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March 30, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'93 MAR 31 P4:12

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Pacific Gas and Electric Company

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

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Docket Nos. 50-275-OLA - 2

50-323-OLA

(Construction Period  
Recovery)

PACIFIC GAS & ELECTRIC COMPANY'S  
RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE  
MOTION TO COMPEL RE: CONTENTION V

I. INTRODUCTION

On March 22, 1993, the San Luis Obispo Mothers for Peace ("MFP") filed a Motion to Compel responses to interrogatories and requests for production of documents purportedly related to Contention V (Thermo-Lag) in this proceeding.<sup>1/</sup> Pacific Gas and Electric Company ("PG&E") herein responds. As discussed in PG&E's objections to the discovery requests at issue,<sup>2/</sup> the requested discovery goes far beyond the narrow contention at issue in this proceeding and could not reasonably lead to relevant or admissible

<sup>1/</sup> "Intervenor San Luis Obispo Mothers for Peace Motion to Compel Pacific Gas and Electric Company to Respond to the First Set of Interrogatories and Requests for Production of Documents Filed by San Luis Obispo Mothers for Peace (Re: Contention V)," dated March 22, 1993 ("Motion to Compel").

<sup>2/</sup> See generally "Pacific Gas & Electric Company's Response to First Set of Interrogatories and Request for Production of Documents Filed by San Luis Obispo Mothers for Peace (Re: Contention V)," dated March 10, 1993 ("PG&E's Objections").

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evidence. On at least three previous occasions the Licensing Board has made clear that the scope of Contention V is narrow and does not encompass the issues on which MFP's discovery request is based. Further frivolous filings by MFP based on this faulty premise should be strongly discouraged.

## II. DISCUSSION

The Licensing Board has already stated, very clearly and on several occasions, that the scope of Contention V is very narrow. The contention as admitted is a challenge only to the adequacy of PG&E's implementation of previously approved interim compensatory measures in fire areas where there are Thermo-Lag installations.<sup>3/</sup> The contention does not address the adequacy of PG&E's fire protection program generally, the generic or Diablo Canyon specific long-term resolution of the Thermo-Lag issue, or the adequacy (in an absolute sense) of the previously approved interim compensatory measures at Diablo Canyon. See PG&E's Objections at 2-4. In fact, MFP has tacitly acknowledged the narrow scope of the current Contention V in filing its second late-filed contention in this proceeding, which attempts to expand upon that scope.<sup>4/</sup> Obviously

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<sup>3/</sup> See Prehearing Conference Order (Ruling Upon Intervention Petition and Authorizing Hearing), LBP-93-1, January 21, 1993, at 37-38, Memorandum and Order (Discovery and Hearing Schedules), February 9, 1993, at 2; Memorandum and Order (Discovery Motions), March 11, 1993, at 3-4.

<sup>4/</sup> See "San Luis Obispo Mothers for Peace Second Late-Filed Contention," dated March 16, 1993.

discovery should not be permitted now on untimely issues not yet (and perhaps never) admitted in this proceeding.

MFP also badly misconstrues the Commission's standard for the scope of permissible discovery in its proceedings. Discovery is permitted beyond the scope of admissible evidence; however, discovery still must be germane to the admitted contentions. Section 2.740(b)(1) states (emphasis added) that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . . ." Moreover, the same regulation goes on to provide that inadmissible information is only discoverable if it "appears reasonably calculated to lead to the discovery of admissible evidence." The problem with MFP's objectionable discovery requests is that those requests seek information that is not in the least relevant to the narrow Contention V in this proceeding. Nor has MFP in its Motion to Compel shown in any way how its patently irrelevant requests are reasonably calculated to lead to admissible evidence.

The Licensing Board, in its March 11, 1993, Memorandum and Order (Discovery Motions), certainly did not mean to imply a discovery standard broader than that permitted by Section 2.740(b). While the Licensing Board recognized (as does PG&E) that the rules allow discovery beyond admissible evidence, it is well-settled that discovery requests are ultimately limited by the scope of the admitted issues. Allied General Nuclear Services (Barnwell Fuel

Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977).<sup>5/</sup> Moreover, the Commission has emphasized that the "purpose of discovery is to expedite hearings by the disclosure of information in the possession of the parties which is relevant to the subject matter involved in the proceeding so that issues may be narrowed, stipulated, or eliminated . . . ." Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981). Far ranging discovery that is well beyond the scope of issues to be litigated, and apparently "calculated" only as a search for bases for new late-filed contentions, is not appropriate. PG&E objects to devoting its resources to such an endeavor.

MFP's Motion to Compel also fails to elucidate at all the "general relevance" to the present issue in this proceeding of the discovery it seeks to compel. MFP simply paraphrases and recharacterizes the individual objectionable requests, perhaps hoping that the relevance is clear in the requests themselves. However, for the reasons stated for each in PG&E's Objections, even very loose relevance is not at all apparent. PG&E's individual

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<sup>5/</sup> It should also be recognized that the March 11, 1993, Memorandum and Order was directed toward MFP's requested, but never conducted, site inspection of Thermo-Lag fire areas. The tenor of the Licensing Board's ruling, and the conference call leading to that ruling, was that inspection should be permitted reasonably beyond the fire areas where Thermo-Lag is installed to permit discovery of anything that might be germane to effectiveness of PG&E's fire watches. There was nothing in the Licensing Board's ruling or discussion that would support the notion that open-ended interrogatories and document requests should now be permitted, based for example on the mere fact that both the contention and the discovery involve fire protection.

objections to these requests are incorporated herein by reference. Accordingly, MFP's Motion to Compel fails to meet 10 C.F.R. 2.740(f)(1) in either style or substance. The following specific responses to the Motion to Compel are also provided.

First, MFP states that it needs "a comprehensive description of areas" in which interim compensatory measures are in effect. To the extent MFP has requested this before, PG&E has provided it. PG&E has identified relevant fire areas and provided, as requested, general arrangement drawings for those areas.<sup>6/</sup> Moreover, PG&E has been ready and willing to accommodate MFP's previously-requested site inspection relative to interim compensatory measures. MFP, contrary to all earlier indications, canceled that site visit. This is not a basis to expand prior discovery. (Also, Document Request 18 is not at all what it is now purported by MFP to be. That request, for a civil/structural drawing index, relates to drawings unnecessary to "know if personnel are physically able to perform the hourly fire watches." This question is answered by the previously provided general arrangement drawings, as well as the fire watch logs themselves that show that the watches have indeed been "physically" performed.)

Second, MFP seeks to learn the "implications to fire protection from hazards such as combustibles and seismic events." Nothing could be more plain than the fact that what MFP seeks "to

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<sup>6/</sup> See PG&E's Objections, Answer to Interrogatory 1(a) at 5.

learn" here has nothing to do with PG&E's implementation of interim compensatory fire watches. At its narrowest, this requested discovery relates only to the generic adequacy of compensatory fire watches, a matter not in issue in Contention V. At its most broad, the requested information could relate to aspects of the Diablo Canyon fire protection program completely unrelated to fire watches and Thermo-Lag installations. As discussed above, the mere fact that a discovery request relates to fire protection does not bring that request within the standard of 10 C.F.R. 2.740(b)(1).

Next, MFP "wants to know . . . what safety-related equipment and components may be disabled in the event of a fire." This blatantly overbroad request hardly requires a response. The effectiveness of PG&E's implementation of fire watches in less than one dozen fire areas is not the least dependent on the equipment in those areas. Nor could the requested information reasonably lead to any admissible evidence.

The same holds true for MFP's fourth argument that it "needs to know the expected duration from fire detection to fire suppression to determine the impact on nearby systems and components." Not only does MFP not "need" this information, but such information is not the least "relevant to the subject matter involved in the proceeding." 10 C.F.R. 2.740(b)(1). This discovery request does not address any information that might be relevant to whether PG&E has been able to implement its interim



compensatory fire watches. Rather, the discovery seems directed only at the substance of MFP's recently proffered late Thermo-Lag contention regarding whether those compensatory measures provide adequate assurance of safety pending resolution of the Thermo-Lag issue. (With regard to this issue, note again that PG&E's compensatory fire watches are consistent with the Diablo Canyon Technical Specifications. Moreover, the Commission has generically approved fire watches as compensatory measures with respect to Thermo-Lag specifically.)

Fifth, MFP seeks "to learn of recent experiences at DCNPP involving fire, deficiencies in fire barriers, problems with missed fire watches, etc." PG&E has provided this information to the extent it relates to Thermo-Lag fire areas since the inception of the compensatory measures (i.e., since issuance of Bulletin 92-01, which effectively required implementation of those measures). By definition, information regarding fires, barriers, or missed fire watches cannot be relevant to the issue in this proceeding if the information either a) concerns areas outside those where Thermo-Lag compensatory measures are in effect, b) relates to fire protection measures that pre-date interim compensatory measures, or c) relates to a failure to initiate compensatory fire watches for reasons unrelated to Thermo-Lag barriers (e.g., failure to initiate a compensatory fire watch after identification of an open barrier). The issue in this proceeding concerns actual effectiveness of implementation of a specific set of fire watches. Information

regarding fire protection performance generally would be relevant only to a general challenge to the adequacy of fire watches -- an issue MFP now concedes (in its recent late-filed contention) is not presently admitted.

Sixth, MFP asserts a need to know "how the interim compensatory fire protection measures interact with other fire protection measures." This asserted argument in favor of the discovery falls flat. There is in the argument itself no apparent connection to the efficacy of PG&E' implementation of compensatory measures. PG&E here refers the Licensing Board to its individual objections to the Document Requests now aggregated by MFP.

Exactly the same holds true for MFP's next desire "to know how fire protection has changed/improved as a result of compensation for the faulty fire barrier, Thermo-Lag." Whether or not fire protection has changed, improved, or even been degraded, simply is not here an issue.

Next, MFP "seeks to learn of the advice PG&E has received and if that advice was implemented." PG&E here assumes MFP is referring to "advice" regarding interim compensatory measures. Whether PG&E has received advice or followed advice on compensatory measures is irrelevant to this proceeding. The compensatory measures are what they are; they have been approved by the NRC as



providing reasonable assurance of safety. The only question before us is whether they have been implemented effectively.

Finally, MFP complains about accessibility of certain information that is available in the NRC's Public Document Room ("PDR"). PG&E continues to believe that, to the extent the discovery requested in this category is permissible, PG&E has done all that is required of it by the NRC's rules. See 10 C.F.R. 2.740(b)(1); see also Memorandum and Order (Discovery and Hearing Schedules) at 3. The ease or convenience of accessing data at the local PDR is not a factor to be considered -- especially given that MFP is requesting in Document Request 1 the entire Updated Final Safety Analysis Report ("Updated FSAR") without any attempt to narrow that request to the issues in controversy. Nonetheless, to ease MFP's work at the local PDR, PG&E is providing as an Attachment hereto a list of the dates of each annual update to the FSAR. PG&E also reiterates that the section of the Updated FSAR addressing fire protection is Section 9.5.1, "Fire Protection System" (approximately 14 pages). There are also Appendices regarding fire protection (identified in the Attachment hereto) in a separate volume (approximately 1,000 pages).

III. CONCLUSION

For the reasons stated above and in PG&E's Objections, MFP's Motion to Compel should be denied in all respects.

Respectfully submitted,

  
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Dated in Washington, DC  
this 30th day of March, 1993

Attachment

<u>FSAR Update Revision</u>	<u>Issue Date</u>
0	09/21/84
1	09/20/85
2	09/19/86
3	09/16/87
4	09/22/88
5	09/20/89
6	09/21/90
7	09/20/91
8	09/21/92

Appendices to FSAR Update Section 9.5.1

- A. Fire Hazards Analysis
- B. Regulatory Compliance Summary
- C. Reactor Coolant Pump Oil Collection System and Evaluation
- D. Emergency Lighting Capacity
- E. Alternate and Dedicated Shutdown Capability
- F. Fire Barrier Figures
- G. Equipment Required for Safe Shutdown
- H. Inspection and Testing Requirements and Program Administration

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) Docket Nos. 50-275-OLA  
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) (Construction Period  
) Recapture)  
)  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS & ELECTRIC COMPANY'S RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE MOTION TO COMPEL RE: CONTENTION V" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk (\*), by Federal Express overnight delivery, or as indicated by the (†) symbol, by hand delivery, this 30th day of March, 1993.

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