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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD
4

5 In the Matter of)
6 PACIFIC GAS AND ELECTRIC COMPANY) Docket Nos. 50-275
7 (Diablo Canyon Nuclear Power) 50-323
8 Plant, Units No. 1 and 2) (Reopened Hearing -- Design
Quality Assurance)

9
10 RESPONSE OF LICENSEE PACIFIC GAS AND ELECTRIC
11 COMPANY TO MOTION FOR EXTENSION OF
12 TIME OF GOVERNOR DEUKMEJIAN

13 INTRODUCTION

14 On July 27, 1983, Licensee served by express mail a
15 set of detailed interrogatories on Governor Deukmejian. These
16 interrogatories were derived specifically and directly from
17 proposed contentions submitted to this Board by the Governor on
18 July 19, 1983. Counsel for the Governor inquired of the under-
19 signed by telephone on August 4, 1983 if he could have until
20 August 31 (as opposed to August 12) to answer the interroga-
21 tories. The undersigned was willing to stipulate an extension
22 of until August 21 ("in hands") but no further.^{1/} On August

23 1. At the time of the telephone conversation, the
24 undersigned did not have a calendar available and did not
25 realize the 21st was a Sunday. The date was arrived at by the
26 realization that a prehearing conference was scheduled for the
23rd and counsel would be traveling the 22nd. In fact, Licensee
would be willing to extend the time for answering its second set
of Interrogatories to Governor Deukmejian only until the 18th of
August.

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1 11, 1983, counsel for the Governor filed the instant Motion for
2 an Extension of Time to Answer which, for the reasons stated,
3 infra, Licensee vehemently opposes.

4 The Motion for Extension of Time to Answer
5 Interrogatories by the Governor must be viewed in light of other
6 developments occurring in this case. This Board has ordered the
7 parties to set aside the month of October for hearings on DQA.
8 (Tr. July 22, 1983, p. 50.) Presumably the Board contemplates
9 starting the hearing sometime between October 3 and October 18,
10 1983. That being the case, discovery in this matter will
11 terminate between September 2, 1983 and September 16, 1983. (Tr.
12 July 22, 1983, p. 53.) Counsel for the Governor is presently
13 planning to take depositions of two Diablo Canyon Project
14 engineers (Dr. William White and Dr. Lincoln Malik) on August 25
15 and 26, respectively. (Telephone conference, August 11, 1983.)
16 Both the Governor and Joint Intervenors have filed proposed
17 contentions to which both the Licensee and NRC Staff have filed
18 extensive objections as to lack of specificity. The Governor
19 has refused, and is continuing to refuse (Motion for Extension,
20 p. 3), to identify any witnesses, expert or otherwise, he
21 intends to use at hearing. The Governor has sent extensive
22 interrogatories to both the Licensee and IDVP, both of which
23 have been answered in detail. The Governor has requested
24 production of documents of Licensee and the IDVP which resulted
25 in the production of in excess of 35,000 pages of documents over
26 one month ago.

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1 put in the untenable position of preparing for the unknown. Is
2 it "fair" for the Licensee to produce witnesses for depositions
3 when no specific contentions or answers to interrogatories have
4 been provided? Does Governor's counsel have the right to
5 continue his "fishing expedition" without being required to at
6 least identify to some degree of specificity what kind of fish
7 he is seeking? Indeed, in a case cited by counsel for the
8 Governor, Pennsylvania Power and Light Company, (Susquehanna
9 Steam Electric Station, Units 1 and 2) LBP-79-31, 10 NRC 597
10 (1979), the board stated:

11 "In Discovery Memo I, we attempted to
12 outline both the NRC rules governing
13 discovery and the underlying purpose which
14 discovery is intended to serve in an NRC
15 licensing proceeding. We stated, inter alia
16 (at pp. 5-6) that

17 the purpose of discovery is to
18 enable each party prior to hearing
19 to become aware of the positions
20 of each adversary party on the
21 various issues in controversy, and
22 the information available to
23 adversary parties to support those
24 positions [emphasis supplied].

25 We went on to observe that Commission
26 licensing proceedings 'are not to become the
27 setting for "trial by surprise," and the
28 discovery mechanism is the major means used
29 to avoid that situation.' Id. at 6.
30 Finally, we noted that answers to discovery
31 inquiries are important in terms of a
32 party's ability to prepare its case for
33 trial--and particularly so for an applicant
34 which has the burden of proof in a
35 proceeding of this type. Ibid. But we also
36 pointed out that discovery always entails
37 some burden or expense, and that only
38 "undue" burden or expense--beyond that
39 normally necessary to identify the details

1 of a party's case and the sources of
2 information upon which it intends to rely--
3 would normally justify' issuance of a
4 protective order. Id. at 7." (10 NRC 599,
5 600).^{3/}

6 CONCLUSION

7 Counsel for the Governor has known for at least two to
8 three months that the month of August was going to be critical
9 for the parties in terms of discovery and preparation for the
10 upcoming hearings. He knew on July 28, 1983 that he was faced
11 with specific and detailed interrogatories on his client's
12 contentions. Somehow both of his consultants (pointedly not
13 witnesses) were unavailable during this critical period to
14 assist in any way. Rather than inform the parties of this
15 exigency at an earlier date, he waits until the day answers to
16 interrogatories are due to spring upon the Board and parties his
17 motion for extension and grounds therefore. It is respectfully

18
19 3. While the Governor cites that case as one where
20 an extension of time was granted, it is most enlightening to
21 read the board's reasons for that decision.

22 "The Staff now estimates that the
23 earliest date for the start of the
24 environmental hearing would be March or
25 April, 1980, and the earliest date for the
26 start of the health and safety hearing would
be February or March, 1981. These delays
suggest that a grant of further time to
respond to discovery would have little or no
adverse effect on the ability of any party
to prepare for hearing, or for the hearing
to be commenced on a timely basis." Id. at
603.

1 requested that this Board order the answers to be made no later
2 than August 18, 1983 in fairness to all parties.

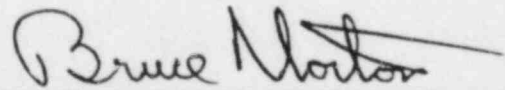
3 Respectfully submitted,

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19 DATED: August 15, 1983.
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-275
)	Docket No. 50-323
Diablo Canyon Nuclear Power Plant,)	
Units 1 and 2)	
_____)	

CERTIFICATE OF SERVICE

The foregoing document(s) of Pacific Gas and Electric Company has (have) been served today on the following by deposit in the United States mail, properly stamped and addressed:

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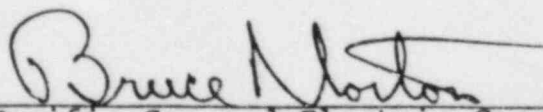
Date: August 15, 1983

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