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Docket Nos. 50-275-GLA - 2

50-323-OLA

(Construction Period  
Recovery)

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the experience or qualifications of its witnesses, or any incident MFP intends to pursue during the hearing, or any other basis for its positions on the admitted contentions. This litany of excuses and repeated assurances that MFP nevertheless will provide PG&E with such information on a timely basis rings hollow as the days pass. MFP, therefore, should be ordered to adhere to the discovery standards mandated by 10 C.F.R. § 2.740(e)(1) and (e)(3).

## II. DISCUSSION

The Licensing Board issued a Memorandum and Order<sup>2/</sup> establishing the discovery schedule in this proceeding. According to the timetable defined in the Scheduling Order, final discovery responses (including objections) were due on April 12, 1993. Scheduling Order at 3-4. Direct testimony, to the extent necessary, tentatively is to be filed in July. Id. at 5.

Despite these dates, MFP continues to defer its response to numerous PG&E interrogatories and requests for document production. This pattern, which has already been noted by PG&E,<sup>3/</sup> is not only perpetuated but also increasingly apparent in MFP's response to PG&E's Second Set. Specifically, MFP has deferred its response to 13 of the 25 discovery requests posed in PG&E's Second

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<sup>2/</sup> "Memorandum and Order (Discovery and Hearing Schedules)," February 9, 1993 ("Scheduling Order").

<sup>3/</sup> See "Pacific Gas & Electric Company's Motion to Compel Discovery From the San Luis Obispo Mothers For Peace," April 6, 1993.

Set.<sup>4/</sup> Given that MFP itself acknowledges that the pertinent discovery requests are appropriate, yet given MFP's pronounced tendency to avoid providing any scintilla of information in response to those requests, an Order imposing on MFP the duty to supplement its responses would facilitate and ensure the efficient resolution of this proceeding.

Section 2.740(e)(3) states that "[a] duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties." Such an Order is warranted in this proceeding due to MFP's heightened hesitance to respond to important discovery requests made by PG&E. Discovery in this proceeding cannot be a one-way street, all in the direction of MFP. PG&E is entitled to discovery from MFP so that it may prepare summary disposition motions, if appropriate, and prepare for trial, if necessary. As explained above, MFP has thus far resorted to a tactic of avoidance in response to more than half of the interrogatories set forth in PG&E's Second Set.

The duty to supplement intimates that the party against whom discovery is sought will produce some information and, later, supplement it upon the availability of additional data. It is difficult to conceive that MFP is still, at this point in the proceeding, unable to provide any information in response to the

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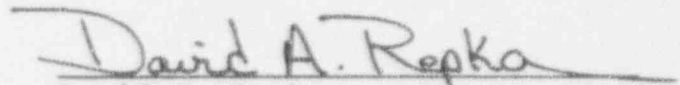
<sup>4/</sup> See MFP response to Requests B-1, B-2, B-4, B-5, B-7, B-8, B-11, B-17, B-19, B-20, B-21, B-22, and B-23.

interrogatories to which it has deferred providing answers. Because "the purpose of discovery is to expedite hearings by the disclosure of information in the possession of parties . . . ," and MFP has yet to be forthcoming in providing such information, issuance of the requested Order is appropriate. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981).

### III. CONCLUSION

In the interest of adjudicatory efficiency and fundamental fairness, PG&E's motion to impose a duty upon MFP to supplement its discovery responses, pursuant to 10 C.F.R. § 2.740(e)(3), should be granted by the Licensing Board.

Respectfully submitted,

  
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Dated in Washington, D.C.  
this 23rd day of April, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'93 APR 28 P2:45

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 MOTION TO IMPOSE DUTY ON MFP TO SUPPLEMENT RESPONSES TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS" 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 delivery, this 23rd day of April, 1993.

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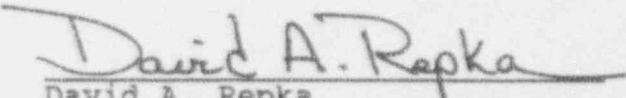
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