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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION '83 AUG 15 P12:30

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
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PACIFIC GAS AND ELECTRIC COMPANY ) Docket Nos. 50-275 O.L.  
(Diablo Canyon Nuclear Power ) 50-323 O.L.  
Plant, Units 1 and 2) )  
 )

MOTION FOR EXTENSION OF TIME  
TO ANSWER INTERROGATORIES

INTRODUCTION

Governor George Deukmejian hereby respectfully moves the Atomic Safety and Licensing Appeal Board for an order extending the time, pursuant to 10 C.F.R. 2.711 of the commission's Rules of Practice, for the Governor to answer Pacific Gas and Electric Company's ("PG&E") Second and Third Sets of Interrogatories. The extension sought is to August 31, 1983. The motion is made on the grounds that, due to the extreme length and complexity of the interrogatories and the scheduled and unalterable unavailability of the necessary consultants, it is impossible for the Governor to respond to the interrogatories within the fourteen-day period nominally provided in the rules.

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### NATURE OF THE INTERROGATORIES

On July 27, 1983, PG&E served its Second Set of Interrogatories on Governor Deukmejian by express mail. Absent an order granting relief, a response will be due August 12, 1983. (10 C.F.R. §§ 2.740b(b), 2.710.) This set consists of 146 separate, detailed interrogatories. The interrogatories request the basis for each and every contention relating to design quality assurance submitted by the Governor to this board. The interrogatories call for highly detailed answers, listing each and every fact relied upon in making each contention, and every section, down to page and paragraph numbers, of every document relied on in making each contention. Obviously, answering these interrogatories in the requested detail will require a huge amount of time.

On August 4, 1981, PG&E served its Third Set of Interrogatories to Governor Deukmejian and Second Request For Production of Documents,<sup>1/</sup> again by express mail. Absent an order of this board to the contrary, a response is due August 24, 1983. (Ibid.) This set contains only five interrogatories: the first asks for identification of all witnesses and detailed information about each -- a question already propounded as Interrogatory number 2 to PG&E's First

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1. No request is made here for an extension of time to respond to the document production request.

Set of Interrogatories to the Governor<sup>2/</sup>; the second asks for identification of each exhibit intended for marking; the last three call for enumeration of each and every FSAR commitment not met and all evidence pertaining to each. In theory, the Governor could respond to the first two questions to the effect that witnesses and exhibits have not been decided upon. The remaining answers will require the assistance of consultants not presently available and the compilation of detailed information.

The Governor wishes to make it clear that he does not presently object to answering these interrogatories. Obviously, the basis for making contentions must be revealed before the hearing, to avoid trial by surprise. (Houston Lighting and Power Company (South Texas Project, Units 1 and 2) LBP-80-11 (1980) 11 N.R.C. 477. The Governor asks only for additional time, based on good cause, as allowed by 10 C.F.R. 2.711(a).

#### GROUND FOR EXTENDING TIME TO ANSWER

Pursuant to the commission's Rules of Practice, the board may extend the time for participants in a licensing proceeding "for good cause." The nature of such

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2. Actually, PG&E's first try only asked for each person "you intend to call as a witness." The second version asks for each person "you intend to or may call as a witness." No difference between the two is perceived that would not render the interrogatory objectionable, so the two are being treated as equivalent.

"good cause" is not specified by the regulation, but is left to the discretion of the presiding officer.

As set forth in the attached declaration of Susan L. Durbin, the Governor has good cause for asking for an extension in that: (1) the interrogatories are extremely long and call for highly detailed answers; and (2) the consultants on whom counsel rely are unavailable. Specifically, Mr. Richard Hubbard is currently in Europe on a vacation scheduled months ago. Mr. Hubbard left the contry on August 1, 1983, and will not return until August 15, 1983, after responses to the interrogatories are due. Similarly, Dr. Jose Roesset, another consultant upon whom counsel rely, is currently attending a professional seminar in Maine. He left for the meeting on August 2, 1983, and will not return until August 13, 1983, again after the responses are due.

These consultants are most familiar with the technical details of the bases for many of the Governor's design quality assurance contentions, as well as being most familiar with many of the precise portions of documents that support these contentions, and their help is indispensable to answering the interrogatories fully and completely. Both consultants' absences were scheduled long before service of the interrogatories, and could not be changed at that late date.

Counsel for the Governor (Mr. Strumwasser) telephoned counsel for applicant (Mr. Norton), asking for agreement to the extension requested here. Counsel for applicant offered an extension to August 21 (in his hands) but declined on extension beyond that date because he said he wanted to have the answers available for the August 23 prehearing conference. Because it was impossible to provide the answers by the new date requested, this motion is being made.

While PG&E may desire the answers to these interrogatories in time to use them at the prehearing conference, it has no such right. PG&E presumably seeks to attack some or all of the Governor's proffered contentions by reference to the answers to its interrogatories. But it is well established in this commission that a party is not required to provide its evidence in support of a tendered contention at this stage of the proceeding. (E.g., Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2) ALAB-590 (1973) 6 AEC 423.) Once the parties have had an adequate opportunity for discovery, efforts may be made to dispose of contentions lacking evidentiary support by filing a motion for summary disposition. (10 C.F.R. § 2.749.) This prehearing conference was not convened to hear spontaneous oral motions for summary disposition.

\* \* \* \* \*

The Governor emphasizes again that this motion does not seek to evade the responsibility for delineating the bases for contentions. All that is asked is sufficient time to respond properly. It is well established that this Board may make scheduling orders as needed to protect parties from undue burden. (Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2) LBP-79-31 (1979) 10 N.R.C. 597, 604-605.) If a reasonable explanation for a delay is given, the presiding officer may grant deadline extensions if such is fair. (Offshore Power Systems (Floating Nuclear Power Plants) ALAB-489 (1978) 8 N.R.C. 194, 206.) Here, where the interrogatories are lengthy and complex, and they cannot be answered fully by the deadline, it is most fair to all parties that an extension be given.

\* \* \* \* \*

CONCLUS JN

The Governor asks only a sufficient extension to reasonably answer the interrogatories, until August 31, 1983. In view of the presently contemplated schedules of the hearing on design quality assurance, this date should not deprive any party of rights to which it is entitled, and is the soonest date by which responses can possibly be prepared. The board is respectfully requested to issue such an order.

DATED: AUGUST 11, 1983

Respectfully submitted,

JOHN K. VAN DE KAMP, Attorney General  
of the State of California  
ANDREA SHERIDAN ORDIN, Chief  
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MICHAEL J. STRUMWASSER, Special  
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By *Susan L. Durbin*  
SUSAN L. DURBIN

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	)	

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DECLARATION OF SUSAN L. DURBIN

The undersigned says and declares as follows:

1. My name is Susan L. Durbin; my business address is 3580 Wilshire Boulevard, Suite 800, Los Angeles, California 90010. I am a duly appointed Deputy Attorney General, am one of the attorneys representing Governor Deukmejian in this case, and am authorized to make this declaration.
2. I am informed and believe that Richard Hubbard, a consultant to counsel in this case, is currently on vacation in Italy with his family. I am informed by his office that Mr. Hubbard left on this vacation on August 1, 1983, and will return on August 15, 1983.
3. I am informed and believe that Dr. Jose Roesset, a consultant to counsel in this case, is currently attending a professional seminar in Maine. I was informed by Dr. Roesset that he would be leaving on August 2, 1983, and returning to his home on August 13, 1983.



4. Messrs. Hubbard and Roesset, as consultants to counsel in this case, are most familiar with many of the facts and documents needed to fully answer the interrogatories in question here.

5. Work has already commenced on preparation of answers. After consideration of the time required to confer with consultants, perform necessary data gathering and document searching, and obtain clerical processing of the answers to the 151 interrogatories, the work cannot be completed prior to August 31, 1983.

I declare under penalty of perjury that the foregoing is true and correct except as to matters stated on information and belief and as to those matters, I believe them to be true.

Executed this 11th day of August, 1983, at Los Angeles, California.



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SUSAN L. DURBIN  
Declarant

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused copies of the foregoing MOTION OF FOR EXTENSION OF TIME TO ANSWER INTERROGATORIES served on the following by U.S. Mail, first class (except for those persons marked with an asterisk ("\*"), to whom the envelope was posted Express Mail), postage prepaid.

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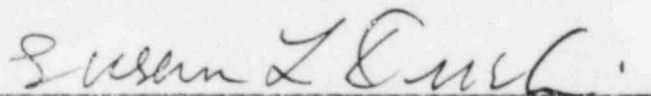
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