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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'83 OCT -6 P2:14

OFFICE OF SECRETARY
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BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

Diablo Canyon Nuclear Power Plant)
Units Nos. 1 and 2)

Docket No. 50-275

Docket No. 50-323

(Reopened Hearing --
Design Quality
Assurance)

RESPONSE OF LICENSEE
PACIFIC GAS AND ELECTRIC COMPANY
TO
GOVERNOR'S DEUKMEJIAN'S
MOTION TO MODIFY SCHEDULE

Licensee Pacific Gas and Electric Company
("PGandE") hereby opposes the Governor's Motion to Modify
the schedule for the conduct of hearings in this matter as
set by this Board on September 7, 1983. The Motion is but
yet another calculated step in a continuous course of
conduct by the Governor and Joint Intervenors to delay these
proceedings. As we will show, each of the reasons adduced
by the Governor in support of the proposed delay in these
proceedings either misstates or ignores the facts as they
pertain to their alleged disability to meet the schedule set

1 by this Board. Moreover, the facts as we see them clearly
2 demonstrate that the Governor and the Joint Intervenors
3 have, at best, slept on their rights and should not be
4 rewarded for their lack of diligence. To do so would make a
5 mockery of the Commission's Rules of Practice and this
6 Board's prior Orders for the conduct of this proceeding.

7 I. THE ITR QUESTION

8 The Governor argues that delays in the issuance of
9 certain ITR's have rendered it impossible to meet the
10 Board's schedule. Upon closer examination this argument is
11 unavailing. As the Board and the parties are all aware, the
12 key ITR's to be issued after September 1 were the Revision 0
13 editions. The September Revision 0 ITR's were to, and did,
14 identify any and all technical issues and the following
15 ITR's (Revision 1's) essentially concerned only the closure
16 of issues and did not raise any new issues. 1/ No new
17 material is added. The last Revision 0 ITR was issued on
18 September 20. Accordingly, the Governor has had sufficient
19 time to formulate and file new contentions by September 30,

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23 1/ In a public meeting attended by representatives of the
24 Governor, Dr. Cooper stated that future ITR Revision
25 0's would only be issued "when we reach the point where
26 only minor issues remain unresolved, and we are confident that those minor issues will be satisfactorily resolved, and any such issues are identified in Revision 0." Transcript Public Meeting, September 1, 1983, at 93-94. Emphasis added.

1 which in fact they did on September 29. 2/ The Board's
2 Order of August 26, 1983, contemplated the filing of ITRs as
3 late as September 30. Thus, the IDVP's filing of Revision 0
4 ITRs was on schedule in accord with the Board's September 7
5 Order.

6 II. DISCOVERY GENERAL

7 The Governor's counsel's approach to discovery in
8 this case has inextricably been one of expanding the issues
9 rather than narrowing them. 3/ Rather than focusing on and
10 narrowing the contentions that were previously advanced,
11 they have done just the opposite. Now, once again at the
12 eleventh hour, they seek to continue discovery in complete
13 disregard of this Board's Order.

14 On May 23, 1983 PGandE identified in response to
15 the Governor's first set of interrogatories those persons
16 most knowledgeable about issues designated by the Governor.
17 However, the Governor did not notice depositions of these
18 individuals until August 15, 1983. Neither did the Governor
19 ask for a designation of PGandE's or the IDVP's witnesses

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22 2/ This is not to say that we agree with the specifics of
23 the new contentions. See PGandE's Motion concerning
those new contentions filed contemporaneously herewith.

24 3/ It seems strange indeed that not a single specific
25 concern of the Governor's has been dropped as a result
26 of the issuance of ITR's, SSER #18, or discovery. To
the contrary, Governor's counsel has seen fit only to
add contentions.

1 until September 2, 1983. The request for such identifica-
2 tion came in the form of interrogatories which were answered
3 in a timely fashion on September 19 and 21, respectively. 4/
4 Clearly, the Governor has been remiss in not expediting
5 discovery. This lack of expedition stands in stark contrast
6 to counsel's repeatedly stated commitment to move these
7 proceedings along with the least possible delay. In fact,
8 during the April 1983 oral arguments Governor's counsel
9 indicated that hearing during August was both desirable and
10 attainable.

11 A. Depositions

12 The Governor now seeks to take additional
13 depositions purportedly based upon newly discovered
14 information. However, once again the Governor's failure to
15 seasonably seek the identity of IDVP, PGandE and/or NRC
16 witnesses should not form the basis for the relief
17 requested. For the attorneys for the Governor and Joint
18 Intervenors to simply not ask for the identity of witnesses
19 until extremely late in the discovery process and to then
20 argue "surprise" is, at best, specious. Moreover, most, if

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24 4/ In contrast, PGandE repeatedly requested of both Joint
25 Intervenors and the Governor the identity of their
26 witnesses starting in May, 1983. The only witness even
arguably identified in a seasonable manner was Dr.
Roessete, who was identified on August 31, 1983. See
PGandE's Motion for Sanctions, September 29, 1983.

1 not all, of these witnesses have been long known to
2 Governor's counsel.

3 The IDVP, in answers to the Governor's interroga-
4 tories, stated that Mr. Krechting was the person most
5 knowledgeable about many of the Phase II related items on
6 May 23, 1983. Governor's counsel now argues they thought
7 Mr. Sestak was that person. Similarly, they claim they did
8 not know that Professor Biggs was going to be a witness,
9 presumably just Professor Holley, whom they did depose, even
10 though both Professors Biggs and Holley signed off on the
11 ITRs dealing with structures. In addition, Mr. Wray signed
12 off as program manager on all of the RLCA ITRs and was also
13 named in the above-referenced interrogatory answers as the
14 person most knowledgeable for the IDVP on ITRs which are the
15 specific subject matter of certain contentions, e.g., the
16 PGandE/Westinghouse interface.

17 Governor's counsel has also seen to it that even
18 those depositions previously noticed were not completed.
19 The depositions of Dr. Kaplan, Mr. Richard Anderson and Mr.
20 Gary Moore were scheduled for 9:30 a.m., 11 a.m., and
21 2 p.m., respectively, on September 26, 1983. The deposition
22 of Dr. Kaplan lasted until 6:30 p.m. with the other two
23 witnesses sitting idly by waiting their turn. At that time,
24 the undersigned informed Governor's counsel that after a
25 dinner break the remaining witnesses would be made available
26 until 10 p.m. as depositions of Dr. Cloud and Mr. Denison of

1 the IDVP were scheduled the next day commencing at 9 a.m.

2 Mr. Kaufman, after being so informed, stated:

3 Number two, the Governor has
4 offered, and in fact is indicating to
5 counsel, that we are prepared to take
6 both witnesses on a single panel, even
7 though Mr. Norton, you expect these
8 people to testify in your mind on
9 different subjects.

10 The questions we have to ask them
11 are roughly similar, and we will save a
12 great deal of time by taking them as a
13 panel.

14 The questions, as I indicated, are
15 roughly similar, and what I see is if we
16 take them seriatim, we will have three
17 hours for one and three hours for
18 another. Taken together, it will turn
19 out we will have three hours for a
20 panel.

21 I believe that it would be the most
22 expeditious way of handling the matter
23 if we intend to finish tonight.

24 If you don't want to take them
25 seriatim, which you are telling me it is
26 impossible to take one of these indi-
viduals, which would mean we would have
to try to make up for that fact by
scheduling depositions concurrently,
which happen to be in the city in which
PG&E is located and have counsel.

27 And while I appreciate the fact
28 that you want to make a heroic effort
29 and appear at every single deposition
30 that is taken on the subject matter, I
31 don't think that we should be put in the
32 position of losing the opportunity to
33 conduct discoveries because of that
34 fact.

35 It is not unusual for a deposition
36 to be taken simultaneously. And if it
37 were a problem, we certainly can handle
38 that by continuing this deposition this
39 evening until necessary.

1 And if it is still a problem, we
2 can handle that fact by taking the wit-
3 nesses in a panel.

4 Now if you insist that they cannot
5 be taken in a panel, even though you
6 know there is no possibility of com-
7 pleting them this evening, then I think
8 you are duty bound to give up heroics
9 and to schedule the depositions concur-
10 rently.

11 [Deposition of Dr. Kaplan, pp. 193-194;
12 emphasis added.]

13 Upon resumption of the deposition at 8 p.m.,
14 counsel for PGandE allowed the singular depositions of
15 Messrs. Moore and Anderson to be consolidated for a panel
16 deposition. At 10 p.m., the undersigned terminated the
17 deposition as announced on several occasions that preceding
18 afternoon. Mr. Kaufman stated:

19 I would like the record to reflect
20 that I have many additional pages of
21 questions to ask these witnesses, and
22 PG&E's attorney is taking his witnesses
23 at the present time and leaving the
24 room, and that is keeping me from com-
25 pleting discovery.

26 [Anderson and Moore deposition at 59.]

27 B. Interrogatories

28 The need of the Governor's counsel to update his
29 answers to interrogatories is due to the failure of
30 Governor's counsel to prepare his case in a seasonal manner.
31 The updating of answers is a common practice recognized by
32 the Rules of Practice as necessary to issue a full and
33 complete response and to prevent surprise. However, under

1 counsel for the Governor's theory one could never have a
2 hearing since his answers to interrogatories might continue
3 to change, and there is apparently the misunderstanding that
4 supplements are not required until Governor's counsel deems
5 appropriate according to his hidden agenda. 5/

6 C. Document Production

7 The major portion of the documents requested by
8 the Governor (50,000 pages approximately) were produced for
9 inspection on June 12, 1983. All documents were then copied
10 by PGandE and sent on June 18, 1983 to attorneys for the
11 Governor as they specifically requested. Thus they have had
12 some three months to review these documents. Additional
13 documents as requested by the Governor on September 2, 1983
14 are to be provided on October 4, 1983, again as also
15 requested by Governor's counsel. These documents relate
16 solely to the revised contentions mandated by the Board and
17 were produced by PGandE as part of a response to interroga-
18 tories as to why PGandE disagreed with the Governor's
19 contentions. Thus, there is no basis in asserting that the
20 production of documents has in any way impaired the
21 Governor's ability to prepare his case.

22
23 5/ While identifying Messrs. Hubbard and Apostilakis as
24 witnesses on September 28, 1983, Governor's counsel to
25 this date has not supplemented the numerous interroga-
26 tories regarding facts, opinions, documents and the
like regarding those witnesses nor has he produced
documents requested to be produced as respects those
witnesses.

1 D. Newly Identified Witnesses

2 Perhaps the most puzzling development involving
3 both the Governor and the Joint Intervenor is their
4 incredibly late designation of expert witnesses on
5 statistical questions dealing with IDVP sampling. The issue
6 of sampling has been "on the table" since at least late
7 1981. The parties have discussed it many times with the
8 Staff and the Commission. Moreover, no recently issued ITR
9 even deals remotely with the sampling question. Thus, the
10 Governor and Joint Intervenor cannot argue surprise or late
11 receipt of information as a basis for not previously
12 identifying these witnesses in response to PGandE's
13 interrogatories. Indeed the dilatory conduct is in complete
14 defiance of the Board's April 21, 1983 Order and demands the
15 exclusion of these witnesses. 6/

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24 _____
25 6/ These witnesses are Messrs. Apostilakis, Kempthorne and
26 Samaniego. Mr. Samaniego is yet another witness listed
 by Joint Intervenor on October 3, 1983.

1 IV. CONCLUSION

2 For the foregoing reasons, PGandE urges this Board
3 not to grant the Governor's Motion to Modify the Schedule.

4 Respectfully submitted,

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20 DATED: October 4, 1983.
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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: October 5, 1983

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