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Subject: [External_Sender] Limited Appearance Statement
Date: Tuesday, July 07, 2015 11:09:30 PM
Attachments: [Gilinsky LA Statement.pdf](#)

Paul Ryerson, Chairman

Judges Gary Arnold and Nicholls Trikouros,

Atomic Safety and Licensing Board

Dear Board Chair Ryerson and Judges Arnold and Trikouros,

I am a former NRC Commissioner. I am submitting to you the attached document, which I would ask you to accept as a limited appearance statement in the proceeding regarding Friends of the Earth's petition for a license amendment hearing on recent Diablo Canyon seismic issues.

Sincerely,

Victor Gilinsky

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

In the Matter of)	Docket Nos. 50-275, 50-323
)	
PACIFIC GAS & ELECTRIC COMPANY)	
)	
(Diablo Canyon Power Plant, Units 1 and 2))	July 7, 2015

LIMITED APPEARANCE STATEMENT OF DR. VICTOR GILINSKY

VICTOR GILINSKY LIMITED APPEARANCE STATEMENT

I am Victor Gilinsky. I reside at 369 Sumac Lane in Santa Monica, California. I was a member of the Commission from 1975 to 1984, a period during which it considered the adequacy of Diablo Canyon's seismic design for plant operations. I would ask the Board to permit me to present a brief written statement in accordance with the Commission's rules regarding limited appearances by a person who is not a party. I am not affiliated with any party in the case before the Board or with any other organization with an interest in the case.

I offer this statement because the early history of how the NRC dealt with Diablo Canyon's seismic safety issues helps to understand current issues. The Commission outlined some of this background in its Memorandum and Order (CLI-15-14), but there is much more that is relevant, going back before Diablo Canyon's licensing.

To start with, the agency incorporated a very weak standard in Unit 1's 1968 construction permit. This was in keeping with priorities of the time: the Atomic Energy Commission was more interested in encouraging nuclear power plants everywhere in the country, including along the earthquake prone California coast, than in the complexities of seismic safety. In fact, the AEC commissioners did all they could to restrain their regulatory staff, which quickly got the idea. I served on the AEC Regulatory Staff from 1971 to 1973 and can attest to that.

Also relevant to Diablo Canyon's lax initial seismic standards is that—as was true of all early plants—the plant's construction permits were granted not under Atomic Energy Act's Section 103, covering power reactors, but under Section 104, covering Research and Development. The latter states: "In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations as will permit the Commission to fulfill its obligations under this Act." There is no such instruction for minimum regulation in Section 103.

But allowing such a lax standard led to more trouble later on. Toward the end of construction the US Geological Survey judged the Hosgri fault—previously identified in 1971—to be capable of generating ground motions greater than those for which Diablo Canyon was designed. That forced postponement of operations for a decade while the plant was modified and reanalyzed. A good part of the time was lost because of the need to redo seismic modifications that the Company had initially done incorrectly.

To avoid abandoning a nearly constructed plant, the NRC Staff permitted an approach to seismic reanalysis and redesign that was significantly less conservative than it would have been for a new plant. The NRC allowed Pacific Gas & Electric to take every advantage of safety margins in the pre-Hosgri design. For example, in analyzing plant structures the NRC allowed a larger damping value than it had previously, which reduced the effect of ground

vibrations. At the same time, the agency allowed credit for the actual, “as-built,” strengths of structural materials, rather than for minimum strengths—the conservative approach—so that larger vibrations became tolerable.

However, using up plant seismic safety margins plus making plant modifications still did not suffice to meet the Hosgri standard. At this point, to find the plant capable of withstanding a Hosgri fault earthquake, the NRC Staff simply lowered the standard: It accepted a reduction of about 20 percent in the estimated ground vibrations at the plant. It did so based on not much more than a hand-waving argument offered by its seismic consultant about what he called the “tau-effect.”

Such a tau-effect reduction had never previously been given credence in a nuclear seismic analysis, nor to my knowledge has it been used since. Nevertheless, the Licensing Board hearing the case—to which then-California Governor Jerry Brown was a party in opposition—went along with it on the basis of the Staff’s endorsement of its consultant’s testimony. The Appeal Board later did, as well, although it could not provide a quantitative explanation. So far as I could tell, no one could.

The commissioners couldn’t decide whether to accept review. They requested a report from the Commission’s then-Office of Policy Evaluation and received a critical 89-page technical analysis. Two commissioners argued for a review of the

Appeal Board decision, including myself.¹ Normally the Commission had 30 days to decide. It gave itself thirteen extensions over a period of nine months before it finally, in March 1982, let the Appeal Board decision stand, thus allowing the plant to operate. It was the weakest possible endorsement. My view is, of course, that of a commissioner in the minority on the issue who failed to persuade the commission to look into the validity of the plant's seismic analysis. But the facts of the case are undeniable, including that without acceptance of the substantial "tau" reductions in ground motions, Diablo Canyon would not have qualified for an operating license.

After the more recent discovery of the Shoreline and other faults, the Company and the NRC Staff have tried, using new analytical techniques, to demonstrate that these do not challenge the Diablo Canyon seismic designs, or as the Commission's Memorandum and Order put it, that they are "a lesser included case under the Hosgri evaluation." Whether PG&E's and the Staff's underlying calculations in dealing with Shoreline and other faults are valid remains to be determined. In my view, the safety issue is weighty enough, and made more so by the plant's history, to require a license amendment hearing.

Equally significant is the shadow that hangs over the previously approved but dubious calculations supporting the adequacy of protection against earthquakes on the Hosgri fault. The NRC may regard the 1982 approval of the Hosgri

¹ Opinion of Commissioners Gilinsky and Bradford on Commission Review of ALAB-644 (Diablo Canyon Seismic Proceeding), March 1982. Attached.

modifications as a settled matter, legally speaking. But it is definitely not a settled safety matter, and that should be the uppermost consideration.

The problematic early history of Diablo Canyon seismic issues and the continued emergence of new issues argue strongly for a thorough and credible reassessment of the plant's seismic safety. The Commission owes the public that. It can only happen in an adjudicatory license amendment hearing before an independent Board. I say this not because the NRC Staff lacks competence, but because it is in the nature of bureaucracy to defend past positions. The Staff has been at this for so long, it is not realistic to look to it to provide dispassionate advice. Its perspective and testimony are valuable, as are those of the plant's owners, Pacific Gas & Electric, but their testimony should have to withstand cross-examination by experts outside the NRC. If their seismic safety case is as sound as they believe it to be, they will prevail. Exaggerated concerns over "regulatory uncertainty" have to take a backseat to assurance of the public health and safety.

**THE GILINSKY/BRADFORD
DISSENTING OPINION ON
NRC'S FAILURE TO REVIEW
THE APPEAL BOARD'S
APPROVAL OF DIABLO
CANYON'S SEISMIC DESIGN**

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Peter A. Bradford
John F. Ahearne
Thomas M. Roberts

In the Matter of)
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PACIFIC GAS & ELECTRIC COMPANY)
)
)

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

Docket Nos. 50-275 OL
50-323 OL

OPINION OF COMMISSIONERS GILINSKY AND BRADFORD ON COMMISSION
REVIEW OF ALAB-644 (DIABLO CANYON SEISMIC PROCEEDING)

The Commission has had in hand since June 16, 1981, the Appeal Board's decision approving the seismic design of the Diablo Canyon nuclear power plant. The Board's decision deals with the most important issue in this Operating License proceeding in view of the discovery of a nearby earthquake fault after plant construction was well underway, and the subsequent need to redo the seismic design.

Normally, the Commission allows itself 30 days to decide whether to review an Appeal Board decision. If the Commission does not act in that time the decision is not taken up for review. In this case, the General Counsel provided the Commission with a twenty-two page memorandum on the legal merits of the Board's

decision and, at the Commission's request, the Office of Policy Evaluation, after a six-week study involving four consultants,¹ produced an 89-page analysis of the technical aspects of the decision. After receiving these memoranda, the Commission found itself unable to decide whether to take review. Altogether over a period of nine months, the Commission extended the time for deciding whether to take review thirteen times. This week the last extension was allowed to lapse.

The issues in the Appeal Board decision need to be distinguished from those of the ongoing reverification of the Diablo Canyon seismic design which has received so much attention recently. The Appeal Board decision deals with whether the bases of the seismic design, as formulated by the applicant and approved by the NRC staff and Licensing Board, are adequate. The reverification program assumes the correctness of those bases and looks into whether they were properly applied in the detailed design of the plant structures and equipment.

The Appeal Board decision deals with the fundamental "response spectrum" at the site--in effect, the frequency and maximum amplitude of the various oscillations of structures attached to the plant's foundation. These maximum oscillations are calculated on the basis of the agreed-upon maximum earthquake, and all safety-related structures and equipment must be designed to withstand them. The Appeal Board deals, in particular, with the adequacy of the new seismic design standard chosen after the

discovery of the nearby Hosgri fault, which had not been taken into account in the original design of the plant. The case presents a number of novel problems, particularly as the assumed earthquake location is very near the plant, and the choices inescapably involve a good deal of judgment.

The difficulty the Commission found itself in, as the nine months of indecision betrays, is that the Appeal Board's decision is not a satisfactory one. On some points it can probably be rescued by different reasoning, though even that would not eliminate the need for review because of the decision's precedential significance. On at least one point, however, the use of the so-called "tau effect" to permit a substantial across-the-board relaxation of the seismic standard applied to the plant, the Board's reasoning is utterly inadequate and is very likely wrong.

Without Commission review, not only will questions remain about the correctness of the Diablo Canyon seismic design, but the Board's decision will stand as an unfortunate precedent which will undermine application of the Commission's regulations on seismic design.

Procedural Background

The NRC issued the Construction Permits for Diablo Canyon Units 1 and 2 in 1968 and 1970, respectively. These permits were issued on the assumption that the plants could be expected to face, at most, a 6.75 magnitude earthquake at a distance of about 20

miles. In 1971, Hoskins and Griffiths published a paper which established the existence of a fault approximately 3 miles off-shore of the Diablo Canyon site. The existence of the fault--called the Hosgri fault--was confirmed in a 1974 study. As the plant was largely constructed, this forced a reevaluation of the seismic design at an awkward time.

After reanalysis, the applicant, the NRC staff and the ACRS concluded that, with certain specified modifications, the plants could withstand the more severe earth movements which must be assumed as a result of the Hosgri fault discovery. This followed a determination by the U.S. Geological Survey that the maximum Hosgri fault earthquake against which the plant had to be designed was one of magnitude 7.5. The applicant and NRC staff did not believe this was the right choice, but apparently convenience dictated its acceptance for the purposes of the proceeding. Much of the difficulty in this case stems, in our view, from the formal acceptance of this standard, but the less-than-wholehearted application of it.²

In the course of the Diablo Canyon Operating License proceeding, the Licensing Board conducted evidentiary hearings on the seismic issues between December 1978 and February 1979. At the close of this part of the proceeding, the parties stipulated, and the Board agreed, that it would be conservative, in view of the existence of the Hosgri fault, to attribute a magnitude of 7.5 to the Safe Shutdown Earthquake ("SSE")³. The Licensing Board

also fixed the maximum vibratory ground motion that an SSE might induce at the plant site and concluded that the seismic reanalysis and redesign were adequate to withstand this SSE.⁴

The Joint Intervenor's appealed several aspects of this decision to the Atomic Safety and Licensing Appeal Board, and were joined in their appeal by Governor Brown, participating as an amicus curiae. On June 16, 1981, the Appeal Board issued its decision affirming the Licensing Board's finding that the Diablo Canyon plants were adequately designed to withstand a 7.5 magnitude earthquake on the Hosgri fault. Since that date, the case has been before the Commission awaiting its decision on whether or not to take review.

Technical Background

As stated above, after the discovery of the Hosgri fault and the subsequent analysis by the U.S. Geological Survey, the parties to the Diablo Canyon proceeding agreed to an earthquake of magnitude 7.5 on a nearby portion of the fault as the fundamental seismic event against which the plant would be designed. Since the plant was in large part already constructed at this point, the reanalysis and redesign understandably did not proceed as they would have in a plant yet to be built. Every advantage was taken of slack in safety margins left in the pre-Hosgri analysis, both in developing the response spectrum and in its application. To cite a couple of examples: a larger damping value was used in analyzing structures (7 percent instead of the earlier 5

percent), which reduced the effect of ground vibrations on the structures. At the same time, credit was taken for the actual -- "as-built" -- strengths of materials (rather than for the minimum required strengths, as is the usual practice) so that larger vibrations became tolerable. These choices were not improper, but they do add significance to further substantial relaxations in the seismic standards for the plant on the basis of the "tau effect". The point is that these further relaxations come on top of a redesign that has already shaved safety margins to the extent permitted in the regulations.

Probably most important along these lines was the choice of the earthquake record used in developing the response spectrum, and the manner in which that record was used. Because no record was available from a station close to a 7.5 earthquake, the applicant used the seismic record, known as the Pacoima Dam record, from a recording station near the center of a 6.5 earthquake (the 1971 San Fernando Valley earthquake). This record could plausibly be taken to represent a larger magnitude earthquake, in particular because it included the largest horizontal acceleration recorded up to that time, about 1.2 g. Nevertheless, the Board's handling of this issue is unsatisfactory. As the Commission's Office of Policy Evaluation put it:

"It is not clear, however, from the Boards' records if the Pacoima Dam record in the frequency range of interest (1-10 Hz) represents a deviation from that expected for a 6.5 M

earthquake. Most of the testimony on Pacoima Dam centered on a frequency range of little practical interest (i.e., near 33 Hz) regarding excitation of structures important to safety. We found no supporting statement on the record which indicated that the Pacoima Dam record substantially exceeded that expected for a 6.5 M earthquake in the frequency range of 1-10 Hz. USGS Circular 672 (p.7) indicated that in the frequency range of 1-10 Hz, the Pacoima Dam record closely resembled what one would expect for a 6.5 M earthquake."⁵

Which brings us to the final point, that on top of all this trimming, the Board permitted a further substantial reduction, more-or-less across the board, in the response spectrum.

"Tau Effect"

The "tau effect", defined by Dr. Nathan Newmark, the NRC staff consultant, is used to describe the filtering effect that large rigid foundations have on the motion imparted to the building's structure during an earthquake. Newmark's estimate of the effect was used to justify a reduction in the response spectrum for each of the important structures in the reanalysis of Diablo Canyon. Newmark's analysis for the reactor containment reduced the acceleration response spectrum by about 20 percent over the frequencies of interest.⁶

A reading of both the Appeal and Licensing Boards' decisions shows an almost total reliance on the opinions of Newmark to justify the tau effect. Newmark in turn apparently relied heavily on the work of Yamahara. Yamahara's work dealt largely with an odd-shaped building quite unlike any of the structures at the Diablo Canyon plant and with earthquakes well below the magnitudes considered at the Diablo Canyon site. Neither of these discrepancies are explained in either Board decision. The Licensing Board's justification sounds almost mystical: "There is ample evidence of the excellent performance of large building foundations in earthquakes. Tau is a manifestation of this."⁷ The Appeal Board responded to criticism of Dr. Newmark by stating: "Simply in light of his repeated references to Dr. Yamahara's work, only a very crabbed reading of Dr. Newmark's testimony could assume that he did not appreciate tau in all its ramifications."⁸ What seems less clear is whether either Board had any idea what it was talking about.

That there is some effect of this kind is plausible, even likely; that the effect is as large as claimed by the applicant and staff is merely conjecture. Here is the way the Commission's Office of Policy Evaluation describes the situation:

"Based on the record, it appears that a phenomenon exists which at times limits the damage to structures in the near field during an earthquake. However, we have not been able to find an empirical or analytical approach which provides

justification as to why the tau effect should be calculated in one specific manner over another. Analyzed or existing data are so sparse that the actual reason for the observed effect may still not have been recognized within the engineering community. Except for the judgment of Drs. Blume and Newmark, there is no evidence to demonstrate an ability to predict tau effects over a range of earthquake magnitudes, structural configurations, and site conditions."⁹

The fact is that the tau effect has not been used in any other nuclear plant analysis. To our knowledge, it has not been used in the design of any other large building.

Comparison of Response Spectra

With the changes and adjustments permitted by the Board it turns out that the post-Hosgri seismic response spectrum does not in all respects represent a more severe seismic standard than the one used before the discovery of the Hosgri fault. As the accompanying diagram illustrates, in the frequency range between 5 and 10 hertz (cycles per second), a range of particular interest in the analysis of the containment building surrounding the reactor, the two response spectra are quite close.¹⁰ For part of this range, in fact, the old spectrum shows a higher response. In other words, for that part of the range the original design conditions were more demanding than the new ones imposed after the discovery of the Hosgri fault. This new

spectrum is the basis of the engineering reanalysis and ultimately determined the extent to which the containment was to be modified. Not surprisingly, in view of the above, only minor changes were required in this area.

Precedential Significance

The Commission decision not to take review, in effect, places the Commission's stamp of approval on the Appeal Board's decision. The Board's reasoning on the "tau effect", for example, may be cited in future cases when an applicant or licensee would otherwise have difficulty in complying with our regulations. Or the tau effect could be used to compensate for deficiencies discovered in the design of completed plants. This would be a significant weakening of past agency practice.

{ Altogether, we cannot escape the impression that the Commission is declining review not because the opinion is essentially sound, but because it is unsound and the prospect of reviewing it is so unsettling.

NOTES

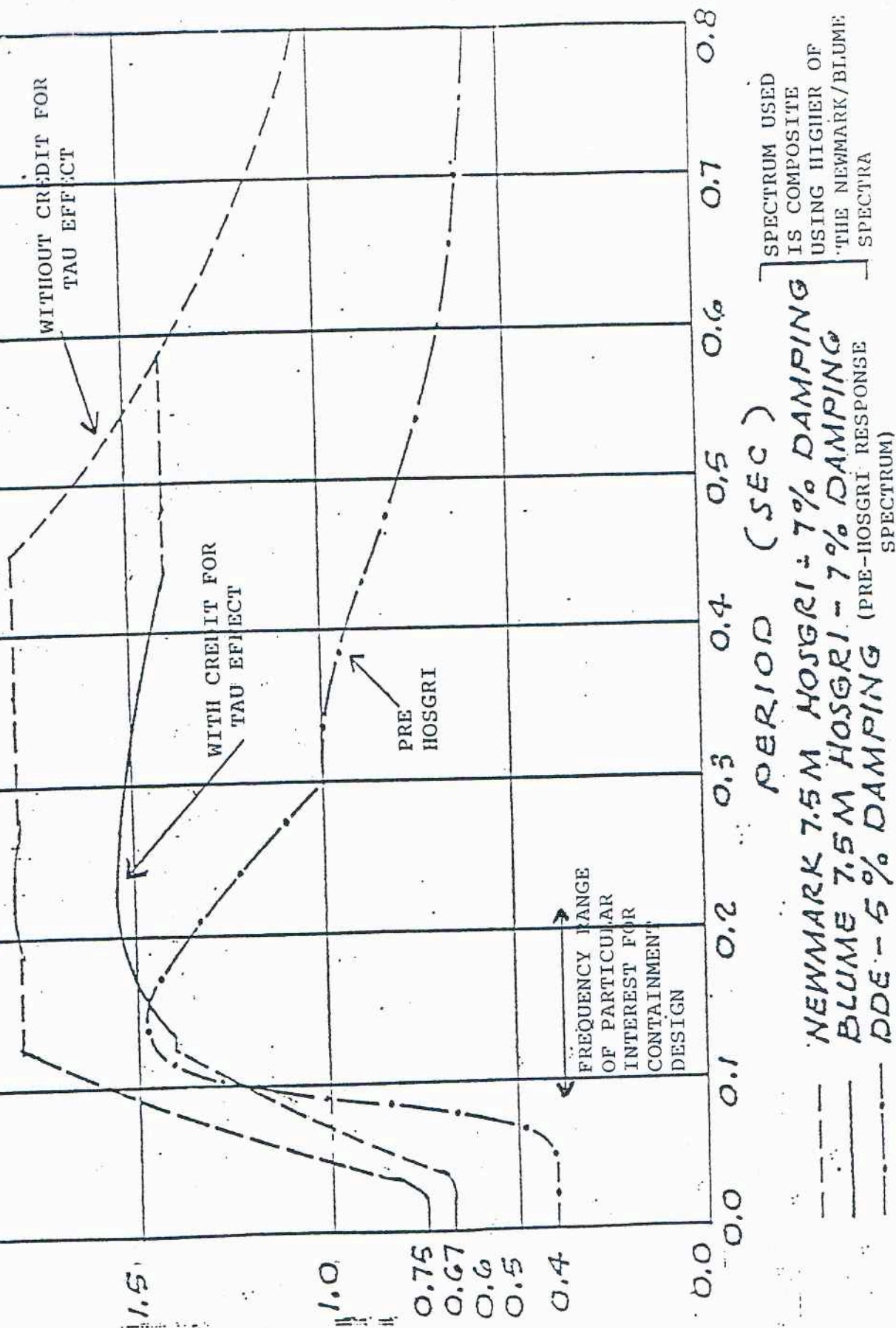
1. We would note that one of the outside consultants retained by the Commission was also acting as a consultant on seismic issues to the applicant in the Summer case. We would have preferred to disqualify this expert in order to avoid any actual or apparent conflict of interest.
2. No hearings were held when the Hosgri fault was discovered. The persistence of litigation over these issues to this day suggests that it would have been wise policy, as well as good law, to reopen the construction permit hearing at that time.
3. The Commission's regulations, 10 CFR Part 100, Appendix A, define the "Safe Shutdown Earthquake" as being "that earthquake which is based upon an evaluation of the maximum earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material. It is that earthquake which produces the maximum vibratory ground motion for which certain structures, systems, and components are designed to remain functional."

The specific structures, systems, and components which must remain functional are those which are necessary to assure:
"(1) The integrity of the reactor coolant pressure boundary.
(2) The capability to shut down the reactor and maintain it in a safe shutdown condition, or (3) The capability to prevent or mitigate the consequences of accidents which could result in potential off-site exposures comparable to the guideline exposures" of Part 100.

4. In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant (Units 1 and 2)), 10 NRC 453 (1979).
5. Memorandum to the Commissioners from Forrest Remick, Subject: Diablo Canyon Design, dated November 12, 1981 with enclosure.
6. ALAB-644, p. 114, footnote 266.
7. In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant (Units 1 and 2)), 10 NRC 453, 495 (1979).
8. ALAB-644, page 124.
9. Memorandum to the Commissioners from Forrest Remick, Subject: Diablo Canyon Design, dated November 12, 1981 with enclosure.

10. Seismic Evaluation for Postulated 7.5 M Hosgri Earthquake, Units 1 and 2 Diablo Canyon Site, figure 4-23.

SPECTRAL ACCELERATION (g)



DIABLO CANYON CONTAINMENT STRUCTURE

COMPARISON OF VARIOUS ELASTIC RESPONSE SPECTRA

Taken From:

"Seismic Evaluation for postulated 7.5 M Hosgri Earthquake, Units 1 & 2, Diablo Canyon Site"

FIGURE NO. 4-23