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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, Units 1 and 2)

)
) Docket Nos. 50-275-OLA
) 50-323-OLA
) (Construction Period
) Recovery)
)
)

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PACIFIC GAS & ELECTRIC COMPANY'S
RESPONSE TO SAN LUIS OBISPO
MOTHERS FOR PEACE SECOND LATE-FILED CONTENTION

I. INTRODUCTION

The San Luis Obispo Mothers For Peace ("MFP") filed a second late-filed contention in this proceeding, dated March 16, 1993, pursuant to 10 C.F.R. § 2.714(a)(1).^{1/} Repeating in essence a contention previously rejected by the Licensing Board in this proceeding, MFP seeks yet again to enlarge the scope of Contention V (Thermo-Lag) to include a challenge to the adequacy (in an absolute sense) of the NRC-mandated interim compensatory measures currently being implemented at the Diablo Canyon Power Plant, Units 1 and 2 ("DCPP").

^{1/} "San Luis Obispo Mothers For Peace Second Late-Filed Contention," March 16, 1993 ("Second Petition").

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Pacific Gas and Electric Company ("PG&E") herein responds to MFP's second late-filed contention. As explained below in Section III, the second untimely contention proffered by Petitioner should not be admitted. The contention fails to satisfy the late-filed contention requirements specified in 10 C.F.R. § 2.714(a)(1)(i)-(v). In light of the fact that the Second Petition is a repackaging of old information, there is certainly no good cause for an untimely contention. The proffered contention also fails to satisfy the legal standards of admissibility codified in § 2.714(b) and (d). The factual basis offered is merely a rehash of generic information regarding the Thermo-Lag issue. There is no basis provided that would justify litigation for DCPD or any plant of the issue of the adequacy of interim measures, an issue that has been resolved generically by the Commission. Finally, the contention is fundamentally defective because it raises matters which PG&E maintains are unrelated to the proposed license amendment at issue in this proceeding. Therefore, for any one of these reasons alone, MFP's Second Petition should be rejected by the Licensing Board.

II. BACKGROUND

Thermo-Lag is a material utilized as a fire barrier at DCPD and a number of other nuclear plants as one element of a carefully engineered, multi-faceted program to protect the plant from the risks of fire. Some licensees have concluded, through testing, that Thermo-Lag does not, in all applications, provide the degree

of fire protection originally expected. See, e.g., Bulletin 92-01, "Failure of Thermo-Lag 330 Fire Barrier System to Maintain Cabling in Wide Cable Trays and Small Conduits Free From Fire Damage" (June 24, 1992), and Supplement 1 (August 28, 1992). In correspondence dated October 27, 1992, the Nuclear Regulatory Commission ("NRC") Staff specifically accepted key elements of PG&E's response to Bulletin 92-01, Supplement 1, for DCP, finding PG&E's "selected method of providing fire protection/prevention without reducing the effectiveness of [its] existing fire protection capabilities to be acceptable."^{2/} In addition, the full Commission as a generic matter directly affirmed for all plants the adequacy of the compensatory measures. In a Staff Requirements Memorandum dated September 21, 1992 (Attachment 1 hereto), the Commission underscored that these measures "should compensate for the fire protection weaknesses found with the Thermo-Lag material" and "assure that an adequate level of fire safety can be maintained."

The NRC Staff also has addressed the adequacy of Thermo-Lag and compensatory measures on a generic basis. In response to a July 21, 1992, petition filed by the Nuclear Information and Resource Service ("NIRS") pursuant to 10 C.F.R. § 2.206, the NRC Staff carefully evaluated issues associated with the use of Thermo-Lag material, including the use of fire watches to compensate for any degradation in the effectiveness of required fire barriers.

^{2/} H. Rood, NRC, to G.M. Rueger, PG&E, dated October 27, 1992.

See NRC Response to § 2.206 Petition (Letter from T. Murley to M. Mariotte), dated August 19, 1992, at 3. In that response, the NRC Staff concluded that, given compensatory fire watches and other existing fire protection measures, Thermo-Lag degradation does not constitute an undue safety risk.

A supplemental petition, dated August 12, 1992, and an appeal dated September 3, 1992, were filed by NIRS in response to the Staff's August 19, 1992, denial of its request for immediate action. In these documents, it was again alleged that Thermo-Lag is an inadequate fire barrier, that compensatory measures do not substitute for regulatory compliance, and that fire watches are inadequate substitutes for fire barriers. Both documents, which were referred by the Commission to the Staff for consideration, were rejected on February 1, 1993. See "Partial Director's Decision Under 10 CFR § 2.206," DD-93-03, February 1, 1993 ("Director's Decision"). The Commission has declined review of the Director's Decision, and that decision is now final agency action. See 10 C.F.R. § 2.206(c)(1).

The NIRS petition, its supplements, and the Director's Decision addressed many of the same technical issues related to Thermo-Lag now offered by MFP as a basis for its late contention. This includes (a) the alleged inadequacy of compensatory fire watches to provide adequate protection itself; (b) Thermo-Lag test failures; (c) ampacity calculations; (d) combustibility; (e) hose

stream test failures; (f) seismic issues; and (g) voids in installed Thermo-Lag applications.^{3/} The arguments raised by NIRS are clearly the model for not only the Second Petition, but MFP's original Contention V in this proceeding.

The proposed contentions (I through XI) originally proffered by MFP were set forth in a Supplemental Petition, dated October 26, 1992.^{4/} Contention V, as originally drafted, alleged that "Thermo-Lag material fails as a fire barrier and, in fact poses a hazard in the event of a fire or an earthquake." Supplemental Petition at 28. For purposes of analysis, the Licensing Board construed Contention V as raising two issues; i.e., "the adequacy of fire protection both on an interim and a permanent basis." Prehearing Conference Order (Ruling Upon Intervention Petition and Authorizing Hearing), LBP-93-1, January 21, 1993 ("Prehearing Conference Order"), at 37. Because there was "an insufficient basis for the claim concerning the generic resolution of the Thermo-Lag issue, as applied at [DCPP]," the Licensing Board rejected the generic

^{3/} The issue of voids was raised by NIRS in a further supplemental petition of December 15, 1992. All of the other issues were raised in the original July 1992 petition, the August 12, 1992, supplement, and the September 3, 1992, appeal.

^{4/} "San Luis Obispo Mothers for Peace Supplement to Petition to Intervene," October 26, 1992 ("Supplemental Petition").

aspects of Petitioner's original contention. Id. at 37 and 38, n.41.^{5/}

Now, MFP has filed its Second Petition on an untimely basis seeking to supplement Contention V with the same generic bases previously rejected by the Commission, the NRC Staff, and the Licensing Board in this case. In particular, MFP alleges that "[a]dditional information reinforces and extends" its original allegation that "Thermo-Lag material is combustible and therefore itself a fire hazard." Second Petition at 1-2. Based on the purported "additional information," MFP further contends that "PG&E's interim measures are not adequate to compensate for this potentially dangerous material [Thermo-Lag]." Id. at 5. The "additional" information relied upon by MFP, which is distinctly not new information, is set forth in the following subsections of the Second Petition: (a) "fire watch"; (b) combustibility; (c) seismic; (d) ampacity derating; (e) voids; (f) hose stream; and (g) investigations. A comparison to the NIRS petition discussed above reveals that these subsections largely mirror the arguments made previously by NIRS. The NIRS petition was also largely copied by MFP in the original proposed Contention V.

^{5/} Earlier attempts to extend the scope of the admitted contention were also rejected in Memorandum and Order (Discovery and Hearing Schedules), February 9, 1993, at 2, and Memorandum and Order (Discovery Motions), March 11, 1993, at 3.

As will be shown in Section III.A below, all of the alleged bases for enlarging the scope of Contention V could have been proffered on a timely basis; in fact, most were. They are simply reiterated and re-phrased in the Second Petition. The "additional information" cited by MFP is not "additional" or "new" at all; it simply does not satisfy the criteria, specified in 10 C.F.R. § 2.714(a)(1), that govern the admission of late-filed contentions. Moreover, as will be discussed in Sections III.B and III.C below, the proffered contention and the purported "additional information" fail to raise an issue litigable in this proceeding. Just as the generic aspect of the original Contention V was rejected for a lack of basis, so too should be the new version of the issue.

III. ARGUMENT

A. PETITIONER'S SECOND LATE-FILED CONTENTION IS
UNTIMELY WITHOUT GOOD CAUSE; IT DOES NOT
SATISFY THE CRITERIA SPECIFIED IN 10 C.F.R.
§ 2.714(a)(1)(i)-(v)

Contentions filed later than 15 days prior to the special or first prehearing conference are treated as late-filed. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364, 1366-67 (1982); 10 C.F.R. § 2.714(b). Late petitioners have a "substantial burden" in justifying their tardiness. Nuclear Fuels Servs., Inc., and New York State Atomic and Space Dev'l Auth. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). Late-filed contentions may be admitted only if they satisfy the legal standards for admissibility (i.e., basis

and specificity) and, as well, upon a favorable balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1):

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Id., citing, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 509 (1982).^{6/}

The five factors of 10 C.F.R. § 2.714(a)(1) are not equally weighted. Good cause (§ 2.714(a)(1)(i)) is accorded more weight than the remaining four factors in the balancing process. E.g., West Valley Reprocessing Plant, CLI-75-4, 1 NRC at 275 ("the burden of [justification] on the basis of the other factors in the rule is considerably greater where the late comer has no good excuse."); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC 1285, 1292 (1984) ("good cause is more heavily weighted."). Thus, if the good cause factor weighs against admission of the

^{6/} The good cause factor applies equally to the admission of late-filed intervention petitions and late-filed contentions. South Texas Project, LBP-82-91, 16 NRC at 1367.

tardy contention, then MFP must make a "compelling showing" on the other four factors in order to be successful. The Cincinnati Gas & Elec. Co. (William H. Zimmer Nuclear Power Station, Unit 1), LBP-83-58, 18 NRC 640, 662-63 (1983); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725 (1982). As will be shown below, MFP has failed to show good cause and has failed to make any persuasive, much less compelling, showing on the other four factors.

1. MFP Is Without Good Cause For Filing
an Untimely Supplement to Contention V

MFP claims to have satisfied the "good cause" factor in connection with its Second Petition simply "because additional and pertinent information has become available to [MFP] since the preparation of [its] original contention (October 26, 1992). [MFP] has proceeded as quickly as possible to evaluate this information and to assemble enough evidence in support of Contention V to satisfy the Commission's standard for admissibility of the contention." Second Petition at 6. When one reviews the bases for the supplement to Contention V now proffered by MFP, however, it is evident that all of the technical assertions made by MFP are old issues based on previously available information; the contention as currently phrased could have been asserted on a timely basis.^{2/} In

^{2/} For purposes of analysis, a finding of good cause is dependent upon the "total unavailability of information." Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67, 69 (1983) (emphasis added); see also Sacramento Mun. Util. Dist. (Rancho Seco Nuclear Generating (continued...))

fact, many of the underlying issues previously were raised by MFP in this proceeding. It seems that MFP here simply has realized that the present Contention V as admitted by the Licensing Board is too narrow to suit its purposes. It is seeking in its Second Petition a second bite at the Thermo-Lag apple.

The United States Court of Appeals for the District of Columbia Circuit has explained that "[i]nformation raised in [new documents] does not amount to a new material 'issue' simply because it adds marginal weight to the case of an opponent or a proponent of a license; the [documents] instead raise a new 'issue' only when the argument itself (as distinct from its chances of success) was not apparent [on a timely basis]" Union of Concerned Scientists v. United States Nuclear Regulatory Comm'n, 920 F.2d 50, 55 (D.C. Cir. 1990) (emphasis in original). Where information is available to the public several months -- and certainly years -- before a contention is untimely submitted, then good cause for the tardiness is negated. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 628 (1985), rev'd on other grounds, CLI-86-8, 23 NRC 241 (1986).

The following addresses sequentially each of MFP's alleged bases in support of its Second Petition. None of the

¹⁷(...continued)

Station), CLI-93-03, slip op. at 32, March 3, 1993, (the unavailability of "information," as opposed to the institutional unavailability of a document, is governing in the determination of "good cause.").

"additional information" cited by MFP creates a new "issue." The "argument itself" (that PG&E's interim compensatory measures are not adequate to compensate for Thermo-Lag) has long been apparent, as has most of the information upon which that argument is now based. The mere issuance of the Director's Decision on February 1, 1993, ruling on the July 1992 NIRS petition, does not constitute a basis for a new contention which in fact is based nearly verbatim on the petition.^{8/} And the NIRS petition itself was founded expressly on what was then pre-existing information.

(a) Fire Watches

In Contention V, as originally proposed, MFP specifically challenged the adequacy of fire watches at DCPD in the context of their use as interim compensatory measures. Supplemental Petition at 29-30. As previously alleged by MFP, "human observers are not completely reliable. They make mistakes." Id. at 29; see also Prehearing Conference Transcript ("Tr.") at 147-49. The alleged inadequacy of fire watches, as originally set forth in Contention V, itself belies any suggestion that this subsection of Petitioner's second late-filed contention satisfies the test of good cause. The issue was raised and rejected. There is no cause to allow it to be resurrected.

^{8/} Even if it did, MFP has failed to account for the over 45 days that have elapsed since that Director's Decision was issued. Such tardiness negates good cause from the outset. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1043-44 (1983) (see third prong of three-part "good cause" test).

MFP now seeks to supplement its challenge to the adequacy of hourly fire watches on the basis of test results reported in NRC Information Notice ("IN") 92-55.^{9/} Second Petition at 2. The cited information notice, however, is dated July 27, 1992; that is, well before the original contentions were drafted. Moreover, IN 92-55 itself cites three earlier INs and one NRC bulletin also addressing the ability of Thermo-Lag 330 fire barrier systems to adequately perform their 1-hour or 3-hour fire resistive functions. Second Petition, Attachment 1 at 1. Therefore, because this subsection of MFP's Second Petition is not based on previously unavailable information, it fails to satisfy the good cause criterion of 10 C.F.R. § 2.714(a)(1)(i).

Finally, it should be noted that fire watches have been authorized for DCPD as a compensatory measure for inoperable fire barriers since the plant began operation. DCPD Technical Specification 3.7.10 provides for certain barriers that PG&E establish on one side of the affected fire barrier either a continuous fire watch or an hourly fire watch with operable fire detectors. Given this longstanding authorization, assuming the issue were litigable (see Sections III.B and .C below), there was no reason MFP could not have previously raised and attempted to justify its challenge to the adequacy of compensatory measures.

^{9/} NRC Information Notice 92-55, "Current Fire Endurance Test Results For Thermo-Lag Fire Barrier Material," July 27, 1992, Attachment 1 to Second Petition.

(b) Combustibility

In this subsection of its Second Petition, MFP contends that "the continued presence of Thermo-Lag at [DCPP] represents fuel for fire that cannot be compensated for by the intermittent observations of fire watch personnel." Second Petition at 2. In support of this attack on the adequacy of fire watches as an interim compensatory measure, MFP notes that "Thermo-Lag 330-1 has been documented by the NRC to be combustible," and cites IN 92-82. Id.^{10/} IN 92-82, however, is at most an additional basis for an old assertion regarding the adequacy of compensatory fire watches. MFP was quite capable of raising the issue previously. The Information Notice (itself over three months old) does not constitute good cause to accept an untimely, reassertion of the very stale fire watch argument. See UCS, 920 F.2d at 55.

Emphasizing the staleness of even the combustibility aspect of the issue, Petitioner indeed specifically included this argument in Contention V as originally proffered by MFP in its Supplemental Petition: "NRC tests show that the [Thermo-Lag] material is not only inadequate, but that the material itself is combustible." Supplemental Petition at 29. It also was the subject of discussion at the Prehearing Conference. Tr. at 147, 152-53. Thus, the issue is not new to this proceeding.

^{10/} Information Notice 92-82, "Results of Thermo-Lag 330-1 Combustibility Testing," December 15, 1992, included as Attachment 2 to Second Petition.

Nor is the combustibility issue new outside of the instant proceeding. Specifically, combustibility was raised in the § 2.206 petition filed by NIRS. See NIRS § 2.206 Petition, dated July 21, 1992, at 14; Emergency Addenda to July 21, 1992, Petition, dated August 12, 1992, at 6. The NRC Staff document apparently now relied upon, IN 92-82, also in effect only cited and summarized the information available long before. See, e.g., Attachments 2 and 3 to IN 92-82 (Lists of Recently Issued Generic Communications and NRC Information Notices Concerning Thermo-Lag 330-1); Report of Test FR 3989, Analysis of Barrier Material for Noncombustibility, August 31, 1992. In these circumstances it cannot be said that MFP's late-filed contention is wholly dependent on previously unavailable information. There is no good cause to justify admission of MFP's Second Petition on the alleged basis of "additional information" pertaining to either fire watches or combustibility.

(c) Seismic

Citing the February 1, 1993, Director's Decision, MFP contends that "this crumbled fire barrier material [Thermo-Lag] provides the potential scenario of loss of fire protection and fuel for the fire. PG&E's compensatory measures are not sufficient to prevent this scenario." Second Petition at 3. Again, this allegation was previously set forth in MFP's Supplemental Petition: "Thermo-Lag poses a unique threat to plant safety in the event of an earthquake." Supplemental Petition at 31. Similarly, the

"contention that Thermo-Lag has some problems in earthquakes," also was discussed by MFP during the Prehearing Conference. Tr. at 147. Thus, there is no basis to allow it to be raised yet again.

The seismic issue also was raised by NIRS in the § 2.206 petition rejected by the Director's Decision cited by MFP.^{11/} The Director's Decision, in and of itself, does not satisfy the good cause criterion. Even though the decision is dated February 1, 1993, it does not raise new issues or provide MFP with previously unavailable information. It simply responds to an issue raised by NIRS in July 1992 through reference to analyses prepared by Philip L. Gould between 1982 and 1984. See Director's Decision at 23, n.24. This subsection of MFP's Second Petition is not "wholly dependent" on the Director's Decision. The seismic allegation could have been proffered -- and in fact was, by MFP and NIRS -- in advance of the public availability of the Director's Decision. The "argument itself" definitely was apparent on a timely basis. UCS, 920 F.2d at 55.

(d) Ampacity Derating

In its Second Petition MFP next contends "that to date [PG&E] has yet to take steps to address this issue [ampacity

^{11/} See NIRS § 2.206 Petition, July 21, 1992, at 15: "As a heavy cementitious pre-formed plate, the product [Thermo-Lag] can break-up and act as a shear, severing cables necessary in safe shut-down. Moreover, if a seismic event should occur and the product shatters the cable tray, the safe shutdown is further jeopardized by fire incidence."

derating] other than compensatory measures. PG&E continues operation with the realization that Thermo-Lag can initiate fires or seriously degrade function of cables as to jeopardize public health and safety." Second Petition at 3. Petitioner's challenge to the adequacy of NRC-approved interim compensatory measures -- on the basis of ampacity derating -- is, again, not a new issue; it is an issue that could have been raised on a timely basis.

First, MFP cites IN 92-46 in support of this element of its second untimely contention. Second Petition at 3. The document, however, is dated June 23, 1992, and was cited by MFP in support of Contention V when originally proffered in this proceeding. Supplemental Petition at 30. Included with IN 92-46 is a "Final Report - Special Review Team for the Review of Thermo-Lag Fire Barrier Performance," dated April 21, 1992. It too reviewed the issue of ampacity derating. The § 2.206 petition, filed by NIRS in July 1992, also specifically raised the issue of ampacity derating on the basis of IN 92-46.^{12/} Therefore, this issue is not new and IN 92-46 obviously was available to MFP on a timely basis.

Second, MFP refers to testimony by NRC Inspector General David Williams, on March 3, 1993, before the House Subcommittee on Oversight and Investigation. Second Petition at 3. Mr. Williams' testimony recounts certain information concerning ampacity derating

^{12/} NIRS § 2.206 Petition, July 21, 1992, at 12-13.

-- all of which was already publicly available in the Inspector General's prior report to the Commission. See Memorandum to NRC Commissioners from David C. Williams, "Inspection of the NRC Staff's Inspection and Review of Thermo-Lag 330-1 Fire Barrier Material," August 12, 1992. Mr. Williams' testimony, although recently delivered on Capitol Hill, is nothing more than a recapitulation of previously available information. Furthermore, as explained above, the issue of ampacity derating was well known, and documented, early in 1992. Therefore, MFP is again without good cause for seeking admission of a late-filed contention.

(e) Voids

Citing an NRC memorandum dated October 21, 1992,^{13/} MFP claims that "[i]n some locations where Thermo-Lag must be wrapped or bent, voids or 'delaminations' have been documented to form. . . . These voids provide fast burn-through avenues that can potentially increase combustibility and accelerate the spread of fire." Second Petition at 4. The memorandum relied upon by MFP to support this subsection of its second late-filed contention was available on a timely basis. Moreover, the issue of voids was raised in the § 2.206 petition filed by NIRS with the Commission on December 15, 1992.^{14/} Thus, the issue was raised by NIRS three

^{13/} Memorandum to file from Frank Miraglia, "Telecon with Rubin Feldman on October 20, 1992," October 21, 1992, enclosed as Attachment 4 to Second Petition.

^{14/} See infra n.3 ; see also Letter from Thomas E. Murley, NRC, to Michael Mariotte, NIRS, dated February 4, 1993, at 1. In this (continued...)

months before MFP filed its untimely contention in this proceeding. This belies any suggestion that this is a new issue. Because this subsection of the Second Petition does not raise a new issue, it is proffered without good cause under § 2.714(a)(1)(i).

(f) Hose Stream

Petitioner challenges the adequacy of NRC-approved interim compensatory measures, in part, on the basis of "NRC acknowledgement of 'the failure of the barrier to pass a fire hose stream test' under the current standard fire test. . . ." Second Petition at 4, quoting Director's Decision at 18. This issue is not new, however. It was raised early in the discussions of the generic Thermo-Lag issue, was cited by NIRS in their July 1992 petition, and was identified in Supplement 1 to NRC Bulletin 92-01, in August 1992. The Director's Decision does not identify the issue for the first time. It simply acknowledges that, in Supplement 1 to NRC Bulletin 92-01, the NRC Staff recognized that "Thermo-Lag barriers have failed hose stream tests." Director's Decision at 18. The hose stream allegation cannot be said to be "wholly dependent" upon the content of the Director's Decision or any other recent document. Catawba, CLI-83-19, 17 NRC at 1043-44. This element of the Second Petition could have been proffered on a

^{14/}(...continued)

interim response to the December 1992 petition, the NRC Staff concluded that "notwithstanding the concerns with voids in Thermo-Lag fire barriers and the bending and stapling of these barriers, there is no immediate threat to the public health and safety." Id. at 2.

timely basis, id., and therefore fails to satisfy the "good cause" criterion of § 2.714(a)(1)(i).

(g) Investigations

In the final subsection of its Second Petition, MFP argues that "PG&E continues to operate the [DCPP] in clear violation of minimum fire protection standards and requirements as contained in 10 CFR Part 50.48 and 10 CFR 50, Appendix R. This situation has come to the attention of officials and investigations are currently underway." Second Petition at 5. Contrary to Petitioner's mischaracterization of the facts, DCPP is being operated in accordance with the operating licenses; the "investigations currently underway" are not specific to DCPP; nor do these "investigations" pose new issues or constitute "additional information" supporting MFP's Second Petition. The "investigations" cited loosely by MFP do not constitute sufficient good cause to justify admission of its late contention.

First, as discussed above, the Commission has generically approved continued fire watches as a compensatory measure in the specific context of Thermo-Lag. The NRC has also specifically approved the compensatory measures adopted at DCPP. These measures are patterned on pre-existing Technical Specifications that authorize fire watches as a compensatory measure for certain inoperable fire barriers. MFP's charges regarding regulatory

violations, therefore, are not only untimely, they are legally wrong and irresponsible.

Next, it is important to note that MFP has misrepresented Chairman Selin's March 3, 1993, testimony before the House Subcommittee on Oversight and Investigation as pertaining to the "admitted failure by NRC oversight of the Thermo-Lag issue that has resulted in substandard fire protection at DCNPP [DCPP]." Second Petition at 5. The Chairman's testimony did not address or imply anything whatsoever relating to DCPP, much less that there is "substandard fire protection at [DCPP]." Dr. Selin's actual testimony was as follows:

At the outset we want to assure the Subcommittee that the NRC staff has assessed the safety significance of this issue to the affected plants and has taken steps to assure plant safety. The licensees that use Thermo-Lag fire barriers have implemented measures, such as fire watches, to compensate for potentially deficient barriers. We have confidence that the compensatory actions taken at the affected nuclear power plants provide reasonable assurance of the protection of the public health and safety while this issue is being fully resolved.

Statement Submitted By United States Nuclear Regulatory Commission to the Subcommittee on Oversight and Investigations, March 3, 1993, at 1, enclosed as Attachment 6 to Second Petition.^{15/}

^{15/} See also 10 C.F.R. § 2.713(a), under which all parties to NRC proceedings are to conduct themselves with "honor, dignity, and decorum as they should before a court of law." Misrepresentation of facts would appear to run afoul of these obligations. See also 10 C.F.R. § 2.713(b)-(c).

Third, the mere existence of a Grand Jury investigation directed at the vendor of Thermo-Lag, not the nuclear licensees, does not itself raise a new issue pertinent to the Proposed Amendment. The ongoing investigation does not provide the good cause necessary under § 2.714(a)(1)(i).

Finally, the citation to NUREG-1150, Second Petition at 5, also fails to satisfy the good cause criterion at issue. Entitled, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," NUREG-1150 was published in December 1990 and quite obviously was available to MFP on a timely basis. At a more fundamental level, however, DCPD is not among the five plants subject to analysis in NUREG-1150.^{16/} Thus, by citing NUREG-1150, MFP again has not satisfied the good cause criterion of § 2.714(a)(1)(i).

2. Lacking Good Cause, MFP Has Failed to Make The Requisite Compelling Showing on the Remaining Four Factors Set Forth In § 2.714(a)(1) to Warrant Admission of Its Late Contention

As explained above, in the absence of good cause, a petitioner must make a compelling showing on the other four factors in order to justify late intervention. Detroit Edison Co. (Enrico

^{16/} The objective of NUREG-1150 was "to provide a current assessment of the severe accident risks of five nuclear power plants of different design." NUREG-1150 at 1-2. The five plants that were the subject of analysis were Surry Power Station, Unit 1; Zion Nuclear Plant, Unit 1; Sequoyah Nuclear Power Plant, Unit 1; Peach Bottom Atomic Power Station, Unit 2; and Grand Gulf Nuclear Station, Unit 1.

Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765 (1982). MFP has failed to do so.

In direct response to the fourth factor, and in apparent response to the second,^{17/} MFP claims that "there is no other party to this case which can represent [its] interests." Second Petition at 6. PG&E concedes that there may be no other party to this proceeding willing to assert the inadequacy of NRC-approved interim compensatory measures being implemented at DCPD. However, as discussed in Section III.B and III.C below, MFP has no basis for arguing that the adequacy of NRC-approved interim compensatory measures at DCPD should be addressed in this proceeding. Lacking a basis for such an argument, MFP has no cognizable "interest" relative to the issue posed in its Second Petition.

Factors two and four also are accorded less weight in the balancing process than factors one, three and five. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 245 (1986); South Carolina Elec. and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981). Thus, even if the Licensing Board determines that factors two and four weigh in favor of admitting the late-filed contention at issue, those two factors are entitled to less weight

^{17/} MFP has failed to provide any direct response to the second factor codified at 10 C.F.R. § 2.714(a)(1)(ii).

than the other three criteria, which weigh against admission of the subject contention.

In response to factor three, MFP claims that its "participation in the litigation of this contention will lead to the development of a sound record." Second Petition at 6. In support of this statement, however, MFP offers only the vague assurance that it "has obtained technical assistance in preparing its case on this issue." Id. MFP's discussion of factor three is devoid of "specific information" from which the Licensing Board can draw an "informed inference that the intervenors can and will make a valuable contribution on a particular issue." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC 59, 85 (1985). The type of "specific information" necessary in response to factor three is best described by the Commission in the following passage:

Our case law establishes both the importance of this third factor in the evaluation of the late-filed contentions and the necessity of the moving party to demonstrate that it has special expertise on the subjects which it seeks to raise. The Appeal Board has said: 'When a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.'

Braidwood, CLI-86-8, 23 NRC 241, 246, quoting, Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); Washington Pub. Power Supply Sys. (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983).

MFP has not described what, if any, "special expertise" it has with respect to the various subsections delineated in the Second Petition. Expert testimony is not even offered as a certainty. MFP states only that it "has obtained technical assistance in preparing its case on this issue." Second Petition at 6. Nor does MFP identify prospective witnesses, much less summarize their proposed testimony. Because MFP has failed to provide any specific information illustrating the extent to which its participation may reasonably be expected to assist in developing a sound record in this proceeding, factor three weighs heavily against admission of the proffered late-filed contention.

Finally, in response to factor five, MFP concedes that "[a]dmission of [its] contention at this time can be expected to broaden and delay this proceeding." Second Petition at 6. MFP simply retorts that such delay is not its "fault," and that operation of DCPD would not be prevented or delayed as a result. Id. This justification does not override the admitted delay and extra expense of expanding the scope of the proceeding, thus adding yet another factor against admission of the issue in this proceeding.

B. MFP'S SECOND LATE-FILED CONTENTION FAILS FOR THE INDEPENDENT REASON THAT THERE IS NO ADMISSIBLE BASIS FOR LITIGATION OF THE ISSUE OF THE ADEQUACY OF INTERIM COMPENSATORY MEASURES

In its Second Petition, MFP asserts that the interim compensatory measures that are being implemented by PG&E for

Thermo-Lag areas at DCPD are inadequate because of the alleged combustibility of Thermo-Lag. MFP identifies several separate "bases" for this proposition. However, none of these "bases" are sufficient to support admission of the untimely contention in this proceeding. As discussed below, the Commission several times has affirmed the adequacy of interim compensatory measures to provide adequate fire protection in Thermo-Lag areas. MFP's recycled, generic, arguments are precluded as a matter of law. Moreover, as a factual matter, MFP has provided absolutely no basis why this conclusion is not true for DCPD.

In fact, a careful review of MFP's purported bases shows that the information presented is either inapplicable to DCPD or irrelevant to the issue of the adequacy of the compensatory measures. All of these issues were among those considered by the Commission in its rejection of the NIRS § 2.206 petition in the Director's Decision. As the Director's Decision indicates, the NRC's defense in depth approach with regard to fire protection expressly provides for fire watches and other compensatory measures in order to provide an adequate margin of safety when a fire barrier like Thermo-Lag is declared inoperable.

MFP's Second Petition fails first to recognize that most of the cited information has nothing to do with compensatory measures. Rather, it relates to the adequacy of the barriers themselves. The

NRC, in Bulletin 92-01 and its Supplement,^{18/} has determined that licensees may not rely on Thermo-Lag as a fire barrier to satisfy Appendix R fire protection requirements. These barriers must be treated as inoperable for many of the reasons stated by MFP (e.g., combustibility, voids, hose stream performance). See also Director's Decision at 18-19. That there may be more than one adverse performance characteristic of Thermo-Lag is irrelevant. The NRC has directed that interim compensatory measures in the form of fire watches, either continuous or roving consistent with the approach in plant Technical Specifications, be put in place to assure that there is adequate protection against fires which might disable any safety equipment necessary for safe shutdown of the plant. Accordingly, the "bases" advanced by MFP in support of its contention are simply matters which must be resolved by NRC and the industry prior to allowing Thermo-Lag to be used to satisfy Appendix R fire protection requirements. These operability issues are not germane to the adequacy of the interim compensatory measures.

1. Fire Watches

The efficacy of the Thermo-Lag compensatory measures in assuring adequate fire protection has been affirmed by the Commission at least twice directly. First, in responding to

^{18/} NRC Bulletin 92-01, "Failure of Thermo-Lag 335 Barrier System to Maintain Cabling and Wire Cable Trays in Small Conduits Free from Fire Damage" (June 24, 1992) and Supplement 1 thereto (August 28, 1992).

COMSECY-92-026, September 21, 1992, the Commission approved the Staff's interim actions to address issues related to Thermo-Lag 330-1 fire barrier material) (a copy of the Staff Requirements Memorandum is provided as Attachment 1 hereto). The Commission stated:

The Commission believes that, although the staff actions to date are interim measures, they have addressed the immediate concerns regarding the safety of those plants using Thermo-Lag 330-1 material as a fire barrier. The measures put in place should compensate for the fire protection weaknesses found with the Thermo-Lag material. Until the issues associated with the fire protection barriers are resolved, the compensatory measures should assure that an adequate level of fire safety can be maintained and that plants using Thermo-Lag material can continue to operate.

This action was taken with full knowledge of the pre-existing operability issues related to Thermo-Lag, including the combustibility issue. The facts asserted by MFP concerning the problems associated with the use of Thermo-Lag again merely indicate the breadth of analysis that must be undertaken by the NRC to ultimately confirm the performance characteristics of Thermo-Lag. They do not undermine the assurance of safety provided by defense-in-depth fire protection as well as compensatory fire watches.

Chairman Selin, in the testimony before the Subcommittee on Oversight and Investigations Committee on Energy & Commerce of the U.S. House of Representatives specifically cited by MFP,^{19/}

^{19/} See Attachment 6 to MFP's Petition.

also addressed the adequacy of the current compensatory measures. As discussed above, the Chairman, on behalf of the full Commission, actually stated that:

The licensees that use Thermo-Lag fire barriers have implemented measures such as fire watches to compensate for the potentially deficient barriers. We have confidence that the compensatory actions taken at the affected nuclear power plants provide reasonable assurance of the protection of the public health and safety while this issue is being fully resolved.

Statement at 1. Chairman Selin also noted that:

NRC's Fire Protection requirements prescribe a defense in depth approach to protect safe shutdown functions, through (1) fire prevention activities (limits on combustibles through design, construction and administration controls); (2) the ability to detect, control, and suppress a fire rapidly (trained fire brigades); and (3) physical separation or redundant safe shutdown functions and emergency lighting for safe shutdown actions and access.

Id. at 3. These statements clearly evidence the Commission's generic conclusion that the current compensatory measures at DCP and elsewhere are adequate to assure protection of the public health and safety until long-term technical issues involving Thermo-Lag are resolved.

The NRC Staff also addressed this specific issue in the Director's Decision, dismissing NIRS's arguments that are clearly the model for MFP's. That decision, as previously noted, has now become a final decision of the NRC. The Director's Decision acknowledged that "the use of fire watches in instances of degraded

or inoperable barriers is an integral part of NRC approved fire protection programs." Director's Decision at 20. The Director's Decision stressed that

[A] fire watch provides more than simply a detection function. Personnel assigned to fire watches are trained by the licensee to inspect for the control of ignition sources and combustible materials, to look for signs of incipient fires, to provide prompt notifications of fire hazards and fires, and to take appropriate actions to begin fire suppression activities. Fire watch personnel are capable of determining the size, actual location, source and type of fire -- valuable information that cannot be provided by an automatic fire detection system.

Id. at 20-21. Thus, the NRC concluded that the use of fire watches to compensate for any degradation of Thermo-Lag is adequate to assure protection of the public health and safety. Id. at 22.^{20/} Review of this generic determination, now a final agency action of the Commission, is precluded as a matter of law in this individual license amendment proceeding.^{21/}

^{20/} This Director's Decision reiterates the decision reached earlier by the NRC Staff in its initial response to the NIRS petition. See NRC Response to § 2.206 Petition (Letter from T. Murley to M. Mariotte), dated August 19, 1992, at 3. The Staff concluded that immediate enforcement action is unwarranted because interim compensatory watches provide adequate assurance of safety.

^{21/} The NRC determination embodied in the various decisions discussed above is legally akin to a policy declaration binding on NRC licensing boards. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 51 (1978) ("policy declaration . . . must be respected by the licensing boards and ourselves [Appeal Board] unless and until rescinded by the Commission or overturned by the courts."); see also Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1732 n.9 (1982) ("[a] Commission policy (continued...)

Furthermore, none of the information put forth by MFP in its Second Petition satisfies the requirement that a contention regarding the adequacy of the NRC-approved interim compensatory measures at DCPD be supported by a basis. Each of the purported bases -- none of which is DCPD-specific -- is discussed below. MFP has simply taken old arguments, with no independent support, and recycled them in the present context. MFP largely relies on generic issues addressed in NRC Staff documents. However, most of what MFP asserts has in fact been specifically rejected by the NRC Staff. Accordingly, MFP has failed to provide a basis sufficient to show a genuine admissible issue.

2. Combustibility

One of the purported technical bases for the fire watch argument is the combustibility of Thermo-Lag. MFP simply asserts that "continued presence of Thermo-Lag at DCNPP represents fuel for the fire that cannot be compensated for by the intermittent observations of fire watch personnel." Second Petition at 2. But MFP does not explain why not. MFP has shown no correlation between combustibility and fire watches.^{21/} MFP's assertion runs contrary

^{21/} (...continued)
statement is, of course, binding on its adjudicatory boards.").

^{22/} The Commission and NRC Staff have recognized that, regardless of the performance and combustibility of Thermo-Lag, the material still provides some measure of fire protection, varying by specific application. Moreover, there is no requirement that 1-hour and 3-hour fire barriers be non-combustible. It is well known that Thermo-Lag has a
(continued...)

to the express conclusions, discussed above, of the Commission and the NRC Staff -- both fully aware of combustibility issues related to Thermo-Lag -- that interim fire watches are adequate. Surely more is required of MFP to support admission of a contention.

3. Seismic

In its response to Contention V, as set forth in MFP's Supplemental Petition, PG&E explained that there is very little Thermo-Lag installed at DCPD for Appendix R requirements and that it is used in only eleven fire areas.^{23/} One of MFP's primary cited concerns involves the performance of Thermo-Lag in a seismic event. Assuming this matter was somehow connected to compensatory fire watches (it is not), PG&E noted in its prior response that Thermo-Lag serves as a fire barrier only on seismically qualified conduit, junction boxes, and other equipment. It was also

^{22/}(...continued)

combustibility characteristic. Thermo-Lag does not provide fire protection by thermally insulating, but by subliming (i.e., passing from a solid vapor state without going through a liquid state). As a result, a portion of the Thermo-Lag material is consumed during the fire rating period. Thus, combustibility alone does not pose a problem -- rather it is part of the product design and an anticipated reaction during the course of a fire. While the degree of combustibility may be germane to the flame spread rate of the material (per ASTM E-84), or to loss of material bulk during a fire endurance test, this is simply another way of saying the degree of combustibility is a factor in Thermo-Lag's performance as a fire barrier. By definition, this is the generic, long-term Thermo-Lag operability issue -- not a fire watch issue.

^{23/} See PG&E's response to NRC Bulletin 92-01, Supplement 1, DCL-92-208, dated September 28, 1992, at Table 1; see also "Pacific Gas and Electric Company's Response to the Petitioners Supplement to Petition, to Intervene," dated November 18, 1992, at 38.

specifically noted that Thermo-Lag is not used on cable trays at DCPD and, therefore, any potential cracking during an earthquake would not affect safety-related cabling. Finally, the configurations for which Thermo-Lag is installed at DCPD are provided in a seismically qualified metal enclosure which precludes damage to cables. MFP has provided no more support than it did the first time it raised this issue and has failed to confront the actual DCPD circumstances as described. Thus, the asserted "basis" -- with no independent evidentiary support -- is patently deficient.

Moreover, the Director's Decision also noted that the Thermo-Lag material may crack or crumble into powdery material or small fragments during a design basis seismic event. However, this cracking and crumbling behavior would not damage safe shutdown systems. Director's Decision at 23. The NRC concluded that shattering of raceways or severing of cables required for safe shutdown under a safe shutdown earthquake scenario are "not credible scenarios." Id. at 23.

4. Ampacity Derating

As for the ampacity derating issue raised by the MFP, the Director's Decision similarly concluded that the issue is not an immediate safety issue relative to the adequacy of current fire protection. Director's Decision at 27. The technical issues raised by ampacity calculations relate to the ability of cables to

carry required electrical loads and to the qualified life of the cable insulation. These are not fire issues. Furthermore, there is no evidence offered by MFP that any ampacity deratings applied for Thermo-Lag barriers at DCPD are faulty. And there is no evidence offered by MFP or anyone else that ampacity calculation errors will lead to fires. MFP's generalized ampacity concern, therefore, cannot provide a basis for litigating interim compensatory measures (the focus of the contention).

5. Voids

The next basis offered is "voids." Voids, however, are simply one reason Thermo-Lag may not perform (i.e., provide fire protection duration) as intended. MFP has not explained the purported connection between this issue and interim compensatory measures. Even more fundamentally, there is no basis offered for the proposition that there are, or even may be, voids in the Thermo-Lag installations at DCPD. The October 20, 1992, memorandum cited by MFP addresses voids found at Comanche Peak, Unit 2. Since there are many different types of Thermo-Lag applications, it is simply speculation to assert that the Comanche Peak finding is relevant to DCPD.

6. Hose Stream Test

Finally, putting aside the obviously baseless matter of ongoing investigations, MFP refers to hose stream test failures. However, in a hose stream test a material is subjected, after a fire endurance test, to a high pressure stream of water to simulate the impact, erosion, and cooling effects of a hose stream during manual fire suppression. The test is used as an indicator of the potential for electrical faulting post-suppression. Hose stream test performance does not have any bearing on the adequacy of fire watches intended to detect a fire.

7. Conclusion

In summary, NRC has carefully reviewed the questions raised concerning the use of Thermo-Lag and determined that all utilities must treat Thermo-Lag as inoperable. The NRC has ordered that all utilities implement interim compensatory measures, basically consisting of fire watches to compensate for the inoperable condition. Given the factual circumstances at DCP, there is no basis for treating it any differently than other plants, nor has MFP shown otherwise. The compensatory measures mandated by the Commission are consistent with the approach to inoperable fire barriers under Technical Specifications at DCP. Given the limited use of Thermo-Lag at DCP, the low fire ratings

in areas where Thermo-Lag is used (see PG&E's Response to NRC Bulletin 92-01 and its Supplement), and the provision for fire watches and related detection and prevention measures, it is clear that the generic compensatory measures ordered by the Commission are sufficient. MFP has not pointed to any specific or credible reason why the interim compensatory measures will not provide adequate protection for the plant's safety. Accordingly, the contention lacks any basis or specificity and is inadmissible.

C. THE PROPOSED CONTENTION IS ALSO INADMISSIBLE BECAUSE IT RAISES A MATTER OUTSIDE THE SCOPE OF THIS AMENDMENT PROCEEDING

It is an axiom of NRC case law that proposed contentions must fall within the scope of the issues set forth in a notice of hearing. See, e.g., Wisconsin Elec. Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983). Stated another way, the scope of a hearing on a license amendment is defined, and limited by, the nature of the proposed licensing action, i.e., the amendment. See, e.g., Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426 (1980). In its Prehearing Conference Order, the Licensing Board expressly recognized this constraint on admissible contentions as follows:

In addition, under both the former and the revised rule [10 C.F.R. § 2.714], contentions asserted must be within the scope of the proposed action.

Prehearing Conference Order at 11.

Notwithstanding the Licensing Board's prior ruling admitting portions of Contention V addressing the effectiveness of PG&E's implementation of interim compensatory measures (Prehearing Conference Order at 38), PG&E maintains that the present late-filed contention is not within the scope of this proceeding. As discussed above, the contention effectively challenges the generic adequacy of fire watches as a compensatory measure. The Commission in several contexts has already spoken on this issue and litigation in this proceeding of such a generic matter would not be appropriate. However, even more fundamentally, the proposed amendment at issue has nothing to do with present operation of the plant, with Thermo-Lag barriers, with fire protection generally, or fire watches specifically. The proposed contention and supporting bases do not establish any nexus between fire watches, or the combustibility of Thermo-Lag, and the proposed amendment that defines the scope of this proceeding. Therefore, the proposed contention cannot be admitted.

The Licensing Board correctly recognized that this proceeding is not the equivalent of initial licensing. Prehearing Conference Order at 11. Admission of routine operational matters such as that now proffered by MFP (simply because it might relate to operation in the recapture period) would treat the amendment as the equivalent of an initial license. The Licensing Board in the Prehearing Conference Order (at 38), however, also implied that any operational matter alleged (with sufficient basis, of course) that

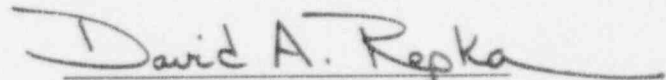
would conceivably continue into the recapture period would be within the scope of this proceeding. It would follow from this that a matter is litigable here so long as it relates to operation. This standard, contrary to the fundamental principles cited above, fails to require any specific nexus between an issue proposed for litigation and the CP recapture amendment. A better reading would limit the scope of this proceeding to matters unique to the recapture period. All aspects of the Thermo-Lag matter fail to meet this test. The issue is a routine operational matter subject to continuing NRC oversight in the inspection and enforcement context.

V. CONCLUSION

MFP's Second Late-Filed Contention should not be admitted in this proceeding. MFP is, without any good cause, raising an old matter; there is no reason to allow a second attempt to admit the issue. Moreover, MFP's issue has already been addressed generically by the NRC. MFP has not provided any basis on which to conclude that compensatory fire watches at DCPD are not adequate to

compensate for degraded Thermo-Lag barriers. The issue should not be addressed again in this proceeding.

Respectfully submitted,



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Dated in Washington, DC
this 6th day of April, 1993



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20546

September 21, 1992

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: COMSECY-92-026 - STAFF'S PLANNED ACTIONS TO
ADDRESS ISSUES RELATED TO THERMO-LAG 330-1
FIRE BARRIER MATERIAL

By memorandum dated August 17, 1992, the Commission identified three matters related to the NRC staff's acceptance and review of the use of Thermo-Lag 330-1 fire barrier material in NRC licensed facilities which required action by the staff. On August 25, 1992, you forwarded to the Commission the staff's planned actions to identify and resolve programmatic issues and to resolve technical issues associated with the Thermo-Lag fire barrier material.

The Commission believes that, although the staff actions to date are interim measures, they have addressed the immediate concerns regarding the safety of those plants using Thermo-Lag 330-1 material as a fire barrier. The measures put in place should compensate for the fire protection weaknesses found with the Thermo-Lag material. Until the issues associated with the fire protection barriers are resolved, the compensatory measures should assure that an adequate level of fire safety can be maintained and that plants using Thermo-Lag material can continue to operate. The staff should continue to develop a longer-term resolution that obviates the need for compensatory measures.

The Commission has reviewed the staff's action plan and finds that its scope and depth of review appear to be adequate to address and resolve any outstanding technical safety issues. The staff should proceed in accordance with the schedule outlined. The Commission still awaits the staff plans to resolve the three programmatic issues raised in the August 17, 1992 memorandum and intends to follow this matter closely. The staff should provide the Commission with periodic reports, at least every three months, on the progress toward completion and notify the Commission expeditiously of any significant findings or obstacles to the completion of the described actions.

(EDO)

(SECY Suspense: 12/18/92)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

FILED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD APR -7 P5:10

In the Matter of:)
) Docket Nos. 50-275-OLA
Pacific Gas and Electric Company) 50-323-OLA
) (Construction Period
(Diablo Canyon Power) Recapture)
Plant, Units 1 and 2))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS & ELECTRIC COMPANY'S RESPONSE TO SAN LUIS OBISPO MOTHERS FOR PEACE SECOND LATE-FILED CONTENTION" 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 deposit for Federal Express overnight delivery, or, as indicated by the (†) symbol, by hand delivery, this 6th day of April, 1993.

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Frederick J. Shon(†)
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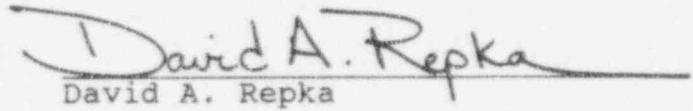
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