Section 2.786 controls. For the reasons set forth below, these time limits are insufficient in this security proceeding. Accordingly, the Governor moves the Commission, pursuant to 10 C.F.R. § 2.711, to grant the Governor appropriately extended time-periods to file for appellate review by the Commissioners and for subsequent filings by the Governor.

The Commissioners are aware that both the Governor and the Joint Intervenors in the Diablo Canyon security proceeding are required to work under constrained conditions in order to safeguard "protected information." See ALAB-600, CCH Nuc. Reg. Rptr. ¶ 30,503 (July 15, 1980). Thus, in addition to executing non-disclosure affidavits, the Governor's counsel and witnesses and those of the Joint Intervenors must do the following:

- If they want to review ALAB-653, the security plan, or any other materials in the security proceeding record, they must do so either in Room 040 of the NRC's Wiltsie Building in Silver Spring, Maryland, or in a room at PG&E's headquarters in San Francisco, California (the "secured rooms").

- All pleadings must be prepared in the secured rooms, thus precluding counsel from use of their offices or their homes. No notes may be taken with counsel from the secured rooms and drafts of pleadings must be reviewed and finalized in the secured rooms.
- Counsels' secretaries must travel to the secured rooms to type analyses, memoranda, and drafts and final copies of pleadings. (They have had to supply their own typewriters in Silver Spring.)^{1/} Since these secretaries work for several attorneys, it is difficult to arrange for their extended absence from the office, thus lengthening the process of preparing pleadings.

The foregoing constraints interfere with the normal procedures of counsel during litigation and curtail the ability of the Governor's counsel and witnesses to work on the security proceeding within the time limits specified in the NRC's regulations. Moreover, in this proceeding, these constraints result in unfair treatment of the Governor, because neither the NRC Staff nor PG&E is subject to the foregoing procedures. Accordingly, there is a compelling need to grant additional time to compensate for this unequal treatment.^{2/}

^{1/} The NRC Staff attempted to supply typing equipment, but the machines which were made available did not produce acceptable copy.

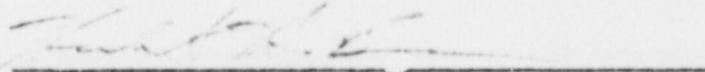
^{2/} In 1977, the Appeal Board recognized that the constraints caused by the procedures imposed on counsel and witnesses by the protective orders might require extensions of time beyond that appropriate in an ordinary case. See ALAB-410, CCH Nuc. Reg. Rptr. ¶ 30,197 (June 9, 1977).

C. Guidance on Filing Procedures

The participants require guidance on which offices, if any in addition to the Commissioners, should be placed on the limited service list for this proceeding. Also, guidance is necessary on the manner in which the Commission wishes the participants to serve the Commissioners with pleadings or documents that contain protected information.

Respectfully submitted,

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September 10, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "MOTION OF GOVERNOR EDMUND G. BROWN JR. FOR EXPEDITED COMMISSION IDENTIFICATION AND CLARIFICATION OF ALAB SECURITY DECISION REVIEW PROCEDURES; FOR TOLLING OF THE TIME PERMITTED TO SEEK COMMISSION REVIEW; FOR EXTENSION OF TIME; AND FOR COMMISSION GUIDANCE ON FILING PROCEDURES" have been served to the following on September 10, 1981 by U.S. mail, first class, except as otherwise noted.

Nunzio J. Palladino, Chairman (*)
Commissioner Victor Gilinsky (*)
Commissioner Peter A. Bradford (*)
Commissioner John F. Ahearne (*)
Commissioner Thomas Roberts (*)
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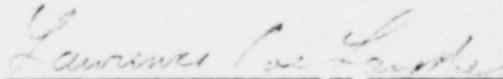


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September 10, 1981