

7/30/81



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-275 O.L.
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-323 O.L.
(Diablo Canyon Nuclear Power)	
Plant, Unit Nos. 1 and 2)	(Low-Power Proceeding)
_____)	

RESPONSE TO MOTION OF GOVERNOR BROWN
TO REOPEN RECORD TO CORRECT STAFF MISSTATEMENTS

On July 15, 1981, almost two months after hearings were completed on Pacific Gas and Electric Company's ("PGandE") request for low-power operating authority, Governor Brown filed a motion to reopen the low-power proceeding for the purpose of correcting a purported material misstatement made during the Staff's testimony. In that motion, the Governor asserted that Staff testimony elicited on cross-examination concerning the existence of a helicopter notification capability for Montana de Oro State Park was erroneous and that the Staff's proposed finding on this point should be ignored by the Board or alternatively the record reopened to permit testimony limited to the matter.^{1/}

This motion is much ado about nothing and represents the Governor's continued myopic interpretation of the evidence presented in these proceedings. It represents another attempt to backdoor the evidentiary process and further delay the proceeding. The Governor is not only mistaken in his assertions, but

^{1/} Subsequent to the filing of the Motion, the Board issued (July 17, 1981) its Partial Initial Decision authorizing issuance of a low-power license for Diablo Canyon.

DS03
50/1

additionally the proffer of evidence is legally insufficient to warrant a reopening.

The record reflects and the Governor acknowledges that there is a MAST helicopter available for emergency operations. However, contrary to the Governor's assertion, the record shows that the Sheriff has a bullhorn which could be used in emergency operations (Board Exhibit 5, p. 6). So much for the alleged factual misstatements.

The Governor then asserts that even if the helicopter/bullhorn capability existed, it would not provide sufficient warning capability due to alleged excessive noise. However, the affiant (Mr. Felty) who purports to present this information not only relies on hearsay information but more importantly lacks any qualifications to testify on these matters.

The Governor also states that helicopter notification was the only method suggested to notify these people. This is simply untrue. This Board found and the record reflects that the San Luis Obispo County Nuclear Power Plant Emergency Evacuation Plan provides for notification by personnel on foot or using horses (Partial Initial Decision, p. 46; San Luis Obispo County Nuclear Power Plant Emergency Evacuation Plan, 1976, p. 35).

Finally, the alleged new evidence, even if true, would not change the result since at low-power, release of radioactive material would not take place for at least 15 hours - a period of time manifestly sufficient to notify persons in remote areas of the park (Partial Initial Decision, p. 37, Sears Testimony, p. 4). This being the case, the standards for reopening a closed

record are not met. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-81-5, 13 NRC ____ (April 1, 1981) Slip opinion at pp. 2-3.

Accordingly, PGandE urges the Board to deny the Motion to Reopen.

Respectfully submitted,

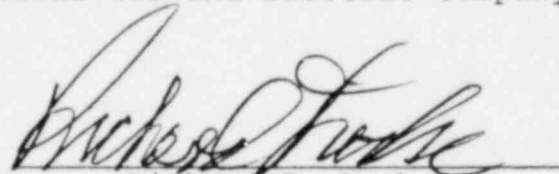
MALCOLM H. FURBUSH
PHILIP A. CRANE, JR.
RICHARD F. LOCKE
Pacific Gas and Electric Company
P. O. Box 7442
San Francisco, California 94106
(415) 781-4211

ARTHUR C. GEHR
Snell & Wilmer
3100 Valley Center
Phoenix, Arizona 85073
(602) 257-7288

BRUCE NORTON
3216 N. Third Street
Suite 300
Phoenix, Arizona 85012
(602) 264-0033

Attorneys for
Pacific Gas and Electric Company

By


Richard F. Locke

DATED: July 30, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-275
)	Docket No. 50-323
Units 1 and 2)	
)	(Low Power Test Proceeding)
Diablo Canyon Power Plant)	

CERTIFICATE OF SERVICE

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

*Judge John F. Wolf
Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mrs. Sandra A. Silver
1760 Alisal Street
San Luis Obispo, California 93401

Mr. Gordon Silver
1760 Alisal Street
San Luis Obispo, California 93401

John Phillips, Esq.
Joel Reynolds, Esq.
Center for Law in the Public Interest
10203 Santa Monica Drive
Los Angeles, California 90067

David F. Fleischaker, Esq.
1735 Eye Street, N.W.
Suite 709
Washington, D. C. 20006

Arthur C. Gehr, Esq.
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

Bruce Norton, Esq.
Norton, Burke, Berry & Junck
3216 North Third Street
Suite 300
Phoenix, Arizona 85012

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

Mrs. Elizabeth Apfelberg
C/o Nancy Culver
192 Luneta Drive
San Luis Obispo, California 93401

Janice E. Kerr, Esq.
Public Utilities Commission
of the State of California
5246 State Building
350 McAllister Street
San Francisco, California 94102

Mrs. Raye Fleming
1920 Mattie Road
Shell Beach, California 93449

Mr. Frederick Eissler
Scenic Shoreline Preservation
Conference, Inc.
4623 More Mesa Drive
Santa Barbara, California 93105

*Deposited in Federal Express mail

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

Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn.: Docketing and Service Section

William J. Olmstead, Esq.
Charles Barth, Esq.
Edward G. Ketchen, Esq.
Lucinda Low Swartz, Esq.
Office of Executive Legal Director
BETH 042
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Richard B. Hubbard
MHB Technical Associates
1723 Hamilton Avenue, Suite K
San Jose, California 95125

Mr. Carl Neiberger
Telegram Tribune
P. O. Box 112
San Luis Obispo, California 93402

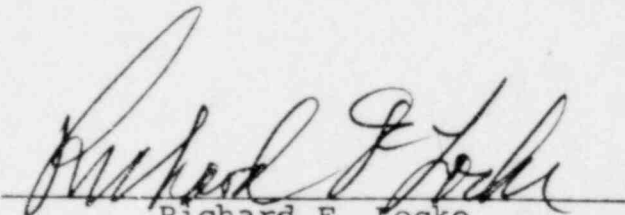
Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Christopher B. Hanback, Esq.
Hill, Christopher & Phillips
1900 M Street, N.W.
Washington, D. C. 20036

Byron S. Georgiou, Esq.
Deputy Legal Affairs Secretary
Governor's Office
State Capitol
Sacramento, California 95814

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

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

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


Richard F. Locke
Attorney
Pacific Gas and Electric Company

Date: July 30, 1981