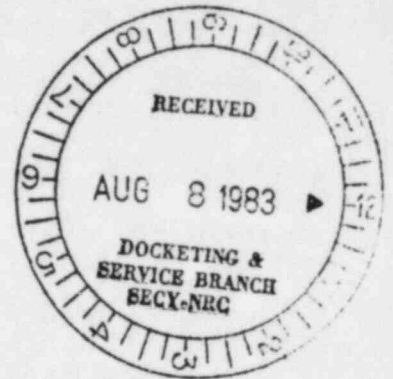


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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

POST-HEARING BRIEF OF LICENSEE  
PACIFIC GAS AND ELECTRIC COMPANY  
REGARDING MOTIONS TO REOPEN THE RECORD ON  
CONSTRUCTION QUALITY ASSURANCE

INTRODUCTION

On July 19-22, 1983, an evidentiary hearing was held in San Luis Obispo, California to resolve "apparent conflicts between the extensive affidavits and other documentary materials in support of and in opposition to the reopening motions, and, in addition, to obtain answers to

1 [Board] questions concerning these materials. . . . " 1/ At  
2 the close of the hearing the Board stated that it was  
3 inviting, but not requiring, briefs from the parties  
4 discussing "the Wolf Creek Standard for reopening [2/] and  
5 how, if at all, any of the matters that have come forth in  
6 this hearing support or do not support that standard . . ."  
7 Transcript of Hearing, p. 916. 3/ In accordance with the  
8 Board's invitation, this brief will discuss the existing  
9 motions in the context of the additional evidence presented  
10 at the hearing as they impact on the standard set forth in  
11 Wolf Creek.

#### 12 DISCUSSION

13 As noted in our May 31, 1983 Response to Joint  
14 Intervenors' and Governor Deukmejian's Motions to Reopen  
15 (pp. 8, 80-81) movants have a heavy burden to meet in order  
16 to sustain the reopening of a closed record for considera-  
17 tion of a late-filed contention. As we noted at that time,

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21 1/ Appeal Board Order of June 28, 1983, pp. 1-2. In that  
22 Order the Board also confined the hearing to the re-  
opening motions on CQA filed by the Joint Intervenors  
and the Governor on May 10 and 17, 1983, respectively.

23 2/ In the Matter of Kansas Gas and Electric Company (Wolf  
24 Creek Generating Station, Unit No. 1), ALAB-462 7 NRC  
320 (1978).

25 3/ References to the July 19-22, 1983 hearing transcript  
26 will be cited hereinafter as "TR. \_\_\_\_\_."

1 "The Motion must be both timely pre-  
2 sented and addressed to a significant  
3 safety or environmental issue. . .  
4 Beyond that, it must be established that  
5 'a different result would have been  
6 reached initially had [the material  
7 submitted in support of the motion] been  
8 considered.'" [Wolf Creek, supra  
9 p. 338.]

10 We argued then, and we state even more emphatical-  
11 ly now, that the "evidence" presented by the movants raises  
12 neither a significant safety issue nor does it establish  
13 that the facts shown would have brought about a different  
14 result if considered initially. In the Matter of Northern  
15 Indiana Public Service Co. (Bailly Generating Station,  
16 Nuclear - 1), ALAB-227 8 AEC 416, 418 (1974). Indeed at the  
17 hearing, as we will discuss below, it became apparent that  
18 much if not all of the "facts" and "evidence" advanced in  
19 support of the motions were based upon mere speculation and  
20 unsupported opinions and conclusions.

21 Finally, it is also manifest that movants have not  
22 satisfied the five requirements for late-filed contentions  
23 found in 10 CFR 2.714(a). This failure forms a separate and  
24 independent basis for denying this motion to reopen. In the  
25 Matter of Duke Power Company, Et Al., (Catawba Nuclear  
26 Station, Units 1 and 2), CLI-83-10, \_\_\_\_\_ NRC \_\_\_\_\_  
(June 30, 1983).

REOPENING THE RECORD IS NOT JUSTIFIED.

At the evidentiary hearing, the Board and the  
other parties had an opportunity to cross-examine the

1 affiants and inquire into the basis for many of their  
2 statements, opinions and conclusions. The major arguments  
3 relied upon by the Governor and Joint Intervenors in their  
4 respective motions consisted of the following:

5 (1) The existence of deficiencies in design  
6 quality assurance ("DQA") allow the inference that  
7 comparable significant deficiencies exist in  
8 construction quality assurance ("CQA").

9 (2) The CQA review conducted by the  
10 Independent Design Verification Program (IDVP) was  
11 unduly narrow but not withstanding that fact it  
12 still uncovered some significant CQA deficiencies.

13 (3) The recent allegations of two former  
14 contractor quality assurance ("QA") personnel  
15 revealed instances of significant CQA breakdowns;  
16 and;

17 (4) The ongoing heavy construction activity  
18 suggests that quality requirements are probably  
19 not being met.

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1 Under close examination the main witness for Gov.  
2 Deukmejian and the Joint Intervenors, Richard Hubbard 4/  
3 made revealing admissions which seriously undermine whatever  
4 credibility might have attached to his arguments in support  
5 of the motions to reopen.

6 For example, the facts show that he had never read  
7 the Diablo Canyon CQA manual or procedures (TR. 39) and he  
8 did not know whether CQA and DQA activities were done by the  
9 same personnel (TR. 40). He did not know what Reedy's  
10 opinion was on whether DQA findings applied to CQA. (TR.  
11 138). Further, he had not reviewed any CQA audits of Diablo  
12 Canyon (TR. 145).

13 The facts also show that Mr. Hubbard admitted that  
14 the whole purpose of a QA program is to find errors (TR.  
15 149). He also admitted that PGandE found certain welding  
16 problems and he agreed that the CQA program worked to  
17 correct the particular deficiencies (TR. 150-152).

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21 4/ Notwithstanding the fact that on extensive voir dire  
22 Mr. Hubbard admitted having virtually no experience in  
23 construction work and practices as well as on-site  
24 construction quality assurance, the Board found Mr.  
25 Hubbard "at least marginally qualified" to testify  
26 subject to the usual caveat that his testimony, as with  
all witnesses, is subject to the Board determining what  
weight it should be entitled to. (TR. 74.) The exami-  
nation of Mr. Hubbard at TR. 92-95 and 105-110 confirms  
that Mr. Hubbard had no formal or practical experience  
in various construction disciplines and activities  
including construction quality assurance.



1           Mr. Hubbard, when pressed further, admitted that  
2 the CQA attributes utilized by Stone and Webster Engineering  
3 Company ("SWEC") in its review of 2 of the major  
4 construction contractors were consistent with Appendix B  
5 criteria (Tr. 165). He also admitted that the SWEC findings  
6 regarding BMI welds involved only a small percentage of work  
7 in a confined space and were unique to the rest of the  
8 Wismer and Becker work. (TR. 181).

9           Significantly, Mr. Hubbard agreed that the mere  
10 issuance of a Notice of Violation by the NRC does not, ipso  
11 facto, mean that a program is not in compliance with  
12 Appendix B requirements (TR. 176) and further, that any  
13 conclusion regarding a "breakdown" in QA is based upon  
14 judgment and experience and an assessment of the  
15 appropriateness of corrective action (TR. 177). Indeed, Mr.  
16 Hubbard candidly admitted that in many areas of his opinions  
17 he had to speculate (TR. 162).

18           He also grudgingly acknowledged that the reactor  
19 coolant system ("RCS") pipe wall investigation results gave  
20 added confidence that CQA records were available (TR. 167)  
21 and that, assuming all radiographs were acceptable, it gave  
22 further evidence confirming the adequacy of the CQA program  
23 (TR. 170).

24           As to the other witness proffered by the Governor  
25 and relied on by the Joint Intervenors, Mr. Virgil Tennyson,  
26 suffice it to say that one obtained a markedly different

1 view of CQA at Diablo Canyon from Mr. Tennyson under ques-  
2 tioning by the parties and the Board than was distilled by  
3 the movants from his sworn statements to NRC investigators  
4 and the attorneys for the Governor.

5 In contrast to negative implications that could be  
6 drawn from Mr. Tennyson's sworn statements and the liberal  
7 interpretation placed upon his statements by the Governor  
8 and the Joint Intervenors in their motions, his testimony at  
9 the hearing confirmed that while there was pressure to get  
10 the job done this was not to be accomplished at the  
11 sacrifice of quality. (TR. 352). Mr. Tennyson was never  
12 told by his employer not to do his job, rather he was told  
13 to do it in a more timely manner. (TR. 350, 351.)

14 For example, Mr. Tennyson testified that he did  
15 his job properly (TR. 308) and that, in all matters  
16 mentioned in his sworn statements, nothing to his knowledge  
17 ever resulted in work being accepted that did not meet  
18 requirements. (TR. 341).

19 As for the "red tag" issue, his testimony revealed  
20 that he had little, if any, knowledge about the precise  
21 details of the issue. (TR. 250, 254, 258, 270). For  
22 example, he did not know the location of the "pulled red  
23 tags", whether the re-work had been accomplished, and, if  
24 so, whether the work had been inspected and signed off  
25 before the tags were pulled. (TR. 258, 270). Indeed, he

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1 admitted that he was wrong if it were shown that the red  
2 tags had been worked-off. (TR. 272). 5/

3           Turning to the question of quality control  
4 inspectors, he admitted that he was responsible for training  
5 inspectors up to 2 years before his dismissal and that they  
6 were adequately trained (TR. 288). Further, as far as he  
7 knows all welders at all times were properly certified.  
8 (TR. 309). The main problem he was confronted with was to  
9 find and employ sufficient quality control inspectors to  
10 timely inspect all the work being accomplished in the  
11 December 1982 to March 1983 timeframe without unduly slowing  
12 up the job. (TR. 311). This problem was alleviated when  
13 Foley hired Cataract - an action that he admitted showed  
14 that Foley was interested in the quality of work (TR. 311,  
15 312).

16           In summary Mr. Tennyson presented testimony that  
17 pressure existed to get the job done but not at the  
18 sacrifice of quality. Further, he felt that PGandE was  
19 committed to assuring a quality job (TR. 223, 352).

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25 5/ In point of fact, Mr. Etzler testified that the red  
26 tags were removed only after the inspection had deter-  
mined that the work had been completed in accordance  
with the disposition (TR. 652).



1           The foregoing discussion and analysis of Messrs.  
2 Hubbard's and Tennyson's testimony supports several  
3 conclusions. First, neither has presented any substantial  
4 evidence other than conjecture, speculation, or unsupported  
5 conclusion that any significant safety issue concerning  
6 construction quality assurance existed or exists at Diablo  
7 Canyon. Indeed, their testimony in many respects supports  
8 the opposite conclusion - that quality procedures were in  
9 effect and enforced. Further, whenever discrepancies or  
10 deviations from quality requirements were noted, appropriate  
11 corrective action was instituted.

12           PGandE's conclusions in this regard are borne out  
13 by the testimony of the Nuclear Regulatory Commission  
14 witnesses. They agreed that the construction quality  
15 program was average to better than average (TR. 807, 808,  
16 823). Also, they stated that the number and type of  
17 discrepancies detected in construction activities over the  
18 lifetime of the project were not unusual or unexpected.  
19 (TR. 807-808.) Additionally, for the December 1982 to March  
20 1983 timeframe they testified that given the type and amount  
21 of work being performed, the deficiencies noted were not  
22 unexpected nor were they of any safety significance (TR.  
23 806, 908). The Staff also expressed the opinion through Mr.  
24 Knight that the probability of the existence of an  
25 undetected significant deviation in construction at Diablo  
26 Canyon was very low. (TR. 860.)

1           Finally, the testimony of the IDVP panel regarding  
2 the CQA audit of two of the main construction contractors by  
3 the IDVP confirmed the adequacy of the construction of the  
4 work reviewed. (TR. 701-703.) Indeed, the manager of the  
5 IDVP offered his opinion that the review gave him reasonable  
6 assurance that an appropriate construction quality assurance  
7 program was in effect at Diablo Canyon. (TR. 720-724,  
8 740e.)

9           The evidence in the record produced by the  
10 Governor and Joint Intervenors presents a classic case of  
11 speculation, innuendo, and unsupported conclusions. Such  
12 "evidence" is not of the type needed to reopen a closed  
13 record. Pacific Gas and Electric Company (Diablo Canyon  
14 Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361,  
15 363 (1981). This abject failure stands in stark contrast to  
16 the objective evidence presented by PGandE, the NRC and the  
17 IDVP that construction activities at Diablo Canyon have met  
18 and continue to meet, applicable quality requirements.  
19 Indeed, it seems clear that none of the "new evidence"  
20 relied upon by the Governor and Joint Intervenors in their  
21 motions constitutes information of major significance  
22 impacting on plant safety nor would this information change  
23 the initial result. It does not reflect a pattern of  
24 discrepancies or deficiencies constituting a widespread  
25 breakdown in CQA. Rather, it shows isolated and relatively  
26 minor problems which have been detected and remedied by

1 appropriate corrective action. Hence, they have failed to  
2 satisfy the litmus test for reopening a closed record..  
3 Wolf Creek, supra at 338; In the Matter of Vermont Yankee  
4 Nuclear Power Corporation (Vermont Yankee Nuclear Power  
5 Station), ALAB-138, 6 AEC 520, 523 (1973).

6 REQUIREMENTS OF 10 C.F.R. § 2.714(a)(1)

7 PGandE has discussed the five requirements for  
8 late-filed contentions in its July 2, 1982 and May 31, 1983  
9 Responses and will not repeat them here. Suffice it to say  
10 that the extreme prejudice PGandE would suffer if  
11 construction quality assurance were reopened when reviewed  
12 against the flimsy "evidence" presented by the Governor and  
13 Joint Intervenors mitigates strongly against such a  
14 reopening. To allow late-filed contentions to be admitted  
15 based upon speculation and surmise by witnesses with either  
16 a bias or an admitted lack of construction quality assurance  
17 expertise would subvert the administrative process and the  
18 principle of administrative finality. ICC v. New Jersey,  
19 322 U.S. 503 514 (1944).

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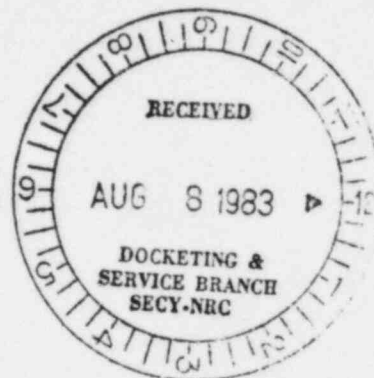
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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PACIFIC GAS AND ELECTRIC COMPANY )  
 )  
Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2 )  
\_\_\_\_\_ )

Docket No. 50-275  
Docket No. 50-323



CERTIFICATE OF SERVICE

The foregoing documents of Pacific Gas and Electric Company have been served today:

1. Motion of Licensee Pacific Gas and Electric Company for Leave to File Additional Pleadings
2. Post-Hearing Brief of Licensee Pacific Gas and Electric Company Regarding Motions to Reopen the Record on Construction Quality Assurance
3. Reply of Licensee Pacific Gas and Electric Company to Response to Motion to Compel Answers to Interrogatories to Joint Intervenors
4. Reply of Licensee Pacific Gas and Electric Company to the Answers of Governor Deukmejian to Motions to Compel Further Answers to Interrogatories and Production of Documents

The above-mentioned documents have been served today on the following by deposit in the United States mail, properly stamped and addressed:

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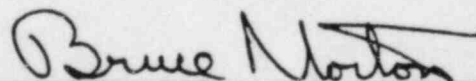
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