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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 O.L.
	)	50-323 O.L.
(Diablo Canyon Nuclear Power Plant,	)	
Unit Nos. 1 and 2)	)	Full Power Proceeding

PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE  
TO GOVERNOR BROWN'S AND JOINT INTERVENORS' BRIEFS  
REGARDING CONTENTIONS FOR FULL POWER HEARINGS

Pursuant to this Board's Order of October 24, 1981, Joint Intervenors and Governor Brown filed Briefs in support of admitting contentions heretofore rejected by the Licensing Board by Order of August 4, 1981. The briefs were filed on November 6 and 9, 1981, respectively. Neither of the briefs contained any legal argument that has not been set forth in prior filings. Governor Brown's brief however went beyond this Board's order and included a lengthy affidavit as to why one contention should be admitted. It is respectfully submitted that the affidavit of Gregory C. Minor should be summarily discarded as both untimely and improperly filed. What is before this Board, in both essence and fact, is an appeal of the Licensing Board's Order of August 4, 1981, not as Governor Brown would have it, yet another opportunity to file affidavits in support of late filed contentions.

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Pacific Gas and Electric Company agrees with Joint Intervenors that the question pending before this Board has been briefed to the point that further briefing would simply be redundant. It should be noted that the admissibility of these same contentions has been litigated not only in the full power proceeding but in the low power license proceeding as well. The Applicant would, however, request that the Appeal Board review the following briefs prior to oral argument:

<u>Date of Brief</u>	<u>Title of Brief</u>
12/18/80	PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO JOINT INTERVENORS' REQUEST FOR DIRECTED CERTIFICATION
12/12/80	NRC STAFF'S RESPONSE TO STATEMENT OF SUBJECTS ON WHICH GOVERNOR EDMOND G. BROWN, JR. INTENDS TO PARTICIPATE
12/23/80	NRC STAFF'S RESPONSE TO INTERVENORS' STATEMENT OF CONTENTIONS RELATIVE TO FUEL LOADING AND LOW POWER TESTING
1/23/81	RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO JOINT INTERVENORS' REPLY TO RESPONSES OF PACIFIC GAS AND ELECTRIC COMPANY AND NRC STAFF TO JOINT INTERVENORS' STATEMENT OF CONTENTIONS
2/26/81	APPLICANT REQUEST FOR DIRECTED CERTIFICATION
4/8/81	MOTION OF PACIFIC GAS AND ELECTRIC COMPANY TO RECONSIDER ASLB ORDER DATED FEBRUARY 13, 1981 AND OPPOSITION TO JOINT INTERVENORS' MOTION TO REOPEN FULL POWER RECORD

<u>Date of Brief</u>	<u>Title of Brief</u>
4/13/81	NRC STAFF'S RESPONSE TO MOTION TO REOPEN
10/1/81	APPLICANT PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR RECONSIDERATION OF THE COMMISSION'S SEPTEMBER 21, 1981 ORDER AS IT DIRECTS INCLUSION OF CONTENTIONS 10 AND 12 IN THE FULL POWER PROCEEDING
10/19/81	NRC STAFF RESPONSE TO (1) APPLICANT'S MOTION FOR RECONSIDERATION AND (2) GOVERNOR BROWN'S MOTION FOR DISMISSAL OF APPLICANT'S MOTION
10/19/81	NRC STAFF'S RESPONSE TO JOINT INTERVENORS' BRIEF IN SUPPORT OF EXCEPTIONS
10/19/81	NRC STAFF'S RESPONSE TO BRIEF OF GOVERNOR EDMUND G. BROWN, JR. ON APPEAL OF THE LICENSING BOARD'S PARTIAL INITIAL DECISION OF JULY 17, 1981
10/20/81	APPLICANT PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO JOINT INTERVENORS' REQUEST FOR DIRECTED CERTIFICATION
10/23/81	NRC STAFF RESPONSE TO JOINT INTERVENORS' REQUEST FOR DIRECTED CERTIFICATION

As a result of the TMI accident, the Commission issued a series of pronouncements regarding licensing, hearings, contentions, etc. NUREG-0694 and NUREG-0737 set forth in specific detail the timed items which the Commission believed should be complied with by applicants and licensees. Initially the Commission issued a "Statement of Policy for further Commission Guidance for Power Reactor Operating Licenses," 45 Fed. Reg. 41738 (June 20, 1980). Subsequently, the Commission issued two further clarifications:

Statement of Policy: Further Commission  
Guidance for Power Operating Licenses,  
45 Fed. Reg. 85235 (Dec. 24, 1980); and

Pacific Gas and Electric Company (Diablo  
Canyon Nuclear Power Plant, Units 1 and 2),  
CLI-81-5, 13 NRC 361 (1981) ("April 1,  
1981 Order").

It is respectfully submitted that a fair reading of the  
Commission's policy statements and the pleadings on file in this  
matter can only lead to one correct conclusion. The Joint  
Intervenors have not met the requirements for late filed  
contentions and reopening a closed hearing record as they must do  
in order to have their proposed contentions admitted. To admit  
those contentions at this late date would create an unprecedented  
injustice to the Applicant in these proceedings and would render  
meaningless the very regulations this Board is required to uphold.

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DATED: November 16, 1981.

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NUCLEAR REGULATORY COMMISSION

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(Diablo Canyon Nuclear Power	)	Full Power Proceeding
Plant, Unit Nos. 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO GOVERNOR BROWN'S AND JOINT INTERVENORS' BRIEFS REGARDING CONTENTIONS FOR FULL POWER HEARINGS", dated November 16, 1981, have been served on the following by deposit in the United States mail, postage prepaid, or by delivery to Federal Express\* for delivery on November 17, 1981, this 16th day of November, 1981:

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