

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-275 OLA  
50-323 OLA

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power  
Plant, Units 1 and 2)

PREHEARING CONFERENCE

LOCATION: AVILA BEACH, CALIFORNIA

PAGES: 1-224

DATE: TUESDAY, MAY 13, 1986

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ACE-FEDERAL REPORTERS, INC.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
 )  
PACIFIC GAS AND ELECTRIC ) Docket Nos. 50-275 OLA  
COMPANY ) 50-323 OLA  
 )  
(Diablo Canyon Nuclear ) Pre-Hearing Conference  
Power Plant, Units 1 and 2) )  
 )

Cabana Room,  
San Luis Bay Inn  
San Luis Obispo, California  
  
Tuesday,  
May 13, 1936

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a. m.

BEFORE:

B. PAUL COTTER, JR, Chairman  
Administrative Judge  
GLENN O. BRIGHT, Administrative Judge  
JERRY HARBOUR, Administrative Judge

APPEARANCES:

FOR THE NUCEAR REGULATORY COMMISSION:

HENRY J. MC GURREN, Esq. and  
LAWRENCE J. CHANDLER, Esq.  
U. S. Nuclear Regulatory Commission  
Washington, D. C.

For Pacific Gas and Electric:

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and

## 1 APPEARNCES (cont.)

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8 For the Intervenors:

9 SANDRA A. SILVER  
10 1760 Alisa Avenue  
11 San Luis Obispo, California 93401 and

12 NANCY CULVER  
13 192 Luneta Street  
14 San Luis Obispo, California 93401  
15 Appearing for Mothers For Peace

16 RICHARD FERGUSON, Ph. D.  
17 Rocky Canyon Road  
18 Creston, California 93432  
19 Appearing for the Sierra Club

20 LAURIE MC DERMOTT and  
21 KEN HAGGARD  
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23 San Luis Obispo, California 93401  
24 Appearing for CODES  
25

P R O C E E D I N G S

9:30 a.m.

1  
2  
3 JUDGE COTTER: The hearing will please come to  
4 order. Will the hearing please come to order.

5 Good morning, ladies and gentlemen. This is a  
6 prehearing conference on the proceeding concerning Pacific Gas  
7 and Electric Company's application to amend its Facility  
8 Operating Licenses Nos. DPR 80 and DPR 82 for the Diablo Canyon  
9 Nuclear Power Plant, Units 1 and 2.

10 For the sake of completeness, let me read into  
11 the record the beginning of the Federal Register Notice of the  
12 Hearing, which was published January 13, 1986. It provides,  
13 in pertinent part, that the U. S. Nuclear Regulatory Commission  
14 is considering issuance of amendments to Facility Operating  
15 License Nos. DPR 80 and DPR 82 issued to Pacific Gas and  
16 Electric Company for operation of the Diablo Canyon Nuclear  
17 Power Plant, Units 1 and 2, respectively, located in San Luis  
18 Obispo County, California.

19 The license amendment request including associated  
20 changes in the combined technical specifications for Units 1 and  
21 2 and license amendment request LAR 85-13, dated October 30,  
22 1985, the licensee's evaluation of proposed plant modifications  
23 and operations in support of the amendment request are  
24 contained in the Reracking Report submitted to the NRC by letter  
25 dated December 19, 1985.

1           The amendments would authorize the licensee to  
2 increase the Unit 1 and Unit 2 spent fuel storage capacity from  
3 270 to 1324 storage locations for each unit. The proposed  
4 expansion is to be achieved by reracking the spent fuel pool  
5 with a combination of poisoned racks and nonpoisoned racks in  
6 the two-region arrangement.

7           The notice goes on, in some considerable detail,  
8 about the technical aspects of the proposal for reracking the  
9 spent fuel pools, and I will not go into that at this point.

10           My name is B. Paul Cotter, Jr. I am the Chairman  
11 of this particular Atomic Safety and Licensing Board. To my  
12 right is Judge Glenn O. Bright, who is a nuclear engineer. And  
13 to my left is Judge Jerry Harbour, who is a geologist.

14           We might for the sake of the record ask the parties  
15 to enter their appearance for the record at this point. Would  
16 you like to start, Mr. McDermott?

17           MS. MC DERMOTT: I am Laurie McDermott and I  
18 represent Consumers Organized for Defense of Environmental  
19 Safety, CODES.

20           MR. FERGUSON: I am Rich Ferguson. I represent  
21 the San Luis Obispo Chapter of the Sierra Club.

22           MS. SILVER: I am Sandra A. Silver. I represent  
23 San Luis Obispo Mothers for Peace.

24           MS. CULVER: I am Nancy Culver, San Luis Obispo  
25 Mothers for Peace.

1 MR. MC GURREN: I am Henry J. McGurren and on my  
2 left is Lawrence J. Chandler who is our special litigation  
3 counsel, and together we represent the United States Nuclear  
4 Regulatory Commission staff.

5 MR. NORTON: My name is Bruce Norton representing  
6 Pacific Gas and Electric Company. And on my left is Mr. Phillip  
7 Crane and on his left is Mr. Richard Locke, both counsel for  
8 Pacific Gas and Electric.

9 JUDGE COTTER: Thank you. Let me make a few  
10 preliminary remarks about the nature of the proceeding here.  
11 One of the problems we face in this delightful surrounding is  
12 that it is a bit informal. Our address is informal and our  
13 location is informal and the character of the environment is a  
14 bit informal.

15 But this is in fact a federal hearing under federal  
16 statutes, primarily the Atomic Energy Act, as amended, and the  
17 Administrative Procedure Act. The proceeding itself is therefore  
18 conducted essentially as a proceeding in any federal district  
19 court requiring the same kinds of decorum and formality, if you  
20 will.

21 There is no smoking in the hearing room and no  
22 demonstrations or right to speak and comment during the course  
23 of the proceeding. And it is limited to those petitioners and  
24 parties who have just entered their appearance in this  
25 proceeding.

1                   We do permit cameras and sound equipment in the  
2 hearing room using existing light. But that equipment is to be  
3 stationary and is not to interfere in the proceedings.

4                   As a preliminary matter, I have the following items  
5 as a proposed agenda. I think we need to deal finally with any  
6 remaining questions as to standing based on the filings which  
7 have been received to date.

8                   I expect that we will discuss the positions of the  
9 petitioners and the parties on the contentions which have been  
10 filed in the proceeding by Codes, Sierra Club and Mothers for  
11 Peace. And we will propose to issue a written decision dealing  
12 with those contentions and the positions of the petitioners and  
13 parties within 30 days of the close of this proceeding.

14                   I would also, on the assumption or if some  
15 contentions are admitted to the proceeding, like to discuss the  
16 question of scheduling of discovery and that sort of thing. And  
17 then I have some minor housekeeping matters that I would like to  
18 deal with at the end of the day, assuming that we complete our  
19 work today.

20                   Are there any other preliminary matters that any-  
21 one wishes to raise? Ms. McDermott?

22                   MS. MC DERMOTT: I have a preliminary question  
23 under which the prehearing conference I would have -- is this  
24 a special prehearing conference 2.751(a)? Or is this a 2.752  
25 hearing?

1 JUDGE COTTER: I think we are under 751(a). What  
2 is the nature of what you are concerned with?

3 MS. MC DERMOTT: We have no attorney representing  
4 us and I wanted to make sure I knew which rules we were  
5 following today.

6 JUDGE COTTER: To the extent that -- while I have  
7 emphasized at the outset the formal nature of the proceeding, I  
8 don't mean to emphasize it to the point of giving you the  
9 impression that this proceeding is going to be hung up on  
10 technicalities. It will not.

11 It will proceed in an orderly fashion and in  
12 a regular fashion. But I don't expect -- and I don't think  
13 either of my colleagues do -- that we are going to conduct this  
14 in some kind of a technicalities game. I don't think you need  
15 to be concerned about that.

16 Are there any other preliminary matters?

17 (No response.)

18 JUDGE COTTER. There being none, let us turn to  
19 the question of standing. At this point, there were initial  
20 filings addressing the question of standing and then there were  
21 initial responses which objected to the completeness of the  
22 standing asserted by the petitioners.

23 MR. MC GURREN: Your Honor, may I interrupt a  
24 second?

25 JUDGE COTTER: Yes.

1 MR. MC GURREN: I just got a note from the back  
2 that they cannot hearing and that they request if there is any  
3 possibility of getting a public address system. And I suppose,  
4 in the alternative, we can all try to speak up.

5 JUDGE COTTER: I am afraid we are just going to  
6 have to speak up. We looked into that and could not get a hold  
7 of one. So we will all try to project.

8 There have been responses to the objections  
9 concerning standing. And the staff and the applicants have  
10 filed some preliminary objections to those objections. Have  
11 they been resolved by the subsequent responses, Mr. Norton?

12 MR. NORTON: Yes, I believe they have.

13 MR. MC GURREN: As far as the staff is concerned,  
14 we no longer have outstanding objections, Your Honor.

15 JUDGE COTTER: All right, then the question of  
16 standing with respect to all three petitioners, the Consumers  
17 Organized for Defense of Environmental Safety, the Mothers for  
18 Peace and the Sierra Club, have been resolved in their favor.

19 And we can now proceed with the question of  
20 whether or not litigable contention has been filed by each of  
21 those petitioners. So perhaps we had better begin with that  
22 subject.

23 MS. SILVER: Are we allowed any opening statements  
24 at all?

25 JUDGE COTTER: If you would like to make them. I

1 am not sure at this point. What did you want to accomplish with  
2 that?

3 MS. SILVER: I just have two short paragraphs that  
4 I would like to read into the record.

5 JUDGE COTTER: All right. Proceed.

6 MS. SILVER: This Mothers' Day, Mothers for Peace  
7 placed an ad in a local newspaper which said: "No mother is an  
8 enemy to another mother. Our hearts go out to all of those  
9 affected by the Chernobyl accident."

10 Although the ad was placed on Saturday ---

11 JUDGE COTTER: Excuse me, Ms. Silver, would you  
12 please stop interrupting by coming back and forth here like  
13 that.

14 MS. SILVER: Our ad was printed on Saturday. We  
15 continued to receive phone calls from people all over the  
16 community thanking us for expressing what they, too, were  
17 feeling. It has been reported that 30,000 people lived around  
18 Chernobyl ---

19 JUDGE COTTER: Excuse me, Ms. Silver, I don't  
20 understand what the relevance is for that opening statement.  
21 What does that have to do with the question of the reracking of  
22 the spent fuel pools at Diablo Canyon?

23 MS. SILVER: The reracking of the pools was  
24 necessitated by the fact that there are two operating reactors  
25 at Diablo Canyon. By adding more storage capacity, we are

1 adding a bigger inventory of radiation. That radiation, we are  
2 concerned, is going to be getting into the air just as it got  
3 into the air at Chernobyl. There were 86,000 people evacuated  
4 at Chernobyl, 30,000 ---'

5 JUDGE COTTER: Ms. Silver, there is such an  
6 enormous difference in how the Russian government goes about the  
7 conduct of their nuclear power operations, that it is simply not  
8 relevant to this proceeding before us.

9 MS. SILVER: Take the example of the Nuclear  
10 Regulatory Commission and Three Mile Island. It took 36 hours  
11 for the Soviet Union to say anything. However, in Three Mile  
12 Island, the accident occurred at 4 a.m. on March 28th. Pregnant  
13 women and children weren't advised to evacuate until March 30th.

14 We share a common problem.

15 JUDGE COTTER: Ms. Silver, we are not addressing  
16 Three Mile Island here. We are addressing whether or not the  
17 public health and safety is adequately protected by the rerack-  
18 ing of the spent fuel pools at Diablo Canyon.

19 This Board cannot listen to matters that are not  
20 relevant to that.

21 MS. SILVER: Well, I think that part of the  
22 problem that exists here is that the Nuclear Regulatory  
23 Commission wishes to have blinders on and stick to a very narrow  
24 focus of one thing, when there is a broader issue here in the  
25 nuclear spent fuel pool reracking. It is just another nail in

1 our coffin.

2 JUDGE COTTER: Ms. Silver, the reason we are here  
3 is because of our sympathy with your concerns about the safety  
4 of the proposed action that the company wants to take in  
5 connection with the reracking of the spent fuel pool.

6 We are also here under a narrow and limited  
7 authority to consider the issues solely connected with that. We  
8 do not have the authority to listen to questions of general  
9 policy or questions dealing with either the statutes that Congress  
10 has passed concerning the regulation of nuclear power or with  
11 the regulations that have been passed under those statutes.

12 So I must ask you to keep your focus on the issues  
13 that are specifically before us concerning the reracking of  
14 the spent fuel pool. I sympathize with your concerns and I  
15 fully understand the depth of your concerns.

16 But my authority is limited. And if we are to  
17 proceed in an orderly fashion here to resolve the issues which  
18 you and the CODES and the Sierra Club have raised, we have to  
19 stay within the limits of those issues.

20 MS. SILVER: Then I will discontinue reading any  
21 further. I only had a few more statements to read. But within  
22 the proceeding, we sent our -- we were told to all have our  
23 contentions to the Board by April 29 in your hand, which of  
24 course we all met.

25 I just received the NRC's response now and I have

1 not -- the Mothers -- I don't know about the other parties, but  
2 the Mothers for Peace have not even received PG&E's response.  
3 And so here we are on the day of the hearing. Two attorneys  
4 over here, three attorneys over here (indicating).

5 We are the people. And we haven't even gotten  
6 their responses. I think we are operating under a bit of a  
7 handicap here.

8 MR. NORTON: Your Honor, we might respond to that.  
9 Not the part about operating under a handicap, but about  
10 responses. I personally have never received -- and I have been  
11 on the mailing list for the Mothers for Peace -- which is  
12 nothing new. They have historically not sent pleadings to us,  
13 to my office.

14 The Sierra Club, we still have not received any-  
15 thing from the Sierra Club. No one at PG&E has ever received  
16 anything ---

17 JUDGE COTTER: I don't think we need to expand  
18 this. I understand what you are saying, Mr. Norton. One of ---

19 MR. NORTON: I have not received ---

20 JUDGE COTTER: --- that I have in the filings  
21 today is that there has not been an adequate certificate of  
22 service. And some of the names on the certificate of service  
23 list have varied substantially.

24 And one of the pieces of housekeeping business  
25 that we will resolve before we leave here is to establish a

1 format and a list of individuals who should be served in this  
2 proceeding.

3 Ms. Silver, I sympathize with your position. One  
4 of the things that we will do here is give everyone an oppor-  
5 tunity to address each of the contentions that have been raised.  
6 And if there is a need for further submissions, we will  
7 consider that at the end of the day when we see how we have  
8 proceeded.

9 Is there anything else that we need to take up as  
10 a preliminary matter?

11 (No response.)

12 JUDGE COTTER: Why don't we proceed with address-  
13 ing the contentions. Is there any particular preference with  
14 respect to which one of the petitioners would like to go first?

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1 JUDGE COTTER: The Mothers for Peace will pro-  
2 ceed first with the presentation of their contentions. What  
3 I would propose is that Ms. Silver would state her conten-  
4 tion, state whatever supporting matters she has in connec-  
5 tion with that contention; and then the applicants and the  
6 staff, if they feel the necessity, can respond to that con-  
7 tention and we will work through them, individually, one  
8 by one.

9 Mrs. Silver?

10 MS. SILVER: Do you want me to read this, the  
11 contentions or summarize it or --

12 JUDGE COTTER: Why don't you summarize it.  
13 I think we all have the written copy of it, do we not?

14 Is there any question about that?

15 MR. NORTON: Your Honor, perhaps we could speed  
16 it up a little bit. I have prepared -- we did get a copy  
17 last week of the Sierra Club's petition from Washington;  
18 and we have had the Mothers and CODES for some time. The  
19 staff, we were handed a pleading that they filed today which  
20 we have gone through and marked which ones they are opposed  
21 to and which ones they are not opposed to.

22 We might be able to dispose of a few by not  
23 being opposed to those.

24 JUDGE COTTER: Very good.

25 MR. NORTON: If we could discuss those first

1 and then discuss the ones we are opposed to later.

2 JUDGE COTTER: Can you proceed through and  
3 identify those contentions which you are not opposed to  
4 which -- and where you agree with the staff?

5 MR. NORTON: Right. That is what I thought  
6 we would do; and that might speed it up.

7 JUDGE COTTER: A good suggestion; why don't  
8 you, if that is agreeable with Ms. Silver. What Mr. Norton  
9 is proposing is that, rather than going through contentions  
10 which they do not oppose, that we go through the list for  
11 all three petitioners and identify all of the contentions  
12 which are not opposed; and then we need not address them  
13 at this point. And we will just address those where there  
14 is opposition.

15 MR. NORTON: And the staff has some discussion  
16 of those that might limit them a little bit; and we would  
17 adopt that position also. And we should discuss them in  
18 that context.

19 But, the ones that they are not opposed to  
20 and the ones that we believe meet admissibility if worded  
21 correctly, and limit it Mothers for Peace -- I, II,  
22 and III.

23 Sierra Club's --

24 MR. FERGUSON: This is going to be complicated  
25 if we try to deal with all three of them.

1 MR. NORTON: We will list the ones they are  
2 not opposed to; and, believe me, it will not take that long.

3 Mothers for Peace, I, II, and III; Sierra  
4 Club's II(a) and (b), consolidated. We really see that as  
5 one contention, contention II.

6 JUDGE COTTER: Roman numeral II?

7 MR. NORTON: Roman numeral II, subparts (a)  
8 and (b), which are really the basis for the contention.

9 The staff is not opposed to I(a) and portions  
10 of I(b); we are. So, while the staff is not opposed to it;  
11 we are.

12 Finally, moving to CODES, neither the staff  
13 nor us are opposed to CODES IVX, as limited in the staff's  
14 response.

15 JUDGE COTTER: Maybe we had better go back  
16 and take each one of them in order and address the question  
17 of the language, where the context in which the lack of op-  
18 position is stated. That takes us back to Mrs. Silver.

19 And, have you seen, Mrs. Silver, the limitation  
20 or the context that the staff put on your contentions I,  
21 II, and III?

22 MS. SILVER: No, I have not; I am sorry.

23 JUDGE COTTER: Mr. McGurren, do you have a  
24 copy of your pleading?

25 MS. SILVER: He has given it to us; but as

1 we were sitting down and we did not have --

2 MR. MCGURREN: May I just make a short state-  
3 ment about that?

4 The rules did provide for us to answer this,  
5 I believe.

6 MR. CHANDLER: No, they did not provide for  
7 responses.

8 MR. MCGURREN: Let me respond to this quickly  
9 as regard to the --

10 JUDGE COTTER: I am not rehashing about what  
11 has gone before.

12 MR. MCGURREN: I thought there was a little  
13 bit of resentment because we were just now able to hand her  
14 our response. Our effort is to be helpful, here, not to  
15 be --

16 JUDGE COTTER: I understand; I discount that  
17 as one of the products of our position in litigation.

18 MR. MCGURREN: With respect to I, the only  
19 limitation, if any, we have is that we are limiting that  
20 contention to parts (a), (b), and (c), as stated; and we  
21 are talking about contention I of Mothers for Peace.

22 And we list -- some of the alternatives in-  
23 clude, in terms of basis and specificity, we want to limit  
24 litigation to those items that have been specified for  
25 Mothers for Peace.

1 MR. NORTON: We are in the same position.  
2 Obviously, we can't be litigating alternatives that are not  
3 set forth. We have to, at some point in time at least, set  
4 forth what alternatives they wish to consider.

5 JUDGE COTTER: Ms. Silver?

6 MS. SILVER: Well, I have a couple of comments  
7 there. First of all, for the people who don't know what  
8 the hell (a), (b), and (c) is --

9 JUDGE COTTER: Please control your language,  
10 if you will, Ms. Silver.

11 MS. SILVER: Our contention is that there are  
12 alternatives to reracking the spent fuel pool. We listed  
13 three alternatives. The first alternative we suggested was  
14 that there could be shipments to another storage facility,  
15 a federally-owned storage facility. I must say that there  
16 has been opposition to that, regarding that alternative,  
17 because, of course, it would then place in jeopardy  
18 thousands of people along the truck routes that the wastes  
19 are going to be carried along.

20 We also suggested that there would be a reduc-  
21 tion of output from the plant which would then reduce the  
22 amount of radioactive waste that would be produced; and it  
23 would also be of benefit because it would be an additional  
24 safety factor.

25 But our third alternative, which is the one

1 that we feel is the most positive, the most recent, and the  
2 most moral one would be that, until a safe way storage site  
3 can be found and a solution can be found and implemented,  
4 that Diablo Canyon should be shut down and not operate so  
5 that no more radioactive waste will be produced.

6 Now, as far as limiting it to those three al-  
7 ternatives, I will also like to note, Mr. Chairman, that,  
8 of course, the safety evaluation report has not been issued  
9 by the nuclear regulatory commission; and I assume that we  
10 will be able to supplement any contentions after we review  
11 a safety evaluation report which, presumably, will be out  
12 at some point.

13 I mean, I hate to limit ourselves on something  
14 when we have not seen part of the documents.

15 JUDGE COTTER: I think the law is fairly clear  
16 that, if the safety evaluation report includes new informa-  
17 tion which was not available at this time, that you might  
18 have the opportunity to supplement the contention or ammend  
19 it to address that new information.

20 If it does not, then you must address the five-  
21 factor test for late-filed contentions, which I am sure you  
22 are familiar with.

23 Ms. Mc Dermott?

24 MS. McDERMOTT: I am very concerned about lim-  
25 iting the contentions at this point because the public

1 availability of the application is not complete. We only  
2 have access to the application through the Cal Poly Library;  
3 and that file is not complete. And, at this point, I would  
4 be very hesitant to limit contentions because of the lack  
5 of availability of public information.

6 JUDGE COTTER: I understand your concern; but  
7 the question is whether that information is or is not avail-  
8 able now or how much of it is and whether, as new informa-  
9 tion comes out, if it is so completely different that it  
10 was not available now. And that governs whether or not you  
11 could modify or ammend the contention to address other con-  
12 siderations.

13 But, at this point, we have to deal with what  
14 we have before us.

15 Do you -- does the staff know when the SER  
16 is scheduled to be issued?

17 MR. MCGURREN: We think it is going to come  
18 out very soon, Your Honor, within a matter of a week, Your  
19 Honor.

20 JUDGE COTTER: Really; all right.

21 Is there anything further to be said about  
22 Mothers for Peace contention number I?

23 (No response.)

24 JUDGE COTTER: Mr. McGurrien, you might address  
25 the context in which the staff has responded to contention

1 number II.

2 MR. MCGURREN: All right, Your Honor.

3 We think that contention II is pretty straight-  
4 forward and we do not oppose admission of this contention  
5 on the basis of the contention as it is stated.

6 JUDGE COTTER: Then that is also the appli-  
7 cant's position, Mr. Norton?

8 MR. NORTON: That is correct, Your Honor.

9 JUDGE COTTER: Any comment, Mrs. Silver?

10 MS. SILVER: No. But, again, I would like  
11 to, for the purposes of the public, say that our second con-  
12 tention was that we are concerned about the overall cost,  
13 both in terms of health effects and potential associated  
14 medical costs associated with additional exposures of the  
15 plant personnel to increased radioactivity levels due to  
16 the increased spent fuel source.

17 JUDGE COTTER: It might be well for the repor-  
18 ter, and the record, to state the contention for the record  
19 first. I think that takes care of contention II.

20 Mr. McGurren?

21 MR. MCGURREN: Your Honor, one clarification.  
22 I do know from my responses is that, when we have seen this  
23 type of contention in the past, we have made a distinction  
24 between contention-raising issues concerned with normal  
25 operation versus accidental situations. And we read conten-

1 tion II, and, as a matter of fact, contention number III,  
2 in light of raising, in the sense of concerns about normal  
3 operation. Now, that is how we have responded to that con-  
4 tention; and that is the basis of our belief that we do not  
5 oppose admission of this contention.

6 JUDGE COTTER: All right. Contention III  
7 states that no analysis has been made of the overall cost  
8 in terms of both health effects and potential associated  
9 medical costs associated with the additional exposures of  
10 persons off the Diablo Canyon site to increased radioactivi-  
11 ty levels due to the increased spent fuel storage.

12 And I understand, now, that neither the staff  
13 nor the applicant opposes that contention as stated?

14 MR. MCGURREN: That is correct, Your Honor.

15 JUDGE COTTER: Mr. Norton?

16 MR. NORTON: Correct, Your Honor.

17 JUDGE COTTER: Any comment Ms. Silver?

18 MS. SILVER: No.

19 JUDGE COTTER: I think we may as well continue  
20 through the contentions of Mothers for Peace, rather than  
21 jumping into the other contentions.

22 So, if you would proceed with contention IV,  
23 Ms. Silver.

24 Let's see -- we will go off the record for  
25 a minute.

1 (Off the record.)

2 JUDGE COTTER: We will go back on the record.

3 Ms. Silver, contention IV?

4 'S. SILVER: We feel that an environmental  
5 impact statement should be --

6 JUDGE COTTER: You might start by reading the  
7 contentions; that would help.

8 MS. SILVER: The expansion of the spent fuel  
9 storage capacity will have a significant effect on the  
10 quality of the human environment, therefore, require  
11 preparation of an environmental impact statement.

12 To us, it just seems unreasonable to assume  
13 that, by expanding the capacity of the spent fuel pool by  
14 almost five times, that that will have no harmful effects  
15 on the environment; and we feel that that should be con-  
16 sidered in this application.

17 JUDGE COTTER: Mr. Norton?

18 MR. NORTON: Well, Your Honor, there are two  
19 bases. First, I would refer the Board to the decision  
20 ASL BP 84-504-07-LA, which is a September 16, 1985 Licensing  
21 Board decision, Florida Power and Light Company, regarding  
22 these same issues, spent fuel pool reracking expansion.

23 That specific contention was rejected in that  
24 case. In addition, as set forth in the staff response to  
25 this contention --

1                   JUDGE COTTER: Before you get to that, what  
2 were the reasons stated in the decision that rejected the  
3 contention?

4                   MR. NORTON: Excuse me, Your Honor; I will  
5 find this specifically.

6                   Yes. I will read the paragraph of the deci-  
7 sion. Contention II alleges that:

8                   "An EIS must be prepared because expansion of the  
9 spent fuel pool constitutes a major federal action.  
10 However, petitioners do not provide any arguable basis  
11 within the scope of this proceeding for concluding  
12 that the expansion will cause significant environmental  
13 impact. Petitioners' assertions that there is a need  
14 to examine the effects of permanent waste disposal is  
15 clearly outside the scope of the current amendment.  
16 Further, petitioners offer no basis for challenging  
17 the Commission's analysis of alternatives and conclusion  
18 that the environmental impact of expanded on-site fuel  
19 storage is negligible. Contention II is rejected for  
20 lack of adequate basis."

21                   And, as the staff points out in their re-  
22 sponse:

23                   "Accordingly, it fails to meet the basis and speci-  
24 ficity requirements of 10 CFR Section 2.714."

25                   My notes have the same -- which I haven't seen

1 this response until this morning; but my notes have the same  
2 thing, no specific basis per Section 2.714. It is just  
3 totally open-ended.

4 JUDGE COTTER: Mr. McGurren?

5 MR. MCGURREN: I really have nothing to add;  
6 he quoted from our response. In short, there was no basis  
7 in specificity stated for the contention.

8 JUDGE COTTER: Mrs. Silver, do you understand  
9 what they are saying as far as for the basis for the speci-  
10 ficity?

11 You have said, initially, that you feel that  
12 it should not be that that kind of expansion of the fuel  
13 pool should have some kind of environmental impact; but  
14 you have not said why. You have said it appears to you;  
15 but you have not stated a reason why it would.

16 MS. SILVER: Actually, the response of the  
17 audience is my response. To me, it seems that it is so ob-  
18 vious that I don't quite understand -- I don't understand  
19 what you don't understand. If we are dealing with --

20 Again, we are dealing with a higher inventory  
21 of radiation. We are dealing with a new process, although  
22 it has been that other plants have been reracked, it has  
23 never been reracked at this plant involved. There are so  
24 many things that are unique about Diablo Canyon that it is  
25 really beyond the realm of common sense not to have an

1 environmental impact statement when you try to rerack spent  
2 fuel pools on --

3 MS. CULVER: May I add something?

4 JUDGE COTTER: Yes.

5 MS. CULVER: As Mr. Norton read the part of  
6 the decision from the Florida case, I was thinking that it  
7 said you had to lay out the potential dangers before you do  
8 the EIS; and I thought that is what an EIS was for, to  
9 determine what the potential dangers might be.

10 JUDGE COTTER: Mr. Norton?

11 MR. NORTON: That is not what I read.

12 I am looking at the paragraph; I don't see  
13 any of those words in what I read, at all. That is not what  
14 it says.

15 MS. CULVER: Do you want to read the first  
16 couple of paragraphs.

17 MR. NORTON: It is only one paragraph.

18 JUDGE COTTER: Rather than rereading, maybe  
19 one of you would just give her a copy of it.

20 MR. NORTON: This is the only copy I have;  
21 and I have lots of notes on it.

22 JUDGE COTTER: Mr. Reporter, would you read  
23 that last paragraph.

24 (Whereupon, the record was read as follows:

25 "An EIS must be prepared because expansion of the

1 spent fuel pool constitutes a major federal action.  
2 However, petitioners do not provide any arguable basis  
3 within the scope of this proceeding for concluding  
4 that the expansion will cause significant environmental  
5 impact. Petitioners' assertions that there is a need  
6 to examine the effects of permanent waste disposal is  
7 clearly outside the scope of the current amendment.  
8 Further, petitioners offer no basis for challenging  
9 the Commission's analysis of alternatives and conclusion  
10 that the environmental impact of expanded on-site fuel  
11 storage is negligible. Contention II is rejected for  
12 lack of adequate basis."

13 MR. NORTON: Your Honor, I would point out  
14 that the last sentence, that there was no basis for challen-  
15 ging the Commission's analysis of alternatives and conclu-  
16 sions, that the environmental impact of expanded on-site  
17 fuel storage is negligible. I believe that references to  
18 the Commission's rulemaking on the storage and disposal of  
19 nuclear waste. The decision, which is 20 NRC 288 of the  
20 Commission itself.

21 Although there is no citation in the decision,  
22 I believe that is what the reference is to.

23 JUDGE COTTER: Are you talking about the waste  
24 confidence rulemaking?

25 MR. NORTON: Mr. Chandler says he doesn't be-

1 lieve it is a reference to that; he believes it is a refer-  
2 ence to another Commission proceeding. But it does --

3 MR. MCGURREN: I believe it is a reference,  
4 Your Honor, to the staff's assessment, environmental impact  
5 assessment.

6 MR. NORTON: For that proceeding.

7 MR. MCGURREN: For that proceeding.

8 JUDGE COTTER: Ms. Culver?

9 MS. CULVER: Well, it's very hard to be  
10 specific before an analysis has been done. You are saying,  
11 now, you have to spell out the -- exactly what the conse-  
12 quences might be of a problem either during an operation  
13 or during accident conditions at Diablo Canyon with the ex-  
14 panded fuel storage.

15 We don't know; but we do think that at least  
16 that level of scrutiny should be given this proposal as is  
17 given to the building of a hospital in our county. And the  
18 EIS is required for that.

19 JUDGE COTTER: That is under California law;  
20 is that correct?

21 MS. CULVER: I guess that is the law. I  
22 thought it was federal law.

23 JUDGE COTTER: No, it's just different; that's  
24 all.

25 MR. MCGURREN: Your Honor, the staff is in

1 the process of writing its environmental impact assessment.  
2 But, regardless of that, we still feel that there is a lack  
3 of basis and specificity stated here for this contention.

4 JUDGE COTTER: I understand. The underlying  
5 concern here is the environmental impact. Do you know when  
6 the staff will finish its --

7 MR. MCGURREN: A couple of weeks, Your Honor.

8 JUDGE COTTER: Would you be so kind as to fur-  
9 nish a copy of that to the other parties?

10 MR. MCGURREN: Absolutely.

11 JUDGE COTTER: Good, thank you.

12 Is there anything further to be said about  
13 contention IV?

14 (No response.)

15 JUDGE COTTER: Return to contention V, then.

16 MS. SILVER: The applicant's proposal does  
17 not ensure that the spent fuel positions will be maintained  
18 within regulatory or design limits in the event of a Class  
19 9 accident, which is a melt-down, or other extreme accident  
20 in the main reactor.

21 The applicant has not shown that, in such  
22 cases, the electrical systems, cooling systems, and plant  
23 personnel will function sufficiently well to ensure contin-  
24 ued safe operation of the spent fuel pools.

25 Through the years, the Mothers for Peace have

1 been associated with the NRC licensing proceedings for 12  
2 years. We have repeatedly asked for analysis to be done  
3 on a Class 9 accident; and we have been told that that acci-  
4 dent was incredible. But, of course, we learned in 1979  
5 at TMI and again in the past couple of weeks at Chernobyl,  
6 a Class 9 accident is not only credible, it has already  
7 occurred twice.

8                   We don't understand the hesitancy of doing  
9 such an analysis. We think it is very helpful to determine  
10 what the consequences of such an accident would be on the  
11 people, the animals, and the environment around Diablo Can-  
12 yon.

13                   I might point out that it is interesting that  
14 neither the staff nor P.G.& E. minds our contention about  
15 what would be the health effects under normal operation,  
16 but they don't want to talk about what would happen in the  
17 event of an accident.

18                   Again, we feel that this is just putting your  
19 heads in the sand.

20                   I did notice that the staff was concerned  
21 about we did not identify something that could happen. We  
22 are concerned, for instance -- this isn't the only thing  
23 that could happen. And I don't want to limit it to that.  
24 But, for instance, if there were an accident in the main  
25 reactor that knocked out the cooling system and blocked

1 access to the spent fuel, we feel that evaporation of much  
2 of the water around the spent fuel could occur and that loss  
3 of coolant would be far more dangerous in a crowded pool  
4 since overheating may occur, causing the zirconium metal  
5 cladding on the fuel rods to react to any of the remaining  
6 waters to form potential explosive hydrogen.

7 I might point out, too, there is no contain-  
8 ment on the fuel handling building.

9 Over the weeks of reading, listening, and  
10 watching the unfolding tragedy at the Chernobyl nuclear plan  
11 we have seen --

12 JUDGE COTTER: Mrs. Silver, Chernobyl is not  
13 relevant here.

14 MS. SILVER: I'm sorry.

15 However, we have seen how the NRC in Washing-  
16 ton has been doing calculations on a plant that is thousands  
17 of miles away from here as the accident was occurring. We  
18 are saying, do the calculations now before an accident  
19 occurs. We are saying, doing it at Diablo Canyon, we think,  
20 of course, that it should be done at every nuclear power  
21 plant across this nation. But right now, we are focused  
22 in on Diablo Canyon. We feel that a Class 9 accident should  
23 be analyzed for this facility for expended spent fuel pools.

24 (Applause.)

25 JUDGE COTTER: Excuse me, please. I under-

1 stand your concerns; but this is not a forum for demonstra-  
2 tions and for expressions of sentiment. It is a forum for  
3 reasoning and for the application of the rule of law as we  
4 have it.

5                   So, kindly restrain yourselves in the future,  
6 Ms. Silver.

7                   MS. SILVER: I have nothing more to say.

8                   JUDGE COTTER: One of the difficulties that  
9 we face in these proceedings, and I know you have run into  
10 it in the past, is that the proceeding cannot deal with or  
11 change policy decisions and statutes and regulations which  
12 have preceded it.

13                   And I think the problem that you are running  
14 into with your concern with a Class 9 accident is that there  
15 has been both policy decision and a decision with the force  
16 and effect of regulation which prohibits our consideration  
17 of that in this proceeding.

18                   Your forum for that has to be either the  
19 Commission itself or the Congress. But that is the diffi-  
20 culty that we face here.

21                   MS. SILVER: The difficulty --

22                   JUDGE COTTER: The matter has been considered  
23 at some considerable length before arriving, or before we  
24 came to the particular concern in connection with Diablo  
25 Canyon. And the decision has been made that we cannot con-

1 sider Class 9 accidents in connection with other events at  
2 the plant.

3 MS. SILVER: Mr. Cotter, we have had -- we  
4 are continually being frustrated in these proceedings, as  
5 you probably know and understand, because it seems that the  
6 Commission cannot change its laws except when the interven-  
7 ors come up with something that sticks to you guys.

8 Now, when we have a contention on the opera-  
9 tors not working simulators instead of on-hands training,  
10 which was in your law books, the NRC changed the law.

11 And when we have something about evacuation,  
12 the NRC changes the law every time we bring up an important  
13 point. And, frankly, one of the concerns that intervenors  
14 around this nation are having is that, if we keep running  
15 up these contentions that are good, that the utility keep  
16 being having -- well, the NRC keeps plugging up the loop-  
17 holes. And, frankly, the utility is getting away with mur-  
18 der -- literally, murder.

19 And so, when you say, "Well, you can't change  
20 the law because it's already been written.", gentlemen, you  
21 have changed the law a great deal. But it is only when you  
22 guys are in trouble.

23 JUDGE COTTER: I don't have anything to do --  
24 (Applause.)

25 JUDGE COTTER: We will have decorum in here;

1 we will not have demonstrations. As a matter of public  
2 policy, we come here to -- for your convenience and because  
3 of your interest so that you can hear what goes on in these  
4 proceedings, so that you can hear what goes on.

5 VOICE: This is the first time we have requested  
6 -- we can hear the young lady; but we can't hear your  
7 back at all.

8 JUDGE COTTER: I'm sorry; I do not have the  
9 facilities here.

10 MS. SILVER: This is the first time we have  
11 not had a public address system in 12 years; I don't understand.  
12 This is a very fancy hotel; they must have some public  
13 address systems.

14 JUDGE COTTER: Mr. Norton, do you want to respond  
15 to Ms. Silver?

16 MR. NORTON: Like I said, the public address  
17 system contention --

18 Your Honor, the staff has a two-page, or a  
19 page and a half, I guess, response which I think sets forth  
20 the law very clearly. And I think you summed it up. I  
21 really have nothing to add to what the staff has filed.

22 The Commission has stated its position on this  
23 matter succinctly and very clearly as quoted in the staff's  
24 response. That is the law.

25 JUDGE COTTER: Mr. McGurren?

1 MR. MCGURREN: The staff has nothing more to  
2 add than what is stated on page 9 and 10 of our response.  
3 In essence, I think it says, as you stated, the Commission  
4 has largely addressed the issue of the Class 9 accidents;  
5 and they have indicated in what respect the Class 9 accident  
6 can be raised.

7 JUDGE COTTER: All right, Ms. Silver, conten-  
8 tion VI.

9 MS. SILVER: The application for reracking  
10 is premature and that no need for the immediate expansion  
11 has been shown. Applicant will have no need for the in-  
12 creased storage capacity for the next four years.

13 We keep being told by the nuclear industry  
14 that the solution to the waste problem is just around the  
15 corner. I suggest we just, you know, we must be there.  
16 And, like, the report is, in a couple of weeks, we don't  
17 need a reracking and it should not be done.

18 JUDGE COTTER: Mr. Norton?

19 MR. NORTON: Excuse me, Your Honor. We be-  
20 lieve that this contention, again, does not have any basis  
21 or specificity. It simply says that the need -- no need  
22 for immediate expansion has been shown.

23 First of all, there is no citation in any  
24 authority by the joint intervenors -- or, excuse me -- by  
25 Mothers for Peace that the law requires you to show an

1 immediate need. Obviously, the need to do the reracking  
2 now exists because of the considerations of exposures to  
3 workers who are going to do the reracking. It makes sense,  
4 if you were only to modify something physically, to do it  
5 before it is contaminated rather than after it is contami-  
6 nated. So I think the immediate need is obvious in that  
7 sense.

8                   While they are talking about, we don't need  
9 to put the spent fuel, you won't need the extra space for  
10 four years because it was designed for that period of time,  
11 obviously, to do the modifications now makes sense, before  
12 it becomes contaminated.

13                   They don't cite any authority for their posi-  
14 tion, however, that you have to show that there is an im-  
15 mediate need for the space. They just say it is fact; they  
16 don't show any legal basis for that whatsoever, no specificity  
17 and no basis.

18                   The staff, basically, says the same thing in  
19 different words. But I will let the staff restate their  
20 position in their response.

21                   MR. MCGURREN: Your Honor, I think that Mr.  
22 Norton has adequately stated what we have said in our re-  
23 sponse on pages 10 and 11, in essence, that they have not  
24 set forth a basis for their assertion that this issue should  
25 be litigated in this proceeding.

1           As we see it, the principle issue here is that,  
2 in the incremental impact of the proposed action, it should  
3 be litigated.

4           MS. SILVER: When we first filed in 1973, one  
5 of our -- on the licensing, the operating licensing pro-  
6 ceedings -- one of our concerns was waste storage. And,  
7 as a matter of fact, we pointed out that, in the final  
8 safety analysis report, that there was a vague and mysteri-  
9 ous term called "long-term permanent waste facility". And  
10 we, in one of our interrogatories, we asked: What does  
11 long-term permanent mean? And they assured us that that  
12 was something that, you know -- essentially, what they did,  
13 is that they erased those words, they changed that term.

14           P.G.& E. assured us -- the NRC assured us that  
15 the waste was going to be here for nine months to a year,  
16 to have a radioactive materials decade, and then it was  
17 going to go out of here.

18           So now, of course, we are sitting here, 13  
19 years later, and they are saying to us, "No, folks, the  
20 waste is not going to go out of here; even though we have  
21 room for four years, we are going to expand it so it can  
22 be here for another 30 years or so."

23           And yet, they have suggested that our first  
24 contention alternative to reracking is a valid one. What  
25 if you come up with something that is valid and that you

1 can have an alternative to reracking and, what happens here  
2 is, now you are saying that, "Well, we have to do it now  
3 because just so the workers will be protected."

4 If there is an alternative, you don't have  
5 to rerack. And so, therefore, why do it now?

6 MR. NORTON: Your Honor, I might, very briefly,  
7 respond to that.

8 If an alternative, a reasonable alternative,  
9 came up -- well, let's say a year now -- that was acceptable  
10 to everyone, including the company, the NRC, there would  
11 be no harm done in the modification of spent fuel pool.  
12 You just never use the space, that's all. So, the reason  
13 you do the modification now, again, is to avoid the contami-  
14 nation. The physical modification, if you never use the  
15 facility to store extra fuel, would not hurt a thing.

16 MS. SILVER: That is a very disingenuous argu-  
17 ment because we have seen in the past, whenever P.G.& E.  
18 says, "Well, listen, we will do this; and, if need be, we  
19 will just take it out or we won't use it." They have never  
20 done that.

21 Whenever they get started, their foot in the  
22 door, everything goes in. And so -- and the NRC is intimi-  
23 dated by that because they've got it going there so you  
24 might as well leave it there. I think that is incorrect.

25 If there is an alternative, then don't start

1 reracking now. But that brings up another point.

2 And that is: The ruling on significant hazards.

3 It is our understanding that, if this Board  
4 rules that there is no significant hazard, that P.G. & E.  
5 will be allowed to go ahead and rerack anyway while we have  
6 a hearing. Or we could have a hearing months on down the  
7 line. When will that decision be made?

8 JUDGE COTTER: You are jumping to a later con-  
9 tention. Let us take them in order and get to them.

10 Ms. McDermott, you had a comment?

11 MS. McDERMOTT: Yes. It offends me, as a rate-  
12 payer, to hear that it does not matter that these modifi-  
13 cations can be made and then be taken -- not used for both  
14 units and it would be no problem. That offends me a great  
15 deal as a ratepayer; and I needed to state that.

16 MR. NORTON: Your Honor, I would like to cite  
17 Section 131 of the Nuclear Waste Policy Act, which is the  
18 law. It states, and this is a finding of the Congress,  
19 Section 131(a)(1):

20 "The Congress finds that the persons owning and oper-  
21 ating civilian nuclear power reactors [that, in this  
22 case, is Pacific Gas and Electric Company] have the  
23 primary responsibility for providing interim storage  
24 of spent nuclear fuel from such reactors by maximiz-  
25 ing, to the extent practical, the effective use of

1 existing storage facilities at the site of each civil-  
2 ian nuclear power reactor and by adding new on-site  
3 storage capacity in a timely manner where practical."

4 Now, that is the mandate of the Congress.

5 Paragraph 2 says:

6 "The federal government has the responsibility to  
7 encourage and expedite the effective use of existing  
8 storage facilities and the addition of needed new  
9 storage capacity at the site of each civilian nuclear  
10 power reactor."

11 And that is, indeed, the law of the land.

12 And this contention, I think, is an attack directly on that  
13 law; and I don't think it is permissible for that basis,  
14 also.

15 JUDGE COTTER: Mr. Ferguson?

16 MR. FERGUSON: A word. We are coming very  
17 close to some of the contentions that the Sierra Club made.

18 Should we wait and go through this all over  
19 again then or -- because --

20 JUDGE COTTER: I think it would be more order-  
21 ly and we will have a cleaner record for making a decision  
22 on it if we take them seriatim.

23 MR. FERGUSON: The only problem with that is  
24 that it doesn't state the concern of the prospective storage  
25 to the one that is in existence now, as if the only differ-

1 ence were, somehow, one of size. There are significant dif-  
2 ferences, as you know. I hesitate to let the statement go  
3 by, that all we are doing is adding more space.

4 JUDGE COTTER: So long as you address it on  
5 the record during the course of this proceeding, it does  
6 not go by unresponded to.

7 MR. FERGUSON: Before the finish, perhaps it  
8 might be useful, since he has just read in paragraphs 1 and  
9 2 of Section 131, the additional paragraph 3, I think, needs  
10 to be included for completeness, if I may read that.

11 "The federal government has the responsibility to  
12 provide, in accordance with provisions of this sub-  
13 title, not more than 1900 metric tons of capacity  
14 for interim storage of spent nuclear fuel for civilian  
15 nuclear power reactors that cannot reasonably provide  
16 adequate storage capacity at the site of such reactor  
17 when needed to ensure the continued orderly operation  
18 of said reactors."

19 We will have something further on that later.

20 JUDGE COTTER: Ms. McDermott, do you have  
21 something to add?

22 MS. McDERMOTT: It was a further addition of  
23 Section 135(b) (A) which says, adequate storage capacity to  
24 ensure the continued orderly operation of this civilian  
25 nuclear power reactor at which such spent nuclear fuel is

1 generated cannot reasonably be provided by the person owning  
2 and operating such a reactor at the site.

3                   And it goes on and on saying that it is the  
4 government's responsibility in that case.

5                   JUDGE COTTER: All right; thank you.

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1 MS. SILVER: The NRC has ordered PG&E to conduct  
2 a long-term seismic program and submit the relative study to the  
3 Commission by 1988. In view of the fact that the study is  
4 still in the early planning stages, any seismic analyses done  
5 on the spent fuel pools as well as on the racks are inadequate.

6 It also makes consideration of reracking pre-  
7 mature and woefully inadequate.

8 In 1974, the Mothers for Peace asked the Atomic  
9 Safety and Licensing Board to issue a stop work order at Diablo  
10 Canyon so that the effects of the faults could be determined.  
11 Chairman Elizabeth Bowers refused the motion on grounds that  
12 studies could be done while construction continued.

13 She made a point of telling us that money would  
14 never be an issue in this case. We were assured that the NRC  
15 was only interested in protecting the health and safety of the  
16 people.

17 The plant at that time -- of 1974 -- cost \$500  
18 million. And Unit 1 was only about half completed. Now partly  
19 because of retrofitting due to the increased ground motion  
20 potentials from the fault and partly due to PG&E's not knowing  
21 their right hand from their left, the reverse of the blueprints,  
22 and partly due to the sloppy workmanship, the plant was finally  
23 completed at a cost of \$5.7 billion.

24 Money obviously became the prime motive for  
25 licensing the plant, as demonstrated by reading the transcript

2 1 of the Commission's meeting.

2 Now, 10 years after our first motion to halt the  
3 construction of the plant, new information came in regarding  
4 the Hosgri fault -- certain aspects of the Hosgri fault. We  
5 requested the Commission to have a hearing.

6 The Commission refused and instead ordered the  
7 PG&E to conduct a long-term seismic study that is supposed to  
8 be done around 1988.

9 We feel that -- and by the way, someone called in  
10 today to say that in the Seismological Society of America  
11 meeting in Charleston, South Carolina, a new paper was presented  
12 regarding the Hosgri fault and the San Gregorio fault.

13 So I am sure you are aware that the state of the  
14 art as far as seismic studies are concerned is very -- we are  
15 on the cutting edge right now and we keep learning more and more  
16 information.

17 It seems to me that to proceed with reracking  
18 while this new information is pending is just to go ahead and  
19 repeat an already grievous mistake.

20 JUDGE COTTER: Mr. Norton?

21 MR. NORTON: My notes beside that contention were  
22 that this matter has been previously litigated, and I think Ms.  
23 Silver has just done a pretty good job of pointing that out.  
24 That is also the basis of the staff's response to this conten-  
25 tion that indeed the seismic matters have been litigated. The

3 1 facility has been found adequate by the Appeal Board and the  
2 Commission after repeated hearings.

3 I would like to correct one thing Ms. Silver said.  
4 The long-term seismic program came not as a result of any new  
5 information discovered in 1980. It very specifically came from  
6 the ACRS letter of 1978 when the ACRS recommended that  
7 approximately 10 years of seismic matters be reviewed.

8 And that is where that long-term seismic program  
9 specifically came from and was added as a license condition by  
10 the Commission when it granted the license. But the seismic  
11 safety of Diablo Canyon has been litigated. It has been found  
12 to be adequate by not only the Commission, but by the Ninth  
13 Circuit Court of Appeals -- oh, I am sorry, by the D. C. Circuit  
14 Court of Appeals.

15 Certainly spent fuel pool reracking modification  
16 is not a basis to reopen that entire litigation.

17 JUDGE COTTER: Mr. McGurren?

18 MR. MC GURREN: The staff has nothing further to  
19 add, Your Honor, to the statement.

20 JUDGE COTTER: Ms. McDermott?

21 MS. MC DERMOTT: Yes, the staff did combine the  
22 CODES's contention No. 2 in its evaluation. Would you like to  
23 cover that now or would you like to cover it later?

24 MR. MC GURREN: I am sorry, I did not hear that,  
25 Your Honor.

4 1 JUDGE COTTER: Ms. McDermott raised the question  
2 of addressing CODES's contention 2 at this point.

3 MS. MC DERMOTT: Because you combined it in your  
4 evaluation with Mothers for Peace contention No. 7.

5 JUDGE COTTER: I am agreeable. Whichever way you  
6 want to go.

7 MS. MC DERMOTT: I would like to put -- well, I  
8 will read the contention right now, No. 2 for CODES.

9 "It is unreasonable and premature to consider  
10 this spent fuel pool seismic design as modified by the proposal  
11 adequate, when the long-term seismic program, a licensing  
12 condition, is to be completed in 1988, two years from now."

13 I have from SFER No. 31 for Diablo Canyon the  
14 Seismic Design Basis Reevaluation Program ---

15 JUDGE COTTER: I am sorry, you said seismic?

16 MS. MC DERMOTT: Seismic Design Basis Reevaluation  
17 Program, it starts on page 4-3. And it is to consider new  
18 information, reevaluation of earthquake magnitude, reevaluation  
19 of ground motion and probablistic risk analysis and deterministic  
20 studies.

21 And the Seismic Reevaluation Program is being  
22 conducted for Diablo Canyon Nuclear Power Plant as one entity  
23 without regard to either of the two units.

24 I have a sheet of paper on the new report on the  
25 San Gregorio Hosgri fault which was presented last month in

5 1 South Carolina. And it indicates that the seismic data is  
2 compelling enough to call for greater seismic coverage and more  
3 intense scientific scrutiny of that fault. And we are very  
4 serious in pursuing this and would be very glad to, in a matter  
5 of semantics, provide more specificity if you would direct us.

6 JUDGE COTTER: I cannot direct you. I can only  
7 listen.

8 MR. CHANDLER: Mr. Chairman, if I may suggest,  
9 the issues that Ms. McDermott has raised now, the concerns that  
10 I think Ms. Silver has expressed on this kind of an issue, if  
11 there is a concern about new information giving rise to an in-  
12 consistency in operation of the facility in terms of its  
13 license provided by the Commission's regulations, there is  
14 always an avenue available. And that is 10 CFR 2.206 petitions.

15 But as pointed out in the staff's reply to these  
16 contentions, this proceeding is not the forum for relitigating  
17 yet again the seismic design basis for the Diablo Canyon  
18 facility.

19 MS. SILVER: I would like to respond to Mr.  
20 Norton's remark that this was directed by an ACRS letter of  
21 1978. Because I would like to also point out that the letter  
22 of 1978 by the ACRS pointed out that if the plant had been  
23 built today -- which was 1978 -- they would have been designed  
24 differently.

25 They recognized the fact that it was not proper

6 1 design at that point for what they had learned through the  
2 Hosgri fault. They also pointed out that one of the reasons  
3 we would license the plant at this time was because San Luis  
4 Obispo is in a -- quote -- low population zone -- unquote.

5 The NRC has allowed certain people in this country  
6 as unexpendable.

7 JUDGE COTTER: Anything further on this one?

8 MR. NORTON: We don't agree that that is what  
9 the ACRS letter says. The ACRS letter speaks for itself. It  
10 does not say that, but I don't think we need to get into that  
11 any further. This Court has access to that letter and the  
12 decisions that emanated therefrom.

13 JUDGE COTTER: Contention 8, Ms. Silver.

14 MS. SILVER: The applicant has not really  
15 considered or analyzed a long-term health, safety and environ-  
16 mental effects of the proposed reracking with respect to such  
17 periods of time over which the spent fuel pool is likely to be  
18 used beyond the expiration of applicant's operating license.

19 It is with a great deal of alarm that we have  
20 learned that there are plants in this country that have been  
21 reracked twice and even three times. This of course highlights  
22 our claims that Diablo Canyon may evolve into a de facto nuclear  
23 waste disposal site.

24 We are concerned also because there is no  
25 regulatory requirement that exists to limit the term of onsite

7 1 storage. It is totally open-ended. There is reason to believe  
2 that this reracking will only be the first of several at Diablo  
3 Canyon.

4 Other questions arise in view of the Waste Policy  
5 Act of 1982 quoted by Mr. Norton. We would like to know what  
6 will be done in 1998 when the Department of Energy has said it  
7 will accept responsibility for the waste. Will PG&E then  
8 become a landlord and rent out their spent fuel pools? Who  
9 will be responsible for the maintenance of the pools at that  
10 time? And if an accident occurs at the plant during the years  
11 after 1998, who will be liable, PG&E or the Federal  
12 Government?

13 As all of us here know, PG&E has made one other  
14 attempt at storing radioactive waste. And that is Humboldt  
15 plant. Again, it is with alarm that we note that the spent  
16 fuel pools at Humboldt are leaking. This hardly inspires  
17 public confidence in their ability to handle such deadly  
18 materials.

19 JUDGE COTTER: Mr. Norton?

20 MR. NORTON: Again, Your Honor, as this Board is  
21 will aware, the contentions in these proceedings are not  
22 admissible if it is an attack on Commission regulations. This  
23 contention is a direct attack on Commission Regulation Sections  
24 51, 10 CFR 51.23. I will quote the very first part of that  
25 regulation, Section (a):

8 1 "The Commission has made a generic determination  
2 that for at least 30 years beyond the expiration of reactor  
3 operating licenses no significant environmental impact will  
4 result from the storage of spent fuel in reactor facility  
5 storage pools," -- and then it goes on.

6 And this contention as phrased is a direct attack  
7 on that regulation. Therefore, it is not admissible in this  
8 proceeding.

9 JUDGE COTTER: Mr. McGurren?

10 MR. MC GURREN: Yes. Essentially, the staff  
11 agrees with that statement. And as we indicate in our response  
12 at pages 12 and 13, the Commission has conducted a rule-making  
13 and it has determined --as Mr. Norton has indicated -- that  
14 there is no significant impact, environmental impact, on the  
15 long-term storage of this spent fuel.

16 MS. SILVER: There is a part of Mr. Norton's  
17 statement that I agree with. I think that we have had a  
18 frustration with fighting some of the rules of the NRC. I would  
19 invite PG&E sometime to sit down with those of us who oppose  
20 a lot of the rules and we could attack them together.

21 It is a very big concern of ours to have a rule  
22 written which is totally open-ended. On the one hand, we have  
23 a waste program in the United States which wouldn't dream of  
24 considering California as a waste storage facility for nuclear  
25 waste because of all of the earthquakes.

9 1                   And yet we have Diablo Canyon which sits on top  
2 of an earthquake fault. And the NRC is proposing that we go  
3 ahead and store this waste, they say possibly temporarily. But  
4 then as you read on, when you have nuclear facilities that have  
5 reracked three times, we consider this temporary in the matters  
6 of -- what? Centuries?

7                   JUDGE COTTER: Which facilities have been  
8 reracked three times?

9                   MS. SILVER: There has been -- in the Federal  
10 Register, there was of 96 applications, 31 had been of the  
11 second or third application for the same pools. And this is  
12 March 6, 1986, page 7754, the Federal Register.

13                   JUDGE COTTER: What is the page number?

14                   MS. SILVER: 7754. Rancho Seco in California has  
15 had two rerackings.

16                   JUDGE COTTER: Thank you. Is there any further  
17 contention? Mr. Ferguson?

18                   MR. FERGUSON: I have a question on the staff  
19 response. These paragraphs 1 through 5 that you say have been  
20 addressed by the Commission as Waste Confidence Rule making  
21 which the Commission concluded, I am not familiar with that.

22                   Can you tell me exactly what the statements refer  
23 to?

24                   MR. MC GURREN: These statements are taken from  
25 the Commission's decision which appears in our report at

10 1 20 NRC 288 at page 293. And these would be the conclusions of  
2 the Commission's rule making.

3 JUDGE COTTER: Does that answer your question?

4 MR. FERGUSON: No. No. What was it in reference  
5 to?

6 MR. NORTON: It is this decision right here  
7 (indicating). I have a copy of it again, it is just a xerox  
8 copy.

9 MR. FERGUSON: If I could have a reference on it,  
10 I will look it up.

11 MR. NORTON: It is 20 NRC 288.

12 MR. FERGUSON: 20 NRC?

13 MR. NORTON: 288. Rule Making on the Disposal  
14 and Storage of Nuclear Waste.

15 MR. MC GURREN: And these five paragraphs are  
16 stated at page 293.

17 MS. SILVER: At paragraph 4, and I will read it  
18 aloud, "If the Commission finds reasonable assurance that if  
19 necessary spent fuel generated in any reactor can be stored  
20 safely and without significant environmental impacts correctly  
21 for approximately 30 years beyond the expiration of that  
22 reactor's operating license at that reactor's spent fuel  
23 storage basin or at either on-site or off-site independent spent  
24 fuel storage installations."

25 So that the public understands that if Diablo

11 1 continues with its licensing for 30 years, we are talking about  
2 30 years beyond that licensing that the NRC seems to consider  
3 as temporary, we are talking about 50 years right now. And we  
4 don't know if in 10 years from now they may change the rule to  
5 say that it is really safe for another 100 years.

6 That is the kind of thing ---

7 JUDGE COTTER: Your arithmetic is a little quick  
8 there, Ms. Silver.

9 MS. SILVER: But these things have happened time  
10 and time again. It was supposed to be here one year. We are  
11 talking about the year 2007. And then when we slip in here 30  
12 years beyond the expiration date -- so it is just by increments  
13 and it may be just 10 years, give or take, or 100 years, give  
14 or take, one way or the other.

15 MS. CULVER: And when federal law says that in  
16 1998 the federal government will take possession of the waste at  
17 commercial reactors, it doesn't say that it is going to move it.  
18 It doesn't say anything is going to physically change, that is  
19 this. You have to understanding the frustration of dealing  
20 with regulations that are so open-ended and that can change  
21 whenever it suits the utility or the industry.

22 Unless or until they come up with a technology  
23 and move it someplace, it is going to stay here. Unless or  
24 until there is a large earthquake, of course.

25 MR. NORTON: Excuse me, Your Honor. We seem to be

12 1 debating the rule-making of the Commission. And I would submit  
2 that the Mothers for Peace, or any other interested party, could  
3 have participated in that rule-making proceeding as they are  
4 participating in this proceeding.

5 I don't understand why we are debating ---

6 MS. SILVER: The government has to ---

7 JUDGE COTTER: We will hold a limited appearance  
8 of statements at a later date.

9 Off the record.

10 (Discussion off the record.)

11 JUDGE COTTER: On the record.

12 Mr. Norton, were you finished?

13 MR. NORTON: Yes, Your Honor.

14 MS. SILVER: Mr. Norton suggested that we will be  
15 able to handle this and all of us can go ahead and -- part of  
16 the thing that we have been learning over these weeks is that  
17 we do live in a free country and this is America and we can do  
18 anything.

19 But, again, I would like to point out to you that  
20 in 1983 and '84 Pacific Gas and Electric Company spent \$14  
21 million on lobbying in California. We don't have that kind of  
22 money, Mr. Norton. We are the people ---

23 JUDGE COTTER: Ms. Silver, this is not relevant  
24 to the ---

25 MS. SILVER: It is relevant.

13

1 JUDGE COTTER: --- contentions that we are  
2 discussing here.

3 MS. SILVER: He is saying we can go out and do  
4 something and he is suggesting that we can do it and it is not  
5 right. We cannot do it.

6 JUDGE COTTER: Ms. Silver, we are here to discuss  
7 the contentions that are at issue that you have placed in issue.  
8 And I am trying to give you an opportunity to do that.

9 MS. SILVER: I would appreciate that. But may I  
10 respond when he comments on something?

11 Mr. Norton, over the years ---

12 JUDGE COTTER: There have been a number of  
13 comments that are going both ways. And I have tried to not jump  
14 in when you become irrelevant on both sides, which both of you  
15 have done.

16 Please try, both sides, to limit yourself to the  
17 contentions which we have here to discuss. Contention 9, Ms.  
18 Silver.

19 MS. SILVER: The applicant has not shown that  
20 people could safely be evacuated in the event of a simultaneous  
21 earthquake and accident at Diablo Canyon's spent fuel pools.  
22 Current evacuation times are inadequate to preserve the health  
23 and safety, given the increased quantity of radiation that would  
24 occur with the spent fuel pool storage expansion.

25 In the event that there is any confusion in

14 1 anyone's mind regarding the contention dealing with the real  
2 threat of an earthquake and accident at Diablo Canyon, please  
3 let me explain it.

4 Our concern is that an earthquake on the Hosgri  
5 fault could trigger an accident at Diablo. That accident in  
6 turn could develop into a greater one causing a call for an  
7 evacuation. The people of this community would be faced with  
8 the multiple handicaps of downed communication lines, downed  
9 sirens, impassable streets and a radioactive cloud overhead.

10 To equate the effects of an earthquake with that  
11 of fog, shows the contempt that the NRC holds for the people of  
12 this community. And for the Court of Appeals to interpret our  
13 concern as one involving the coincidental occurrence of an  
14 earthquake and accident at the same exact time and computing  
15 the probabilities of that happening was disingenuous and  
16 insulting.

17 I would think that the legal profession feels  
18 very dirty by such an utter distortion of our case. The prompt  
19 and smooth evacuation is a major concern to us. The people near  
20 the Chernobyl plant were evacuated 30 hours after the accident.

21 As I pointed out, the accident at TMI occurred on  
22 March 28 and evacuation of pregnant women and children were  
23 advised on March 30. It is clear to us that we share one thing  
24 in common with both of those communities. And that is that we  
25 are at the mercy of the utility to let us know that an accident

15 1 has occurred.

2 This particular utility is at the mercy of a  
3 \$5.7 billion investment. We have seen politics get in the way  
4 of Chernobyl and at TMI. There is no reason to assume that it  
5 could not happen here too.

6 The injured people at Chernobyl were flown to  
7 Moscow for treatment. PG&E has contracted with the San  
8 Francisco hospital to treat injured workers. But what about the  
9 general population? Are we all going to go to French Hospital  
10 in San Luis Obispo? It is a very fine hospital, but they  
11 haven't done too many bone marrow transplants lately.

12 JUDGE COTTER: Mr. Norton?

13 MR. NORTON: Yes, Your Honor. That contention,  
14 again, is an attack on matters that have been previously  
15 litigated in this case, and therefore is not admissible.

16 JUDGE COTTER: Mr. McGurren?

17 MR. MC GURREN: Yes. As the staff has stated on  
18 page 14, the Commission has previously rejected this issue, the  
19 issue of complicating effects of earthquake on land emergency  
20 responses, and has determined that the Commission's regulations  
21 do not require such considerations.

22 And that is the basis for our belief that this  
23 contention should be rejected.

24 JUDGE COTTER: Anything further, Ms. Silver?

25 MS. SILVER: It is very difficult for us to sit

16 1 here and have these gentlemen say, oh, well that has already  
2 been litigated. We had an earthquake in Alaska and there was  
3 a tsunami warning and PG&E went out in the water, I assume.  
4 At one time they were supposed to have a bullhorn to announce  
5 when a tsunami was going to be coming to Diablo Canyon.

6 I think that although we appreciate the fact that  
7 you come here, you are not listening to us. You are from the  
8 Washington area, you don't have too many earthquakes back there.  
9 This is a real serious problem in our community.

10 We have all chosen ---

11 JUDGE COTTER: For your information, Ms. Silver,  
12 the eastern United States is a very active earthquake area.

13 MS. SILVER: And do you have emergency plans  
14 that involve earthquakes?

15 JUDGE COTTER: We certainly do.

16 MS. SILVER: We don't, we don't. And that  
17 bothers us. And we have been after PG&E that says be prepared  
18 for an earthquake and that they did not even allow into  
19 evidence any possibility of determining what we would do in the  
20 event there was an earthquake that triggered an accident out at  
21 Diablo Canyon.

22 That is our concern.

23 JUDGE COTTER: Contention 10, Ms. Silver.

24 MS. SILVER: The applicant has not analyzed nor  
25 considered the consequences of an accidental impact on a -- or

5-17 1 or a misguided or exploded missile launched from the Vandenberg  
2 missile range. Vandenberg is a missile launch facility for the  
3 United States Air Force and soon will become a prime launching  
4 facility for NASA.

5 Accidental explosions have been occurring with  
6 increased frequency. I am sure that when PG&E and the staff  
7 read this contention that the reaction was to file it in the  
8 incredible file. No doubt ballistic studies will be promoted  
9 to show how remote the possibility is.

10 We would like to ask, what are the probabilities  
11 for a TMI happening? What are the probabilities of a space  
12 shuttle explosion, a Titan explosion and rocket explosion, one  
13 occurring right after the other in rapid succession?

14 PG&E has claimed that the containment will stand  
15 the impact of a 747. Can a fuel handling building withstand  
16 the same forces? We feel that crash analysis should be done.

17 MR. NORTON: Your Honor, again there is a lack  
18 of nexus. The contention seems to be site-specific rather  
19 than the fuel pool specific. We are talking about reracking  
20 of the spent fuel pool. This does not have any specificity. I  
21 don't believe they are maintaining that a Vandenberg rocket is  
22 going to somehow directly hit the spent fuel pool. I don't  
23 think that is Ms. Silver's contention at all.

24 JUDGE COTTER: Mr. McGurren?

25 MR. MC GURREN: We have nothing to add to what

18 1 Mr. Norton has stated. Essentially, we think that it is raising  
2 an initial siting issue, and this has long since been resolved.  
3 It is a matter that is not before this Board.

4 JUDGE COTTER: Ms. Culver?

5 MS. CULVER: What you are saying then, it is a  
6 siting problem and the site is bad because Vandenberg has  
7 increased its number of launches, that we can't reopen that  
8 issue at all because it has already been done. Because it has  
9 already been sited.

10 MR. MC GURREN: What happened is that there has  
11 not been a relationship developed between Vandenberg and the  
12 instand action before this Board, which is the reracking of the  
13 spent fuel pools.

14 MS. CULVER: Well, a lot of people in our  
15 community stood on the beach a few weeks ago and watched that  
16 missile explode. There was a huge plume in the sky, it was a  
17 very short distance south of us, and it was a very eerie feeling  
18 because being a military facility we knew that we were not going  
19 to get a whole lot of information, just as we don't get a whole  
20 lot of information from Diablo Canyon.

21 They launch missiles that go over San Luis Obispo  
22 county on a regular basis.

23 JUDGE COTTER: Is Mr. Norton's statement correct,  
24 that you are not contending so much that a missile might directly  
25 impact on the spent fuel pool as you are the missile might

19

1 strike the site?

2 MS. SILVER: Well, where is the spent fuel pool  
3 located? It is located inside the fuel handling building, is  
4 that correct? And the fuel handling building is not a  
5 containment dome. There is not three feet of concrete there,  
6 so that there are projectiles that could go through that  
7 building which would then expose the spent fuel pools.

8 JUDGE COTTER: Well, in trying to decide something  
9 like that, it is an "if." It is awfully speculative.

10 MS. SILVER: Much of it is. Our contentions --  
11 even the NRC has put us through things like tornadoes. We  
12 have a lot of tornadoes. You don't.

13 But anyway, they have to do certain analyses for  
14 tornadoes, they have to do certain analyses for a lot of  
15 different things which are speculative. But that is part of the  
16 thing that you do when you are dealing with a highly-dangerous  
17 technology.

18 If this were, you know, a residential place, then  
19 okay, I can see where you may not have to do that. But we are  
20 talking about spent fuel pools.

21 MR. NORTON: Excuse me, Your Honor, this matter --  
22 again, the Vandenberg missile launches and so on -- we indeed  
23 considered, was analyzed, was in the FSER specifically  
24 referenced, was -- quote -- subject to litigation -- unquote --  
25 during the construction and licensing proceedings.

20

1 JUDGE COTTER: I understand that, Mr. Norton. But  
2 if I understand this contention correctly, they are saying there  
3 has been an increase in activity at Vandenberg since the  
4 initial site work was done.

5 MR. NORTON: That is correct. Well, that is what  
6 they are saying. Whether that is true or not, I don't know.  
7 But 10 CFR 2.206 is where you would bring that up. That is not  
8 peculiar to the spent fuel pool, is my point.

9 If it is indeed a viable contention, if there is  
10 indeed a concern issue, it should come up under 2.206, not under  
11 spent fuel pool reracking. There is no specificity to that in  
12 spent fuel pool reracking.

13 MS. CULVER: May I make a comment? We are in the  
14 same position we have been in in a dozen times over the years.  
15 And that is, Mr. Norton tells us to raise this issue before it  
16 occurs, raise this issue in an orderly time. Talk about this  
17 before the increased activity has occurred.

18 We have been told over and over again, if we just  
19 raised this issue several years before it occurred, it would  
20 have been fine. This becomes so absurd.

21 MS. SILVER: Also, I really must comment on this  
22 2.206. The NRC has a nice little thing where the public can go  
23 ahead and file things. Well, as a parent I understand that when  
24 sometimes the kids do something wrong, I will give them an  
25 alternative of something to do.

21

1 But I also know that it is futile. And that is  
2 essentially what 2.206 is. It is something that will relieve  
3 us because the way we are fighting, well, we are fighting back  
4 but we know it is futile.

5 JUDGE COTTER: I don't think that is the case at  
6 all, Ms. Silver.

7 MS. SILVER: How long has 2.206 ---

8 JUDGE COTTER: I don't know about the frequency,  
9 but I know that that process for relief has been successful.  
10 If you would, contention 11.

11 MS. SILVER: In light of increased terrorist  
12 activities, the applicant has not adequately analyzed or  
13 considered the consequences of sabotage of the spent fuel  
14 facilities.

15 The possibility of increased harm due to  
16 sabotage of the spent fuel pools will necessitate increased  
17 security measures over and above the current forces. The threat  
18 of terrorist attacks has increased over the years until at this  
19 point in time we are experiencing an epidemic.

20 With an increased inventory of radioactive  
21 materials in the spent fuel pool, we are concerned that the pools  
22 themselves might become a target to some deranged people. We  
23 note that an article in the May 4, 1986, Los Angeles Times by  
24 Bennett Ramberg, a senior research associate at UCLA Center for  
25 International and Strategic Affairs, points out that the

22

1 regulation regarding sabotage at nuclear plants is shamefully  
2 inadequate.

3 Ramberg reports that the United States regulation  
4 -- by the way, I am quoting him because we did have a contention  
5 in sabotage at the licensing proceedings, but they were in  
6 camera and we did not take part in that. We had an attorney  
7 who took part in that. So I have no idea what ---

8 JUDGE COTTER: Well, you did take part through  
9 your attorney. You personally did not.

10 MS. SILVER: What I am saying is that the  
11 information that I am giving now is information that I got from  
12 a public document and not from the in camera proceedings.

13 Ramberg reports that the United States regulation  
14 prescribes that reactor operators need not protect against more  
15 than one insider or more than three external attackers. Also,  
16 guards can assume that the attackers would not operate with more  
17 than hand-held automatic weapons nor explosives in quantities  
18 greater than can be carried by hand.

19 This last condition excludes protection against  
20 truck bomb incidents seen in the Middle East or against an  
21 enemy attack.

22 We find these regulations very inadequate to  
23 protect the inventory of the spent fuel pools, especially if  
24 they are going to be reracked.

25 We have also been concerned, as I notice the NRC

23

1 has been concerned, about the significant physical security  
2 problems in the area of access control that has been occurring  
3 at many plant sites across the country.

4 I refer you to IE Information Notice No. 8627  
5 dated April 21 of this year. Diablo Canyon offers another  
6 very serious problem. The heavy drug use at Diablo Canyon has  
7 been well known to the community for years. Recently there  
8 have been a number of arrests. And it is especially important  
9 to note that many of those who have been caught have been  
10 security guards.

11 JUDGE COTTER: Mr. Norton?

12 MR. NORTON: It is our position that this  
13 contention should be rejected on two bases. Number one, as  
14 stated by Ms. Silver, it has been indeed litigated by this very  
15 party before this Board -- excuse me, I guess it was not before  
16 this Board. It was before the Appeal Board in in camera  
17 proceedings for a week of testimony. They had expert witnesses  
18 represented by counsel, et cetera.

19 There is a decision that was affirmed by the  
20 Commission. They did not appeal that decision.

21 In addition, we submit that as phrased, as  
22 stated and as argued by Ms. Silver, contention 11 is an attack  
23 on Section 50.13 of the Commission's regulations.

24 JUDGE COTTER: Mr. McGurren?

25 MR. MC GURREN: Your Honor, the staff has, as it

24 1 states on page 15 of this reply, indicates that the issue of  
2 adequacy of the PG&E security measures has been litigated. It  
3 was also pointed out by Mr. Norton.

4 And for that reason, we believe this contention  
5 should be rejected.

6 MR. CHANDLER: Mr. Chairman, for the record, I  
7 think it should be understood that the statement that Ms.  
8 Silver read characterizing the regulatory requirement of the  
9 guard forced should not be taken necessarily as reflecting  
10 accurately what the regulations and staff requirements are in  
11 terms of physical security requirements. They may or may not  
12 be accurate.

13 But, obviously, that is something that ---

14 JUDGE COTTER: The regulations speak for  
15 themselves.

16 MR. CHANDLER: Well, they don't in this area.  
17 They are deliberately vague in this area. And for that reason,  
18 for example, the hearing was held in camera.

19 JUDGE COTTER: All right.

20 MS. SILVER: We find ourselves in a funny  
21 predicament because we even debated whether we should raise  
22 this issue. It is an issue of concern to us. On the other  
23 hand, we don't want to give people ideas, obviously, that  
24 whether these rules are accurate or not, it is our understanding  
25 from reading the classified decision that it looks like there

25 1 is a very limited sabotage force that the NRC requires the  
2 utility to protect against.

3 I believe that the number three of outside people  
4 is ludicrous.

5 JUDGE COTTER: I think this may be a good time to  
6 take a break. We will take a 10-minute recess.

7 (A recess was taken.)

8 JUDGE COTTER: The hearing will come to order.

9 We have made some inquiries. I don't know whether  
10 additional chairs have arrived in the back yet or not. But  
11 there are some back there now, I am told.

12 We have turned the table for the applicant so that  
13 he won't be talking so much this way and the sound will go back  
14 towards the end of the room.

15 We have inquired about a microphone and found that  
16 none is available right now. There might be one available after  
17 lunch. And if so, we will have it installed.

18 One of the problems that we ran into was that  
19 other portions of this larger facility had been booked before  
20 we made our arrangements. And so that kind of equipment was  
21 taken. And I promise to do my best to speak up.

22 So I think now we had better proceed with  
23 addressing the contentions involved. Has someone flipped a  
24 coin over here?

25 MR. FERGUSON: I thought we would do the Sierra

26

1 Club next.

2 JUDGE COTTER: We will proceed with the Sierra  
3 Club's contentions. Mr. Ferguson, if you will proceed with  
4 your contention No. 1?

5 MR. FERGUSON: If I could just comment before I  
6 read this, the first part of our contention has to do with the  
7 technical data which we felt was necessary for us to fully  
8 understand the implications of the proposed reracking.

9 After January or February, whenever we first  
10 received the reracking proposal from PG&E and the notice of  
11 the proposed hazards termination by the NRC, we had a group of  
12 scientists and engineers from the local university take a look  
13 at the proposal to see what our comments would be.

14 And we felt that we really could not say too much  
15 about the safety or security of the system unless we had some  
16 more data. We wrote a letter to the NRC requesting the  
17 additional information and as yet have had no response. So it  
18 ended up being included as a contention because we feel that  
19 this would really be helpful information for anybody who wants  
20 to understand what the implications of the proposal are.

21 JUDGE COTTER: This is the no significant hazard  
22 consideration you are suggesting?

23 MR. FERGUSON: No, the reracking proposal from the  
24 applicant.

25 JUDGE COTTER: Right.

27

1 MR. FERGUSON: I guess it was issued in September.  
2 At any rate, contention 1(a) is the contention of the Sierra  
3 Club, Santa Lucia chapter, that the report submitted to the  
4 Nuclear Regulatory Commission entitled "Reracking of Spent  
5 Fuel Pools at Diablo Canyon, Units 1 and 2" and other communica-  
6 tions between Pacific Gas and Electric Company and NRC which  
7 are available to the public on the same subject failed to  
8 contain certain relevant data necessary for independent  
9 verification of the claims made in the reports regarding  
10 consistency of the proposed reracking or the protection of  
11 public health and safety and environment.

12 In particular, the reports fail to contain data  
13 regarding -- number one, I could find no reference in the  
14 reports to the mass of either spent fuel assembly and/or of the  
15 loaded racks.

16 Number two, we could find no reference to  
17 numerical values for the spring constants used to model the  
18 behavior of the racks.

19 Number three, they can't find any reference to  
20 the expected velocities or displacements of the spent fuel  
21 pools as a function of time in three dimensions during the  
22 postulated Hosgri earthquake -- or any other earthquake, for  
23 that matter.

24 Nor could we find an expected maximum velocity  
25 and displacement of the racks obtained from the computer

28

1 computer modelling of the racks postulated for the Class III  
2 earthquakes.

3           Number give, they can't find the kinetic  
4 coefficients of friction appropriate for estimating the  
5 frictional forces between the pool floor liner and the racks  
6 when sliding of the racks occurs.

7           And, number six, there was a reference to rack  
8 "H" indicating it had different dimensions, which raised some  
9 questions. And we couldn't find any different dimensions.

10           In addition, when we get this data and it can be  
11 looked at, some of the implications -- we felt that there may  
12 be more data that was needed. And we did not want to limit  
13 ourselves right now, since we have so little to work with, so  
14 we contended that additional data may be needed to verify the  
15 data contained in the reports.

16           I guess the staff did not have any problem with  
17 these, according to my reading of it. Maybe if the applicant  
18 has comments, I would like to comment afterwards. I don't know.

19           JUDGE COTTER: Mr. Norton?

20           MR. NORTON: Your Honor, we read this slightly  
21 differently than the staff. Basically, the staff says that  
22 they don't oppose the admission of the contentions, provided  
23 the contention is limited to the bases of the particulars  
24 offered.

25           But prior to that, they read the contention as the

29

1 Sierra Club's asserting that without this information the NRC  
2 will not be able to conduct its verification of the reracking  
3 proposal.

4 I don't read the contention that way. And  
5 perhaps we can get some clarification from the Sierra Club. I  
6 read their contention as saying that it is not the NRC's  
7 verification. They want to independently verify all of these  
8 calculations, et cetera.

9 And I think we need to get a clarification as to  
10 whether it is their position that it is the NRC that doesn't  
11 have the information. I think they are saying something else.

12 MR. FERGUSON: Your Honor, let me clarify what  
13 our position is. What we are saying is and what we think the  
14 Sierra Club is contending here is that -- what we are saying  
15 is that we think that they are contending and we think it is  
16 an adequate contention is that because of the absence of this  
17 information, that the staff will not be able to do its job.  
18 And that is determining whether or not there is reasonable  
19 assurance of public health and safety.

20 That is what we think is their contention. And  
21 that is the contention we think satisfies our rules, with the  
22 exception of the last part, "additional data may be needed."  
23 We think that if they limit to the items they have mentioned,  
24 1 through 6, that feel that there is a contention here that  
25 can be litigated.

1 MR. NORTON: And I would like clarification from  
2 the Sierra Club. Because I read their contention differently.  
3 I think they are saying ---

4 JUDGE COTTER: Right. Mr. Ferguson?

5 MR. FERGUSON: Well, our contention is that  
6 nobody can verify it without this data, whether it is the NRC  
7 or anyone else in this room. We contend that this data should  
8 be made available. It seems to me from this ---

9 JUDGE COTTER: I think the issue that they are  
10 presenting to you is, the staff has the responsibility for  
11 verifying the data which is submitted by the applicant, for  
12 verifying that it adequately meets the general public health  
13 and safety concerns of the regulations.

14 And the applicant has questioned whether you are  
15 saying that you don't care whether the staff can or can't.  
16 You will only be satisfied if you can do that.

17 MR. FERGUSON: That doesn't help us. But I was  
18 hoping that both of us could do that.

19 JUDGE COTTER: But the point being that the  
20 statute says it is the staff's responsibility, not the Sierra  
21 Club's responsibility. That is the distinction they are trying  
22 to make.

23 They are not questioning your identification of  
24 additional information that you think is necessary. They are  
25 going to the second part of it and they want to be sure that

1 what you are saying is that it is the staff who ultimately makes  
2 that decision that the information is adequate, not the Sierra  
3 Club.

4 MR. HAGGARD: Your Honor?

5 JUDGE COTTER: Yes.

6 MR. HAGGARD: It seems to me ---

7 MR. NORTON: Excuse me, may I ask who is speaking?

8 MR. HAGGARD: Ken Haggard from CODE. It want to  
9 add something here. You asked about the specifics. And I think  
10 that the shoe fits both feet. If you want specifics, you want  
11 specifics. You have to have specifics to get specifics. And  
12 it seems to me a very logical request for specifics on the side  
13 of the applicant.

14 JUDGE COTTER: That is not the issue, I don't  
15 think here. Everybody agrees that you have asked for specifics.  
16 And they don't oppose that as a contention.

17 What they are concerned about is what they perceive  
18 as a possible corollary to the specifics and that is, whether  
19 the staff will decide the specifics are adequate or the Sierra  
20 Club will decide.

21 MR. HAGGARD: Your Honor, you have already asked  
22 the Sierra Club for specifics. You have already in this meeting  
23 asked for specifics. Now, if you want specifics, and I assume  
24 that we are talking about ---

25 JUDGE COTTER: I don't think you are listening to

1 me, Mr. Haggard. You are not listening to me.

2 MR. HAGGARD: I am listening to you very well.  
3 Did you not earlier ask Mothers for specifics?

4 JUDGE COTTER: Yes, and you have given them. And  
5 they have not opposed them. That is not the issue that we are  
6 trying to get to here.

7 MR. FERGUSON: If I could just respond. I don't  
8 -- I am not a lawyer, I'm not familiar with the details of the  
9 regulations. So I don't really know -- I don't know the  
10 details.

11 Our feeling when we wrote this was that we would  
12 like to be able to consult outside people to try and verify  
13 whether or not this proposal was in fact safe. And we felt  
14 this data needed to be known.

15 I have no way of knowing whether NRC has this  
16 data or not. I would hope that they do. But I don't know that.

17 JUDGE COTTER: Both the applicant and the staff  
18 agree that that is reasonable. It is a legitimate contention.  
19 It is their contention that it is admissible into the  
20 proceeding.

21 Then they asked another question.

22 MR. FERGUSON: Right, and my response to that was  
23 yes, I should hope that this data would be in the public  
24 domain. He interpreted our ---

25 JUDGE COTTER: That is not the other question

1 they are asking.

2 MR. NORTON: Excuse me, Your Honor, may I try?

3 MR. FERGUSON: I am saying he isn't interpreting  
4 our contention correctly. We are not asking whether the NRC  
5 has this. We would like this in the public domain.

6 MR. NORTON: That does not answer my question.  
7 The question I am asking is, if you read that first portion of  
8 the contention where they say -- the whole thing is one sentence  
9 but try and pick it up in the middle.

10 It says, "The reports fail to contain certain  
11 relevant data necessary for independent verification." Now the  
12 staff is reading that as saying fails to contain certain  
13 relevant data for the staff to make its evaluation.

14 My feeling is that what the Sierra Club is saying  
15 is that it fails to contain certain relevant data necessary for  
16 the Sierra Club to make its independent evaluation. If that is  
17 indeed their issue, then we don't believe it is admissible.

18 If it is the other, we have some problems with it  
19 too. It is nowhere near as severe as what they are saying that  
20 it is the Sierra Club that has to make that verification.

21 JUDGE COTTER: If it is the other, what is the  
22 nature of your problems with it?

23 MR. NORTON: Well, much of this is available.  
24 I mean, it just is available in the public record. They say  
25 it isn't. It is.

1 MR. FERGUSON: Can you give me a page reference?

2 MR. NORTON: It is not in the report. It is  
3 available in the public record, like the FSER which are  
4 available to you.

5 MR. FERGUSON: I was looking three days in the  
6 library at the FSER. And it seems to me that would be the kind  
7 of stuff you would put in here (indicating).

8 MR. NORTON: I think we should be addressing you  
9 and not each other.

10 JUDGE COTTER: If you can talk to each other, you  
11 don't need to talk to me. I would be perfectly happy.

12 Ms. McDermott?

13 MS. MC DERMOTT: I would like a clarification of  
14 where the -- does the application contain all of the information  
15 necessary? Or what are the other avenues for information on  
16 the fuel reracking issue to the staff and to the public?

17 JUDGE COTTER: Do you want to respond to that, Mr.  
18 Norton? Or Mr. McGurren?

19 MR. NORTON: For example, he has numbered 1 through  
20 6 things. We can give the references to those, where those are.  
21 They are all in the public record. You know, you never asked  
22 us for it. We can give you the references. There is no problem  
23 with that.

24 But that isn't the contention, if you will, to say  
25 we want information. It is not a proper contention. We will

1 happily give them the information. But it is not a proper  
2 contention. And that is what we are here to decide, is it a  
3 contention.

4 JUDGE COTTER: I understand your position.

5 MR. FERGUSON: That is why I started this by saying  
6 these are questions that we had three months ago. And we were  
7 also trying to find out where we could get this data.

8 JUDGE COTTER: May I suggest, for openers, as a  
9 first step that you two get together after this is over and then  
10 you furnish him with as much of those citations and references  
11 as you can.

12 MR. NORTON: I would be happy to.

13 MR. CHANDLER: Mr. Chairman, for a point of  
14 clarity, as Dr. Ferguson alluded to earlier, he had written the  
15 staff a letter. I believe it was in the beginning of March  
16 sometimes, which for some reason was not received.

17 We received the subsequent letter attaching a  
18 copy of the first letter in which he had requested the informa-  
19 tion which he has now listed in his several contentions.

20 Simply because of the formalities associated with  
21 the hearing process and discovery versus admission of  
22 contentions and the staff's efforts directed to the preparation  
23 of the safety evaluation reports and environmental assessment,  
24 it has simply been impossible to be able to get back and  
25 communicate with Dr. Ferguson to respond to these things.

1 I think it is our intent that not only will the  
2 applicant, certainly -- if they can provide it, fine. But, you  
3 know, we have looked forward to the opportunity to see if we  
4 can't resolve some of these things outside of the formal arena.  
5 if that is at all possible, by making this information available  
6 to him. And to the public at large, of course.

7 JUDGE COTTER: Good. Thank you.

8 MR. FERGUSON: Your Honor, I do have one question.  
9 And that is, when we get this information and can complete some  
10 of our calculations, it raises the question that there may be  
11 additional issues that get raised as a result of those  
12 calculations.

13 I am just wondering what the procedure for dealing  
14 with those would be?

15 JUDGE COTTER: We talked about that at the outset  
16 I think in connection with some of Ms. Silver's contentions.  
17 And the general rule is that if the information that results is  
18 new and was not otherwise available, then there may be a right  
19 to amend your contentions.

20 If the answer is that it is not new or that it  
21 was otherwise available, then the right to amend contentions is  
22 questionable at best.

23 MR. FERGUSON: Okay.

24 JUDGE COTTER: So I understand then that we do  
25 have agreement, number one, that you all will get together and

1 give as much citation and information as you can. And I would  
2 suggest, if you would, that that be done in the next 30 days in  
3 connection with this information.

4 MR. NORTON: We can give him that information at  
5 the next break. We will give him the citations for those six.

6 JUDGE COTTER: All right. Then the second  
7 question I think is a matter of law, in any event. So we will  
8 deal with that in rendering our decision.

9 MR. NORTON: May we ask that I assume the same  
10 holds for 1(b), that it is the Sierra Club's verification that  
11 you are talking about, not the NRC's?

12 JUDGE COTTER: The same language, exactly.

13 MR. FERGUSON: Again, I would say the same thing.  
14 I don't think that anybody can verify it unless they consider  
15 these things. So, I have the same problem with that as I had  
16 before.

17 Now, maybe they have -- I don't know about it.  
18 I can't address that issue. Should we go through these?

19 JUDGE COTTER: Yes, Mr. McGurren, do you have  
20 something to contribute to this, I think?

21 MR. MC GURREN: As to 1(b), what I just said with  
22 1(a) applies to 1(b). It is our understanding that the  
23 contention was stated in terms of the staff would not be able  
24 to conduct a determination or finding of reasonable health and  
25 safety absent this data. That is the way we were interpreting

1 the contention.

2 With regard to the items listed in Contention 1(b),  
3 we found some of those items to meet the specificity require-  
4 ments of 2.714, whereas we find that some of them didn't.

5 With respect to those that we did find adequate,  
6 we read it in terms of the staff would not be able to conduct  
7 its finding of reasonable health and safety absent that  
8 information.

9 MS. MC DERMOTT: My question before was not  
10 answered. And it comes up again. Where is the application,  
11 the completed application? Is that part of the information for  
12 making the decision on the spent fuel plan for reracking?

13 JUDGE COTTER: Mr. McGurren?

14 MR. MC GURREN: Where is all the information?

15 MS. MC DERMOTT: Is the completed application all  
16 of the information necessary -- does the application hold all  
17 of the information necessary for the reracking of the spent fuel  
18 plan determination?

19 MR. MC GURREN: I think that, with the staff's  
20 safety evaluation also, is a part of the documentation. Any  
21 any documents that ---

22 MS. MC DERMOTT: Your source of information from  
23 the utility, is that in the completed application? Is that  
24 your total package of information from the utility? Or are  
25 there other sources of information available to you?

1 MR. MC GURREN: As the project manager, as I was  
2 just reminded, our review is also based upon a number of  
3 readings of summaries that we have; there were meetings as I  
4 recall; there is visits to the plant for the technical  
5 reviewers to see where things are.

6 MS. MC DERMOTT: Are those summaries part of the  
7 application package?

8 JUDGE COTTER: I think the short answer, Ms.  
9 McDermott, is that you start with an application. The staff  
10 looks at it, and they determine that portions of it are  
11 complete and adequate for some parts of the project, and that  
12 other portions need to be expanded or supplemented.

13 And they go back to the applicant and they request  
14 additional information which is then filed in writing and  
15 becomes an additional part of the record. And as they go along  
16 initially, after getting most of the information or all of the  
17 information they think they need, they write a safety evaluation  
18 report on the application.

19 There may be some open items in the safety  
20 evaluation report because they have requested information and  
21 they have not gotten it all yet. So they issue supplements to  
22 the safety evaluation report.

23 So the application, plus the safety evaluation  
24 report, plus the supplements to it -- what am I missing? -- the  
25 environmental assessment, makes the total package of information

1 that governs the decision that the work proposed satisfies the  
2 public health and safety.

3 MR. FERGUSON: I think though that you can see  
4 what she is driving at. From the public's point of view, it  
5 looks like we are asked to make decisions on the proposal while  
6 there is still data coming in that we will never see.

7 JUDGE COTTER: No, you will see the data. You  
8 will see the data.

9 MR. FERGUSON: But this hearing will have already  
10 taken place.

11 JUDGE COTTER: No, no. The data, if the staff  
12 decides that some portion of the application is inadequate and  
13 they request additional data, that becomes a part of the public  
14 record and that is available to you.

15 If that contains new information that was other-  
16 wise not available, then you have an opportunity to amend your  
17 contentions to address that new information if it raises some  
18 kind of a new health and safety issue in your mind.

19 If it is not found to be new information or was  
20 otherwise available, then you cannot amend your contentions.

21 MR. HAGGARD: Could I ask what procedure would be  
22 after the hearing if that occurs?

23 MR. FERGUSON: You mean after the conference or  
24 the hearing?

25 MR. HAGGARD: After the prehearing conference.

1 What procedure is implemented?

2 JUDGE COTTER: All the information which is  
3 generated, specifically particularly the SERs, I think in  
4 ordinary course will be served on you. And you can examine  
5 them at that time and determine whether or not you find new  
6 information that was not previously available.

7 And at that point, you could make a decision  
8 whether or not to amend your contentions as they stand now.  
9 And then we would go through this process all over again.

10 MR. FERGUSON: And what you are saying is, these  
11 things that don't start out as contentions are saying that in  
12 our opinion whoever is going to decide on the merits of this  
13 proposal needs to consider some of these things. And maybe  
14 somebody is considering them. I don't know. But we are stuck  
15 without it.

16 So I would just like to read through them and  
17 maybe comment on some of these. I notice that some of them you  
18 said I was not specific enough. Perhaps I can amplify those  
19 a little bit.

20 JUDGE COTTER: Dr. Ferguson, let me suggest I  
21 think we have covered 1(a) ---

22 MR. FERGUSON: 1(a), that's no problem.

23 JUDGE COTTER: --- and on 1(b) my notes indicate  
24 that the staff finds fault with subparagraphs 3, 6 -- I am  
25 sorry, yes, 3, 4, 6 ---

1 MR. FERGUSON: 5, too, I think in my notes.

2 JUDGE COTTER: I think 5 was all right.

3 MR. FERGUSON: 5 is okay.

4 JUDGE COTTER: I guess there is just 3, 4 and 6.

5 And I guess you might just address those.

6 MR. FERGUSON: I can just maybe comment on the  
7 overall gist of these and then I will deal with those  
8 specifically then.

9 What struck us in looking at the proposal is that  
10 unlike the racks that are currently in place, the new racks are  
11 not only answer to hold more material, but they are also not  
12 bolted down.

13 And in PG&E's report it indicates that a seismic  
14 event of the plant would be expected to cause these racks,  
15 which weight somewhere on the order of 100 tons -- but I am not  
16 sure because we don't have the data yet -- but that these racks  
17 are expected to slide around back into each other.

18 And they report a calculation being done to  
19 indicate what the forces on the racks would be and what the  
20 possible ---

21 JUDGE COTTER: Could I interrupt you for a  
22 second. Are you talking about subparagraph 1?

23 MR. FERGUSON: No, (b).

24 JUDGE COTTER: 1(b)(1) or 1(b) generally?

25 MR. FERGUSON: Right. And now I will deal with

1 the others. This was our problem, that what we have here is a  
2 different technology from what is in place. And so these issues  
3 that we raise have to do with assessing this new storage system,  
4 namely, non-anchored racks.

5 So the issues that apparently nobody had problems  
6 with were Nos. 1 and 2. No. 3 has to do with the possible  
7 damage if these things are going to bang into each other, and  
8 if there is some possible damage, then it seems the question has  
9 to be asked as what is going to be the result of this potential  
10 damage.

11 And we can't find in here any assessment of what  
12 could happen. Our own preliminary assessment indicates that  
13 there could be a good deal of heat generated. And that -- and  
14 at that time a new kind of problem. And the whole issue of  
15 pool cooling becomes a new problem because of potential damage  
16 to the racks.

17 We can go into the details of that if you want.  
18 I don't think that this is the time. But that is why that was  
19 included in there. So -- I mean, we know that the question of  
20 cooling the pools has been addressed.

21 But our point is that this new technology with  
22 these racks sliding around and backing into each other raises  
23 new questions about pool cooling and the assuredness that has  
24 not been raised before. That is one ---

25 JUDGE COTTER: Is that the "KF" factor?

1 MR. FERGUSON: That is the measure of the  
2 criticality of the pool. And in fact that would be higher now,  
3 yes. The fact that they are pushing a KF factor higher. The  
4 fact that they are not bolted down has nothing to do with it.

5 JUDGE COTTER: I guess what I am saying is that I  
6 think one of your contentions addresses the KF factor. And I  
7 am asking whether this subparagraph 3 is duplicative of that.

8 MR. FERGUSON: No. No. It is not the issue.

9 JUDGE COTTER: On that basis, I think I understand  
10 3. And with that understanding, I think there is enough  
11 specificity for 3 that that could be litigated.

12 MR. NORTON: Well, I guess we -- I am a little  
13 bit confused where we left the earlier discussion about 1(b),  
14 before getting into the subparts, about the staff's under-  
15 standing. I hope the staff's understanding is now that it is  
16 not the contentions that it is the NRC but the Sierra Club has  
17 the right to do the verification.

18 JUDGE COTTER: I don't think that is what they  
19 said at all.

20 MR. NORTON: That is what I am trying to clarify.  
21 Because I am pretty sure that is what I understand the Sierra  
22 Club to be saying. And the staff, they are saying no, that it  
23 is the NRC's verification.

24 JUDGE COTTER: I understand your point. But it  
25 seems to me that that is probably a matter of law. And I think

1 we can move on from that.

2 MR. NORTON: All right.

3 MR. FERGUSON: I am curious I guess. Are you  
4 suggesting that the NRC should be able to do these calculations  
5 with data that is not available to the public so they can ---

6 MR. NORTON: No.

7 MR. FERGUSON: Otherwise, why make the  
8 distinction?

9 JUDGE COTTER: No, the question he raises is the  
10 one that we were not communicating on earlier. And still not  
11 communicating on. And that is, who is responsible for doing the  
12 independent verification, assuming all of the data was available.  
13 That is Mr. Norton's question.

14 MR. NORTON: These contentions as I read them and  
15 as you keep reiterating them, are saying that the Sierra Club  
16 has to be able to do an independent verification. I say there  
17 is no basis in the law for that.

18 It is the NRC that has to do an independent  
19 verification. Now, the Sierra Club can raise any contention it  
20 wants about the adequacy of that verification. But there is no  
21 requirement that they do an independent verification.

22 MR. HAGGARD: Mr. Norton, are you afraid to do the  
23 verification? Why are you so concerned?

24 JUDGE COTTER: He is talking about the statutory  
25 scheme.

1 MR. HAGGARD: That is not the way he is reading  
2 it to me. He may have read it that way. But I interpret it  
3 that he seems to be afraid that somebody is going to be able to  
4 check the calculations.

5 JUDGE HARBOUR: Let me interject here. I think  
6 we are still not communicating very well here. I will try, but  
7 I am not sure that I will accomplish it.

8 Does the Sierra Club allege that the staff is  
9 unable to make a finding in the seismic calculations without  
10 this information?

11 MR. FERGUSON: Yes.

12 JUDGE COTTER: I think that is the contention.

13 MR. NORTON: If that is the contention, that is a  
14 totally different contention than is stated here. And I have  
15 far less problem with that contention.

16 MR. FERGUSON: But I would not restrict the  
17 contention to the NRC. What you say is certainly the specific  
18 case. But I think we ought to be able to do the calculations  
19 too, that is correct.

20 MR. HAGGARD: It doesn't seem reasonable to me  
21 that the public, if they have an expertise available, to be  
22 expected to be able to do the calculations. Does that seem  
23 unreasonable to you, Mr. Norton? I ask the question.

24 MR. CHANDLER: Mr. Chairman ---

25 JUDGE COTTER: I think Judge Harbour has another

1 question.

2 JUDGE BARBOUR: I think -- and, please, we are  
3 trying to be able to deal with the Sierra Club here and let us  
4 just stick with their responses.

5 Now, in 1(b)(3), it still isn't completely clear  
6 to me how the loss of pool cooling relates to the seismic event.  
7 Would you explain that a bit, again, please?

8 MR. FERGUSON: Well, it came about from our  
9 concern that we essentially have new problems going on now where  
10 we have the potential sliding and impacting of the racks. And  
11 that once you allow that to happen and you say, all right, then  
12 there is at least a potential for certain kinds of damage.

13 The issue of what happens in the loss of pool  
14 coolant is a different issue in my opinion. It seems like that  
15 -- in other words, what we can't find here is what the  
16 consequences would be of damage to the system in view of the  
17 fact that these new racks aren't bolted down.

18 And one of the elements in there has to do with  
19 pool cooling and the loss thereof. Does that help?

20 JUDGE BARBOUR: Yes, that helps.

21 MR. NORTON: Excuse me, Your Honor, in response  
22 to this specific one, No. 3, again I have difficulty distin-  
23 guishing it from contention 2(a) and 2(a)'s subparts as now  
24 being enlarged upon by the Sierra Club.

25 And if the source of loss of cooling is seismic

1 event -- I think the specifics that they are now giving you --  
2 and that indeed is covered in 2(a) which we, the parties, agree  
3 should be admitted as a contention as stated by the staff.

4 MR. FERGUSON: Would you run that by me again?

5 JUDGE COTTER: He is raising a question about  
6 whether or not there is some duplication in the parts 1(a), (b)  
7 and part 2 of the contention. And we can deal with that when we  
8 make our ruling on it.

9 MR. NORTON: No. 4 ---

10 MR. FERGUSON: We have not addressed that.

11 MR. NORTON: I am sorry, you haven't addressed  
12 that. I am sorry.

13 JUDGE COTTER: Go ahead.

14 MR. FERGUSON: One of the other features that  
15 pops out at you when you look at this proposal is the fact that  
16 there are a large number of racks, handling a large number of  
17 feet. I counted them once and I don't remember -- there's  
18 something like 150-200 separate pedestals on the bottom for  
19 these racks.

20 And it raises the kinds of questions when you  
21 start talking about potential failures, which are discussed in  
22 the report, you have to ask yourself not -- I mean, it is not  
23 just a question of, is it going to happen or is it going to  
24 reach a certain number and then everything is going to go to  
25 pot or not.

1                   As it well known, when you have a large number of  
2 things and you start doing bad things to them, they start to  
3 fail on the statistical way. And it seems here since we have  
4 increased the number of racks significantly and the number of  
5 rods -- fuel rods significantly, that we have to begin to start  
6 looking at these failure modes that have been statistical in a  
7 statistical way. And ask yourself, here we have whatever it is,  
8 150 feet or something.

9                   Suppose one of them were to break? Then when --  
10 and maybe this is statistically not unreasonable at the two-  
11 standard deviation level. You know, what is going to be the  
12 results of that and has this been addressed?

13                   Our feeling was that just sticking in a single  
14 number for the maximum force that a rack can handle and saying,  
15 well, it doesn't get up to that much and therefore we are okay  
16 is inappropriate in this kind of analysis where we have a huge  
17 number of these things to deal with.

18                   That was why we included that -- sorry, we could  
19 not be more specific. But it is difficult in these kinds of  
20 areas. So our suggestion is that we begin to look at these  
21 failure modes in this statistical way which I think would be the  
22 more usual engineering practice.

23                   JUDGE COTTER: Mr. McGurren?

24                   MR. NORTON: I think it is perhaps our turn to  
25 go. Unless you want the staff ---

1 MR. MC GURREN: I can go ahead, Your Honor. I  
2 still have difficulty understanding the basis in terms of being  
3 able to litigate it and to satisfy what the Appeal Board says  
4 in Peach Bottom, so the parties would know at least generally  
5 -- so they would be on notice to know generally at least what  
6 they are supposed to litigate.

7 I don't -- I just don't feel that there is enough  
8 basis there to satisfy the requirements of 2.714.

9 JUDGE COTTER: If I understand what he is saying,  
10 he is saying that the possibility of the failure of one of the  
11 pedestals in one of these rack arrangements might break has not  
12 been considered through statistical analysis as to the possible  
13 consequent events.

14 MR. MC GURREN: I understand. And correct me if  
15 I am wrong, but you are saying the basis here really is a great  
16 number of these feet or pedestals and because of their number  
17 that did the staff look at the significance of those numbers  
18 in terms of statistically look at those?

19 MR. FERGUSON: Yes, yes. Our point is that once  
20 you begin to deal with large numbers of things, the statistical  
21 approach begins to make more sense than just to say -- to set up  
22 a certain value and say this is failure or not failure. And so  
23 on. That's really all that this is claiming, that the large  
24 number of elements will make a statistical failure analysis  
25 more appropriate for that specific number.

1 MR. NORTON: Your Honor, I think I understand the  
2 position that they are stating. I think it is specific, as  
3 specific enough for that matter. But I am somewhat puzzled for  
4 those of us -- and I am sure Ms. Silver will recall the design  
5 verification proceedings when we did things statistically and  
6 they got very upset and wanted everything done deterministi-  
7 cally.

8 In this particular case, the deterministic  
9 analysis has been done and they're saying, no, no, no, let's  
10 do it statistically. And I understand exactly what he is saying.  
11 I just don't understand why one has to do a statistical analysis  
12 when one has done a deterministic analysis.

13 MR. FERGUSON: Well, for example, there was a  
14 number given here which says that a rack can handle an impact  
15 force of -- if I remember right -- 175,000 pounds, as if that  
16 is a hard or fast number.

17 And I am sure that if one went out and measured  
18 what was going to happen to the rack, one would find some kind  
19 of distribution. It is not clear what that number represents  
20 when you begin to talk about the possible failure of these  
21 things.

22 It is not a hard and fast kind of thing. I mean,  
23 what is the standard deviation? We are talking about 100,000  
24 pounds, 50,000 pounds or what?

25 MR. NORTON: I would suggest to you that they are

1 really saying that the determination that was made, the  
2 deterministic number, is wrong, or is not supportable. Which is  
3 a different contention than is stated here.

4 JUDGE COTTER: That could be a facet of it.

5 MR. FERGUSON: My response is that I have no idea  
6 where that number came from. It was just put down in the report.  
7 If you want me to add to this contention that we should maybe  
8 understand where those numbers come from, well, I will do that.

9 But it is just a number. It is not the standard  
10 way that one would look at this kind of factor.

11 MR. MC GURREN: If I could add something else on  
12 this, Your Honor. It is not clear from item 4 by itself what  
13 part of the rack he is contending is going to fail. I think  
14 there is a certain specificity lacking there.

15 MR. FERGUSON: We could fix that in the report.  
16 There was a list of ratios that were given, for example, all of  
17 which were used to limit these values having to do with the  
18 strength of the -- I forget. Maybe you can ask the engineers  
19 what they were.

20 But there were several of them which were used as  
21 sort of limiting values in the safety analysis for the racks. I  
22 think my guess it was probably -- well, I think we should  
23 probably look at all of them at least to some extent.

24 JUDGE COTTER: Is part of your concern here, Dr.  
25 Ferguson, lack of information as to the underlying processes

1 whereby they arrived in this case at the deterministic  
2 conclusion?

3 MR. FERGUSON: That is a certain part of it. I  
4 mean, I can't say anything is done or how it was done. But I  
5 think I also object to sort of looking at it as this hard and  
6 fast number. It just does not seem to be the way the standard  
7 engineering practice would proceed when you have that kind of  
8 problem.

9 JUDGE COTTER: All right, I think we understand  
10 the issue here. And as I understand it, subparagraph 4, both  
11 the staff and the applicant continue to oppose that and think  
12 that it should be rejected.

13 MR. MC GURREN: That is correct with regard to  
14 the staff, Your Honor.

15 MR. NORTON: Yes, Your Honor.

16 JUDGE COTTER: Item 6, subparagraph 6.

17 MR. FERGUSON: 5 I think we're on.

18 JUDGE COTTER: 5 they do not oppose. I might note  
19 that subparagraph 6 says that the comparison of the proposed  
20 spent fuel storage system with other such systems at other  
21 reactor sites having less severe seismic design criteria.

22 MR. FERGUSON: Right. Our conclusion here is that  
23 there is no indication what, if anything, has been done in this  
24 proposal that is site specific. Maybe there isn't any. Maybe  
25 there is something. I don't know.

1                   But as far as we can tell, the system that is  
2 proposed for the Diablo Canyon site is pretty much the same as  
3 exists in other plants without the seismic problems. And it  
4 seems to me that there should be some discussion somewhere as  
5 to how this proposal has been made safe for the specific  
6 problems at Diablo Canyon.

7                   If in fact there is any difference between this  
8 proposal and what has been proposed in any other site, that was  
9 the specifics behind No. 6. I suppose you could argue that as  
10 long as somebody thinks that it's safe, it doesn't matter how  
11 it compares to some other plant.

12                   But I think it would certainly make the public  
13 feel more confident if it knew what had been included in this  
14 design that especially made it so that it could handle the  
15 seismic difficulties that we have.

16                   That was why we included No. 6.

17                   MR. MC GURREN: Your Honor, I think that what is  
18 happening with regard to the staff's review -- or the  
19 Commission's review with respect to each plant, each amendment,  
20 each application, is based upon that particular application  
21 itself and the specifics of the proposal and not how it relates  
22 to another spent fuel pool somewhere else.

23                   JUDGE COTTER: I think what Dr. Ferguson is  
24 postulating is a standard spent fuel pool rerack system, in what  
25 way has it been adapted to deal with the specific conditions at

1 Diablo Canyon. Is that correct?

2 MR. FERGUSON: Exactly.

3 JUDGE COTTER: Is his assumption correct? Is there  
4 a standard spent fuel pool rerack system for openers? Or was  
5 it designed from scratch to deal with the specifics at Diablo  
6 Canyon?

7 MR. NORTON: Your Honor, the answer is no. The  
8 assumption is false.

9 JUDGE COTTER: No what?

10 MR. NORTON: The assumption is false. There is no  
11 standard from which this was adapted. This spent fuel pool  
12 modification is for Diablo Canyon. We did not go get it from  
13 some other facility. It was specific for Diablo Canyon.

14 So I don't know -- I don't see how it is relevant  
15 to compare it with Turkey Point or Peach Bottom or SMUD. There  
16 is no relevance.

17 JUDGE HARBOUR: Or did you buy an off-the-shelf  
18 design? Or is this design specifically for Diablo Canyon?

19 MR. NORTON: Designed specifically for Diablo  
20 Canyon.

21 JUDGE HARBOUR: Is that clear in the application?

22 MR. NORTON: I don't know.

23 MR. MC GURREN: The answer to your question is  
24 yes. It is clear that this was designed for this -- that their  
25 application was designed for this reactor.

1 MR. FERGUSON: It is clear in the application that  
2 the site-specific problems are addressed. It would make us feel  
3 a whole lot better if we were to know in what way these specific  
4 problems have been taken into account and we would feel better.  
5 Maybe that is measurable, I don't know.

6 MR. MC GURREN: I think that gets back to the  
7 problem that the applicant was having with 1(a) and 1(b). What  
8 we're doing here is not satisfying an intervenor's safety review.  
9 But what we are trying to do is satisfy the Commission's --  
10 giving them enough information to make their determination of  
11 whether there is reasonable health and safety.

12 JUDGE COTTER: I understand that. But it seems to  
13 me that it would be time reasonably well spent, assuming a  
14 reasonable amount of it, to spend some time with Dr. Ferguson  
15 to explain how.

16 MR. NORTON: No problem with that. But again,  
17 that is not the basis for the contention. And the reason for  
18 that is obvious. Because if someone is unalterably opposed to  
19 the criteria, you have to make them feel well. Obviously, we  
20 are in a no-win situation. So that can't be the criteria.

21 JUDGE COTTER: That is not the issue I was  
22 postulating.

23 MR. NORTON: But in terms of the admissibility of  
24 the contention, the contention can't be that the Sierra Club  
25 will feel well.

1 JUDGE COTTER: I understand that. But I think a  
2 lot of what this process is about is the exchange of information.

3 MR. NORTON: Absolutely. And we have never been  
4 asked for the information. If they should ask, we would be  
5 happy to give them whatever information we can.

6 JUDGE COTTER: I guess you can consider yourself  
7 asked.

8 MR. FERGUSON: It was done, unfortunately. But it  
9 seems to be the problem with the mail or something. There was  
10 a request that was made through the NRC staff two and a half  
11 months ago. Well, whatever.

12 All right, will that be all?

13 JUDGE COTTER: I think that completes 1 and 2 ---

14 MR. FERGUSON: No, we have a couple of more.

15 JUDGE COTTER: I am sorry, 1(a) and (b). But you  
16 don't have opposition on the balance of them.

17 MR. FERGUSON: All right. Could I just make one  
18 comment?

19 JUDGE COTTER: Excuse me a minute. Judge Harbour  
20 raised a question of whether PG&E has some additional informa-  
21 tion or comment on 1(b).

22 MR. NORTON: We were opposed to 1(a) and 1(b) as  
23 raised by the Sierra Club because it is their contention that  
24 it is them that must be satisfied as opposed to the staff. And  
25 on that basis we opposed both of these contentions, the subparts

1 notwithstanding. And there are additional arguments to some of  
2 the subparts.

3 JUDGE COTTER: All right.

4 MR. FERGUSON: If I could just comment on No. 7,  
5 and especially because it relates closely to one of the Mothers  
6 for Peace contentions. And I was a little unhappy with the  
7 response that was made them. I would just -- if I could just  
8 comment on that?

9 JUDGE COTTER: I am sorry, I am glad you mentioned  
10 that because if I understand the staff's response to 7, it was  
11 qualified. Why don't you address 7.

12 For the record, subparagraph 7 says that the  
13 report fails to consider alternative on-site storage facilities  
14 including subparagraph 1, construction of new or additional  
15 storage facilities and/or subparagraph 2, acquisition of  
16 modular or mobile spent nuclear fuel storage equipment including  
17 spend nuclear fuel storage caps.

18 MR. FERGUSON: And the reason this wasn't included  
19 as a contention has to do with the Nuclear Rights Policy Act  
20 criteria which say that if we are going to claim that it is not  
21 reasonable that adequate storage capacity cannot be reasonably  
22 provided at Diablo Canyon and the Federal Government is going  
23 to take responsibility for this in entering the contracts to  
24 remove it, that the plant operator must have already exhausted  
25 several other possibilities besides reracking.

1                   And if I could just read that section of the law,  
2 you will see why this is included in that, Section 135 of the  
3 Nuclear Rights Policy Act, subparagraph (b)B -- and somewhere  
4 anyway.

5                   MR. NORTON: Excuse me, could you give us the site  
6 so we can follow along, please?

7                   MR. FERGUSON: Section 135 subparagraph (b) for  
8 contracts, further subparagraph B where it begins "Such person  
9 is diligently pursuing."

10                   What this is saying is that the government can  
11 enter into a contract so long as -- and here I quote -- "Such  
12 person is diligently pursuing licensed alternatives to the use  
13 of" -- wait a minute. No, that's all right -- "is diligently  
14 pursuing licensed alternative use of federal storage capacity  
15 for the storage of spent nuclear fuel expected to be generated  
16 by such persons in the future including (i) expansion of storage  
17 facilities at the site of any civilian power reactor operated  
18 by such person; (ii) construction of new or additional storage  
19 facilities at the site of any civilian nuclear power reactor  
20 operated by such person, and (iii) acquisition of modular or  
21 mobile spent nuclear fuel storage equipment including spent  
22 nuclear fuel storage caskets for the use at the site of any  
23 civilian nuclear power reactor operated by such person, and" --  
24 the last one -- (iv) trans-shipment to another civilian nuclear  
25 power reactor owned by such person."

1                   Some of these have been addressed more or less,  
2 but some have not, in the proposal that we read anyway. And  
3 that is why we felt it was important to include these two  
4 because, as I understand the law, we could not expect the  
5 federal government to enter into contracts to handle this fuel  
6 unless the company had already exhausted these possibilities.

7                   This is why they were included.

8                   MR. MC GURREN: Your Honor, that does not change  
9 the staff's position. We note that in Section 53.13, these  
10 very alternatives that Dr. Ferguson has raised or set forth.  
11 That is 53.13(c) (1), (2), (3) and (4).

12                   MR. FERGUSON: I don't even know what you are  
13 referring to.

14                   MR. MC GURREN: I am referring to our regulations  
15 where we have placed into our regulations sections of the Waste  
16 Policy Act. And in essence, that does not change our position.

17                   We do think that item 7 does raise a litigable  
18 contention or whether or nor there has been adequate  
19 consideration of those alternatives that you have indicated here.

20                   MR. FERGUSON: Okay.

21                   MR. MC GURREN: In an environmental context.

22                   MR. FERGUSON: Then I have no problem.

23                   MR. NORTON: I would like this to be coupled with  
24 the Mothers for Peace -- I think it is No. 1 or 2. They have  
25 got an (a), (b) and (c) in their number 1. I would think these

1 would be two more that could be added to it. Obviously, if that  
2 is admissible, then this subpart is on the same basis.

3 MS. SILVER: Could I have a clarification of what  
4 was meant by "environmental context" as opposed to?

5 MR. MC GURREN: Yes, as opposed to safety.

6 Whenever we are addressing a question of alternatives, it  
7 usually comes up in terms of meeting Environmental Policy Act  
8 as to whether there has been an adequate discussion of  
9 alternatives. Alternatives to the proposed action.

10 MS. CULVER: But the discussion of alternatives  
11 has to do with safety as well. I mean, there is a tremendous  
12 overlap.

13 MR. MC GURREN: It would be safety implications  
14 of the discussion of environmental alternatives. Potential  
15 safety impacts.

16 MR. FERGUSON: Well, as long as we can rest  
17 assured that these considerations are going to be met, I don't  
18 really think it matters what the reference is.

19 JUDGE COTTER: All right. If I understand, there  
20 is no opposition to item 2(a) and (b). There was a limitation  
21 put on it by the staff, if I remember, as characterized.

22 Have you had a chance to look at that, Dr.  
23 Ferguson?

24 MR. FERGUSON: I have not been able to go through  
25 all of the responses, I am sorry.

1 JUDGE COTTER: Let us move off the record for a  
2 moment.

3 (Discussion off the record.)

4 JUDGE COTTER: On the record.

5 We will adjourn for lunch and be back at 1:30.

6 (Whereupon, at 12:30 p.m., the hearing was  
7 recessed, to reconvene at 1:30 p.m., that same day.)

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## AFTERNOON SESSION

1:45 p.m.

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3 JUDGE COTTER: The hearing will come to order,  
4 please.

5 At the time of the recess earlier, we had,  
6 I think, reached II(a) and (b); and it is my understanding  
7 that the staff does not oppose that contention; is that  
8 correct?

9 MR. MCGURREN: That is correct, Your Honor.

10 JUDGE COTTER: Mr. Norton?

11 MR. NORTON: I'm sorry; I missed the number.

12 JUDGE COTTER: II(a) and (b).

13 MR. NORTON: That is correct, Your Honor.

14 JUDGE COTTER: Then we can proceed to conten-  
15 tion III, Dr. Ferguson.

16 MR. FERGUSON: Well, I will read this as a  
17 unit. It has four parts; and I will explain, afterwards,  
18 what the gist of this contention is.

19 JUDGE COTTER: I think you might try to summar-  
20 ize it if you could, whichever is easier.

21 MR. FERGUSON: Well, it is the contention of  
22 the Sierra Club that no attempt has been made to ascertain  
23 the views of the population surrounding the reactors at Diablo  
24 Canyon concerning the proposed spent fuel storage facili-  
25 ties; and that the proposed reracking is probably inconsis-

1 tent with these views;and that, as discussed above, the pro-  
2 posed reracking is inconsistent with the protection of the  
3 public health and safety and the environment;and that exis-  
4 ting storage facilities at Diablo Canyon will be effectively  
5 used to the maximum, within practicable, within the next  
6 few years; and that adequate storage capacity at Diablo Can-  
7 yon cannot reasonably be provided to assure the continued  
8 orderly operation of the reactor.

9           The gist of this contention is that, according  
10 to -- is that, according to the Nuclear Waste Policy Act,  
11 the reracking to increase the on-site storage capacity is  
12 required to be consistent with the five elements, one of  
13 which is public health and safety, and the protection of  
14 public health safety and the environment.

15           Another is that the proposed additional stor-  
16 age be consistent with the views of the population surround-  
17 ing reactor. I understand that, in the usual sense, this  
18 pre-conference hearing might limit itself to the first con-  
19 sistency requirement, namely, the protection of the public  
20 health and safety.

21           Again, I am not a lawyer. And I read over  
22 the appropriate Code here, cited by the staff, and I don't  
23 understand why it is that these other conditions are not  
24 raised at the same time. Are we to have separate hearings  
25 on other parts of the Nuclear Waste Policy Act or not?

1                   Our general contention is that the Nuclear  
2 Waste Policy Act made it quite clear that, at some reactors,  
3 on-site storage might not be reasonable. And, if it is not  
4 reasonable, then the federal government has the responsi-  
5 bility to remove the spent fuel and put it into interim  
6 storage. And, as a guideline for what is reasonable and  
7 not reasonable, they give us these five consistency things.  
8 One that protects the public health and environment; and  
9 number two, economic considerations; and, number three, con-  
10 tinued operation of the reactor. And number four, other  
11 applicable laws; and number five, that the on-site storage  
12 be consistent with the views of the population surrounding  
13 the reactor.

14                   What this contention is saying is that, we  
15 find no evidence that there has been any attempt made to  
16 make sure that these conditions of the Nuclear Waste Policy  
17 Act have been considered with regard to the reracking.

18                   The four segments of our contention here have  
19 to do with the rest of the Nuclear Waste Policy Act and in  
20 the conditions that the Act imposes if, in fact -- if, in  
21 fact, somebody is going to rule that it is unreasonable to  
22 store spent fuel at -- to rerack at Diablo Canyon -- and  
23 I invoke Section 131, I think it is.

24                   So, again, I apologize for not knowing the  
25 regulations; but my reading of 10 CFR 2.714 is not -- does

1 not limit the discussion to questions of, protects the pub-  
2 lic health and safety exclusively.

3           And maybe I am misreading it; but anyway, that  
4 was the gist of our contention. That, if we are going to  
5 find out whether or not this reracking satisfies the re-  
6 quirements of the Nuclear Waste Policy Act, there is a few  
7 other things that need looked at.

8           JUDGE COTTER: Mr. McGurren?

9           MR. MCGURREN: I think Dr. Ferguson, I think,  
10 came close to the mark in his assessment of whether or not  
11 this contention meets our rules.

12           I think what is indicative to me is that these  
13 four items he has raised under contention three do not re-  
14 late to the scope of this proceeding. The one that is  
15 closest to the mark is concerned with public health and  
16 safety and the environment; and that is what we are doing  
17 here, but with respect to the applicant's proposal only.

18           I just think that, as we have stated on page  
19 29 of our response, he has failed to show how, in essence,  
20 falls within the scope of this proceeding.

21           We are not here litigating whether or not the  
22 Act falls within the Waste Policy Act or not; what we are  
23 doing is determining whether or not the proposal is consis-  
24 tent with the health and safety and the Environmental Policy  
25 Act.

1           In essence, he has failed to show how this  
2 contention relates to the scope of this proceeding which  
3 is before this Board.

4           JUDGE COTTER: Mr. Norton?

5           MR. NORTON: Well, not to repeat what the  
6 staff has stated, I think, in addition to what the staff  
7 has stated, Sections (b), (c), and (d) -- (b) is nothing  
8 more than a rehash of 2. It says, "as discussed in Section  
9 2 above". The proposed reracking consistent with the public  
10 health and safety and environment. Well, that is an admitted  
11 contention in Section 2 above. So I don't think there is  
12 any need to -- I don't think it is a new contention here.  
13 I don't think it is intended as such; I just think it is  
14 kind of a statement of fact.

15           And, in contention (c), or subpart (c), it  
16 says, existing storage facilities at Diablo Canyon will be  
17 effectively used to the maximum extent practicable within  
18 the next few years. I don't think that is a contention  
19 either. That is why we are amending, asking for an amend-  
20 ment to modify the spent fuel pools. And so, again, that  
21 is not a contention. I don't think it is intended as a con-  
22 tention; it is, again, a statement of the facts. And I  
23 don't think anyone disagrees with that statement.

24           And, then, (d) -- it says, adequate storage  
25 capacity at Diablo Canyon cannot reasonably be provided to

1 ensure the continued orderly operation of the reactors.

2 Now, again --

3 MR. FERGUSON: That is not a statement of  
4 fact, though. MR. FERGUSON:

5 MR. NORTON: That has no specificity whatso-  
6 ever. It is, again, a statement of opinion on Sierra Club's  
7 part. But there is no nexus there of what you can get a  
8 contention. That is as open-ended as you can get.

9 There is no specificity at all.

10 JUDGE COTTER: I think, Dr. Ferguson, to a  
11 large extent, the four statements contained in contention  
12 3 are to one degree or another covered by prior contentions  
13 that we have discussed.

14 MR. FERGUSON: I would certainly agree that  
15 the part (b) is, that it was put there for completeness and  
16 is not a new one, as he says. We seem to be in agreement  
17 on part (c), so I guess that is not in contention.

18 But certainly, letter (a) is a new item and  
19 having to do with the Nuclear Waste Policy Act. And if,  
20 in fact, our -- this is where I am at a disadvantage. If  
21 the hearing -- if the conference today -- or the hearing  
22 -- is going to limit itself to the protection of public  
23 health and safety issues, then I agree that this is not  
24 appropriate. However, at some time, the other requirements  
25 of the Act need to be addressed. Then, I think --

1 JUDGE COTTER: I guess, to reiterate, my  
2 reaction off the top of my head, without looking at the  
3 legislative history of the Nuclear Waste Policy Act, is that  
4 this hearing process, among other things, is primary method  
5 for determining what the view of the local community is,  
6 or are.

7 MR. FERGUSON: My understanding of the legis-  
8 lative history is that it is more than that.

9 JUDGE COTTER: What more would it be?

10 MR. FERGUSON: Well, the law does not spell  
11 out how this, in fact, is going to happen; but it is clear  
12 that, from our work with people who wrote the law, that  
13 there was to be a serious attempt made at some representa-  
14 tive attempt to find out what it was that the people thought.  
15 It is an amazing part of the law.

16 It is interesting to read the legislative his-  
17 tory and to know that people oppose the law, just exactly  
18 what they had in mind. But I think, from what the staff  
19 has to say, the question is, is this, the hearing that has  
20 been called, going to admit the rest of the Act to litiga-  
21 tion or are we going to have one hearing for the protection  
22 of the public health and safety issues and are we going to  
23 have another one for the rest of the Act?

24 Personally, I think we need to consider all  
25 in a lot.

1 JUDGE COTTER: I think you understand, we can-  
2 not litigate the Act. The Act is a controlling fact.

3 MR. FERGUSON: That's right; but the questions  
4 is whether or not significant attempt is made, whether or  
5 not any consistency has been found. The Act requires that  
6 there be reracking to be consistent with the views of the  
7 population surrounding the reactor.

8 At some point, if the reracking is going to  
9 go forward, there has to be some determination of that fact,  
10 that that is consistent. I am not a lawyer; you guys know  
11 better.

12 JUDGE COTTER: I think I understand your views  
13 but I am not sure how it fits in without looking at the  
14 statute.

15 MS. McDERMOTT: For clarification, I wonder  
16 how do we drop the views of the population out of the Act.  
17 How can we apply just part of the Act to what we are talking  
18 about here, which is interim spent fuel storage?

19 MR. FERGUSON: But I don't think that is what  
20 is contested.

21 MS. McDERMOTT: That question needs some  
22 clarification.

23 MR. FERGUSON: I don't think that this has  
24 been an issue raised yet. Am I right?

25 JUDGE COTTER: I don't know without looking

1 at the statute to see how it might relate to what we are  
2 doing here.

3 My initial reaction is that, if that is a  
4 reasonably close paraphrase of the language in the statute,  
5 to paraphrase what you have in your paragraph (a), that the  
6 statute probably does not specify how it may simply contem-  
7 plate the hearing process and the process like the 2.206  
8 petition that the Commission has in place.

9 MR. FERGUSON: Our reading of the legislative  
10 record says otherwise. In our work with the people who  
11 wrote this, it is not clear what they did have in mind.

12 MR. MCGURREN: Your Honor, I think that it,  
13 at least, should be noted that in the actual Notice of this  
14 proposed action, Notice dated January 13, 1986, in Volume  
15 51 of the Federal Register, page 1451, at page 1455, it is  
16 noted there that -- it is clear from the language there that  
17 there is a certain relationship between the Nuclear Waste  
18 Policy Act and this hearing.

19 And it looks as if what this hearing would  
20 do is -- or, at least the Nuclear Waste Policy Act, the Sec-  
21 tion of the Nuclear Waste Policy Act would do is provide  
22 this hybrid process which, I think, the basis or the effort  
23 of the Nuclear Waste Policy Act would be to provide a means  
24 by which certain matters could be raised in a more efficient  
25 manner. And I think that that is what was established by

1 the hybrid process which is set out in our regs in Section  
2 2. --

3 JUDGE COTTER: The hybrid hearing process is  
4 simply an alternative to the process we are presently em-  
5 barked on. And no one has requested that the hybrid hearing  
6 process be used.

7 MR. MCGURREN: That is correct. Yet, I think  
8 it could be triggered ten days after your Order on conten-  
9 tions. But I think that, first of all, it is acknowledged  
10 in the Notice itself that this proposed action, that the  
11 Waste Policy Act does provide a means by which a more effi-  
12 cient way of handling contentions can be approached.

13 JUDGE COTTER: Well, that goes to the method-  
14 ology and efficiency, not to what they are talking about. .

15 MR. MCGURREN: That is correct. But what I  
16 am just simply trying to say, it is not like two ships  
17 passing in the night. I mean, our regulations do recognize  
18 the existence of the Nuclear Waste Policy Act.

19 MR. FERGUSON: I think that a separate section  
20 is involved altogether.

21 JUDGE COTTER: Well, we will look at the Act  
22 in connection with your paragraph (a) of contention III.

23 Is there anything further to be said about  
24 contention III?

25 Ms. Culver?

1 MS. CULVER: I would just like to ask a ques-  
2 tion. I want to make sure that I understand what is being  
3 said.

4 Is it being suggested by you or by the staff  
5 that this hearing at which no public comments are allowed,  
6 that this hearing would fulfill the requirement that says  
7 that this amendment must be consistent with the views of  
8 the population surrounding such reactor?

9 JUDGE COTTER: I don't know. It seems to me  
10 it may be a possibility; and it is incorrect to say that  
11 no public comments are allowed because the Notice was given  
12 and everyone who wished to intervene was given the oppor-  
13 tunity to intervene.

14 And, at this point, only three groups have  
15 elected to take that opportunity.

16 MS. CULVER: Then, if this is to be the time  
17 when you evaluate whether this amendment is consistent with  
18 the public's views, then you have to consider that the pub-  
19 lic's views that have been expressed today are all in oppo-  
20 sition to this amendment.

21 MS. SILVER: That's right.

22 JUDGE COTTER: I guess my reaction to that  
23 is that this is a limited segment of the full population.

24 MS. CULVER: And it is; and I agree with that.  
25 But that is my point.

1 JUDGE COTTER: I don't think that the thrust  
2 of the Act -- I don't know; we are sort of fumbling around  
3 here in the dark without having the Act in front of us.

4 MR. NORTON: May I read to you the Notice that  
5 was published in the Federal Register, Monday, January 13,  
6 1986? And I presume that this is the Notice that the  
7 Mothers received, along with Sierra Club and the CODES and  
8 so on and it is upon which they intervened in this proceed-  
9 ing. And it says, and I quote, that:

10 "The Commission...."

11 A And this is page 1455; and it's three columns.  
12 It is the left-hand column about 70 or 80 percent down on  
13 the left-hand column -- quote:

14 "The Commission is seeking public comments on this  
15 proposed determination. Any comments received within  
16 30 days after the date of publication of this Notice  
17 will be considered in making any final determination.  
18 The Commission will not normally make a final deter-  
19 mination unless it receives a request for a hearing."

20 So it is very clearly in the initial Notice,  
21 told everybody what, you know, what -- when they were so  
22 to make their comments and so on.

23 MS. CULVER: But that is the provision of the  
24 law.

25 MS. SILVER: There hasn't been any other mem-

1 ber of the public who has intervened on P.G. & E.'s side  
2 saying that they want nuclear waste up here. All the public  
3 who have requested to intervene are people who represent  
4 thousands of constituents, which are these three parties.

5 So I think we already have what the public's  
6 view is on this whole thing.

7 MR. NORTON: Excuse me, Your Honor; this is  
8 not talk of intervention; this -- the Commission is seeking  
9 public comments, not intervention. This is dealing with  
10 public comments on the proposed determination.

11 Any comments received within 30 days of the  
12 date of publication of this Notice --

13 In other words, 30 days of the January 13,  
14 1986, will be considered in making any final determination.  
15 I strongly suspect that most of these did not comment to  
16 intervene in these proceedings. I don't know whether they  
17 commented under this Notice provision or not.

18 MR. MCGURREN: Your Honor, I think that re-  
19 lates to the significant hazards, the initial findings of  
20 no significant hazard.

21 MR. NORTON: Yes, it does.

22 MR. FERGUSON: I think the question is: How  
23 is this constituency determination going to take place?

24 MR. NORTON: I might add, Your Honor, that  
25 that consideration, obviously, as I read the Notice of

1 this pre-hearing conference, you said public statements  
2 would not be accepted at this time, but would be at a later  
3 time. Presumably, that would be the time of an evidentiary  
4 hearing.

5           But I will also state that no one of these  
6 five considerations is controlling. Obviously, the Commis-  
7 sion, in its decision-making process, considers all of  
8 those. No single one is overriding.

9           JUDGE COTTER: I should make a point, too,  
10 in relation to what Mr. Norton just said, that this hearing  
11 process is limited to the issues which are raised by poten-  
12 tial intervenors and found to be appropriate for litigation,  
13 unlike the situation in the construction permit where  
14 Licensing Board has the responsibility to look at every  
15 aspect of the application.

16           Under the Commission's regulations, our juris-  
17 diction is limited to the issues that you raise here; and  
18 we are not permitted to look beyond the issues that you  
19 raise here.

20           I think we have contention III pretty well  
21 aired out. Are you satisfied?

22           MR. FERGUSON: I am not quite sure -- well  
23 -- well, no one has anything more to say.

24           JUDGE COTTER: If you have something more to  
25 say, please, go ahead.

1 MR. FERGUSON: I am not quite sure where it  
2 sits.

3 JUDGE COTTER: As I understand it, where it  
4 sits now is that you are raising the question about whether  
5 -- what the appropriate interpretation is to be applied to  
6 that section of the Nuclear Waste Policy Act which raises  
7 the question about the consideration of the action being  
8 consistent with the views that are raised through this pub-  
9 lic process.

10 MS. SILVER: Judge Cotter, I don't understand.  
11 It seems to me that, typically, in America,  
12 what one does is they take a vote. And, if we are the popu-  
13 lation here, you ask us whether -- do you want this to be  
14 a radioactive waste dump --

15 JUDGE COTTER: That is correct; that is called  
16 an election.

17 MS. SILVER: That's called democracy.

18 JUDGE COTTER: No. We elect people to repre-  
19 sent us. This is not an election; this is a hearing.

20 MS. SILVER: It's a hearing; but it seems --

21 JUDGE COTTER: It is a judicial process.

22 MS. SILVER: But how do you find out if the  
23 population is for this or not? You have to ask them.

24 MS. CULVER: You just pointed out that we are  
25 a very limited segment of the population, indeed, a refer-

1 endum of scientifically knowledge -- some attempt should  
2 be made to comply with that section, I would think.

3 JUDGE COTTER: If you think that you want a  
4 referendum or something like that, I think you have got to  
5 go to your state government.

6 MS. SILVER: It has to be binding; it has to  
7 be binding.

8 JUDGE COTTER: That's fine; but I am not your  
9 state government. All this Board can do is decide in the  
10 adjudicatory aspect of our society what the rights are under  
11 the issues that are raised.

12 I am not a complete government; we are just  
13 a little slice of it.

14 MS. CULVER: But your job is to see if the  
15 amendment complies with the controlling federal law and that  
16 is one section of the federal law.

17 Then it seems to me it is incumbent upon you  
18 to find out whether it complies with that section, whether  
19 it is consistent with the public's views in this area.

20 JUDGE COTTER: We have to go back and examine  
21 the statute and what this means and issue a decision as to  
22 how it applies in this case; and we will do that.

23 MR. FERGUSON: If I can ask just one more  
24 question of Mr. McGurren and that is: Do you still feel  
25 that the scope of this hearing process is not to address

1 this issue?

2 MR. MCGURREN: The issue, as you stated it,  
3 I do not believe that is the scope of this proceeding.

4 MS. CULVER: Does that mean that there will  
5 be some other proceeding to be your guide?

6 MR. MCGURREN: I think that our own regula-  
7 tions, part 53, addresses aspects of the Waste Policy Act  
8 concerning -- I think it is titled Criteria Procedure for  
9 Determining the Adequacy of Available Spent Nuclear Fuel  
10 Storage Capacity.

11 We have a set of regulations with regard to  
12 the making of the appropriate determination under the Waste  
13 Policy Act, determination which may -- would allow a utility  
14 to take advantage of the offer from the federal government  
15 to take that spent fuel.

16 MS. CULVER: But how does that comply with  
17 the part about the views of the population? I am mystified.

18 MR. MCGURREN: I don't know; I don't know.

19 JUDGE COTTER: We get awfully close to the  
20 fundamentals of society in these proceedings.

21 Contention IV, Dr. Ferguson.

22 MR. FERGUSON: Yes. Contention number IV has  
23 to do with all of the rest of them. It's sort of -- that  
24 is, contention IV, it is our interpretation of how the  
25 Nuclear Waste Policy Act should be applied in this case.

1 And it reads:

2 "In light of the foregoing, it is the contention of  
3 the Sierra Club that:

4 (a) The federal government has the responsibility  
5 to provide sufficient capacity for interim storage  
6 of spent fuel from Diablo Canyon; and

7 (b) That the federal government is required by law  
8 to enter into contracts with P.G. & E. for the pur-  
9 poses of providing storage capacity for spent fuel  
10 produced at Diablo Canyon."

11 This is the summary of what has gone before;  
12 and, if I may, I would like to summarize the whole process.

13 And, as I say, we are a little bit at a disadvantage be-  
14 cause, in fact, we haven't had the data that we wanted in  
15 order to do the calculations.

16 We have looked at things as carefully as we  
17 can to give him what we have. And, in fact, one of the pre-  
18 vious contentions contended that, in fact, the proposed re-  
19 racking is -- or does not satisfy the protection of health  
20 and safety and the fact is not a reasonable to try and do.

21 If I can just sort of summarize what we have  
22 been saying here. The Nuclear Waste Policy Act is, as we  
23 know, the controlling law that deals with whether or not  
24 with how the spent fuel is going to be handled for the time  
25 being. And everything we are talking about has to do with

1 what the intent of that law is.

2           And I think, probably, we have all had input  
3 into the writing of that law. Certainly you have; and cer-  
4 tainly we have -- and you guys have. But this law was  
5 written in 1982; and it was well known there were problems  
6 with Diablo Canyon at that time. And, in fact, after con-  
7 siderable urgings by the Sierra Club and others, the Section  
8 31(a)(3), whatever it is, was written in specifically to  
9 deal with problems -- reactors that had special problems.  
10 And the operative word is reasonable.

11           They said, if it is unreasonable to store  
12 spent fuel for long periods of time on-site, then the feder-  
13 al government has the responsibility to provide adequate  
14 storage capacity.

15           JUDGE COTTER: That is the ultimate question.

16           MR. FERGUSON: That is the ultimate question.

17           JUDGE COTTER: The reasonableness of the re-  
18 racking.

19           MR. FERGUSON: That is it in a nutshell. And  
20 I cannot help but believe that every single person in this  
21 room doesn't feel that it is just not reasonable for the  
22 United States to put its high-level nuclear waste storage  
23 facilities on so-near an earthquake fault. Nobody thinks  
24 that that is reasonable. And we can have a hearing and we  
25 will argue about the technicalities and what the forces are

1 on the racks and what is going to happen to the racks and  
2 all of that kind of stuff.

3           But I haven't met a single person who is going  
4 to claim that it is reasonable to do it. And that is,  
5 essentially, what the issue is. And it seems to me that  
6 it is our duty here, both the public and the company and  
7 the federal regulators, it is our job to make sure that --  
8 not only the laws work -- this law isn't even four years  
9 old -- it is our job to make sure the people know they can  
10 depend on federal law to deal with the problems that arise  
11 with nuclear waste.

12           It is horrendous; and they are not going to  
13 get any better. It is going to go on and on. It seems to  
14 me that it is our duty, both citizens and federal employees  
15 and jurists to make sure that not only does the law work,  
16 but the law is seen to work.

17           And, certainly, in light of recent events,  
18 people like us have a big responsibility. There are a lot  
19 of people who are worried, who are in American here, are  
20 our laws going to keep us safe from the bad things that can  
21 happen in the nuclear industry?

22           Personally, I would like to see the applicant  
23 withdraw the whole procedure and suggest that we enact --  
24 that we invoke Section 131 and say, "Look, none of us think  
25 this is a reasonable thing to do. Why in the world are we

1 even talking about it?"

2           So, anyway, the last contention here is,  
3 essentially, summarizes that. What we will argue in the  
4 hearing has to do with the reasonableness of this proceed-  
5 ing. And we claim it is not reasonable to store nuclear  
6 waste for long periods of time at Diablo Canyon because of  
7 the seismic problem; and, therefore, the federal government  
8 has the responsibility to take that stuff and do something  
9 with it. And, of course, I don't want it in my backyard,  
10 kind of thing; but, on the other hand, there's not a person  
11 in this country that would not agree that there are better  
12 places to put this stuff than down here at Diablo.

13           So I think it is the federal government --  
14 I think the law is very clear, as written, so that the  
15 federal government is required by this law to enter into  
16 contracts P.G. & E. to remove that stuff.

17           I don't know if that fulfills CFR 2.714 or  
18 not.

19           JUDGE COTTER: Thank you, Dr. Fergusson.

20           Mr. Norton?

21           MR. NORTON: Unfortunately, it does not. It  
22 is as stated; this proposed contention is nothing more than  
23 a conclusion of law and, therefore, it is not admissible  
24 as a contention.

25           However, as the speech we have just heard would

1 indicate, the thrust of the contention is continued in con-  
2 tention II(a) and (b) which the parties agree should be  
3 a contention. And if the intervenors should prevail on con-  
4 tention II(a) and (b), then, presumably, the judicial body,  
5 this Board, Licensing Board would find, as stated in pro-  
6 posed contention IV, as a conclusion. But it is not in the  
7 form of a contention.

8 JUDGE COTTER: Mr. McGurren?

9 MR. MCGURREN: Your Honor, we agree with what  
10 the applicant has just stated. And it is the essence of  
11 what we stated on page 30.

12 I think I would also like to note that Section  
13 111(5) indicates that the primary responsibility to provide  
14 for -- the responsibility to pay the cost of interim storage  
15 of spent fuel until this -- is with the utility itself,  
16 until the government is able to accept that responsibility.

17 But I think this was pointed out by us in re-  
18 sponse to one of the earlier contentions. I don't know if  
19 I can find it.

20 MR. FERGUSON: If I may just respond briefly.

21 JUDGE COTTER: Yes.

22 MR. FERGUSON: When he read the first two  
23 parts of Section 131 -- and I wanted to read the last part  
24 -- but, yes, it is clear that the primary responsibility,  
25 if it is reasonable, is to keep this stuff at the site.

1 We really don't know what else to do with it. The question  
2 is -- the point is that, when they wrote that law and wrote  
3 in those sections, they knew perfectly well that there might  
4 be sites and they knew about Diablo Canyon, where it was  
5 not reasonable to do that.

6 And we are saying, "Look, this is it; this  
7 is what they wrote that law for."

8 JUDGE COTTER: All right, thank you.

9 I think, then, we should turn to the CODES  
10 contentions.

11 MS. McDERMOTT: That starts on page 15.

12 I would like to make a preliminary statement  
13 about 10(c) of our 50.3(c)(2) which states that one copy  
14 of the application shall be made available in an appropri-  
15 ate office near the site of the proposed facility for in-  
16 spection by the public and updated as amendments to the  
17 application, prior to public hearings, may be made.

18 This updated copy shall be produced at the  
19 public hearing for the use of any other party to the pro-  
20 ceeding. The applicant shall certify that the updated  
21 copies of the application contains the current contents of  
22 the application submitted in accordance with the requirements  
23 of this policy.

24 That has not happened. We do not have a copy  
25 here today for our use. There is not a complete copy of

1 the application at the local public document room. We have  
2 an institutional unavailability of information. The local  
3 public document is missing information on this proceeding --

4 JUDGE COTTER: Excuse me; before you continue,  
5 let us resolve that right now.

6 What needs to be done here?

7 MR. NORTON: Well, first of all, that state-  
8 ment was made this morning. I am informed that the public  
9 document room, indeed, has an up-to-date, fully -- right  
10 at the date, there was one submission that went in a couple  
11 of days ago that hasn't yet gotten there; but everything  
12 else is there.

13 MS. McDERMOTT: We've been looking for the  
14 October 30, 1985 report; and it is not there.

15 MR. NORTON: Now, wait a minute; excuse me.  
16 Let me check on the report itself because the application  
17 is what I asked about. That is what you asked me about.

18 MS. McDERMOTT: That is part of the applica-  
19 tion, from my understanding of the Federal Register Notice.

20 MR. NORTON: They checked with the librarian  
21 and found out that the report had been taken and it was re-  
22 placed; it is now replaced.

23 MS. McDERMOTT: I was there as late as 3:00  
24 o'clock yesterday and it was not.

25 JUDGE COTTER: Is there any difficulty with

1 simply giving --

2 MR. NORTON: They have a copy of the report.

3 MS. McDERMOTT: I do not have a copy of the  
4 report.

5 MR. NORTON: It is sitting on the table right  
6 there.

7 MS. McDERMOTT: That is the Sierra Club's.

8 MR. NORTON: We will be happy to give them  
9 a copy of the report. There are copies of the report all  
10 over.

11 MS. McDERMOTT: The information is officially  
12 one month or so late as being placed in the public document  
13 room. Title 10 CFR 0 through 199 is gone from the County  
14 Law Library. The only one missing is gone. The County  
15 Counsel's copy is also missing.

16 We tried to get a copy and it is back-ordered  
17 to us; and the local public document room copy is one year  
18 out of date. The copy we are using today was given by a  
19 local person who made allegations to the NRC and is now  
20 three years out of date. And it does not contain the part  
21 53 that you mentioned. It's completely missing from this;  
22 it does not exist. It skips from 51 to 55.

23 So we have not been able to look at that in-  
24 formation that was handed us today. So I feel very strongly  
25 that there is an adversarial position that is arbitrarily

1 put upon us and that impedes the flow of information we  
2 want. We live around this reactor; we need to have confi-  
3 dence in what is going on. We can't even get the informa-  
4 tion.

5 JUDGE COTTER: I am sure it is an administra-  
6 tive glitch. If you would -- well, so far, the items that  
7 you have mentioned are the application --

8 What do you not have now that you need?

9 MS. McDERMOTT: I don't have either the Sep-  
10 tember or the October one. The September one is in the  
11 library.

12 JUDGE COTTER: You need the September report?

13 MS. McDERMOTT: Yes, I think it is September  
14 19 and October 30.

15 JUDGE COTTER: September 19, 1985?

16 MS. McDERMOTT: Right; and October 30.

17 JUDGE COTTER: October 30, 1985?

18 MS. McDERMOTT: I'd like to check my copies  
19 of extra letters, if I may, after this proceeding, the  
20 letters that have gone back and forth between the NRC and  
21 the applicant.

22 JUDGE COTTER: Let us go through this, the  
23 things that you mentioned. You also mentioned a current  
24 copy --

25 MS. McDERMOTT: 10 CFR 0 through 99.

1 JUDGE COTTER: I think what you really want  
2 is the applicable sections; don't you?

3 MS. McDERMOTT: Well, actually, I want the  
4 whole book because it seems to be jumping all over the whole  
5 book.

6 MR. NORTON: Excuse me, Your Honor. She is  
7 going to have a real problem because we don't have either.  
8 That Code has not been published.

9 MS. McDERMOTT: Then is that back-ordered to  
10 you, also?

11 MR. NORTON: That is correct; but the govern-  
12 ment prints it.

13 JUDGE COTTER: That is not an uncommon prob-  
14 lem. We get the current 1986 version of Title 10 somewhere  
15 after 1987 is a practical matter.

16 MR. NORTON: I notice that Mr. Chandler has  
17 the same copy that you have; and it is the same copy I have.  
18 There are sources that give you --

19 MS. McDERMOTT: This is a 1983 copy.

20 MR. NORTON: There is no excuse for that.  
21 The 1985 copy has been out for a year and a half at a very  
22 nominal charge.

23 MS. McDERMOTT: \$17.00.

24 MR. NORTON: That is relatively nominal for  
25 a law book.

1 JUDGE COTTER: So, what you basically need  
2 is whatever is available -- and I am talking back in the  
3 regs -- the current version of Titles 2 and 50 would cover  
4 it; wouldn't it? I mean -- what am I saying?

5 Sections -- parts 2 and 50 of Title 10.

6 MR. NORTON: 51.

7 MS. McDERMOTT: 53 was mentioned in one con-  
8 tention also.

9 MR. MCGURREN: Part 51, also.

10 JUDGE COTTER: I mentioned that.

11 So we said the application and the reports.

12 Is there anything else?

13 MS. McDERMOTT: I don't have a complete  
14 listing from what I was going through yesterday. Thank you.

15 MR. NORTON: Your Honor, I should point out  
16 that this information that is in the public document room  
17 can be copied there. And, unfortunately, it seems that some  
18 people, rather than copy the material, take the material  
19 and it is replaced as soon as it can be replaced.

20 But, again, believe us, it is not us.

21 JUDGE COTTER: I understand that.

22 At this point, we have three petitioners and  
23 we've got two parties; and I do not want to waste time with  
24 the people arguing about whether or not information they  
25 don't have or they do have. I want them to have the infor-

1 mation so that we can move along.

2 MS. McDERMOTT: Should I read contention I?

3 JUDGE COTTER: Please.

4 MS. McDERMOTT: Adequate consideration has  
5 not been given to alternatives to reracking the spent fuel  
6 plans at Diablo Canyon under the Nuclear Waste Policy Act  
7 of 1982, the Public Law 97-425, January 7, 1983. The  
8 federal government has the responsibility to provide interim  
9 storage of spent nuclear fuel for civilian reactors, nuclear  
10 power reactors that cannot reasonably provide adequate stor-  
11 age capacity at the site of such reactors when needed to  
12 assure the continued orderly operation of such reactors.

13 P.G.& E. and its wholly owned subsidiary,  
14 Pacific Energy Trust, have a contract with the Department  
15 of Energy for the storage of high-level radioactive waste  
16 at this time.

17 JUDGE COTTER: Does this basically differ from  
18 a couple of the contentions we have already discussed?

19 MS. McDERMOTT: I think it is a definition  
20 of the word "reasonably" is what we boil down to. And that  
21 is very similar to a Sierra Club contention.

22 The staff response -- I don't want to speak  
23 for the staff; but, evidently, it is considered a broad  
24 assertion and I think it is very specific that "reasonable"  
25 is the word that we are defining. And "reasonable" is a

1 specific word and has legal interpretations.

2 JUDGE COTTER: Does it ever.

3 MS. McDERMOTT: That's right.

4 JUDGE COTTER: We spend most of our time ar-  
5 guing about who is the reasonable hand that we will listen  
6 to.

7 MS. McDERMOTT: And, in citing the law, the  
8 Nuclear Waste Policy Act doesn't support our assertion.  
9 I don't really know what does. This is cited to the best  
10 of our illegal ability, if you will. We do not have legal  
11 counsel; and I think that it greatly hinders us. But, if  
12 we are provided access to this forum without attorneys, we  
13 must take that avenue because of financial inability. But  
14 I don't think that should limit us when it comes to presen-  
15 ting our contentions to you and, perhaps, reforming them  
16 and coming back to you with those contentions.

17 JUDGE COTTER: All right.

18 MR. NORTON: To save time, I will not repeat  
19 or refer to the last contention that the Sierra Club has as  
20 contention IV. I think this is stating it much the same  
21 way. It is, again, a non-specific conclusion of law if,  
22 indeed, under Sierra Club's II(a) and (b) it were found  
23 unreasonable to modify the spent fuel pool, then this conclusion  
24 might, indeed, prove to be true.

25 But, again, this is a conclusion of law, not a

1 contention. There is no specificity; it would be impossible  
2 to extend it. One could -- if this were admitted as a  
3 contention, one could argue that anything and everything  
4 with no boundaries. And that, again, doesn't meet the require-  
5 ments of the contention.

6 JUDGE COTTER: Mr. McGurren?

7 MR. MCGURREN: The staff agrees with what the  
8 applicant says; and we also believe -- we won't repeat what  
9 we said on page 16 of our response. In essence we feel that  
10 the basis of the contention does not support the contention.

11 MR. FERGUSON: Your Honor, if I could just  
12 add a comment.

13 I understand what it is saying and how it  
14 refers to most of everything. But the first sentence, it  
15 seems to me, the first sentence that adequate consideration  
16 has not been given in the report, which is all I have to  
17 work on, to alternatives to reracking.

18 It is the contention that we raised, too.  
19 And, therefore, if we are going to invoke certain sections  
20 of the law, then the applicant is required to consider cer-  
21 tain avenues --

22 JUDGE COTTER: As I understand it, then, the  
23 applicant opposed that as a contention, the question of  
24 alternatives, as it applies to the environmental considera-  
25 tions.

1 MR. NORTON: Yes. And that, indeed, we now  
2 have an (a), (b), (c), (d), (e) alternatives from the com-  
3 bination of Mothers for Peace and the Sierra Club.

4 This one has no specifics, or it is obviously  
5 subsound in those other two, that first sentence. But the  
6 remainder of it doesn't seem to have anything to do with  
7 the first sentence.

8 MS. McDERMOTT: I made it a point of putting  
9 a period on purpose so we could divide these things.

10 JUDGE COTTER: Do you want to add anything  
11 on contention II, Ms. McDermott?

12 MS. McDERMOTT: Yes, I would, that the staff  
13 got 10 CFR 53.1(c)(1), and that is something that I am not  
14 able to look up, but just want to be able to rebut because  
15 it is not in the CFR that I looked at.

16 JUDGE COTTER: All right.

17 Contention II?

18 MS. McDERMOTT: It is unreasonable and prema-  
19 ture to consider the spent fuel seismic design as modified  
20 by the proposal adequate, when the long-term seismic program  
21 of licensing additions is to be completed in 1988, two years  
22 from now. I think we talked about this one with the Mothers  
23 for Peace contention.

24 JUDGE COTTER: Is there anything you want to  
25 add to that discussion? The Mothers for Peace -- I think

1 their contention was number VII. I think we aired that out  
2 fairly well.

3 MS. McDERMOTT: Yes. Do you want to try con-

4 JUDGE COTTER: Do you want to try contention  
5 III, then?

6 MS. McDERMOTT: By ordering the long-term  
7 seismic study, the Commission has indicated that there are  
8 unanswered questions of possible seismic hazards that must  
9 be investigated.

10 I would like to add something to that. And  
11 that is, from this SSER number 31, I guess, on page 4-83  
12 and 4-84, that is a licensing consideration they are to  
13 consider new information, reevaluation of earthquake magni-  
14 tude, reevaluation of ground motion and probabilistic risk  
15 analysis and deterministic study.

16 And, to us, it seems to be that one is en-  
17 danger of issuing a ruling where all of the information has  
18 not been assessed; and giving the statement, "Don't confuse  
19 us with facts.", because there is to be a reevaluation of  
20 magnitude, reevaluation, consideration of new information.  
21 That is an implication that all of the studies have not been  
22 performed on the seismic issue of Diablo Canyon.

23 JUDGE COTTER: I think you made this point  
24 earlier in connection with the contention VII.

25 MS. McDERMOTT: Yes.

1 JUDGE COTTER: And there was a response by  
2 both the applicant and the staff to it.

3 MR. FERGUSON: Your Honor, at the risk of  
4 flogging a dead horse or something, I do have one question.

5 In one of our contentions that dealt with the  
6 data, it had to do with what the seismic model that was  
7 being used and what is in the report has to do with the  
8 acceleration. And it's not clear from that what the corres-  
9 ponding velocity this displacement as a function of time  
10 are. And we were told that we could get that information  
11 and, based on that information, be able to file a new con-  
12 tention if there was something new in it.

13 The reason I bring this up is that there is  
14 an issue that involves the seismic stuff regarding the re-  
15 racking, which is new, and lay it out. And, if I should  
16 wait until I get the date from P.G. & E., that is okay. But  
17 it seems to me that it does have to do with this seismic  
18 review thing. And that is, as far as I am aware, all of  
19 the seismic studies that have been done so far, the seismic  
20 model that is involved is one which has been designed for  
21 a modal analysis and analysis to the response to the system  
22 in terms of the normal modes.

23 It turns out, when you start to look at how  
24 things slide around on the floor, that are not tied down,  
25 that are not rigid, the kind of seismic model that you are

1 using for them and are reasonable, for modal analyses, can  
2 turn out to be not so reasonable for calculating stuff  
3 sliding around.

4           It is one of the main reasons why we want to  
5 see what the seismic model really looks like in more detail.

6           Basically, if you have a part that is bolted  
7 down and you are asking, then, "Okay, how is going to re-  
8 spond if the earth shakes?", then what has been done is,  
9 perhaps, not probably adequate.

10           But, if you were going to ask, "Here is the  
11 rack and it is not bolted down and now the plant is going  
12 to move north. What is going to happen to that rack?", it  
13 requires a different kind of seismic analysis. And, perhaps  
14 this is not an issue to be raised at this time; and I should  
15 wait and see what, in fact, they were using when they did  
16 the calculation.

17           But it is an issue that affects the seismic  
18 study in a way that is different from what we had before,  
19 different because the new racks are not bolted down, basic-  
20 ally.

21           I don't know if you can slide on this request  
22 or not.    You can wait until --

23           JUDGE COTTER: I think it does.

24           MR. MCGURREN: Your Honor, I think that, maybe  
25 now is not the right time to do this; but, at some time be-

1 fore we close this pre-hearing conference, something has  
2 to be said to clarify in the minds of the intervenors what  
3 really is the criteria for filing new contentions.

4 I am hoping that none of the intervenors go  
5 away misled. And I have a feeling that it is, at least,  
6 not clear in Dr. Ferguson's mind what should follow from  
7 his contentions I(a) and I(b), by the information that he  
8 is going to get from the applicant. Because, if -- it's  
9 my understanding of the case law that, if the information  
10 that he receives is not something that wasn't available be-  
11 fore, he cannot raise new contentions. It's consistent,  
12 I think, with the Cataba Decisions.

13 JUDGE COTTER: I think we might -- we could  
14 consider addressing that in the decision that we issue on  
15 these contentions because, I think, if we try to get into  
16 a little explanation, we are all going to end up tied up  
17 in knots.

18 MR. FERGUSON: I guess my response to that  
19 is, if I've got to file it now to get it filed, maybe we  
20 should file another contention. I don't know if that is  
21 appropriate because I don't know what modeling that has been  
22 used.

23 JUDGE COTTER: Is there anything more on con-  
24 tention III? Do you want to respond?

25 MR. NORTON: I would just as soon respond to

1 II, III, and IV. I think they are all, basically, tied to  
2 the same thing. And, perhaps, if the CODES could go through  
3 number IV, then we will respond to all three at one time  
4 and save some time.

5 MR. MCGURREN: I think the staff feels that  
6 II and III have been, in essence, responded to earlier; IV  
7 might be a little different.

8 MR. NORTON: Well, in that case, I will re-  
9 spond to II and III.

10 I think the problem with II and III, the same  
11 problem with number VII. And I also think there is the same  
12 problem with number IV to some extent, is that the -- this  
13 proceeding cannot relitigate the seismic basis of design  
14 for Diablo Canyon, as set forth in contention II(a) and (b)  
15 of the Sierra Club, they certainly can raise that the design  
16 of the spent fuel pool somehow might exceed -- and they can  
17 make that argument -- that might exceed the seismic design  
18 basis of the plan.

19 And I assume that that is what they are doing  
20 in II(a) and (b). But contentions II and III, here, do not  
21 do that. They simply raise a generic question regarding  
22 the seismic design of Diablo Canyon which has been litigated  
23 and it was appealed and decided against them.

24 MS. McDERMOTT: Your Honor, I am wondering  
25 if perhaps it would assist if we had a clarification of why

1 was this seismic reverification or seismic program made a  
2 licensing condition if it is not going to affect seismic  
3 issues as Diablo Canyon?

4 MR. NORTON: In 1978, the ACRS felt -- the  
5 ACRS, in case you don't know, is the Advisory Committee on  
6 Reactor Safeguards; it is a collegial body made up of inde-  
7 pendent scientists from around the country in various fields  
8 including the fields of geology, seismology, et cetera.  
9 And if, as in the case of Diablo Canyon, that body does not  
10 have enough expertise, they retain consultants. In that  
11 case, I think, there were 11 retained at one time on Diablo  
12 Canyon seismic issues.

13 That body, in issuing a letter which is re-  
14 quired, on safety matters for the Diablo Canyon before the  
15 Commission can proceed with licensing, stated in its letter  
16 that it would like to see a long-term seismic program --  
17 I don't know whether they used those exact words; but I be-  
18 lieve they did -- and, in approximately a decade -- I think  
19 they used the term "ten years" -- and that is, indeed, what  
20 happened when the license issued in 19 -- long-term perman-  
21 ent license issued in -- full power operation license, I  
22 should say -- issued in 1983?

23 MR. LOCKE: 1984.

24 MR. NORTON: 1984. The Commission --

25 MR. CHANDLER: The reinstatement of low-power

1 license was in 1984.

2 MR. NORTON: Put a condition on that license  
3 that we would look at those things that you have read, the  
4 purpose being to see if there had been any dramatic changes  
5 or not which would affect the seismic design of the plan.

6 And that is exactly what the status is and  
7 that is the reason --

8 MS. McDERMOTT: But is that different from  
9 what I am saying, that this is the considering new informa-  
10 tion --

11 MR. NORTON: Let me finish.

12 The Commission has decided that the plant is  
13 safe, is designed adequately to withstand anything, the  
14 Hosgris or any other earthquake fault could offer.

15 They have ruled that as a matter of law and  
16 the courts have, indeed, agreed with that determination.  
17 The Commission, in its wisdom, conversatism, whatever you  
18 want to say, has also said, "Let us take a look at and let  
19 us make them apprised of seismic conditions." The put that  
20 on as a licensing condition. We do that in any event. Any-  
21 one would do that in any event. We would keep apprised in  
22 the changes of technology, just like you keep apprised of  
23 any other changes in the technology -- in the nuclear indus-  
24 try. I mean, there's changes, you keep apprised of them,  
25 and you evaluate them as the apply to your facility.

1           The same is true here; it's just that they  
2 put it on as a condition because, probably, because of the  
3 notoriety and, certainly, because of the ACRS letter. And  
4 we are following it.

5           MS. McDERMOTT: Has this been an issue that  
6 we cannot address until 1988?

7           JUDGE COTTER: Basically, yes, because -- well  
8 it appears to me far, from what I have heard, that you could  
9 not because the Commission has found and, of course, upheld  
10 that the seismic design of the plant is adequate.

11           They have said, as a matter of normal precau-  
12 tion, we should continued to monitor it. And they set a  
13 specific program for doing it and they put it as a condition  
14 to the license. But until some new information develops  
15 and that new information, if any, would not be available  
16 until 1988, the Commission and court ruling that the seismic  
17 design is adequate is controlling.

18           MR. CHANDLER: A little bit of perspective,  
19 Mr. Chairman.

20           I would like to point that, when the Commis-  
21 sion reinstated the low-power license in April, 1984, they  
22 specifically recognized the existence of a fairly signifi-  
23 cant amount of new information, some of it brought to their  
24 attention by the joint intervenors who were then participa-  
25 ting in the licensing proceeding, some of it brought to its

1 attention by the applicants themselves, in terms of a paper  
2 which had recently been issued at that point in time.

3 And, after considering that information, the  
4 Commission still felt satisfied that that new information  
5 did not self-present an impediment to going forward with  
6 licensing in terms of ensuring the public health and safety.

7 So, it is not as if the Commission had not,  
8 in fact, been aware of, certainly, some of the new informa-  
9 tion that I believe that CODES is referring to and Ms.  
10 McDermott has reference to at his point in time.

11 And, as I alluded to earlier, should CODES,  
12 or any other person, feel that there is significant new  
13 information that would cause doubt as the ability to assure  
14 the public health and safety, in spite of Ms. McDermott's  
15 skepticism, I suggest that the vehicle of 2.206 provides  
16 a very effective remedy for pursuing this.

17 MS. SILVER: I would like to issue some more  
18 clarifications. Mr. Norton referred to the ACRS as a col-  
19 legial group of people who are independent. They are funded  
20 by the Nuclear Regulatory Commission. They are being paid  
21 by the NRC.

22 Also, reference has been made that this has  
23 been taken to court. Now, the issue of the Hosgris was not  
24 decided in court, as you gentlemen know. You have full re-  
25 sponsibility for technical issues. The courts have ruled

1 that the NRC is supposed to have the technical expertise;  
2 and, therefore, the NRC is the one who has final judgment.

3 So, the courts have not ruled on the seismic  
4 of Diablo at all.

5 JUDGE COTTER: Well, the courts have ruled  
6 to the extent that they have found that the NRC's conclusion,  
7 that the seismic design was adequate, is not unreasonable.

8 MS. SILVER: I think they --

9 MS. CULVER: They haven't dealt with the  
10 seismic design for the plant; they have dealt with other  
11 issues.

12 MS. SILVER: If we were bringing to a judge  
13 something about the tower effect, they would say, "Forget  
14 it; they don't know what they are talking about." And that  
15 is the case; and that is why it is your responsibility; and  
16 that's why your job is so very, very important and vital  
17 to all of us. And that is why we are expressing frustration  
18 because we have to get over our points to you because you  
19 are our final avenue.

20 As far as bringing up new contentions, I hap-  
21 pen to be a party at the time the Hosgris fault was redis-  
22 covered in 1973. And it was pointed out that it was a long  
23 process getting the seismicity reentered into the case, get-  
24 ting the Hosgris fault being entered as a new contention.

25 And, as I mentioned beforee, we asked for a

1 stop-work order and the real wheels kept grinding.

2           So, to flippantly say you can always file a  
3 2.206 or you can always -- I appreciate, Mr. McGurren, your  
4 statement of trying to clarify Dr. Ferguson that there is,  
5 perhaps, a misunderstanding as the ease with which one can  
6 bring up new contentions, because that ease is not there.  
7 And I appreciate your honesty on that.

8           JUDGE COTTER: Contention IV?

9           MS. McDERMOTT: No site in California is being  
10 considered for a permanent waste repository for high-level  
11 radioactive waste. Probably because of the seismic condi-  
12 tions, it is unreasonable to extend the storage capacity  
13 of spent fuel pools for the same reason.

14           And, the part of the staff's response that  
15 I have highlighted is that the unreasonableness in that con-  
16 tention is meant to reflect the Nuclear Waste Policy Act  
17 and the fact that it must be considered reasonable to have  
18 the interim fuel pond storage there. I lose the specific  
19 words, but it has to do with one of the earlier contentions  
20 where reasonable is the word used in the Nuclear Waste  
21 Policy Act, unreasonable is the contention that we wish to  
22 push forward.

23           The staff has also said that we have failed  
24 to explain how, if at all, any decision regarding the selec-  
25 tion of permanent high-level waste repositories bears any

1 any relationship to the Commission's decision on the proposed  
2 reracking of the spent fuel pool at the Diablo Canyon faci-  
3 lity.

4           And so I must go back to the initial story  
5 that the public had, was that the waste spent fuel would  
6 be held for five months, then it would be taken to another  
7 site. Now we are being told 22 years; and there is also  
8 a possibility of 30 years past the operating license expira-  
9 tion date.

10           And there are many people who would not even  
11 be here than just from the act of living and dying. That  
12 is pretty permanent. There are people who are just now  
13 being born that will be 52 years old at the time that we  
14 have been told, at this point, there is a possibility that  
15 the fuel will be there that long.

16           What is temporary? What is permanent? Those  
17 are words. What is interim? These are all very vague words  
18 that we are being told apply to the spent fuel pond rerack-  
19 ing. And we were initially told five months; now we can  
20 extend that up to 52 years, if we carry it through.

21           JUDGE COTTER: I guess I have some difficulty,  
22 initially, in seeing the connection between the permanent  
23 geologic repository and the Diablo Canyon spent fuel pools  
24 because, as I understand it, one of the criteria for safety  
25 in the permanent geologic repository, is that it will be

1 safe for 10,000 years.

2 MS. McDERMOTT: Right; and we don't have one  
3 because there hasn't been a site like that found, to this  
4 point. And that gets back to the contention: What is tem-  
5 porary? What is permanent?

6 JUDGE COTTER: 10,000 years sounds a lot more  
7 permanent to me, I guess, than --

8 MS. McDERMOTT: Than if you had to be living  
9 here for 52 years; but, to us, that -- well, it's tied in  
10 with contention V, so I think I will hold the rest of my  
11 argument for contention V.

12 JUDGE COTTER: Do you want to continue with  
13 contention V; we'll take them together?

14 MS. McDERMOTT: Would that put me at a disad-  
15 vantage?

16 JUDGE COTTER: Excellent question; but I don't  
17 think it will.

18 MS. McDERMOTT: Contention V said that the  
19 additional spent fuel rods in the reracked -- spent fuel  
20 pools, would increase radioactive contamination in an acci-  
21 dent involving the fuel pools.

22 Here we have high numbers of rods for long  
23 periods of time near a fault; and we are playing the odds.  
24 When is that fault going to do something? Did we consider  
25 all of the information?



1 me that one again.

2 JUDGE COTTER: It is not just that you felt  
3 that the original determination was five months and now it  
4 is 52 years. The question is: Is it unreasonable to con-  
5 clude that, if it were stored in that location for 52 years,  
6 that today that is unreasonable?

7 MS. McDERMOTT: Yes, that is my contention.

8 JUDGE COTTER: Why?

9 MS. McDERMOTT: Because high numbers of rods,  
10 longer periods of time. We are playing the numbers game  
11 with the Hosgris fault.

12 JUDGE COTTER: But, if the technology is ade-  
13 quate to handle the higher number of rods, isn't that the  
14 kind of thing --

15 MS. McDERMOTT: Our contention is that the  
16 technology is not adequate.

17 JUDGE COTTER: Is that what you were saying?

18 MS. McDERMOTT: That is also what I am saying.

19 JUDGE COTTER: What aspect of the technology  
20 is inadequate?

21 MS. McDERMOTT: Well, that gets onto something  
22 else. It is further down the road; but, perhaps, I had  
23 better let --

24 MR. CHANDLER: I think you and the staff here  
25 are asking us to trust their calculation that it is. At

1 least through the resistance of the applicant you would  
2 get the information that allows us to indicate that we can  
3 follow up on that.

4 I am just trying to answer your question.  
5 I think that is an answer to your question.

6 JUDGE COTTER: Is that to say, then, that --  
7 I am just trying to understand your reasoning underlying  
8 the conclusion that you are giving me.

9 In other words, this Board has to understand  
10 the reasons underlying the bald conclusion. If you don't  
11 give me the reasons, then we can't understand --

12 MR. CHANDLER: Most experts in geology pre-  
13 dict that there will be a major problem -- they are not pre-  
14 dicted in one year -- they predicted the '52 earthquake.

15 I am an architect; and I deal with earthquakes to a nominal  
16 degree. We know that every time there is a big quake, people  
17 go down, they first go down and study those -- and Codes  
18 change. We have all been through two or three layers of  
19 that.

20 So, I don't think the knowledge is golden,  
21 that the final state of the art on an earthquake design,  
22 nobody admits that that is it. So, the fact that we have  
23 52 years in which the prediction is that we will have a major  
24 quake coincides with our lack of knowledge. It is an evolu-  
25 tionary state, certainly, to me; and that it says that you

1 are increasing the odds of a bad situation much more than  
2 52 to 1.

3 JUDGE COTTER: I understand what you are but  
4 again, you need to present some specific fact that would  
5 make this Board conclude that the current state of the know-  
6 ledge about reracking and geology would make it unreasonable  
7 to conclude this.

8 MR. CHANDLER: I think I agree with what you  
9 are saying; but, if we get the information to where Sierra  
10 Club and other people can check the calculations, then we  
11 will get that specificity you were asking for; but we cannot  
12 do that.

13 MS. McDERMOTT: I think my basic suspicion  
14 boils back to, in the Public Utilities proceeding, we had  
15 been presented with an Atomic Energy Commission letter that  
16 states -- it was a memorandum of a meeting between the  
17 applicant here and the Atomic Energy Commission. And where  
18 the Atomic Energy Commission was told by the applicant that  
19 they would not -- they would refuse to follow up on faulting  
20 that they found at the seawall and the containment at the  
21 risk of further complicating and already contested hearing.

22 So they decided not to pursue the issue of  
23 sites seismology at that time in 1967; and, therefore, did  
24 not discover the Hosgris fault in time for us to be involved  
25 with it at that time when they were first considering re-

1 construction of the plant.

2           And I have a very strong skepticism about a  
3 regulatory body being told by an applicant that they don't  
4 want to do that because of an already contested hearing.  
5 And that was the Hosgris fault we were talking about then,  
6 the Hosgris fault we are still talking about.

7           We were told five months to begin with; now  
8 we are being told 22 years plus possibly 30 years more, 52  
9 years. But what will we be told in 20 years? Will we be  
10 told 100 more years?

11           I have very small amounts of faith, which is  
12 why I am here, because I do have that faith that there is  
13 a possibility of making a difference.

14           But the Hosgris fault has been a problem all  
15 along; and it is still a problem. And it is really hard  
16 to sit here and explain any more; but I appreciate you try-  
17 ing to get out from us what our contentions truly are.

18           But that is the basis of my lack of, perhaps  
19 faith in what will happen because of this. It is the seis-  
20 mic issue. All along, it has been the seismic issue. Back  
21 in 1967, when the applicant told the Atomic Energy Commis-  
22 sion that they would not look further for faults at that  
23 time.

24           JUDGE COTTER: All right; I understand your  
25 position.

1 Mr. Norton?

2 MR. NORTON: Well, unfortunately, our position  
3 is the same on IV and V as it was on II and III. I think  
4 it is very clear, and Ms. McDermott has made it abundantly  
5 clear, that they want to litigate the seismic design of  
6 Diablo Canyon, and not the spent fuel pool at all, but the  
7 seismic design of Diablo Canyon. That is simply not an ad-  
8 missible contention in this proceeding.

9 If something should come up, 2.206 is where  
10 that will be taken care of, not in this spent fuel pool  
11 decision.

12 JUDGE COTTER: Mr. McGurren?

13 MR. MCGURREN: The staff opposes for the same  
14 reason. It appears that Ms. McDermott has stated that she  
15 does, in fact, want to litigate the seismic design of Diablo  
16 Canyon; and that has been litigated. It has been approved  
17 by the Commission; and it is supported by the courts. And,  
18 therefore, these contentions should be rejected.

19 JUDGE COTTER: Dr. Ferguson?

20 MR. FERGUSON: In response to Mr. Norton's  
21 comments, his comments are getting awfully close to saying  
22 that there are no seismic considerations to be dealt with  
23 within the reracking proposal because the seismicity problems  
24 have already been taken care of. And, as I pointed out,  
25 that is not case at all.

1           Our contention is that I don't even know what  
2 they have been doing because I haven't gotten what, in fact,  
3 what models they used. This doesn't have particularly to  
4 do with these contentions, but rather I am going to argue  
5 that there are seismic issues with the reracking, upon which  
6 we do not know yet. And I just want to make that known.

7           JUDGE COTTER: I think you have made that  
8 point.

9           MR. CHANDLER: Mr. Chairman, before we leave  
10 this last contention that has been discussed, and I don't  
11 think the staff is disagreeing with Dr. Ferguson. We are  
12 just saying, by the way, there are seismic issues here in  
13 terms of whether a proposal complies with the seismic design.  
14 That has already been established here.

15           But I think that is what Mr. Norton was sug-  
16 gesting and what we have been suggesting in our responses,  
17 that we are not really in fundamental disagreement. We dis-  
18 agree with the notion that one here can relitigate the fun-  
19 damental design basis. But we agree one can litigate whether  
20 the design of the spent fuel pools complies with that design  
21 basis.

22           The other point is something that, I guess,  
23 I am unclear on in listening to Ms. McDermott's discussion  
24 of the last couple of contentions.

25           And earlier in the day, there has been this

1 reference to a 52-year period of time as if that is the pro-  
2 posal that is now being advanced and this is something that  
3 will be examined and looked at, say, as part of the staff's  
4 environmental review.

5 In fact, what we are talking about here is  
6 amendment to the operating license for Diablo Canyon Units  
7 1 and 2; and those licenses have expiration dates.

8 So, for purposes of context, I would suggest  
9 that one also look at the period of time provided by those  
10 licenses as the bounding period; at the time of their expira-  
11 tion the disposition of the site, the fuel, and other mater-  
12 ials will be subject to separate considerations.

13 And I don't think we can --

14 JUDGE COTTER: I believe you have given us  
15 that hypothetical earlier.

16 Contention VI?

17 MS. SILVER: Well, can I comment on that last  
18 comment?

19 I am curious because I see that, as you said,  
20 we could argue all day on reasonableness; but you seem not  
21 to be concerned about a 52-year period of storage of waste  
22 at this site. And I was wondering what, in light of it --

23 JUDGE COTTER: No. That deals with substance,  
24 Ms. Silver. I was simply talking to Mrs. McDermott on using  
25 that as a hypothetical for the purposes of argument in try-

1 ing to elucidate the basis that she would offer for saying  
2 that that was an unreasonable period.

3 I don't know one way or the other and I have  
4 no position on it at this point. That is not what we are  
5 considering right now.

6 MS. SILVER: Obviously, it still is kind of  
7 an important point, though, because as Ms. McDermott was  
8 trying to say, the definitions here are very elusive. We  
9 don't know what interim means; and we don't know what tem-  
10 porary means.

11 I have a feeling that everybody in this --  
12 around here has a different idea as to what interim means  
13 and what temporary.

14 The 52-year thing, Mr. Chandler referred to,  
15 you know, there are certain licenses and certain times that  
16 they expire. I might point out that P.G. & E. had a license  
17 that expired twice and they get these licenses renewed and,  
18 then, at one point, they were operating without a licence  
19 anyway.

20 The NRC doesn't turn down relicenses; that  
21 is something that is a proforma thing.

22 JUDGE COTTER: I think we are getting a bit  
23 afield; and we have to speak with the contentions and give  
24 Ms. McDermott a chance to address them and respond. I think  
25 also that we have been at this for about an hour and a half,

1 so we take a ten-minute break; only this time, it's going  
2 to be a real ten-minute break, not a half-hour.

3 (Brief recess.)

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1 JUDGE COTTER: The hearing will come to order,  
2 please.

3 Contention 6, please, Ms. McDermott.

4 MS. MC DERMOTT: We are still part way through 5,  
5 I believe, because the staff says about knowing what kind of  
6 an accident -- the basis for such an accident and the basis for  
7 increased radioactivity, that the parties would not be given  
8 sufficient notice so they will know at least generally what they  
9 will have to defend against or oppose.

10 And that was in relationship to the additional  
11 spent fuel rods in the rerack spent fuel pool would increase  
12 radioactive contamination in an accident. And if it needs be,  
13 we could specify the type of accident.

14 What we are most concerned with is an explosion-  
15 type accident. The loss of cooling, the hydrogen build-up and  
16 the explosion and pulverization of the fuel rods.

17 JUDGE COTTER: How would the loss of coolant take  
18 place?

19 MS. MC DERMOTT: Let us say procedural errors,  
20 human error. I know that two-thirds of the decay heat removal  
21 problems are caused by human error and procedural problems.

22 MR. MC GURREN: Are you talking about 5 or 6 now?

23 MS. MC DERMOTT: We are talking about 5. And if  
24 that is needed for the specificity, that would be fine with me.  
25 But the contention is there because our expertise and how these

2 1 accidents occur is not that great. Our concern about the  
2 accident occurring is very great.

3 JUDGE COTTER: I understand that.

4 MS. MC DERMOTT: I think that loss of coolant and  
5 hydrogen explosion is perhaps the worst case scenario that we  
6 could come up with.

7 JUDGE COTTER: Mr. McGurren?

8 MR. MC GURREN: May I just have a minute, Your  
9 Honor?

10 (Pause.)

11 MR. MC GURREN: Your Honor, with respect to  
12 contention 5, which now sounds like it has added to it  
13 contention 6, human error, if I understand it correctly the  
14 intervenor is asserting that there would be an explosion caused  
15 by hydrogen production caused by ---

16 MS. MC DERMOTT: Because of loss of coolant.

17 MR. MC GURREN: Because of loss of coolant because  
18 of human error?

19 MS. MC DERMOTT: Yes.

20 MR. MC GURREN: But we still have the basic  
21 problem with what in terms of human error would cause this  
22 chain of events to cause this accident. And for the same reason,  
23 we don't feel that it meets 2.714, the basis for specificity.

24 JUDGE COTTER: It sounds like we are talking about  
25 5, 6 and 7 together.

3 1 MS. MC DERMOTT: But I think they all do fit in  
2 together. And that is part of the problem of going at this  
3 backwards. Because I only get the information from case study  
4 reports on errors and problems that have occurred, and then  
5 find out what those problems were and find out perhaps with  
6 decay heat removal problems which is ---

7 JUDGE COTTER: You are talking about at other  
8 plants?

9 MS. MC DERMOTT: What has happened at Diablo  
10 Canyon. There was one instance also there. Where in this case  
11 study I read that two-thirds of the problems, the underlying  
12 cause was human factor considerations like ---

13 The quote right here from this decay heat removal  
14 is that from our analysis and evaluation of operational data,  
15 "We conclude that many plants do not pay adequate attention to  
16 the human factor aspect of plant operations, testing, sur-  
17 veillance and maintenance during plant shutdown. Faulty pro-  
18 cedures and operator-technician errors associated with plant  
19 shutdown were underlying or root causes of almost two-thirds of  
20 the reported loss of decay heat removal systems events."

21 JUDGE COTTER: What is that that you were quoting  
22 from or paraphrasing?

23 MS. MC DERMOTT: It is from a case study on decay  
24 heat removal in a report several months ago of the NRC. Let me  
25 come up with it. "Decay Heat Removal Problems Case Studies,

4 1 December 23, 1985.

2 MR. NORTON: Your Honor, may we comment? That has  
3 nothing to do with spent fuel pools at all.

4 MS. MC DERMOTT: No, it has to do with underlying  
5 causes of problems being human error. And the application does  
6 not address human error. It is lacking in human error, but  
7 human error is consistently the reason for the problems at  
8 nuclear reactors.

9 JUDGE COTTER: It sounds to me like contentions  
10 6 through 10 is what you are talking about in gross. And they  
11 raise a question about whether operational procedures in  
12 connection with the operation of the spent fuel pool are  
13 adequate to protect against human error.

14 MS. MC DERMOTT: Right, because in the application  
15 as I could find it, there was nothing that addresses human  
16 error and there was nothing that addressed any of these  
17 problems.

18 But in report after report, human error and  
19 technical problems and faulty procedures end up being the root  
20 causes of these problems. So perhaps there is a lack of  
21 semantic explanation here on my part, being able to put it into  
22 specific contention language. But it is a serious concern.

23 If one looks at this backwards, from analyzing  
24 problems at nuclear reactors, we are specifically worried about  
25 cooling and shutdown times. And here, these human factor

5 1 considerations out of this case study on decay heat removal,  
2 two-thirds of the problems were during shutdown because of faulty  
3 procedures and errors associated with plant shutdown operations.  
4 And the fuel pond is at its most active during plant shutdown.  
5 That is when it is being used the most and that is when the  
6 people are coasting the most on technical specifications and  
7 procedures.

8 JUDGE COTTER: Mr. Norton?

9 MR. NORTON: The last statement I think was a  
10 pretty good example of the problem we have with this series of  
11 contentions. And one of the criteria for admitting contentions  
12 is whether the intervenor's participation in that contention  
13 would add a positive manner in the Board's considerations.

14 And I would submit to you that the last statement  
15 by the CODES's representative that during plant shutdown plant  
16 cooldown is when the pool is at its most critical situation.  
17 There is actually no basis in fact for that statement at all.

18 I think if you read these contentions and listen  
19 to Ms. McDermott's attempts at giving the Board a basis of  
20 specificity for the contentions, it is pretty obvious that they  
21 have none. They do not have the technical expertise to put  
22 together a scenario that is credible, reasonable and that meets  
23 the test of what their regulation is to be considered a  
24 contention.

25 I would submit -- and that is an additional basis

6  
1 by which these contentions should not be admitted.

2 JUDGE COTTER: Are you referring to one of the  
3 five factors for ---

4 MR. NORTON: The Turkey Point decision says that  
5 the intervenor's participation has to add in a positive manner  
6 for the contention to be admitted.

7 And for example -- I don't want to come up with  
8 an analogy, but if someone who knew nothing about a subject  
9 wanted to raise a contention that they were going to testify  
10 about it but literally knew nothing about it, then the Board  
11 would not be very interested in hearing it.

12 I mean, if you take a person who knows nothing  
13 about geology and they say I am going to litigate geology and  
14 I am going to testify even though I don't know anything about  
15 it, the Board tends not to admit those because there is nothing  
16 to be gained.

17 MS. MC DERMOTT: Your Honor, I did not say I  
18 wanted to be litigating ---

19 JUDGE COTTER: Just a minute.

20 MS. MC DERMOTT: --- or testifying.

21 JUDGE COTTER: If I understand the thrust of  
22 contentions 5 through 10, Mr. Norton, they say that the procedures  
23 for the operation of the rerack spent fuel pool are inadequate  
24 to protect against human error which might lead to some kind of  
25 an accident which would threaten the public health and safety.

7 1 MR. NORTON: That is a very good rule. But even  
2 if what they say -- and indeed that is what they say -- then I  
3 would say what procedures? And how are they inadequate? How  
4 do we defend contentions like this, what procedures are  
5 inadequate which lead to human error? What procedures are  
6 inadequate? How are they inadequate? What human error do they  
7 lead to?

8 We have to have that specificity for our defense.  
9 That comes from Turkey Point and other decisions. We don't  
10 hear that. We hear some points from RHR, which is a residual  
11 heat removal study that has nothing to do with a spent fuel  
12 pool -- nothing whatsoever.

13 JUDGE COTTER: Mr. Mc Gurren?

14 MR. MC GURREN: It is the staff position that  
15 either combining these 5 through 10 contentions or separately,  
16 we still do not feel that they meet the specificity and basis  
17 requirements of 2.714.

18 MS. MC DERMOTT: Your Honor, I would like to make  
19 a few points. One of them is that adding in a positive manner  
20 these issues were issues that were not addressed in the  
21 application. I could find nothing in the application that  
22 addresses any of these human factors considerations.

23 However, in doing significant research and reading,  
24 such as the San Onofre waterhammer problem, reading the report  
25 on that, time after time there are contentions that poor

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1 communications between site personnel and NRC personnel  
2 contributed to the severity of the emergency and the possibility  
3 of faulty reasoning and inappropriate or poor procedures  
4 contributed to that problem.

5 They had a minor problem that became a very major  
6 problem because of these problems. And these problems are not  
7 addressed in NRC technical specifications and procedures, or in  
8 what the applicant has filed here.

9 So we have noticed a lack in the application. We  
10 would like that lack to be taken care of. And I am at a loss  
11 for words.

12 MR. HAGGARD; It seems strange that Mr. Norton  
13 would ask us to give more specifics for something they have no  
14 specifics on. It is a little bit of a double bind, but a  
15 legalistic maneuver.

16 JUDGE COTTER: Any other further comment?

17 MR. FERGUSON: Your Honor, could I make a comment?

18 JUDGE COTTER: Yes.

19 MR. FERGUSON: Well, the whole question of human  
20 error and how it was dealt with in the reracking, we can sit  
21 and go through it. There are many cases -- many situations  
22 described in the report where the applicant maintains that  
23 significant administrative controls would be in place to prevent  
24 thus and thus from happening.

25 And that is not a statement that we can really

9 1 get our teeth into. We can't really say that is not true. On  
2 the other hand, I doubt that they could prove or disprove. And  
3 that is why the human error problems are so hard to deal with.

4 And yet, as I think what Ms. McDermott is trying  
5 to say, the record is quite clear that time after time the human  
6 error is in fact a major safety consideration. I don't know what  
7 or how you can deal with that in this kind of proceeding.

8 But it certainly would be -- and we are getting  
9 back to what would make this Sierra Club feel good -- but I  
10 think, certainly from a public part of you, it is important that  
11 these issues are addressed at some level in the proceeding.

12 I don't know how to do that. And I admit that I  
13 cannot. I can only understand the problem that I have with  
14 these contentions. And yet in a very real sense they are  
15 important.

16 JUDGE COTTER: It may just be that the concern  
17 here is an information gap that could be filled in. I don't  
18 know. All we can do is to take the record back and maybe roll  
19 on it.

20 MR. CHANDLER: Mr. Chairman, one other point that  
21 leaves us a little confused is in contention 10. Where in  
22 addition to the comments that Mr. Mc Gurren made earlier, this  
23 contention states the consequences of poor communications between  
24 site personnel and NRC personnel -- I guess I am really unclear  
25 as to how to understand that contention.

10

1 The responsibility to assure the safe operation  
2 of the facility lies with the licensee. How this communication  
3 between site personnel and NRC fits into that scheme in the  
4 context of this proceeding, I guess I am not clear on.

5 MS. MC DERMOTT: Would you like me to clarify?

6 MR. CHANDLER: If the Judge wishes.

7 JUDGE COTTER: Please.

8 MS. MC DERMOTT: This came as a direct result of  
9 the San Onofre waterhammer incident, and it was one of the major  
10 reasons for the problem becoming exacerbated. And it was  
11 because the NRC personnel came in and relieved personnel on site  
12 that knew better what was happening than the NRC personnel  
13 thought they knew.

14 And it went around and around and it became a  
15 much worse problem.

16 JUDGE COTTER: You may have misspoke. You said  
17 that ---

18 MS. MC DERMOTT: The NRC personnel thought they  
19 knew better than the site personnel of the utility what was  
20 happening, when in fact that was not the case. And it was --  
21 this is again working at this backward from what was a serious  
22 problem, what can we turn into something that will not happen  
23 here at Diablo Canyon.

24 It is a serious problem world-wide, communications.  
25 We are having a great deal of difficulty communicating here

11 1 today. And this is not an emergency situation. It is a  
2 pressing and serious situation, but it is not a site emergency.

3 And the poor communications play a very large  
4 part in what happens in accidents or in emergency situations.  
5 And those lines are not clear. My understanding is the NRC is  
6 trying to address that themselves, the communications aspect.

7 JUDGE COTTER: What are the concerns here? I am  
8 understanding what you are saying, but one of the requisites  
9 of this process is that it deal with specific factual situations  
10 rather than generic situations.

11 And one of the things that we cannot do is deal  
12 with the overall problem of communications. I think we have  
13 got a pretty full exposition of the positions of both sides  
14 here.

15 MR. NORTON: Your Honor, may I add one something?  
16 And this is because of a comment made by the Sierra Club, and  
17 to a lesser extent by CODES. That there has been no considera-  
18 tion of this and that therefore they cannot be specific.

19 That is just not quite so. Let me for the record  
20 cite that the error of drop cast was considered and technical  
21 specification covers that, or a revision was made and that is  
22 LAR 85-13. Another error that was considered was dropped  
23 assembly where the operator dropped a fuel assembly during  
24 refueling or fuel-handling operations.

25 And I would suggest that you look at Section 4.7

12 1 in the reracking report. And also look at Item 9, PG&E letter  
2 DCL 86-019, which went to the staff. All of these are in the  
3 PDR. The third one was misplaced assemblies. An operator  
4 misplaced spent fuel in the wrong region during refueling or  
5 fuel-handling operations.

6 Again, I ask you to look at 4.7 of the reracking  
7 report. Another one was loss of cooling caused by pump failure,  
8 a loss of cooling water in heat synch where operator maintenance  
9 error cause an inadvertent pump inoperability or loss of coolant.  
10 See chapters 5 and 7 in the reracking report.

11 Finally, new rack design fabrication installation,  
12 human errors during the reracking to cause rack anomalies. And  
13 again, look at chapters 8 and 10 of the reracking report.

14 Now, our problem is that many of these contentions  
15 could have been -- your analysis was faulty, you did not do  
16 this right or you did not do that right. Or you did not  
17 analyze this specific situation and you should have. And this  
18 is why you should have.

19 But we don't get that at all after all of these  
20 filings and after the argument today. We are still left with  
21 things like waterhammers in Southern California Edison that  
22 have nothing to do with this procedure that in the broad term  
23 like communications that we can't respond to. We can't deal  
24 with specifically, because they don't relate to the specifics  
25 of this case.

13

1 So indeed, in the circumstances there wasn't any  
2 such analyses, there wasn't any such thing taken into account.  
3 And they are and they could have been made a contention if  
4 someone had enough serious problem with the analysis and had  
5 the dropped cast and it could have been a contention. But that  
6 has not been done here.

7 And it is simply unfair to make general conten-  
8 tions that are attempted to be made here.

9 JUDGE COTTER: Contention 11.

10 MS. MC DERMOTT: All right. Adequate considera-  
11 tion of the loss of spent fuel cooling has not been considered  
12 and that has been talked about pretty significantly here today.

13 The staff response is that we must be rejected  
14 since there is no basis stated. But it is the basis for a very  
15 severe accident scenario.

16 JUDGE COTTER: But, again, you have to give some  
17 indication of why the consideration is inadequate in the report.  
18 That is what we mean by basis and specificity.

19 MS. MC DERMOTT: Does Mr. Norton have a cite as  
20 to where this is considered in his application?

21 MR. NORTON: I am sorry, but what is considered?

22 MS. MC DERMOTT: The consideration of the loss of  
23 spent fuel coolant. Could you give me the cites for them?

24 MR. NORTON: I just read them.

25 JUDGE COTTER: I think you were on Chapter 7 to 10.

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1 MR. NORTON: That is Chapter 5 and 7 of  
2 the Reracking Report. I can even tell you what those  
3 sections show, if you like that information?

4 Thermal Hydraulic Analysis and cooling  
5 evaluations showed significant consequences; redundant  
6 pumping, make up water sources provided adequate cooling  
7 capability. Chapters 5 and 7 of the Reracking Report.

8 That is just, just the letter (indicating)  
9 that I wrote.

10 JUDGE COTTER: What was the letter? Was  
11 that September?

12 MR. NORTON: I think it is 86-01-9. But,  
13 subject to check, he is checking it right now. It is  
14 DCL 86019.

15 MS. MC DERMOTT: Yes; I think you had  
16 two and a half hours to correct the problem.

17 MR. NORTON: Dated January 28, 1986. And,  
18 when I say it is a letter, it is not just a letter; it  
19 is a very thick attachment to that letter.

20 JUDGE COTTER: Have you seen that, Ms.  
21 Mc Dermott?

22 MS. MC DERMOTT: I was just going to see  
23 if I had that one with me. It was January 26?

24 MR. NORTON: Twenty-eight.

25 MS. MC DERMOTT: I think I do have that

1 one.

2 DR. FERGUSON: Could you run that number  
3 by me again?

4 MR. NORTON: DCL-86-019. It is a cover  
5 letter and attachment to the NRC, dated January 28, 1986.

6 MS. MC DERMOTT: I don't have that, I am  
7 sorry.

8 MR. NORTON: It was sent to the PDR, and  
9 is in the PDR; and has been in the PDR.

10 MS. MC DERMOTT: I was incorrect. That  
11 was an NRC letter that I have. I am sorry.

12 JUDGE COTTER: There seems to be some ques-  
13 tion about how long things stay in the PDR.

14 MR. NORTON: The report was missing, but  
15 I don't think there is much about the rest of it being  
16 missing. I don't think there has been serious problem  
17 with documents missing from the PDR. The people down  
18 here are very conscientious about it. The local people  
19 are very conscientious.

20 MS. MC DERMOTT: There is generally a 20  
21 per cent whenever I go to look something up. There is  
22 usually about 20 per cent of the things that I am after  
23 that are not available.

24 JUDGE COTTER: Mr. Mc Gurren, do you have  
25 anything on contention 11?

1 MR. MC GURREN: We have nothing to add to our  
2 statement on page 20, Your Honor.

3 MR. NORTON: Your Honor, on the PDR, Mothers  
4 For Peace are on our mailing list. And anything that  
5 we sent to the staff, like that letter, does indeed  
6 go, an extra copy, goes to the Mothers For Peace.

7 I don't want the impression left that,  
8 somehow, nobody down here is getting these things. Be-  
9 cause the Mothers For Peace -- Am I correct, Mrs. Silver;  
10 you are, indeed, receiving copies of this?

11 MS. SILVER: After we protested that we  
12 were taken off the mailing list, yes; then, we were put  
13 back on.

14 MR. NORTON: But you are receiving them?

15 MS. SILVER: We are receiving them.

16 MR. NORTON: Thank you.

17 MS. SILVER: We don't live next door to  
18 each other.

19 MR. NORTON: I understand.

20 JUDGE COTTER: Contention 12.

21 MS. MC DERMOTT: Contention 12 is the lack  
22 of resolution and action on critical issues being investi-  
23 gated by the Office of Investigation (OI) and Office  
24 and Inspection and Auditor (OIA), issues which are di-  
25 rectly related to the significant hazards issue of the

1 pools reracking application have not been given any con-  
2 sideration.

3           And the staff says that we have to be re-  
4 jected. And let me see if I can find where-- Let me  
5 just ove rmy notes here.

6           I would say that all issues that have been  
7 sent to OI and OIA are very important. It considers  
8 codes and procedures used during the intitial construction  
9 of the fuel-- it has to do with the initial bulding of  
10 Diabale Canyon itself, which is being granted a given,  
11 of being adequate at this point for the fuel pond rerack-  
12 ing. And these are issues that have not been thoroughly  
13 followed up on. There is no resolution on many of these  
14 Office of Investigation issues.

15           \* The OIA issues are up to and including  
16 lying by top Region V officials to the Commission about  
17 the Diablo Canyon obligation management program, that  
18 it was being implemented. And, in the 1700 allegations,  
19 it was only implemented once, on one allegation.

20           And, so, this, it affects this proceeding  
21 and it affects all of the issues related to whether or  
22 not that is an adequate fuel pond to begin reracking  
23 in.

24           JUDGE COTTER: The fact that there are  
25 investigation and allegations--

1 MS. MC DERMOTT: That have been going on  
2 for many years.

3 JUDGE COTTER: --is in itself not some-  
4 thing that we can consider until there is some kind of  
5 a conclusion or report which would give some validity  
6 to the allegation, or would indicate that the investiga-  
7 tion has generated some new information.

8 MS. MC DERMOTT: These investigations have  
9 been going on for some, more than two years. And the  
10 OIA investigation has been going on for over one year,  
11 now. And these are very serious, serious allegations.

12 JUDGE COTTER: But they are still allega-  
13 tions.

14 MS. MC DERMOTT: They are still allegations.  
15 But we could have been blown out of the water with those  
16 allegations; we have not been. They are serious allega-  
17 tions and they ave serious significance to what has hap-  
18 pened at Diablo Canyon.

19 JUDGE COTTER: But, until those allegations  
20 and that process results in something more, there is  
21 nct a factual matter for us to consider.

22 MS. MC DERMOTT: So this is the considera-  
23 tion for the 1988 seismic reevaluation. We can't object  
24 until after OI and OIA give us determinations on these.  
25 It is as if these were never given.

1 JUDGE COTTER: I can't take consideration  
2 of something that may never come into being in this case.

3 MS. MC DERMOTT: It has had no resolution  
4 at all. It has not been dismissed.

5 JUDGE COTTER: So nothing exists beyond  
6 an allegation at this point, you see.

7 Mr. Chandler?

8 MR. CHANDLER: Mr. Chairman, I wanted to  
9 point that, by definition, that matters that are pending  
10 before the Office Investigations and before the Office  
11 of Inspector and Auditor, has to be borne in mind.  
12 The technical allegations, which Ms. Mc Dermott referred  
13 to earlier -- some seventeen or eighteen hundred of  
14 them, which were filed with the Commission at various  
15 times, before the various stages of licensing for the  
16 issuance of the operating license for Diablo Canyon,  
17 have been evaluated, in large measure, through conclu-  
18 sion by the staff, by the Region, by NRR; and, the staff  
19 has been satisfied that either the technical issues have  
20 been unsubstantiated, or do not present an impediment  
21 to licensing.

22 What is pending before the Office of Inves-  
23 tigation -- again, by definition, are issued on the  
24 allegation of wrong doing by the licensee in terms of  
25 alleged wrongful terminations. I think there is a document,

1 a signature forgery, those kinds of allegations. But  
2 they are not technical allegations. None of them--

3 JUDGE COTTER: You mean, all of them go  
4 to personnel practices rather than--

5 MR. CHANDLER: A better way of saying it,  
6 sir, yes.

7 Likewise, those allegations which have  
8 been referred to the Office of Inspector and Auditor,  
9 are of wrong doing or personal conduct on the part of  
10 certain staff individuals.

11 Those matters are still under investiga-  
12 tion. But, again, to my knowledge, none of these matters  
13 relate to any of the issues pending before the Board  
14 in the context of the application to expand the spent  
15 fuel pools.

16 The technical issues, I think the majority  
17 of them have been resolved through complete closure.  
18 All of them have been screened for purposes of licensing  
19 actions in this proceeding; and I believe the staff is  
20 coming to closure on the remaining ones shortly.

21 MR. NORTON: Your Honor, by way of response  
22 from the applicant, we have a problem with this one for  
23 lack of specificity, again. We don't know what allega-  
24 tions we are talking about. And I am sure that Mr.  
25 aggard would have no objection to CODES giving us the

1 allegations that they aware of. Because we have never  
2 seen them and we would very much like to see them. Per-  
3 haps, then, we could respond specifically.

4 With CODES be willing to give copies of  
5 those allegations?

6 MS. MC DERMOTT: The allegations that were  
7 turned over to you by the NRC?

8 MR. NORTON: No; the ones that are pending  
9 before OI and OIA that you are referring to. We would  
10 love to see them. Do you have copies for us?

11 MS. MC DERMOTT: No; I don't have copies  
12 for you.

13 MR. NORTON: Would you be willing to give  
14 them to us?

15 MS. MC DERMOTT: I think I am, perhaps,  
16 led down the legal path where I would be saying some-  
17 thing that would be to my detriment.

18 JUDGE COTTER: He simply is asking: Do  
19 you know the specific allegations currently under investi-  
20 gations by OI and OIA?

21 MR. CHANDLER: And I would object, Mr.  
22 Chairman, if she answered that question. Because, inas-  
23 much as the staff has not seen fit to turn those over,  
24 nor has OI, to the applicant for resolution, because  
25 of the determination that it would be inappropriate to

1 to do so.

2 JUDGE COTTER: That is not the matter,  
3 Mr. Chandler. The question is: Do you know of any spe-  
4 cific allegations currently being investigated by OI  
5 and OIA?

6 MS. MC DERMOTT: Not by sitting there and  
7 listening to the OIA take them. By talking to the people  
8 making the allegations, yes. And I could not breach  
9 their confidence.

10 JUDGE COTTER: Then if you can't identify  
11 the specific allegations, then, we can't measure whether  
12 or not they would arise to the level of something that  
13 should be considered here.

14 MS. MC DERMOTT: Can you get them from  
15 the Office of Investigation and Auditor?

16 JUDGE COTTER: Not on a general fishing  
17 expedition.

18 MS. MC DERMOTT: Not on a general fishing  
19 expedition,

20 MR. HAGGARD: Doesn't that, it sounds to  
21 me-- It sounds like you are asking us to violate the  
22 procedures that are set up to handle these kinds of things.

23 JUDGE COTTER: No; I am simply trying to  
24 find out if there is something specific; and I am not  
25 hearing anything specific yet. And, even if it was

1 a specific allegation, it still is simply an allegation.

2 MS. MC DERMOTT: Specifically, the Commis-  
3 sion was misled with respect to whether or not the Diabl  
4 Canyon Obligation Management Program was being followed;  
5 and it was not being followed. The Commission was told  
6 that it was being followed.

7 MR. NORTON: Your Honor, I would submit  
8 that, if that is a specific allegation, I have no way  
9 of knowing whether it is or not. But it would not sur-  
10 prise me, because I believe I heard that argument that  
11 was made by GAP before the Commission. So that would  
12 not at all surprise me. I don't know whether it has  
13 anything to do with the spent fuel pool; and what it  
14 has to do with this proceeding.

15 MS. MC DERMOTT: It has to do with the  
16 integrity of that pool.

17 MR. NORTON: Excuse no. That someone from  
18 Region V, or NRR, set up an allegation program, or whether  
19 we are going to handle allegations in a certain way.  
20 But they did not follow that program to the letter.  
21 You have got to show a nexus between that and spent fuel  
22 pools and reracking. And I don't think there is any  
23 remote nexus.

24 MS. MC DERMOTT: If there is an issue,  
25 shouldn't we put our pennies together and find an

1 attorney?

2 JUDGE COTTER: No; I don't think that would  
3 make any significant difference. I think we can under-  
4 stand your position on this. I think I have an excellent  
5 understanding of your contention.

6 Let us move to contention 13. I think we  
7 should probably move to contention 13.

8 MS. MC DERMOTT: This has been talked about  
9 quite a lot: the views of the population surrounding  
10 Diablo Canyon Nuclear Power Plant have not been con-  
11 sidered. They are repugnant and inconsistent with the  
12 Nuclear Waste Policy Act of 1982.

13 JUDGE COTTER: I think we have aired that  
14 one out pretty well.

15 MS. MC DERMOTT: Yes.

16 JUDGE COTTER: Do you have anything to  
17 add to what we have already discussed in connection with  
18 it?

19 MS. MC DERMOTT: No.

20 JUDGE COTTER: Contention 14 is not opposed  
21 by the staff, I believe.

22 MR. MC GURREN: With the limitation that  
23 the scope of the contention be limited to the scope of  
24 the storage period authorized by the amendments to the  
25 license.

1 MS. MC DERMOTT: How can that be if we  
2 have information -- I don't have the cite to it right  
3 now -- that it would be extended to 30 years beyond the  
4 license expiration of Diablo Canyon.

5 MR. MC GURREN: I think the Commission  
6 itself has answered that question by indicating the long  
7 term storage, the storage beyond, certainly beyond, the  
8 operating license of the reactor, that the Commission  
9 concluded that such storage impact should be insignifi-  
10 cant or without environmental impact.

11 JUDGE HARBOUR: Are you referring to 10  
12 CFR--

13 MR. MC GURREN: I think we dealt with this  
14 contention in contention 1(a), it think it is, of Mothers  
15 For Peace. And, also, we tied it --

16 JUDGE COTTER: Speak up, please, Mr. Mc  
17 Gurren.

18 MR. MC GURREN: That the amendments would  
19 be actually tied to the actual operating license period  
20 of the two units.

21 MR. NORTON: We have no objection to this  
22 one, as stated, and as stated by th staff again.

23 What we are doing here is amending the  
24 license through the year 2010. We are not, this conten-  
25 tion should not be allowed to the 52 years, or 30-year

1 period, or whatever it is that you want to discuss.  
2 Because, that is not what is before this Board. It is  
3 simply the license period, and we have no objection to  
4 the contention on that basis.

5 MS. MC DERMOTT: We have no objection to  
6 limiting it if we can have some certainty that is, in  
7 fact, what the limit would be.

8 JUDGE COTTER: So you do not agree that  
9 is a, to the limitation proposed by staff.

10 MR. HAGGARD: It seems like a reasonable  
11 request.

12 JUDGE COTTER: We decide the issues before  
13 us. We don't determine the future. I can't tell you  
14 what that--

15 MR. HAGGARD: Perhaps, then, this --

16 MR. NORTON: I can't hear Mr. Haggard.

17 MR. HAGGARD: It seems -- maybe I am not  
18 a lawyer -- but it seems very contradictory to me to  
19 say: Okay! We will limiting it to the scope. We have  
20 no way of saying that that is the limit to the scope.

21 Does that make sense?

22 JUDGE COTTER: I do not understand what  
23 you are sying.

24 MR. HAGGARD: I guess, you know, there  
25 is frustration here; and part of this is that we have

1 these necessary procedures to deal with information.  
2 And, as lawyers, that is your concern. A lot of us are  
3 not lawyers.

4 We are concerned with the information,  
5 too; and I hope that we all realize that procedures are  
6 not information. Information is information. Procedures  
7 start with information.

8 Our procedure here is try to say: Okay;  
9 we will accept this if you put this limit on it. But  
10 we are not willing to say that that limit is the limit  
11 of the use of the pond.

12 Now, if on a procedural standpoint, that  
13 may be very cute, and all of that. But in terms of infor-  
14 mation, it is not, it is contradictory, irrational and  
15 does no make sense.

16 That is all that I can say about it.

17 MS. SILVER: I have a question. In the  
18 application, PG and E says that the storage will be to  
19 2007. And, now, the staff is saying the Unit 2 operating  
20 license expires 2010.

21 MR. CHANDLER: Actually, Mr. Norton said  
22 that. We state in our response; he is the one who said  
23 it.

24 MS. SILVER: The question I have is: are  
25 we going to be given another reracking proposal? I mean,

1 why limit us on this thing if the fuel pools will take  
2 it up until 2007; but there are three more years left  
3 on the license. Are we talking about--

4 MR. NORTON: Excuse me. I don't know the  
5 difference 2007 and 2010, other than it is three years.  
6 But clearly, it wasn't done because it s a magical num-  
7 ber. I don't know whether we are miscommunicating in  
8 terms of the expiration date or what; or whether one  
9 of them is a typo, or not. But it clearly is not an  
10 analysis that shows 2007 is okay; 2008 is not. There  
11 is nothing like that.

12 MS. SILVER: That is not the point. It  
13 is written down here and we can't take things on trust  
14 from PG and E. In one case, you say here, on September  
15 19, on Unit 1, the capability will be going into the  
16 next century, the year 2007. Now, we are saying that  
17 license, if you continue without--

18 MR. NORTON: That is the difference between  
19 Unit 1 and Unit 2, perhaps. There is Unit 1, 2007; and  
20 Unit 2, 2010, perhaps. I don't know. I don't know the  
21 distinction between the dates, what that is. I just  
22 don't know why the difference in the dates. I can check  
23 on it.

24 MS. SILVER: But, obviously the concern  
25 that you raise, it seems that you are being very precise

1 on all of these things, and, since the panel of Judges  
2 seems to be skeptical of our skepticism, these are things-

3

4 JUDGE COTTER: Mrs. Silver, we are not  
5 skeptical of your skepticism. We understand that you  
6 hold strong feelings in it.

7 MS. SILVER: It is not the feelings.

8 JUDGE COTTER: But it does not help us,  
9 and it does not help your objective to throw in statements  
10 which knock the applicant one way or the other. It is  
11 much more helpful for us if you just stay focused on  
12 the issues.

13 MS. SILVER: We tried the other way, also;  
14 and we have been in this proceeding for 12 years. The  
15 plants are licensed; they are asking for an amendment  
16 to their license. I don't think you can really criticize  
17 the people of this community. Because we have fought  
18 very, very hard and we have had--

19 JUDGE COTTER: I am not criticizing--

20 MS. SILVER: There is--

21 JUDGE COTTER: I am not criticizing the  
22 people of the community.

23 MS. SILVER: I am sure you are not.

24 JUDGE COTTER: I am saying that the pejora-  
25 tive comments do not help you in your objective.

1 MS. SILVER: Well, all right. There is  
2 discrepancy, and it has been for years we are talking  
3 about here.

4 MR. NORTON: I have an explanation, if you  
5 like to hear it.

6 The paragraphs you are referring to, I  
7 presume, is attachment A, page 1. It says, installation  
8 of the new spent fuel storage racks provide spent fuel  
9 storage capacity for approximately 20 years of normal  
10 operation of both units as shown by the fuel discharge  
11 schedules, provided in the reracking report, tables 11(a)  
12 and 11(b). With the increased storage capacity, full  
13 core discharge capability will be maintained through  
14 September 2007 and March 2008 for Units 1 and 2 re-  
15 spectively. So those dates of 2007, 2008, are projected  
16 if you have just absolute, normal operation for the next  
17 years, and you keep unloading, keep unloading, and so  
18 on. That is when the pools will become full.

19 And, obviously, you cannot unload more  
20 in them after they become full.

21 MS. SILVER: The problem is that we are  
22 asked to be very specific in our contentions, by the  
23 way, we have no written response from PG and E. We seem  
24 to have the burden of carrying this whole thing by being  
25 very specific.

15-1

1 DR. FERGUSON: Could I make an attempt  
2 to resolve this issue?

3 JUDGE COTTER: All right, Doctor Ferguson.  
4 I think we have a pretty full explanation of it, but  
5 go ahead.

6 DR. FERGUSON: As I understand it, you  
7 limitation suggests that this consideration be limited  
8 to the period authorized by the license amendment; is  
9 that what I hear?

10 MR. MC GURREN: That is correct.

11 DR. FERGUSON: Is there a firm date  
12 that?

13 MR. MC GURREN: The amendment would be  
14 tied to the operating license for each separate reactor,  
15 which indicates--

16 DR. FERGUSON: Would you state what those  
17 dates are?

18 JUDGE COTTER: That is September 9, 2010  
19 on page 22 of the staff's filing.

20 MR. MC GURREN: That is for Unit 2; and  
21 for Unit 1, it would be a little before that.

22 JUDGE COTTER: Then, Unit 1 is earlier.

23 MR. NORTON: Your Honor, we can give you  
24 the exact date. I don't have it off the top of my head.  
25 But they can dig it out.

1 DR. FERGUSON: Let us just use those dates.

2 MR. NORTON: That is exactly what I am  
3 suggesting.

4 JUDGE COTTER: Contention 16, Ms. Mc Dermott.

5 MS. MC DERMOTT: No, 15.

6 The applicant has not demonstrated the  
7 existence nor implementation of a detailed quality as-  
8 surance program which would effectively detect and pre-  
9 vent defective work by contractors and vendors involved  
10 with the proposed spent fuel pool reracking.

11 They say that we are not correct, the staff  
12 does. And I contend that we are correct and this Chapter  
13 10 of September 10, 1985 letter, which addresses quality  
14 assurance, does not address implementatin or training  
15 or tracking of problems. So I would ask the question  
16 of whether this meets the specification of 10 C.F.R.  
17 50 Appendix B for quality control, quality assurance.  
18 And that would help alleviate my concerns here.

19 JUDGE COTTER: Mr. Norton?

20 MR. NORTON: Yes.

21 This is an attack on a prior decision of  
22 the Commission, the Licensing Board. The Licensing Board  
23 held --

24 MS. MC DERMOTT: This is contention is-

25 MR. NORTON: Excuse me, Your Honor, may

1 we finish; may we respond without interruption?

2 JUDGE COTTER: Ms. Mc Dermott, please.

3 MR. NORTON: Fifteen says that they have  
4 not shown the existence and implementation of an detailed  
5 quality assurance program. It was found to be, however,  
6 by the Appeal Board in its design verification program  
7 hearings in 1983-- In 1984, the decision; the hearings  
8 were in 1983, excuse me.

9 That matter was litigated by Mothers For  
10 Peace and other intervenors in those proceedings. That  
11 is the same quality assurance program that has been found,  
12 that was found to be adequate and it is still in place  
13 today and governs this work. It is Class 1 -- that is  
14 not the right word. It is covered by the QA program;  
15 it is Class 1 structures. And all modifications therein  
16 are covered under that QA program. It was found by the  
17 Appeal Board and the Commission to be adequate.

18 Additionally, this -- No; I think that  
19 is sufficient and I won't go into the additional argument.

20 JUDGE COTTER: Mr. Mc Gurren?

21 MR. MC GURREN: Your Honor, the staff has  
22 nothing to add to that.

23 MS. MC DERMOTT: Your Honor, this was not  
24 a specific attack on any Appeal Board decision at all.  
25 This was a specific contention upon looking at the

1 September 19, 1985 quality assurance program, chapter  
2 10; and from the vagueness in here, I am unable to find  
3 anything that says that it does meet the 10 CFR 50 Ap-  
4 pendix B criteria. I specifically note that implementa-  
5 tions and training is missing; tracking of problems is  
6 missing. That is not in here.

7                   And, so, I would like assurances from the  
8 utility that this does meet 10 CFR 50 Appendix B require-  
9 ments.

10                   MR. NORTON: Excuse me, Your Honor. This  
11 is stated slightly different this time.

12                   What is in that report, of course, is just  
13 saying that the quality assurance program is being ap-  
14 plied. The quality assurance program isn't set forth,  
15 nor was it ever intended to be set forth in that document.

16                   It is in volumes and volumes of other docu-  
17 ments, and it is that quality assurance program that  
18 has been found to be adequate.

19                   That report simply references the quality  
20 assurance program and, of course, it doesn't set forth  
21 all the elements of the quality assurance program. It  
22                   volumes to do that.

23                   JUDGE COTTER: Mr. Norton, do you have  
24 the cites to those decisions?

25                   MR. NORTON: 763, but I don't--

1 MR. CHANDLER: March 1984.

2 MR. NORTON: March 1984. You know numbers  
3 a lot better than I have off the top of my head.

4 It very specifically addressed both con-  
5 struction and design, the quality assurance programs.

6 JUDGE COTTER: Perhaps you might get the  
7 citation of that decision and give it to Ms. Mc Dermott  
8 in full so she can look at it.

9 MR. NORTON: I am sure she has it, the  
10 decision itself. But--

11 JUDGE COTTER: I am not sure she does,  
12 Mr. Norton. have it,

13 MS. MC DERMOTT: Mr. Norton must be confus-  
14 ing me with Mothers For Peace, I am sorry.

15 MR. NORTON: I do not have a copy of the  
16 decision with me, so I can't read the full citation.

17 JUDGE COTTER: Will you kindly, after this  
18 proceeding is closed, give her a citation to the decision,  
19 the full title, Mr. Norton.

20 MR. NORTON: Sure. I was just looking  
21 to see if there was anything-- I think it may be cited  
22 in one of these later decisions. That is what I was  
23 hoping, if I can find it.

24 JUDGE COTTER: Continue with 16, Ms. Mc  
25 Dermott.

1 MS. MC DERMOTT: This is the contention  
2 submitted to meet the three standards of the Federal  
3 Register Volume 51, No. 44, Thursday, March 6, 1986,  
4 Rules and Regulations, page 7754, for a significant  
5 hazards on the spent fuel pool reracking at Diablo Canyon  
6 Nuclear Power Plant.

7 And the staff response is: It is an ascer-  
8 tion and not a contention. And I would have to say that  
9 they are correct, that is an ascertainment; that we have  
10 brought forward does involve a significant hazards deter-  
11 mination because of the fact it does increase the spent  
12 fuel pool capacity, significantly increases the prob-  
13 ability, or consequences of an accident previously  
14 evaluated; and it is the consequences of the accident-  
15 that we are considering; and that is does increase the  
16 spent fuel storage capacity, significantly reduce a  
17 margin of safety. And that is true because of the HOSGRI  
18 Fault that we have discussed time after time; and that  
19 it is a numbers game: the more fuel rods we have, the  
20 longer they are stored there, the more trouble our area  
21 is in.

22 So I would have to agree that this is not  
23 a contention; that this is an ascertainment of the way we  
24 read the significant hazards determination.

25 JUDGE COTTER: Are you asking for some

1 relief or just making the statement?

2 MS. MC DERMOTT: No; I agree with the staff:  
3 it is an assertion.

4 JUDGE COTTER: All right. Mr. Norton?

5 MR. NORTON: It seems to me to be withdrawn,  
6 so I have nothing further to say.

7 MR. MC GURREN: We have nothing further  
8 to say. Just that, we also responded to this assertion  
9 with regard to the significant hazards determination in  
10 response to contention 12, making reference to the Commis-  
11 sion's final procedures standards of significant hazards  
12 considerations 51 Fed Reg 7744, particularly the language  
13 on 7746; and that is March 6, 1986.

14 JUDGE COTTER: All right.

15 I believes that concludes considerations  
16 of the contentions.

17 MS. SILVER: Excuse me, Your Honor, I be-  
18 lieve that Mr. Norton was going to give us the expiration  
19 date of Unit 1.

20 MR. NORTON: I don't have it yet; someone  
21 is looking it up.

22 (After a pause.)

23 April 2008, without looking at a particular  
24 date. Because it is 40 years from the construction per-  
25 mit, which was April 1968.

1 JUDGE COTTER: Let me take care of one  
2 minor piece of miscellany before we go on to anything  
3 more. That is, attached to the staff's pleading, I think  
4 you all have it in front of you, the last one they filed.  
5 It is a certificate of service. That is the last two  
6 pages.

7 The Board would ask that all parties use  
8 that format and attach it to each of the pleadings that  
9 you send to the Board.

10 MS. MC DERMOTT: Is that March 30, 1986;  
11 is that the one you are reading from?

12 JUDGE COTTER: May 9. It is the one we  
13 have been talking about here.

14 Do you have that in front of you?

15 MS. CULVER: Yes; but if you want to make  
16 changes to this--

17 JUDGE COTTER: When I do that, but the  
18 first point I want to make is: in filing pleadings,  
19 please use that format so that we can eliminate, as much  
20 as possible, any kind of arguments about whether or not  
21 something was, or was not sent to everyone.

22 Secondly, let us go through the list and  
23 strike from it those people who do not require service  
24 at this point.

25 MR. CHANDLER: Mr. Chairman, we would

1 apologize for this rather antiquated service list.

2 JUDGE COTTER: Let us just get to the strik-  
3 ing. The fourth name down on the left-hand column on  
4 the first page is Elizabeth Apfelberg. Is there any  
5 reason to serve her?

6 MR. CHANDLER: Ms. Apfelberg was a former  
7 member, or a member, of Mothers For Peace and she had  
8 been on the service list for the operating license, and  
9 has been continued. But, whether she continues--

10 JUDGE COTTER: I think in the interest  
11 of-- Of course, we are going to confine ourselves to  
12 people who are in the room.

13 MR. NORTON: There were a number of indi-  
14 viduals like Ms. Apfelberg who were original intervenors  
15 originally. And they were not all Mothers For Peace;  
16 they were intervening individually. And that is why  
17 they were on there as individuals. Not because they  
18 were Mothers For Peace.

19 I think in fairness to them, there were  
20 a number of those who were also individual intervenors.

21 JUDGE COTTER: So Ms. Apfelberg is stricken  
22 from the list.

23 Mr. Norton, I guess, we will keep on it.  
24 Thomas H. Harris--

25 MS. CULVER: Can we replace Elizabeth

1 Apfelberg with me?

2 JUDGE COTTER: Yes. Do you want to give  
3 us your name and address?

4 MS. CULVER: Nancy Culver, 192 Luneta  
5 Street, San Luis Obispo, California 93401.

6 JUDGE COTTER: 93401.

7 Mr. Harris?

8 MR. NORTON: If we can go through these,  
9 can we make corrections. My own is wrong. The firm  
10 name is changed. It is Norton, Berry, French and Perkins.  
11 Park is deleted, Perkins is added. In the past we have  
12 had a bit of a problem. We always end up Zap mailing  
13 and Federal Expressing and overnight mailing and those  
14 kinds of things in this proceeding. And that doesn't  
15 work to a post office box.

16 So, in addition to this address, we have  
17 obviously an office address, which is 20002 East Osborne,  
18 Phoenix, Arizona. And, if you put that in after the  
19 post office box, it will be for Phoenix, Arizona and  
20 use it only for overnight delivery, and stuff like that.  
21 The post office box works fine, but not for packages  
22 and overnight letters.

23 The Zip Code, I wasn't going to complicate  
24 it with the change because they always find us anyway,  
25 85016. And it does help if you use the proper Zip Code,

1 of course.

2 JUDGE COTTER: I take it Mr. Harris is  
3 out. Mr. Gordon Silver and Mrs. Sandra A. Silver is  
4 to be as one.

5 MS. SILVER: Actually, we are substituting  
6 that now. And that will be Mrs. Jacquelyn Wheeler.

7 JUDGE COTTER: Who is she?

8 MS. SILVER: She will be the representative  
9 for the Mothers For Peace.

10 JUDGE COTTER: Will she be replacing you,  
11 Mrs. Silver?

12 MS. SILVER: Yes.

13 JUDGE COTTER: Effective when?

14 MS. SILVER: I think through the mailings  
15 now.

16 MS. CULVER: Ms. Jacquelyn Wheeler, and  
17 the address is 2455 Leona Street. But she is moving.

18 JUDGE COTTER: When?

19 MS. CULVER: We are not sure.

20 JUDGE COTTER: How long do you estimate  
21 this address will be valid?

22 MS. CULVER: Christmas. She will let us  
23 know, of course. And that is San Luis Obispo, the same  
24 Zip code: 93401

25 MR. NORTON: We have already used Mr. Gehr.

1 JUDGE COTTER: Delete Mr. Gehr. Delete  
2 Mr. Blankenburg. We delete Mrs. Fleming?

3 MR. NORTON: Yes.

4 JUDGE COTTER: Do we delete the next one,  
5 Joel Reynolds and John Phillips?

6 MS. CULVER: I am sorry; do not delete  
7 them.

8 MR. CHANDLER: Can he be on-- Is he a  
9 party to this?

10 MS. CULVER: Can he remain on this list?

11 JUDGE COTTER: If you want him to receive  
12 a copy, you can see that he gets it yourself. But, if  
13 he is not going to be party, there is no need to burden  
14 everyone,

15 David S. Fleischaker?

16 MR. NORTON: Same; he was the attorney  
17 prior to Mr. Reynolds.

18 JUDGE COTTER: So he is deleted.

19 How about Richard B. Hubbard?

20 MR. NORTON: He was a technical consultant  
21 to the Governor.

22 JUDGE COTTER: He is deleted; Mr. Hubbard  
23 is deleted.

24 Lewis Shollenberger, is there any reason  
25 for him being on the list?

1 MR. CHANDLER: He is Regional Counsel for  
2 the NRC. We simply ask as a courtesy, but if the Board  
3 prefers not to--

4 JUDGE COTTER: I don't see any need --if  
5 he is not going to be directly involved, to burden every-  
6 body in sending copies to him. If the staff would like  
7 to, certainly they can feel free.

8 Delete Mr. Shollenberger.

9 And Janice Kerr?

10 MS. CULVER: No.

11 JUDGE COTTER: Delete Ms. Kerr.

12 MR. NORTON: I am sorry. Janice Kerr,  
13 he has to be on it. She is PUC.

14 MR. CHANDLER: Why? She is not a party.  
15 They have shown no interest in this proceeding.

16 MS. CULVER: Who is she?

17 MR. NORTON: She is a counsel for the Public  
18 Utilities Commission.

19 JUDGE COTTER: I don't think that is the  
20 burden of the parties here.

21 MR. NORTON: Fine. I oppose it.

22 JUDGE COTTER: You are on the record, Mr.  
23 Norton.

24 Michael Strumwasser?

25 MR. CHANDLER: He was a special counsel

1 for the Attorney General for the special licensing pro-  
2 ceeding. He is not in this proceeding.

3 JUDGE COTTER: Delete Strumwasser, Durbin  
4 and Kaufman.

5 How about Lee Gustafson? Is there any  
6 reason for the parties to serve him?

7 MR. NORTON: Yes; Mr. Gustafson, we have  
8 a Washington office and he is in the Washington office.  
9 And for some strange reason, many times the pleadings  
10 get to him, and they don't get to us. And that is why  
11 we have gone to using him in Washington. He particularly  
12 helps with the staff's and board's filing, because it  
13 gets there in one day. Sometimes your mail take a week  
14 to get out here.

15 MS. CULVER: Does that mean we have to  
16 serve you in Phoenix, PG and E in San Francisco and PG  
17 and E in Washington?

18 MR. NORTON: That is the way it has been  
19 for a long time. It wasn't his name, it was that office.  
20 He is there, and we would like it to be sent to him in  
21 that office. Before, it was just that office.

22 MR. CHANDLER: If that is the case, it  
23 is the same as Mr. Shollenberger.

24 JUDGE COTTER: Well, frankly, it seems  
25 to me that the question is whether it is a convenience

1 of the parties, and a benefit to serve him. I think  
2 Mr. Norton is saying that it is. If is isn't, I have  
3 no feeling one way or the other. My inclination is to  
4 keep the list to a minimum.

5 MR. NORTON: It is simply a question of  
6 timing.

7 JUDGE COTTER: This we can vote on Mrs.  
8 Silver.

9 MS. SILVER: In the spirit of cooperation,  
10 then, we will leave Mr. Gustafson is.

11 JUDGE COTTER: We will leave him in. It  
12 may be a benefit to this proceeding.

13 MR. NORTON: Your Honor, we have the same  
14 problem with the next one, which is Mr. Crane -- who  
15 is seated to my left. That is the mailing address, but,  
16 again, when it comes to overnight delivery -- if the  
17 parties want to do that -- it does not work at a post  
18 office box. So let me give you a delivery address, which  
19 is different, as was mine: 77 Beale, 31st Floor, San  
20 Francisco, Zip Code 94106.

21 JUDGE COTTER: Mr. Eissler, I take it,  
22 is no longer involved?

23 MR. NORTON: Correct.

24 JUDGE COTTER: Mr. Eisler is deleted.

25 Docketing and Service Section stays in.  
I am wondering whether we can do something about also

1 sending-- No; I guess we need for the docket file, so  
2 we will have to leave it.

3 The Licensing Board Panel has a separate  
4 service.

5 MR. CHANDLER: In any event, the staff  
6 is obligated to serve those next several ones.

7 JUDGE COTTER: I might comment that I guess  
8 we have to leave in both the Licensing Board Panel and  
9 the Appeal Board Panel, with the file copies, for now.  
10 But there is some effort afoot to combine the docketing  
11 operation, and we may be able to cut that back.

12 MR. CHANDLER: I am not sure the other  
13 parties, Mr. Chairman, serve certified copies to the  
14 Appeal Panel. I think that is just a number that the  
15 staff uses.

16

17 MR. NORTON: We never have; we have always  
18 served them with one, unless it is a matter pertaining to  
19 something before them.

20 JUDGE COTTER: Let us delete the one for  
21 the official service, the five from the official service  
22 list.

23 MR. NORTON: The remaining names on that  
24 page can be deleted.

25 JUDGE COTTER: We will delete Daniel Nix,

1 John Marrs, and Harry Willis. This is an additional  
2 expense for all parties.

3 MS. SILVER: We have to realize that this  
4 community has a limited access to media, and to these  
5 proceedings--

6 JUDGE COTTER: Can't you furnish these  
7 to the newspapers?

8 MS. SILVER: At an added expense to us,  
9 of course. But, I mean--

10 JUDGE COTTER: That is preciesly the point.  
11 It is an added expense to everyone.

12 MS. CULVER: What about Mr. Blankenburg  
13 at the top of the page; did he go out?

14 JUDGE COTTER: Yes.

15 MR. NORTON: He, perhaps, went because  
16 he was not here to defend himself. we have no objection  
17 to either or both newspapers being on the list.

18 JUDGE COTTER: Let me put it to you this  
19 way: I have no objection to the parties sending anything  
20 that they want that the mails will accept to each of  
21 the newspapers. But I do not see it as a requirement  
22 of this proceeding. And, what I am concerned about,  
23 here, with this service list, is: the parties to this  
24 proceeding are all fully served with all documents.  
25 So, it you want to voluntarily do that, that is fine,

1 as far as I am concerned. But they do not need to be  
2 a part, in my judgment, should not be a part of the of-  
3 ficial service list.

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1 JUDGE COTTER: We will go off the record  
2 for a minute.

3 (Discussion off the record.)

4 JUDGE COTTER: On the record.

5 Off the record, we had a discussion with  
6 the representative from the San Luis Obispo County Tele-  
7 gram-Tribune, who would like to continue to receive fil-  
8 ings for all of the parties. The Tribune has filed a  
9 request to the NRC Region V. It has been suggested that  
10 Region V might not have control over that, because it  
11 is a matter of Commission policy; and, that that request  
12 should be directed to the Secretary of the Commission  
13 in Washington.

14 So, the ultimate conclusion is that, as  
15 a matter of current rules, it would not be appropriate  
16 for us to include newspapers on the official service  
17 list. We would be happy to encourage all parties to  
18 send copies of all of their documents to the press, if  
19 they wish; and, that, otherwise, the matter of getting  
20 on the official service list, or somehow getting service  
21 of documents from the Secretary of the Commission, will  
22 be resolved between the paper and the Commission.

23 That leaves us with Mr. Nix, John Marrs,  
24 Harry M. Willis, J. D. Shiffer all deleted from the of-  
25 ficial service list.

1                   Page 3 of the official service list is  
2 Doctor Richard Ferguson and Laurie Mc Dermott; and, of  
3 course, they should remain on the list.

4                   Is there anyone else who should be on the  
5 list who is not?

6                   MR. NORTON: Yes. Let me ask a couple  
7 of questions about two that we talked about.

8                   In terms of delivery of the document to  
9 Dr. Ferguson, I have, I guess, I believe that Federal  
10 Express might have a problem with this address? Is that  
11 a problem?

12                   DR. FERGUSON: Beats me; it never hap-  
13 pened. That is sort of an official post office address.  
14 UPS it there.

15                   MR. NORTON: Fine.

16                   MS. CULVER: We would have a request, Mr.  
17 Chairman.

18                   Obviously, this has been our service list,  
19 so the NRC staff does not appear. For documents served  
20 by the other parties, they should be directed to the  
21 attention of Mr. Mc Gurren. That can be done as a single  
22 filing at the Office of the Executive Legal Director,  
23 U. S. Nuclear Regulatory Commission, Washington, D. C.  
24 20055, and the Zip Code is critical.

25                   If a document is to be delivered by express

1 mail, or other over night services, the street address  
2 is required instead of simply Washington, D. C. And  
3 that street address is 7735 Old Georgetown Road, Bethesda,  
4 Maryland 20814.

5 If it regular mail, please use the ab-  
6 breviated form, just U. S. Nuclear Regulatory Commission,  
7 Washington, D. C. 20055. It saves two to three days.  
8 And it helps if you put a mail stop of MNBD 9604.

9 MS. MC DERMOTT: On which address; give  
10 it to me again, please?

11 MS. CULVER: MNBB 9604. That is the Mary-  
12 land National Bank Building, Room 9604.

13 JUDGE COTTER: Off the record.

14 (Discussion off the record.)

15 JUDGE COTTER: On the record.

16 MR. NORTON: The decision that you asked  
17 us to give the citation of to Ms. Mc Dermott is ALAB-  
18 763, dated March 20, 1984, found at 19 NRC 571.

19 And the expiratin dates of the licenses  
20 are April 23, 2008 for Unit 1; and december 9, 2010  
21 for Unit 2.

22 JUDGE COTTER: Thank you.

23 The only other matter I had to take up  
24 at this point was on the assumption that -- I don't know  
25 how to get into the careful wording of this business

1 -- on the assumption that the contention, or contentions  
2 are admitted to the proceeding. I would like to get  
3 some feel for how discovery, and on what schedule that  
4 might be completed.

5 Have you all thought that far?

6 Let me start with Ms. Silver.

7 MR. MC GURREN: Your Honor, it might be  
8 affected by 2.109 on the hybrid proceeding, which states,  
9 that within ten days after an order granting our request  
10 for a hearing, or petition to leave for intervene, any  
11 party may invoke the hybrid hearing procedures. And  
12 I think that those procedures are specific as to -- or  
13 at least a suggested -- discovery period.

14 JUDGE COTTER: I am sorry. They say --  
15 what?

16 MR. MC GURREN: They suggest a discovery  
17 period and, off the top of my head, I think it is 90  
18 days. but I am not sure of that. In other words, what  
19 I am saying--

20 JUDGE COTTER: That is an option.

21 MR. MC GURREN: That is still an option  
22 that might come up. One of the parties, any one of the  
23 parties might request the hybrid proceedings.

24 JUDGE COTTER: Then maybe the discussion  
25 of the discovery scheduling may be premature.

1 MR. NORTON: I am not sure that we can't  
2 perhaps agree at least to some tentative time frames  
3 at this time. I am not sure that we could not all agree  
4 to have the 90-day discover period; and, then, it would  
5 not matter whether you were in the hybrid proceeding  
6 or in the regular proceeding, if you had a 90-day dis-  
7 covery period after your order, or from some 90 days  
8 after July 1; or, 90 days, whatever the date.

9 MS. MC DERMOTT: Your Honor, I have been  
10 involved with discovery with the utility in another for-  
11 mat. And that took well over six months -- I believe  
12 it was nine months -- to get any relief. And I wonder  
13 what procedures are available to us to make sure that  
14 we get expedited responses to the discovery?

15 JUDGE COTTER: There are rules governing  
16 discovery in Part 2.

17 MR. NORTON: The proceedings she talks  
18 about unfortunately has no rules. It is the strangest  
19 proceeding, in that regard, I have ever been involved  
20 in. There are no rules.

21 JUDGE COTTER: I might announce my own  
22 preference. I am not necessarily speaking for my col-  
23 leagues. I am not sure about their views.

24 But I think contention discovery is a com-  
25 plete and total waste of time. And I think it should

1 be conducted voluntarily; it should be conducted reason-  
2 ably as to all parties; and, that it should be conducted  
3 with a minimum of resistance to furnishing information.  
4 That is assuming that all three of those are met.

5 It seem to me that, in general, in litiga-  
6 tion, too much time is wasted quibbling over the aspects  
7 of discovery either because the demand is too large or  
8 too vague, or because somebody does not want to give some-  
9 thing up that they know eventually they are going to  
10 have to give up anyway.

11 So, I would hope that we will run into a  
12 minimum of that in this proceeding.

13 MR. NORTON: Your Honor, I don't disagree  
14 with what you say at all. However, I would out that,  
15 with parties without legal representation, discovery  
16 may be a little difficult because of the difficulty of  
17 framng proper interrogatories, proper request for pro-  
18 duction, et cetera. It put sus in a rather awkward spot  
19 because we do have an "advantage" in the sense of knowing  
20 how to do that.

21 JUDGE COTTER: One device that I found  
22 useful in the past is simply ordering the parties to  
23 meet and setting a time and a place. And the whole con-  
24 cept being that, to the extent formal discovery can be  
25 avoided, the whole process can be expedited and become

1 a good deal less burdensome on both sides, both who are  
2 asking for information and those who are furnishing it.

3 MR. MC GURREN: Would a meeting such as  
4 that, did you say that it would be transcribed?

5 JUDGE COTTER: No; it would be off the  
6 record; it would be among the parties; and we would not  
7 be present unless we were asked to be. And, if we were  
8 asked to be, it would be only with the limited purpose  
9 of resolving some problems that might arise that the  
10 parties decided that they could not resolve themselves,  
11 or to assist in that. We did that in the River Bend  
12 Case, which involved the need for getting legislation  
13 out of the Louisiana, and the parties conducted all of  
14 those meetings themselves and seemed to work it out pretty  
15 well. And there was no need for the Board to become  
16 involved. And, obviously, my preference would be that  
17 the Board not be involved; that the parties simply sit  
18 down with each other and decide what information they  
19 need, and have a fair exchange.

20 MS. CULVER: We, in the staff, have done  
21 this before in this proceeding, and the applicant as  
22 well; and has had some success. For the staff, I think  
23 we would certainly be willing to try that again.

24 MR. NORTON: We have a problem with furnishing  
25 the kind of information, for example, that you asked

1 for on your first contention. That is routine and easily  
2 done. We do get a little bit of -- Part of the prob-  
3 lems we have that this Board ought to be made aware of  
4 is: We are opposing two of the parties, here, who are  
5 opposing parties in another, at least one other, related  
6 matter: the rate case. And that presents--

7 JUDGE COTTER: That may create special  
8 problems, and it might be useful for us to assist you.  
9 But you would have to decide that when you got to it.

10 MR. NORTON: It is a unique situation.

11 MS. CULVER: I would-- We are talking  
12 about a time frame that I think Mr. Norton suggested,  
13 90 days. We don't have a problem with 90 days.

14 I would ask that the Board would consider,  
15 if it were to include such a provision in its order,  
16 if it would make clear whether that 90 days is 90 days  
17 for initiation of any discovery requests, or 90 days for  
18 completion of discovery. And, if the latter, obviously,  
19 to insist that parties file within the time frames so  
20 that we can give an adequate response.

21 JUDGE COTTER: Let me try this one on you:  
22 Suppose the order set a date certain for the parties  
23 to sit down together to discuss discovery; and, then,  
24 later, made a joint report to the Board of what, in their  
25 best estimate, what would be required and when it would

1 be completed.

2 MS. SILVER: Will discovery begin after  
3 the SER is files?

4 JUDGE COTTER: No; it would begin after  
5 the decision is issued on these contentions.

6 MS. SILVER: Presumably, since we would  
7 have a couple of weeks, and you mentioned initially that  
8 the decision was going to be within 30 days, so hope-  
9 fully--

10 JUDGE COTTER: Probably at the outer end  
11 of that, Mrs. Silver.

12 MS. CULVER: The staff would have the report  
13 in before the 30 days; is that it?

14 JUDGE COTTER: I would say that that was  
15 a possibillity that was announced.

16 MS. MC DERMOTT: If I may ask what the  
17 normal discovery time frame is in these sorts of pro-  
18 ceedings? Is 90 days an abbreviated discovery?

19 JUDGE COTTER: It varies, depending on  
20 how issues there are in the case, and the nature of the  
21 issues and the nature of the information that is needed  
22 to address the issues. No real rule of thumb.

23 MR. NORTON: The design verification pro-  
24 gram, which was far, far more complex a proceeding than  
25 this, in terms of issues, experts, parties, and so on,

1 my recollection is that that was around a three or four  
2 month period discovery, total -- 90 days being, of course,  
3 three months.

4 JUDGE COTTER: You are talking about the  
5 proceeding before the Appeals Board?

6 MR. NORTON: Yes. So that is not--

7 MS. SILVER: Those were with legal counsel,  
8 though.

9 MS. SILVER: Yes; which much more elongated,  
10 frankly.

11 MS. SILVER: I don't know if that remark  
12 was in order.

13 JUDGE COTTER: That was complimentary.

14 DR. FERGUSON: Your Honor, there is an  
15 additional problem, however; in that, the applicant points  
16 out that they are going to want to pull fuel out of the  
17 reactor within that 90-day period. I don't know, or  
18 if you have enough flexibility with or not? If this  
19 proceeding drags on, then, the possibility of injunc-  
20 tions, or what not, would that end that issue, off the  
21 cuff?

22 MS. CULVER: That is what I would also  
23 like to know. What bearing does this proceeding have  
24 now on PG and E's plan to go ahead? That is, will you  
25 allow them to go forward, then we have hearing?

1 MR. MC GURREN: Your Honor, this is pre-  
2 cisely the matter that we noted in one of our, in a couple  
3 of our responses to contentions. That is: the significant  
4 hazards consideration, and whether the staff determines  
5 that it has significant considerations, does not really  
6 relate to this proceeding whatsoever. And that is what  
7 determines whethre the applicant can go ahead with its  
8 amendments proposal.

9 JUDGE COTTER: The issue has been raised,  
10 Mrs. Silver; and we will have to deal with it in writing  
11 our decision. But my impression, without having looked  
12 at it, is: Mr. Mc Gurren's statement is correct. Es-  
13 sentially, the significant hazards consideration is a  
14 guideline that is to be used by the staff in making a  
15 determination as to whether to authorize the licensee  
16 to go ahead and peform the word, or beginto perform it,  
17 that is being applied for in the license amendment.

18 MS. CULVER: So what is the time table,  
19 again, on the staff's determination?

20 MR. MC GURREN: The staff addresses that  
21 in its safety evaluation, which--

22 MS. CULVER: So we don't know.

23 MS. SILVER: May I ask, then, the procedure  
24 of appealing a decision, since it is the staff and the  
25 not the Board that would make a decision, how would one

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appeal a decision that was made by the staff?

JUDGE COTTER: Mr. Mc Gurren?

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1 MR. CHANDLER: Your Honore, I think it  
2 would the Court of Appeals.

3 JUDGE COTTER: No; I think, I think you may  
4 at least be able to go the Commision, for openers; but  
5 mayber a 2.206, even before that.

6 MR. CHANDLER: I am not sure about a 2.206.

7 MR. NORTON: Your Honor, the staff, are  
8 you asking the staff on how to appeal one of their deter-  
9 minations?

10 JUDGE COTTER: I am sure not doing that  
11 Mr. Norton.

12 MR. CHANDLER: YOU asked for the staff's  
13 advice and you get what you pay for; just remember that.

14 MR. NORTON: They are asking in the sense  
15 of how to appeal? And obviously there is an adversary  
16 relationship, if you are appealing their determination.

17 MS. SILVER: Mr. Norton, you may want  
18 to appeal their decision.

19 MR. NORTON: In which case, I would not  
20 ask their advice as to how to do it.

21 MS. SILVER: I am not asking their advice.  
22 I am just asking a rule -- is there a rule that states  
23 what you are supposed to do on appeal.

24 MR. NORTON: That is giving advice.

25 JUDGE COTTER: That is the problem.

1 MS. SILVER: Well, you see, the other prob-  
2 lem is: the NRC is commissioned to protect the health  
3 and safety of the people. We are the people! Now, either  
4 he tells us, or you tell us. What are the procedures?  
5 How do we do that.

6 MS. CULVER: This should not be secret,  
7 Your Honor.

8 MS. SILVER: We are asking for a direct ans-  
9 wer, Your Honor.

10 JUDGE COTTER: We are not commissioned  
11 by this body particularly to give legal advice. We are  
12 specifically forbidden from doing that.

13 The rules and regulations are in the public  
14 domain. And you may not find the answer satisfactory,  
15 but it is your responsibility and obligation to dig them  
16 up. It is not secretive.

17 MS. MC DERMOTT: Well, I will ask you about  
18 the ex parte communication, what constitutes an ex parte  
19 contact?

20 JUDGE COTTER: Certainly you can on that,  
21 because that relates to how you relate to this Board.

22 An "ex parte contact," is a contact by  
23 -- as it relates to the Board -- by one of the parties  
24 without the knowledge or presence of the other parties  
25 on a matter of substance. That is one of the issues

1 in the case. It is not an ex parte contact for one of  
2 the parties to, say, call up the Board member and ask  
3 them for procedural advice, methodology and where we  
4 are, or what the Board might be contemplating as far  
5 as when its decision would issue. That sort of thing.

6 MS. MC DERMOTT: So, then, I can also ask  
7 my other question, which is: the way I read this, is  
8 that the order shall be served on all parties to the  
9 proceeding; and objections to the order that you will  
10 be giving would be filed a party within five days after  
11 service.

12 There we have a difficulty, because, very  
13 often, our mail has not come from you within seven days,  
14 even.

15 JUDGE COTTER: Service means receipt by  
16 you, I believe.

17 MS. MC DERMOTT: Not by the docket service?

18 MR. NORTON: No; it means the date of the  
19 postmark.

20 MS. CULVER: But time is provided in the  
21 Commission's regulations for service. If it is served  
22 by regular mail, in addition to the time provided, an  
23 additional five days, if served by regular mail; and  
24 two day if served by express mail or other expedited  
25 delivery.

1 MS. MC DERMOTT: Thank you.

2 MS. CULVER: That is not advice; it is  
3 just a recitation of what is in the regulation.

4 JUDGE COTTER: I still have lying on the  
5 table a question of the reaction to the possibility that  
6 of the Board directing parties to meet within a time  
7 certain, and report jointly on the discovery program.

8 MS. CULVER: This is during discover?

9 JUDGE COTTER: This would be at the outset.

10 MS. SILVER: And I assume it would be in  
11 San Luir Obispo?

12 JUDGE COTTER: Yes, probably.

13 MR. NORTON: Your Honor, I would rather  
14 see what teh contentions are, and so, you know. Without  
15 having a feel for that at all, we are going to -- in  
16 fact, we have already arranged to meet Doctor Ferguson,  
17 to meet with some of technical people to give him the  
18 information he needs. We have already set that in mo-  
19 tion. I think Dr. Ferguson and Dr. Lew met during this  
20 noon hour to set that in motion.

21 But before committing to having a meeting  
22 among all of us to discuss discovery, I would rather  
23 see what teh contentions were. It may be much more or-  
24 derly, simply, than them just giving us some interroga-  
25 tories and let us answer depending on the contention.

1 JUDGE COTTER: I will go along with, Mr.  
2 Norton, because of the unknowns at this point.

3 I, again, was interested in planting a  
4 seed. I hope that you would be very constructive in  
5 your initial contacts with each other. And I might com-  
6 ment--

7 Off the record.

8 (Discussion off the record.)

9 JUDGE COTTER: On-the record. .

10 Is there anything else that we need to  
11 discuss at this point?

12 (No response.)

13 JUDGE COTTER: Then, the hearing is closed  
14 and I think you all for your contributions and par-  
15 ticipation.

16 (Whereupon, at 4:50 p.m., the hearing in  
17 the above-entitled matter was closed.)

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before Nuclear Regulatory Commission,

in the matter of:

Pacific Gas and Electric

Diablo Canyon Nuclear Power Plant, Unit 1 and 2

Docket Number: 50-275-OLA et al

Date: 13 May 1986

Place: San Luis Obispo, California

were held as therein appears, and that this is the original transcript thereof for the files of Commission.

JAMES W. HIGGINS  
Official Reporter

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