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April 27, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'93 APR 28 P2:49

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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

I. INTRODUCTION

On April 12, 1993, the San Luis Obispo Mothers For Peace ("MFP") filed, pursuant to 10 C.F.R. § 2.714(a)(1), a third late-filed contention in this proceeding.<sup>1/</sup> The proposed contention alleges that "deficiencies exist at the [Diablo Canyon Nuclear Power Plant] with the environmental qualification of safety-related and non-safety-related electrical cables (Okonite cables or other cables with bonded jackets)." Third Petition at 1. The contention also broadly challenges "the adequacy of maintenance and surveillance practices at [the plant] to verify that the actual operating environment of these cables are bounded by the

<sup>1/</sup> "Intervenor San Luis Obispo Mothers For Peace Third Late-Filed Contention," April 12, 1993 ("Third Petition").

1503

environmental parameters used to qualify the equipment." Id.<sup>2/</sup> Pacific Gas and Electric Company ("PG&E") herein responds to MFP's third late-filed contention.

MFP's Third Petition, and supporting basis, plows much the same ground as MFP's recent motion to conduct additional discovery on cable issues.<sup>3/</sup> That motion sought additional discovery on two unrelated issues: 1) a generic issue, addressed in a December 1992 NRC Information Notice (IN 92-81), related to the environmental qualification ("EQ") of certain Okonite cables with bonded Hypalon jackets; and 2) an issue specific to Diablo Canyon Nuclear Power Plant ("DCPP") based on an isolated operational experience with 12kV power cables associated with the Circulating Water Pumps ("CWPs"). The Third Petition adds a third unrelated issue -- the matter of three 4kV cable failures in circuits associated with the Auxiliary Salt Water ("ASW") pumps, experienced at DCPP between October 1989 and October 1992.

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<sup>2/</sup> To date MFP had been attempting to inject these same environmental qualification issues into the existing Contention I (Maintenance and Surveillance). See, e.g., "San Luis Obispo Mothers for Peace Motion for Leave to File Additional Discovery Re: Okonite Cables with Bonded Jackets," April 2, 1993; see also "Intervenor San Luis Obispo Mothers for Peace First Set of Interrogatories and Requests for Production of Documents to Pacific Gas & Electric Company," February 16, 1993 (see generally requests C-1, C-2, C-3, C-24, E-3, E-4, and E-27).

<sup>3/</sup> See supra, n.2.

PG&E provided substantial background on these cable issues in its response to the motion for additional discovery and will not repeat that discussion here.<sup>4/</sup> PG&E incorporates that discussion by reference. The important point for purposes of addressing the Third Petition is that the generic EQ issue and the two DCPD-specific cable problems involve different cable types (neither the 4kV nor 12kV cables are required to be environmentally qualified or have bonded Hypalon jackets) and different failure mechanisms (even the 12kV and 4kV failures are different). In support of the Third Petition, MFP is again mixing apples, oranges, and bananas.

As it has done before in this proceeding, MFP is offering disparate elements drawn from the public domain, unfiltered, and with no independent evidence or technical support, to make very broad and baseless assertions about the adequacy of DCPD programs. PG&E believes that the Licensing Board does not need to take these assertions at face value. A hard look reveals that the Third Petition is untimely, raises a generic issue not admissible here, and otherwise fails to provide a basis that supports the global reach of the proposed contention.<sup>5/</sup>

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<sup>4/</sup> See "Pacific Gas & Electric Company's Opposition to Request for Additional Discovery Re Cables," April 19, 1993, at Section II.

<sup>5/</sup> PG&E reiterates at the outset that the Commission now requires more than the longstanding requirements of "basis and specificity" for admission of contentions. Under 10 C.F.R. § 2.714(b)(iii), a petitioner must come forward with sufficient information "to show that a genuine dispute exists with the applicant on a material issue of law or fact." The  
(continued...)

## II. ARGUMENT

### A. PETITIONER'S THIRD LATE-FILED CONTENTION DOES NOT SATISFY THE CRITERIA SPECIFIED IN 10 C.F.R. § 2.714(a)(1)(i)-(v)

Section 2.714(a)(1) specifically places the burden on the petitioner to justify an untimely contention based on a showing against the five factors specified therein.<sup>6/</sup> MFP, in its very terse Third Petition, offers only a hodgepodge of technical issues, coupled with brief boilerplate inserts with respect to the five factors. MFP has failed to meet its burden and the petition cannot be granted.<sup>7/</sup>

#### 1. MFP Is Without Good Cause For Filing an Untimely Cable Contention

MFP's Third Petition addresses the generic EQ issue raised in IN 92-81, i.e., the methodology used to qualify Okonite electrical cables with bonded Hypalon jackets. In an attempt to apply this issue to DCPD, MFP mixes in for good measure the

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<sup>6/</sup>(...continued)

Commission's purpose in revising its rules was to preclude admission of issues where the "intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce facts." 54 Fed. Reg. 33,168, 33,171 (1989).

<sup>6/</sup> For a discussion of caselaw germane to the five factors of 10 C.F.R. § 2.714(a)(1), see "Pacific Gas & Electric Company's Response to San Luis Obispo Mothers for Peace Second Late-Filed Contention," April 6, 1993, at Section III.A. For brevity and clarity, that discussion is not repeated here.

<sup>7/</sup> In filing such a facially inadequate petition, MFP has not shouldered the burden placed upon it by law. Instead, MFP has subtly and improperly shifted the burden to PG&E to show exhaustively why the late petition cannot be granted.

completely unrelated 4kV ASW and 12kV CWP cable problems. However, the focus of the contention remains on the EQ issue: whether Okonite cables (or other cables) with bonded jackets are adequately qualified for their installed operating environment. IN 92-81, the genesis of this issue, was issued over four months before MFP filed the late contention. MFP was also served a copy of IN 92-81. Therefore, the Third Petition should be rejected summarily based on a lack of good cause for the untimely filing.<sup>8/</sup>

MFP argues that it has "proceeded as quickly as possible to evaluate the information and to assemble enough evidence in support of Contention XII." Third Petition at 4. Putting aside for the moment the question of whether MFP has indeed assembled enough "evidence," this assertion does not explain or justify the tardiness. MFP further pleads ignorance of the generic EQ issue until it was revealed to MFP by Mr. Pollard on March 25, 1993. However, at least half the documents constituting Mr. Pollard's revelation were publicly available documents in December 1992 (the Information Notice, itself, issued December 11, 1992, and the NRC's letter to NUMARC, dated December 22, 1992). Therefore, regardless

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<sup>8/</sup> See, e.g., Nuclear Fuels Servs., Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 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."). In the absence of good cause, a petitioner must make a compelling showing on the other four factors in order to justify the admission of a late-filed contention. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765 (1982). As explained below, MFP has not made the requisite compelling showing in reference to any of the remaining factors.

of when Mr. Pollard focused on the issue, and regardless of when or how MFP became aware of the matter, MFP is late without good cause.

MFP is a longstanding participant in DCPN NRC licensing proceedings and is now quite obviously assisted by MHB Technical Associates, a consulting firm it has employed in previous licensing matters and one certainly with the wherewithal to monitor NRC's generic correspondence. MFP cannot have it both ways here, claiming to bring technical expertise to the proceeding, while at the same time disclaiming the technical ability to read generic issuances from the NRC. Furthermore, IN 92-81 obviously has interested MFP for some time. MFP claimed in its previous discovery motion that IN 92-81 is germane to Contention I already admitted in the proceeding. Although PG&E disagrees with that conclusion, the fact that MFP (and presumably MHB) see a connection certainly gave MFP reason to pay attention to the issue last December when IN 92-81 was publicly released. In sum, MFP is late with the proposed contention.

The more recent nature of the 12kV CWP failures at DCPN does not save the Third Petition. These events have nothing to do with the EQ issue that is the focus of the contention. They relate to cables not required to be environmentally qualified under 10 C.F.R. § 50.49 and therefore do not support an assertion that maintenance is insufficient to assure that the environment is bounded by the qualification testing. One cannot cite recent



information irrelevant to the thesis of a contention to avoid what would otherwise be an untimely petition.

2. MFP Also Fails To Demonstrate How It Will Assist  
In Developing The Record On Generic Cable EQ Issues,  
Or Any Other Issue

The burden is on MFP to "demonstrate that it has special expertise on the subjects which it seeks to raise." Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986). In contrast, only one sentence in MFP's Third Petition even attempts to support the assertion that litigation of the proposed contention will lead to the development of a sound record. MFP's "showing" on the third factor in the Third Petition reads as follows: "SLOMFP has obtained technical assistance in preparing its case on this issue and expects to be able to provide expert testimony on the significant risks posed by the degraded cable and its impact on the proposed operating license extension." Third Petition at 5. This sentence does not explain how MFP will address the technical issues raised in IN 92-81, a generic issue raised by Sandia National Laboratories and the NRC Staff. Likewise, it does not explain or offer any particular knowledge regarding cables or systems at DCPD. In fact, the technical confusion inherent in the Third Petition belies any such knowledge or expertise.

MFP's discussion of factor three is totally 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 NRC's Appeal Board has held that where reliance is placed on the factor of expertise, the petition should provide a "bill of particulars." Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978). MFP's Third Petition is lacking not only "particulars," but also the most rudimentary "generalities" concerning the claimed expertise of its unidentified technical assistants. Presumably, this failure means that MFP will do no more than rely on public documents, issued by the NRC and others, to make some unspecified points. This provides no assistance in developing a record on a generic issue, or any other issue. Factor three, therefore, weighs heavily against admission of MFP's third late-filed contention.

3. Having Failed To Satisfy Late-Filed Factors One and Three, MFP Has Not Satisfied The Remaining Criteria

MFP has also failed to make any persuasive showing on the remaining factors of § 2.714(a)(1). First, in direct response to factor two, MFP states that "[n]o other forum exists by which [it] can be heard by an impartial judge and have its interests protected." Third Petition at 5. However, MFP ignores the forum provided by 10 C.F.R. § 2.206 for routine operational matters such as those raised in the Third Petition. It has been held that a petition filed pursuant to 10 C.F.R. § 2.206 may be sufficient to protect a petitioner's interests for purposes of § 2.714(a)(1)(ii).



See Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 21-22 (1986); Florida Power & Light Co. (St. Lucie Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 23 (1977), aff'd, CLI-78-12, 7 NRC 939 (1978) ("The rule does not say that the 'other means' must be equivalent in every respect to the intervention sought.") Such a forum would afford MFP itself an avenue to protect its purported interests. See Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-85-9, 21 NRC 524, 528 (1985). Furthermore, the "means" provided by § 2.206 (consistent with MFP's stated concern) would be "impartial." Accordingly, especially given the generic nature of the cable EQ issue raised by MFP, an appropriate forum is available in 10 C.F.R. § 2.206.<sup>9/</sup>

Pertinent to the fourth factor, MFP avers that "[t]here is no other party to this case which can represent SLOMFP's interests." Third Petition at 5. This may be true for purposes of the immediate proceeding. However, this fact is of little importance. MFP has, in its basis for the proposed contention, relied upon nothing other than references to issues already being pursued by the NRC Staff. IN 92-81 is an NRC Staff issue. The DCPD cable failures have been reviewed by the NRC Staff and are already the subject of an NRC Staff inspection report. MFP has

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<sup>9/</sup> Under § 2.206, if the issue is not ultimately resolved to MFP's satisfaction, and MFP has by that time any independent technical evidence, that forum can be used to bring that evidence to the attention of the agency.

provided no independent basis for proposed Contention XII. Thus, its alleged "interests" are but phantoms for purposes of § 2.714(a)(1)(iv). The public "interests" in the issues raised are obviously being actively pursued by the Staff and others.

Finally, MFP concedes, in response to factor five, that "[a]dmission of this contention at this time can be expected to broaden and delay this proceeding." Third Petition at 5. 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. The latter justification does not nullify the admitted delay, extra expense, and diversion of licensee and NRC resources that would be incurred as a result of expanding the scope of this proceeding.<sup>10/</sup> Therefore, this factor -- as does each of the five factors -- weighs heavily against the Third Petition.

B. MFP'S THIRD LATE-FILED CONTENTION FAILS FOR THE INDEPENDENT REASON THAT IT IS NOT ADMISSIBLE IN THE PRESENT PROCEEDING

Assuming for argument that the Third Petition could somehow survive the hurdle of § 2.714(a)(1), the proposed contention must still be dismissed as inadmissible in this proceeding. MFP's third late-filed contention asserts that deficiencies exist at DCPD related to the environmental qualification of "safety-related and

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<sup>10/</sup> With respect to MFP's assertion that operation of DCPD would not be delayed, the fifth criterion for admission of a late-filed contention requires a licensing board to determine whether the proceeding, and not the issuance of a license or the operation of a plant, will be delayed. Limerick, 23 NRC at 23.

non-safety-related" cables having bonded jackets (specifically including Okonite cables). MFP further asserts that PG&E has not adequately verified "that the actual operating environment of these cables are bounded by the environmental parameters used to qualify the equipment." Third Petition at 1. As discussed above, these assertions and the alleged supporting basis are mere conjecture, based on a fundamentally erroneous assumption that the cable failures at DCPD involved EQ cables with bonded Hypalon jackets. When the unfiltered and erroneous "facts" presented by MFP are clarified, and the various intertwined issues are untangled, it becomes clear that there is no genuine, admissible issue.

As previously noted, MFP points primarily to IN 92-81 reporting preliminary test results related to a potential generic EQ issue (for which, incidentally, the NRC Staff believes there is no immediate safety concern). Then MFP points to DCPD-specific reports regarding operational experience with cables that are outside the EQ program. Thus, the Third Petition in reality presents: (1) a generic EQ issue with no evidence of a problem specific to DCPD, (2) isolated DCPD events that do not relate to EQ and, therefore, do not support the EQ argument, and (3) isolated DCPD events that do not support an admissible contention regarding any other DCPD program (e.g., maintenance and surveillance).

Once the issues and bases are untangled, two legal bars to admissibility clearly emerge. First, since the contention relates

primarily to a generic EQ issue raised by the NRC Staff, adjudication in the present licensing proceeding is not proper. Routine operational matters such as this one are properly left to the NRC Staff for oversight and resolution. Second, to the extent that the proposed contention might be construed to raise different issues, unrelated to the generic EQ issue and specific to DCPD (e.g., the implications of recent cable failures), the contention fails for lack of a sufficient basis. The isolated 4kV ASW and 12kV CWP failures cited by MFP (which, of course, are not EQ-related) simply fail to suggest any programmatic problem that might be of consequence in this proceeding. Each of these two legal bars to admissibility is discussed separately below.

1. MFP's Proposed Contention Relates to a Generic Issue Not Properly Addressed in a Licensing Proceeding

The longstanding general rule under NRC case law is that licensing boards should not accept in individual licensing proceedings contentions dealing with generic issues merely because a party points to a newly issued NRC report or information notice. Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-87-24, 26 NRC 159, 162-163 (1987); Gulf States Utils. Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772 (1977). Rather, before consideration is given to generic matters, a nexus must be established to connect the generic issue to the proposed license amendment in question. Diablo Canyon, 26 NRC at 162. MFP's proposed contention fails to establish any meaningful nexus between the generic EQ issue and either DCPD or the proposed

amendment here at issue. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), 16 NRC 1649, 1655 (1982).<sup>11/</sup> This proceeding is not the appropriate forum to litigate every potential generic issue currently being addressed by the NRC and the industry.

MFP's attempt to link the generic EQ concern reported in IN 92-81 to plant-specific events at DCPD reflects a fundamental misunderstanding of the issue. First, the text of the proposed contention asserts that EQ deficiencies exist for both safety-related and non-safety-related cables at DCPD. However, non-safety-related cables do not, of course, require environmental qualification. This link, therefore, is on its face erroneous. Second, MFP's discussion of the basis for the proposed contention is similarly flawed. MFP cites the recent CWP and ASW cable failures as if these events somehow show a DCPD-specific manifestation of the generic EQ issue. As discussed above, they do not. Neither the 4kV nor the 12kV cables have a bonded Hypalon jacket. The failure mechanisms involved in these cable incidents

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<sup>11/</sup> As explained, MFP fails to show a nexus to DCPD because the DCPD-specific incidents are unrelated to EQ. While PG&E does not further discuss the lack of a nexus to the "CP recapture" amendment at issue in this proceeding, it does not concede that such a nexus exists. IN 92-81 raises a current generic question related to certain cables. The proposed CP recapture amendment has no bearing on this issue. A present day operational matter is not germane to the proposed recaptured period of operation. 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).

are different and bear no relationship to the subject of IN 92-81. Thus, these events provide no support for the generic EQ contention.

Furthermore, unlike cases involving unresolved generic safety issues where there may be no regulatory requirement addressing an issue (c.f., Diablo Canyon, 26 NRC at 163), there is in this case a specific applicable regulatory requirement with which PG&E must currently comply -- 10 C.F.R. § 50.49 (the "EQ rule"). Potential generic EQ issues arise in the normal course of the NRC's business and have been and can be dealt with effectively by the NRC Staff under the EQ rule. The proposed amendment here at issue does not change the EQ rule and does not affect the status quo relative to inspections against, and enforcement of, that rule. IN 92-81 itself clearly states that it requires no specific action or response from licensees, and that the notice does not contain requirements. Should this issue be determined to have any applicability to DCPD, the regulatory requirements are in place by which the NRC can resolve the matter in the ordinary regulatory context. The present licensing proceeding is not an appropriate forum for this generic issue.

In sum, the contention regarding the environmental qualification of cables at DCPD (or anywhere else) cannot be admitted. A generic issue reported in an NRC information notice -- a matter of routine regulatory oversight -- cannot provide a basis



for litigation of the issue in an individual licensing proceeding. To give this some perspective, in 1992 the NRC issued 86 information notices (not counting supplements to earlier notices). Through April 22, 1993, the NRC has this year issued 30 more information notices (again not counting supplements). It seems very likely that several more will be issued during the pendency of this proceeding. A new contention cannot and should not be admitted each time one of these notices is issued.

2. The Proposed Contention Is Inadmissible Because It Lacks Sufficient Basis

Even if the proposed contention is interpreted as alleging problems specific to DCPD -- as opposed to a generic issue as discussed above -- it still fails for lack of adequate basis pursuant to the Commission's heightened threshold for admissibility of contentions. In support of the proposed contention, MFP has cited only isolated and unrelated cable incidents (i.e., the 12kV and the 4kV failures). These isolated, unrelated incidents do not constitute an adequate basis for an assertion of "deficiencies" in EQ, maintenance and surveillance activities, or any other program at DCPD.

As explained above, neither the 12kV nor the 4kV incidents are related to the generic EQ issue raised in IN 92-81. Likewise, there is no showing that any of the incidents cited is individually safety significant. Nor is there any showing that the incidents have a common root cause with programmatic implications.

The 4kV and 12kV incidents involved different systems, different cables, different physical indications, and different failure mechanisms.<sup>12/</sup> In each instance, PG&E has replaced the cables involved and has undertaken further analysis to identify root causes and any further necessary corrective actions. Specifically, after each cable failure, including the three 4kV cable failures prior to 1993, PG&E sent samples of the failed cables to its laboratory and to the vendor for examination and testing. In each case, PG&E then reviewed the laboratory and vendor analyses to determine whether the failures were isolated events or not. As noted in the NRC's recent inspection report on this subject,<sup>13/</sup> PG&E's analyses indicated that the recent 12kV cable failures were unrelated to the earlier 4kV cable failures. The 4kV failures did not involve severe jacket degradation or unexpected loss of ability to meet or exceed original mechanical or electrical stress limits. The NRC inspection report specifically finds that in these events there were no violations of regulations or deviations from commitments. Simply citing unrelated incidents as support for a suggestion that they are part of a greater problem is, without any

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<sup>12/</sup> See also "NRC Staff Response to San Luis Obispo Mothers for Peace's Motion for Leave to File Additional Discovery re: Okonite Cables with Bonded Jackets," April 21, 1993, at attached Affidavit of Ann M. Dummer.

<sup>13/</sup> NRC Inspection Report Nos. 50-275/93-03 and 50-323/93-03, April 8, 1993.

evidence of a connection, insufficient to satisfy the basis requirements of 10 C.F.R. § 2.714.<sup>14/</sup>

Isolated incidents such as the 4kV and 12kV incidents are the routine result of maintenance and surveillance activities and plant operation. No maintenance program is intended to detect, or even is capable of detecting, all equipment failures before they occur. Both the 4kV and 12kV cables are buried cable of a type not ordinarily pulled for routine surveillance. However, buried cables have been subject to routine high potential tests at each refueling outage.<sup>15/</sup> The 4kV and 12kV cables apparently failed due to unexpected and isolated circumstances. MFP offers no basis for an assertion that, given these unique circumstances, the incidents are indicative of a broad deficiency in PG&E's maintenance and surveillance program, or any other program at DCPD. The limited, unfiltered, and conjectural basis offered simply fails to live up to the global sweep of the proposed contention.

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<sup>14/</sup> It is well settled that separate incidents and findings do not constitute a sufficient basis for an allegation of poor programmatic practices. See, e.g., Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 725 (1985); Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-11, 21 NRC 609, 636 (1985). Moreover, unlike Contention I already admitted in this proceeding, MFP cannot even rely on some theory of "sheer numbers" to suggest a programmatic problem. There are only cables for two systems cited.

<sup>15/</sup> Notably, the most recent ASW 4kV cable failure specifically occurred during an outage post-maintenance high-potential (hi-pot) surveillance test.

A licensing board, in determining whether a petitioner has indeed raised a genuine dispute as to a material issue, is not constrained to accept the stated basis for the proposed contention uncritically. See, e.g., Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48-49 (1989). Here, a thoughtful review of proposed Contention XII and its purported bases (i.e., isolated incidents of no safety significance) confirms that the bases fail to support the otherwise broad and conclusory allegations. Such a review constitutes neither a premature nor prohibited foray into the realm of "evidentiary" issues. Indeed, this review is required by the Commission's contention admissibility thresholds. A contention cannot be admitted if it fails to raise a genuine issue of material fact. 10 C.F.R. § 2.714(b)(2)(iii).<sup>16/</sup>

In sum, even if the proposed contention were assumed to raise some issue specific to DCCP's programs, it utterly fails to

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<sup>16/</sup> Failure to reject this proposed contention, which is not supported by any programmatic basis, would significantly undermine the Commission's intent in revising § 2.714 in 1989 to heighten the threshold for admission of contentions and to ensure that formal hearings are reserved for genuine disputes on material issues of law or fact. See 54 Fed. Reg. 33,168 (1989). Given the paltry basis offered, the proffered contention fails to identify a genuine dispute.

provide a basis for such a programmatic contention. The "deficiencies" alleged by MFP, whether in the EQ program, in the maintenance and surveillance program, or in any other program, are not supported by an adequate factual basis. The contention does not raise a genuine issue of material fact or law, as required by Section 2.714(b)(2)(iii).<sup>17</sup> Accordingly, admission of the contention must be denied under 10 C.F.R. § 2.714(d)(2).

### III. CONCLUSION

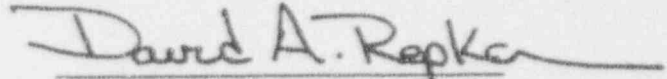
MFP's Third Petition should be denied. The proposed contention regarding cable issues is untimely, addresses a generic

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<sup>17</sup> In the instant proceeding, the Licensing Board need never reach the materiality determination specified in § 2.714(b)(2)(iii) because, as explained above, MFP has not supported proposed Contention XII with an adequate basis. Nonetheless, PG&E does not concede, as discussed above, that this proposed contention -- addressing a present day operational matter -- raises a material matter, i.e., one within the scope of the present license amendment proceeding.

issue, and lacks an adequate basis to show a genuine issue that would be of consequence in this proceeding.

Respectfully submitted,



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Dated in Washington, DC  
this 27th day of April, 1993



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

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) (Construction Period  
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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 THIRD 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, this 27th day of April, 1993.

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U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Frederick J. Shon\*  
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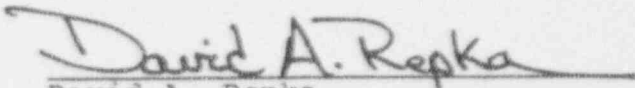
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