

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

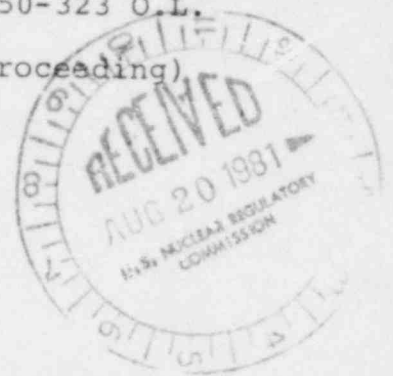
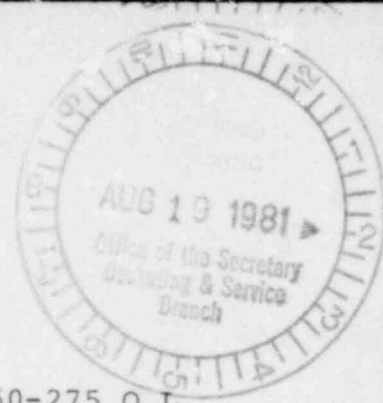
PACIFIC GAS AND ELECTRIC COMPANY)
(Diablo Canyon Nuclear Power)
Plant, Unit Nos. 1 and 2))

Docket Nos. 50-275 O.L.
50-323 O.L.
(Low-Power Proceeding)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY
RE COMMISSION BRIEFING ON UNCONTESTED ISSUES
OF DIABLO CANYON LOW-POWER OPERATING
LICENSE APPLICATION

On August 10, 1981 the Commission held an open meeting for the purpose of a Staff briefing on uncontested issues with respect to Pacific Gas and Electric Company's ("PGandE") application for a low power operating license. At that meeting the Commission's General Counsel, Mr. Leonard Bickwit, identified contested issues which would not be discussed. Additionally, Mr. Bickwit announced the receipt of letters from Messrs. Brown and Fleishaker, attorneys for Governor Brown and Joint Intervenors, protesting Commission discussion at the meeting of any contention which had been rejected by the Atomic Safety and Licensing Board.

On August 12, 1981 the Commission issued an invitation to the parties to comment, if they wished, upon "...any discussion [at the August 10, 1981 meeting] which touched upon issues relevant to contentions of Joint Intervenors or subjects of Governor Erown which were rejected as matters in controversy by the Licensing Board and remain subject to



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1 appeal." (Emphasis supplied). As we read the request for comments it is directed solely to rejected contentions insofar as they were raised and discussed at the meeting.

We have received the transcript of the meeting and determined that the Staff presentation essentially discussed matters contained in the Safety Evaluation Report, Supplements 10 and 12. Moreover, there were only a few instances where the Staff presentation or questions from the Commission arguably touched upon matters pertaining to rejected contentions of the Joint Intervenors or subjects of the Governor.

Our review disclosed that we have no significant comments to make at this time in response to discussions had on these particular matters.

However, there is another matter which arose during the meeting which has caused a great deal of concern to PGandE and that relates to the advice given Commission Bradford in response to his inquiry whether ex parte communications could be had with any of the parties on rejected contentions.

Mr. Bickwit opined that such ex parte contacts re rejected contentions would be appropriate. We disagree.

We believe there is a meaningful distinction between the Commission conducting an open meeting with the Staff, which is transcribed by a reporter, and attended by the public and

the parties and an ex parte unannounced, private meeting of Commissioners with only one of the parties. Such a meeting involving "substantive" as opposed to "procedural" issues would contravene the intent and spirit of the ex parte communication provisions of 10 C.F.R. 2.780.

We urge that this matter be resolved expeditiously to avoid any misunderstanding among the parties regarding application of the ex parte rule in this proceeding.

Respectfully submitted,

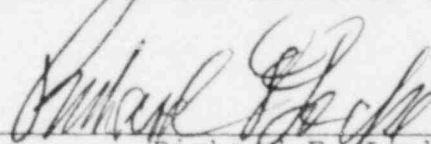
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By



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DATED: August 17, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

Units 1 and 2)

Diablo Canyon Power Plant)

Docket No. 50-275

Docket No. 50-323

(Low Power Test Proceeding)

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:

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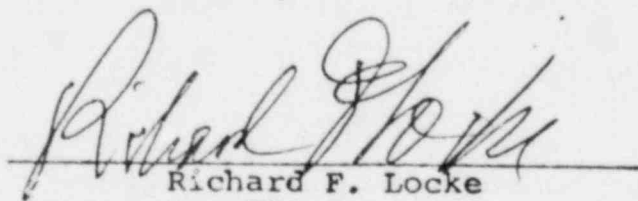
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Date: August 17, 1981