

# PACIFIC GAS AND ELECTRIC COMPANY

PG&E

77 BEALE STREET, SAN FRANCISCO, CALIFORNIA 94106  
P.O. BOX 7442, SAN FRANCISCO, CALIFORNIA 94120

TELEPHONE (415) 781-4211  
TELECOPIER (415) 543-7813

ROBERT OHLBACH  
VICE PRESIDENT AND GENERAL ATTORNEY

CHARLES T. VAN DEUSEN  
PHILIP A. CRANE, JR.  
HENRY J. LAPLANTE  
JOHN B. GIBSON  
ARTHUR L. MILLMAN, JR.  
CHARLES W. THISELL  
DANIEL E. GIBSON  
JACK F. FALLIN, JR.  
JOSEPH I. KELLY  
ASSISTANT GENERAL COUNSEL

GILBERT L. HARRICK  
GLENN WEST, JR.  
HOWARD V. DOLLE  
JAMES C. LOSBROOK  
ROBERT L. BORDON  
PETER W. HANSEN  
RICHARD L. LOCKE  
DAVID L. LUDWIGSON  
WILLIAM M. EDWARDS  
F. RONALD LAUFENBERGER  
ROBERT R. SACKETT  
DAVID H. WILLIAMS  
BRUCE W. WORTHINGTON

SENIOR COUNSEL

EDWARD J. MCGANNEY  
DAN BRAYSON LUBBOCK  
BERNARD J. DELLABANTA  
JOSHUA BARLEY  
JOSEPH S. ENDLERT, JR.  
ROBERT L. HARRIS  
DOUGLAS A. DOLESER  
J. PETER BAUMGARTNER  
JOHN A. FRYE  
J. MICHAEL REIDENBACH  
VICKI E. SAMSON  
SHIRLEY A. WOOD

DAVID W. ANDERSON  
CHAS. BERGHAUSEN  
LEON E. CARRISBY  
ALFRED DANES  
DONALD D. BRADSHAW  
PATRICK D. GOLDIN  
PAUL V. HAYNES  
RICHARD C. JONES  
MURRAY W. LINDSAY  
JOHN R. LOP  
ROBERT E. MCGINNAN  
RICHARD H. MOORE  
SHIRLEY A. SANDERSON  
JACK V. SHUCK  
KENNETH VAND

JATHAN T. ANNAN  
STEVEN P. BURKE  
PAMELA CHARRELLE  
DARYL P. ENCHAS  
DAVID C. GILBERT  
STEVEN F. GREENWALD  
JUAN M. JAYE  
MIRIAM E. LIPSON  
JUDITH A. LORING  
A. KIM MCKENZIE  
RICHARD L. MEISS  
ROBERT J. PETERS  
JILL A. SHAPIRO  
LEON E. VINCENT

ATTORNEYS

September 18, 1981

Thomas S. Moore, Esq.  
Chairman  
Atomic Safety and Licensing Appeal Board  
U. S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

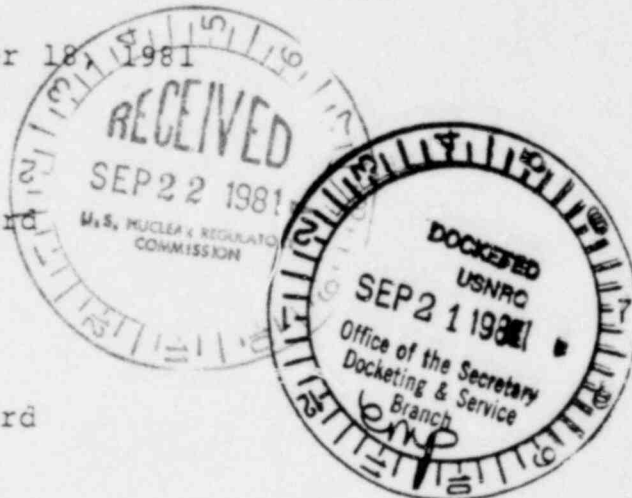
Dr. John H. Buck  
Atomic Safety and Licensing Appeal Board  
U. S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Dr. W. Reed Johnson  
Atomic Safety and Licensing Appeal Board  
U. S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Re: In the Matter of Pacific Gas and  
Electric Company (Diablo Canyon  
Nuclear Power Plant, Units 1 and 2)  
Docket Nos. 50-275 O.L. and 50-323 O.L.  
(Low Power Proceeding)

Gentlemen:

Pacific Gas and Electric Company ("PGandE") filed various papers today opposing the stay applications of the Joint Intervenor and Governor Brown. We have discovered two pages that have typographical errors that we feel should be corrected, one on page 3 of PGandE's opposition to Joint Intervenor's stay motion and one on page 6 of G. A. Maneatis' affidavit. Enclosed find corrected copies of these pages. I would appreciate it if you would substitute the corrected pages in the appropriate places. (I have enclosed two copies of the corrected page for Mr. Maneatis'



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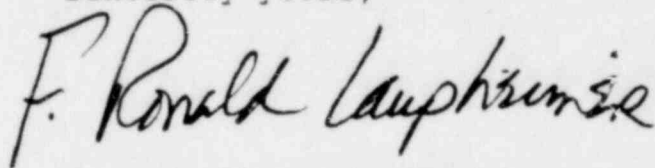
Thomas S. Moore Esq.  
Dr. John H. Buck  
Dr. W. Reed Johnson

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September 18, 1981

affidavit since his affidavit was filed in support of  
PGandE's opposition papers to both the Joint Intervenors'  
and Governor Brown's stay motions.)

Sincerely yours,

A handwritten signature in cursive script that reads "F. Ronald Laupheimer". The signature is written in dark ink and is positioned above the printed name.

F. RONALD LAUPHEIMER

FRL:et

cc: Diablo Canyon Service List

Moreover, the Revised Policy Statement has not denied to Joint Intervenors any rights under either the Administrative Procedure Act or the Atomic Energy Act. NUREG-0737 imposed new and additional safety requirements with which operating license applicants are required to comply in order to receive a license. Joint Intervenors, in effect, argue that the Commission, by imposing this substantial additional public protection, somehow opened the door for them to litigate anything else they could think of by merely asserting that there is some unspecified relation to TMI. This is nonsensical. Joint Intervenors have long had an avenue open to them to seek additional safety measures, i.e., petitions for rulemaking. Indeed, the Commission several months ago commenced rulemaking regarding NUREG-0737. 9/ Moreover, there is no question that the Commission may consolidate into a single administrative proceeding - rulemaking - challenges to the sufficiency of additional licensing requirements imposed on license applicants rather than have them litigated in individual licensing proceedings. 10/

The rejection of Joint Intervenors' TMI-related contentions was proper.

B. The ASLB Was Correct In Ruling That The Emergency Preparedness For Low Power Testing Is Adequate.

Joint Intervenors complain that the ASLB improperly failed to require compliance with 10 C.F.R. § 50.47 and appendix E, the Commission's new emergency planning

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9/ "Licensing Requirements for Pending Operating License Applications," 46 Fed. Reg. 26491 (May 13, 1981). For this reason, the cases cited by Joint Intervenors at page 5, note 10 of their stay motion are inapplicable. Those cases raised the completely separate issue of whether a binding requirement may be issued without notice and comment.

10/ Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1081-85 (D.C. Cir. 1974). See also Nader v. Ray, 363 F.Supp. 946, 949, 955 (D.D.C. 1973). Joint Intervenors' argument that they are being deprived of their right to a hearing under section 189(a) of the Atomic Energy Act is specious. If, as here, the Commission can properly preclude litigation of certain issues in a licensing proceeding, it is illogical to claim that Joint Intervenors are being improperly denied a hearing to that extent. Siegel v. AEC, 400 F.2d 778, 784-85 (D.C. Cir. 1968).

8. The electricity which would be generated by Diablo Canyon is needed in the PGandE system now. While Diablo Canyon cannot be operated until the licensing and testing described above is completed, it is nonetheless true that delays now will correspondingly delay commercial operation, and not to operate this facility at the earliest opportunity will increase the cost to consumers because of increased capital and replacement power costs. It is estimated that the delay of the operation of the Diablo Canyon units will cost our customers approximately \$1,000,000 per day based on the differential cost of fuels burned and the carrying cost of the plant investment.

9. PGandE's system reliability will be seriously impaired by a failure to bring Diablo Canyon into commercial operation at the earliest possible time. The Federal Energy Regulatory Commission ("FERC") has concluded that between a 15 and 20 percent reserve margin of generating capacity is a reasonable margin to assure adequate and reliable electric service. The California State Energy Resources Conservation and Development Commission ("CEC"), in its 1981 Biennial Report to the Governor of California and the State Legislature, has identified inadequate reserve margins as one of two "Particular Vulnerabilities" of PGandE:\*/

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\*/ The second is the further erosion of PGandE's financial condition if Diablo Canyon does not achieve commercial operation in 1981.

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