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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD 12:50

OFFICE OF SECRETARY
DOCKETING & RECORDS

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

MOTION FOR MODIFICATION OF SCHEDULE

Governor George Deukmejian hereby moves the Atomic Safety and Licensing Appeal Board for an order modifying the schedule established in the board's September 7, 1983, order for the hearing on design quality assurance.

Since the August 23-24, 1983, prehearing conference, the timetable for completion of the Independent Design Verification Program (IDVP) has fallen behind at least two weeks. This delay in the IDVP has rendered it impossible to meet the deadlines established by the board.

The IDVP timetable, given the board by counsel for Pacific Gas and Electric Company is summarized in Table 1, together with the actual dates of release for those ITRs received so far. At the deposition two days ago of Edward Denison of the R. L. Cloud organization, Mr. Denison testified that the IDVP still had eight ITRs to issue, which it hoped to get out the end of this week. If it is successful in doing so, the delay in completion of the IDVP will have been two weeks from the dates given at the prehearing conference.

1.

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TABLE 1

ITR SCHEDULE GIVEN AT THE PREHEARING
CONFERENCE AND ACTUAL DATES OF RELEASE

ITR	Date of Release Given at Prehearing Conference*	Actual Date of Release **	Date of Receipt by Governor
51 Rev. 1	9/13 (D-151)	9/21	9/26
54 Rev. 1	9/9 (D-190)	9/14	9/19
55 Rev. 0	8/31 (D-150)	9/8	9/16
Rev. 1	9/13 (D-151)		
56 Rev. 0	9/16 (D-189)	9/20	9/26
Rev. 1	9/20 (D-151)		
57 Rev. 1	9/9 (D-190)	9/8	9/16
58 Rev. 1	9/16 (D-190)		
59 Rev. 0	9/8, 23 (D-149)	8/19	8/25
Rev. 1	9/13 (D-151)		
60 Rev. 0	8/31 (D-150)	8/18	8/24
Rev. 1	9/13 (D-151)		
61 Rev. 0	8/31 (D-150)	9/14	9/19
Rev. 1	9/13 (D-151)		
63 Rev. 0	8/23 (D-149)	8/23	9/1
Rev. 1	9/9 (D-190)		
65 Rev. 0	9/9 (D-189)	9/19	9/22
Rev. 1	9/13 (D-151)		
67 Rev. 0	8/31 (D-150)	8/15	8/18
Rev. 1	9/2 (D-189)	9/13	9/20
68 Rev. 0	8/16 (D-189)	9/22	9/26
Rev. 1	9/20 (D-151)		

*Parenthetical citation is to Transcript pages where schedule was given.

**Date of letter of transmittal.

Accordingly, the Governor moves the Appeal Board to adjust the schedule by moving all pertinent deadlines back about two weeks. In particular, the Governor requests the following new dates, which would enable the parties to address the reports about to be issued by the IDVP, permit the orderly conclusion of pending discovery matters, and enable the parties properly to prepare for hearing:

Discovery: That discovery be extended, solely to permit the parties to take and complete specified depositions and to complete the updating of interrogatory answers, to October 10, 1983.

Contentions: That the Governor and Joint Intervenors be permitted to file^{1/} contentions arising out of the Interim Technical Reports (ITRs) issued after September 20, 1983, on October 12, 1983.

Direct Testimony, Witness Qualifications, Panel Groupings, Exhibit Lists and Exhibits: That the matters presently required to be filed by October 8, 1983, be due on October 22, 1983.

Objections to Proposed Testimony and Exhibits: That the objections presently due October 14, 1983, be due instead on October 28, 1983.

* * * * *

1. As the Appeal Board did in its September 7 order, the Governor uses the word "file" to mean that the papers are in the hands of the board and the parties.

Responses to Objections, Estimated Cross-Examination
Time, and Statements of Procedural and Evidentiary Issues:

That the matters presently required to be filed by October 19
be due November 2.

Hearing: That the first two weeks (seven hearing days)
of hearings be cancelled and the hearing commence on Monday,
November 7, 1983, at the San Luis Bay Inn in Avila Beach.
The schedule from that day forward to remain as in the
board's order, including the contemplation that the hearing
conclude by November 23.

The Governor respectfully submits that the proposed
modification is necessary to the holding of an adequate hearing
before this board and that events that have transpired since the
present schedule was set have insured that the proposed modifica-
tion will not jeopardize timely operation of the power plant.

I

DELAYS IN THE IDVP HAVE MADE MODIFICATION
OF THE SCHEDULE UNAVOIDABLE

The schedule contained in the September 7 order was
based on a schedule for completion of the IDVP's remaining ITRs
by September 16. (Tr., pp. 189-190.)^{2/} That schedule contem-
plated the issuance of the last ITR on September 16. Subsequent
to the prehearing conference, the schedule has slipped at least
two weeks, with the final ITRs now projected to be issued around
September 30. (See Table 1.) The effect of these delays has
been to render it impossible to meet the deadlines set in the

September 7 order without eliminating much of the verification work from the scope of the hearing. Here is the effect of the IDVP slippage.

Contentions. The September 7 order requires that the Governor and Joint Intervenors have in the hands of the board and the parties by September 30 "any proposed issues that depend on matters contained in any" ITR issued after September 18.

Plainly, it is not possible to put in the mail on September 29 a document specifying issues in a report that will be issued no earlier than September 30 and received by the parties no earlier than October 3.

Testimony. The board has already provided for discovery to continue for ten days after issuance of the last ITR. For those issued on September 30, that would run to October 10 (a legal holiday). But the September 7 order requires the parties to have their direct testimony in the other parties' hands by October 8. Obviously, that testimony cannot benefit from discovery that will not yet be completed. And, perhaps of greater practical importance, there is simply no time for counsel and their consultants both to complete discovery, and to prepare direct testimony.

2. Actually, it is unclear the extent to which the schedule was based on the August 24 forecast of counsel for PG&E or the IDVP schedule he gave the previous day, on which the parties had based their own scheduling proposals. From August 23 to August 24, the IDVP schedule was revised with six ITRs formerly expected in August postponed roughly two weeks to mid-September, but with certain ITRs formerly project for September 20 revised to September 16 on the second day of the conference. (Tr., pp. 149-151, 189-190.)

Since all subsequent deadlines are keyed to the October 8 date for the filing of direct testimony, those dates have likewise been rendered impossible by the delays in the IDVP.

II

ADDITIONAL TIME IS REQUIRED TO COMPLETE DISCOVERY

The parties have been diligently pursuing a deposition schedule that began immediately after the prehearing conference. In the last 35 days, 24 depositions have been scheduled, of which 17 have been completed. The eighteenth is expected to be done on September 30. However, in the intensive schedule, it proved impossible to complete five of the depositions,^{3/} and a sixth was cancelled because the witness was unavailable for personal reasons. The status of the 24 noticed depositions is set forth in Table 2.

* * * * *

3. The Governor had indicated his willingness to speed the deposition process by taking simultaneous depositions using different lawyers. PG&E objected to simultaneous depositions.

TABLE 1
STATUS OF NOTICED DEPOSITIONS

DEPONENT	OF	DATE OF DEPOSITION	STATUS
1. Anderson	PG&E	9/26	Unfinished
2. Cloud	IDVP	9/27	Completed
3. Cooper	IDVP	9/23	Completed
4. Denison	IDVP	9/27	Completed
5. Haas	Staff	9/21	Unfinished
6. Holly	IDVP	9/29	Completed
7. Jagannath	Staff	9/20	Unavailable
8. Kaplan	PG&E	9/26	Completed
9. Knox	Staff	9/20	Unfinished
10. Kuo	Staff	9/20	Completed
11. Malik	PG&E	8/25	Completed
12. Moore	PG&E	9/26	Unfinished
13. Morrill	Staff	9/27	Completed
14. Philipikopolis	BNL	9/14	Completed
15. Polk	Staff	9/20	Completed
16. Raymond	PG&E	9/24	Completed
17. Reedy	IDVP	9/22	Completed
18. Reich	BNL	9/14	Completed
19. Roesset	Governor	9/29-30	In Progress
20. Schierling	Staff	9/21	Completed
21. Sestak	IDVP	9/22	Completed
22. Skidmore	PG&E	9/24	Completed
23. Wermiel	Staff	9/21	Unfinished
24. White	PG&E	8/25-26	Completed

Since these 24 depositions were noticed, new witnesses have been identified by three parties in the past week, requiring additional depositions. Following the September 21 depositions of the staff and the September 24 depositions of PG&E quality assurance managers, on September 26 counsel for the Governor advised the parties that the Governor would be designating Richard B. Hubbard as an additional expert witness.^{4/} Following the September 26 deposition of PG&E's statistician, counsel for the Governor determined that he would call Prof. George Apostolakis as an expert witness, and the parties were so advised at a September 28 deposition. Those two designations were confirmed in supplemental answers to interrogatories filed on September 28. Meanwhile, counsel for the Joint Intervenors have retained Prof. Peter Kempthorne and designated him as an expert witness on statistics in a Supplemental Answer to Interrogatories filed September 23. In a September 23 letter to counsel for the Governor, counsel for the IDVP indicated that, while the IDVP had not yet determined who all its witnesses would be, he was tentatively designating three new proposed expert witnesses for trial, Prof. M. J. Holley, Prof. J. M. Biggs, and R. Wray; the deposition of Prof. Holley had already been noticed by the Governor and is expected to be completed on September 29, but no notices have yet been issued for the other two IDVP witnesses.

4. Counsel for PG&E indicated his intention to seek to preclude Hubbard from testifying and, failing that, to take his deposition, which counsel contended could only be done after the October 8 deadline for the filing of direct testimony.

Two days earlier the IDVP had designated W. Cooper, R. L. Cloud, R. F. Reedy, and J. Krechting as its experts; Krechting had not been noticed for deposition on the apparently erroneous assumption that his superior, F. Sestak, would be the pertinent witness on Phase II.

In addition to the witnesses recently identified in interrogatory answers, important witnesses have been identified for the first time in depositions. In particular, it was learned that James Knight, who is not identified in Supplement 18 to the Safety Evaluation Report, will be relied upon by the staff to defend that report. The depositions of two Brookhaven National Laboratories engineers, A. Philipacopoulos and M. Reich, revealed the existence of previously undisclosed correspondence between BNL and the IDVP seeking answers to many of the same questions that have been posed by the Governor. It appears necessary to depose at least three BNL employees -- C. Constantino, C. Miller, and P. Bezler -- must be deposed to determine how the BNL concerns are being resolved. And the depositions of the IDVP and DCP structural engineering experts, as well as the release of ITR 68, Rev. 0, have identified the need to take the deposition of the as yet unidentified person responsible for the Diablo Canyon Project's soil structure interaction analysis for the containment.

With the most recent set of expert witness designations, 38 expert witnesses have been identified by the parties, of whom 18 have not been noticed for deposition and another 5 have had

Table 3

DESIGNATED EXPERT WITNESSES

<u>NAME</u>	<u>PARTY</u>	<u>DEPOSITION STATUS</u>			<u>SUBJECT</u>
		<u>Done</u>	<u>Started</u>	<u>None</u>	
Amaral	PG&E			X	QA
Anderson	PG&E		X		General, Statistics, Sampling
Apostolakis	Governor			X	Statistics
Biggs	IDVP			X	Structural Engineering as it Applies to Nuclear Power Plants
Cloud	IDVP	X			Engineering Mechanics
Cooper	IDVP	X			Engineering Mechanics
Costantino	NRC			X	Contentions 3(f), (i)
DeUriarte	PG&E			X	QA
Dick	PG&E			X	QA
Dunning	NRC			X	Contentions 4(d)-(f), 4(u)
Etzler	PG&E			X	General
Friend	PG&E			X	General
Haass	NRC		X		Contention 8
Hartzman	NRC			X	Contentions 4(l), (m)
Holley	IDVP	X			Structural Engineering as it Applies to Nuclear Power Plants
Hubbard	Governor			X	General, QA
Jacobson	PG&E			X	QA
Kaplan	PG&E	X			Statistics
Kempthorne	Jt Int			X	Statistics
Knight	NRC			X	Contentions 1(a)-(e), 2(a)-(d), 6, 7
Knox	NRC		X		Contentions 4(b), 4(c), 4(g), 4(o), 4(t), 4(u)
Krechting	IDVP			X	Nuclear Power Systems design and operation
Kubicki	NRC	X			Contentions 4(i)-(k)
Kuc	NRC	X			Contentions 1(a)-(e), 2(a)-(d), 3(a)-(n), 4(n)
LaGrange	NRC			X	Contentions 4(f), 4(g), 4(o)
Malik	PG&E	X			Seismic
Miller	NRC			X	Contentions 3(c), (e), (f), (h)-(l), (n)
Moore	PG&E		X		General, Statistics, Sampling
Morrill	NRC			X	Contentions 5, 8
Philippacopoulos	NRC	X			Contentions 3(e), (g), (j)
Polk	NRC	X			Contentions 3(a)-(n), 4(n)
Reedy	IDVP	X			Design QA
Schierling	NRC	X			Contentions 1(a)-(e), 2(a)-(d), 6, 7
Shipley	PG&E			X	?
Skidmore	PG&E	X			General, QA
Wang	NRC			X	Contention 3(g)
Wermeil	NRC			X	Contentions 1(a)-(e), 2(a)-(d), 4(a), 4(p)-(s), 6, 7
White, William	PG&E	X			General, Statistics, Sampling
Wray	IDVP			X	Structural Engineering as it Applies to Nuclear Power Plants
TOTAL		13	5	20	

their depositions started but not completed. (See Table 3.) While the Governor does not believe it is necessary for each and every designated witness to be deposed, he does believe it essential to the development of a full record that at least 13 witnesses from among the group recently identified and the group already noticed but not yet fully deposed must be taken for the parties adequately to develop a complete record at the hearing and be prepared to use the time given for cross-examination effectively. Together with the three additional witnesses PG&E will likely seek to depose, there are 16 depositions therefore remaining to be taken or completed before the parties can properly turn to preparation of direct testimony. These witnesses are identified in Table 4.

Accordingly, the Governor moves the Appeal Board to authorize the depositions of the witnesses listed in Table 3 through October 11 (October 10 being a legal holiday).

Interrogatories. Since the commencement of discovery in April, there has been a brisk interrogatory practice. By the Governor's count, approximately 850 pages of interrogatory answers and exhibits thereto have been filed by the parties (roughly a quarter of those pages by the Governor). While this exchange has been productive, there is a continuing need to update answers^{5/} as the parties continue to develop their cases

5. The parties have agreed to continue updating to the date direct testimony will be filed. The Governor proposes the filing of direct testimony remain the date on which the updating obligations ends.

TABLE 4
REMAINING DEPOSITIONS

Deponent	Of	Party Wishing to Take Deposition	Event Identifying Need to Take Deposition
Anderson	PG&E	Governor	Unable to Complete 9/26
Apostolakis	Governor	PG&E	Declaration as Witness, 9/28
Bezler	BNL	Governor	Depositions of Philipikopolis, Reich
Biggs	IDVP	Governor	Declaration as Witness, 9/21
Constantino	BNL	Governor	Depositions of Philipikopolis, Reich
Haas	Staff	Governor	Unable to Complete 9/21
Hubbard	Governor	PG&E	Declaration as Witness, 9/26
Jagannath	Staff	Governor	Unavailable on 9/20 due to personal emergency
Kempthorne	Joint Intervenors	PG&E	Declaration as Witness, 9/23
Knight	Staff	Governor	Depositions of Schierling, et al.
Krechting	IDVP	Governor	Declaration as Witness, 9/21
Miller	BNL	Governor	Depositions of Philipikopolis, Reich
Moore	PG&E	Governor	Unable to Complete 9/26
Soil-Structure Interaction Witness	DCP	Governor	ITR 68, Rev. 0
Wermiel	Staff	Governor	Unable to Complete 9/21
Wray	IDVP	Governor 12.	Declaration as Witness, 9/21

and, particularly, as the last body of IDVP analyses is released and digested.

Document Production. The Governor has thus far received roughly 50,000 pages of documents from PG&E and the IDVP. A relatively small additional number have been obtained during the deposition process. Early next week another body of documents, expected to be substantially smaller than the quantity already received, is due to be produced to the Governor by PG&E, the IDVP, and the staff.

The initial body of documents has been screened and substantially reviewed, although some additional work remains before the detailed listing of exhibits presently required by the board for October 8 can be prepared. While the apparatus for analyzing the documents to be received next week will permit their rapid review, it is virtually impossible to guarantee that they can be fully analyzed by October 8. The additional time necessary to accommodate the IDVP slippage would also permit a more thorough review of this evidence.

It should be clear that the parties are diligently pursuing discovery. It is doubtless clear to the parties that the effort has been productive, enabling them to compile a more complete and accurate picture of the verification program that is expected to resolve a number of the contentions without trial and to permit the remaining issues to be resolved on a reasoned, informed basis.

* * * * *

III

THE PROPOSED MODIFIED SCHEDULE WILL NOT JEOPARDIZE THE FULL POWER OPERATION SCHEDULE

Governor Deukmejian is reluctant to urge any delay in completion of these proceedings. In the present case, however, the compelling need for the proposed changes in the schedule are matched by compelling evidence that any slippage in the schedule for the proceeding has been more than matched by the changes since the prehearing conference in the schedule for low-power operation.

In August this board was told that PG&E was hoping for license restoration and fuel loading on October 7 (Tr., p. 160) and hoped to be able to cross the 5 percent power rating 61 days thereafter, in early January (Tr., p. D-199). Since August, the commission has declined to consider restoration of the suspended license until the IDVP is projected a date for issuing an SER limited to fuel loading matters of October 14, and the commission is scheduling a public meeting to take comments on the possibility of restoring PG&E's authority to load fuel on October 28. A decision would come sometime thereafter, presumably in early November. There is not even a proposed date for the commission to consider authorization for criticality and no date for a SER addressed to low-power issues. Thus, the two-week postponement from the August schedule proposed here is smaller than the delay of at least a month in the earliest possible fuel loading.

In fact, it is quite likely that there would be little or no delay of the close of hearing from that already contemplated. Because the first two weeks were scheduled to be short weeks, only 7 days of hearings would be lost in exchange for 14 days of additional pretrial preparation. That would leave 12 hearing days before Thanksgiving. Thus far, 8 witnesses have been designated by the parties, giving rise to the likelihood that the hearing can still be concluded by November 23.

The proposed modification has other, incidental benefits of practical value to the parties. Although no hearings were scheduled for October 28, when the commission will be hearing comments on restoration of the loading license, nevertheless that proceeding in Washington, coming at the end of a week of three days of hearing in San Luis Obispo, presents practical problems for those parties intending to be present. A two-week postponement of the start of the hearing also avoids the need for the proceedings to commence in Arroyo Grande and be moved to Avila Beach; the schedule proposed here will permit the full hearing to be held at one location.

CONCLUSION

The board will doubtless hear opposition to the motion from parties citing the need for regulatory swiftness and decrying further delay.

The delay comes not from the Governor but from the inevitable consequences of the still unfinished verification program. While the applicant's urgent desire for an immediate

conclusion of this proceeding is understandable, it should not force this board into a schedule that precludes serious assessment of the important issues this case presents, nor should it disable the parties from assisting the board in performing that duty.

The present schedule is the product of express representation by PG&E about the time required to complete the IDVP. That those predictions proved unrealistic -- like so many schedules that preceded them -- should not redound to the disadvantage of the parties seeking a full hearing.^{6/}

* * * * *

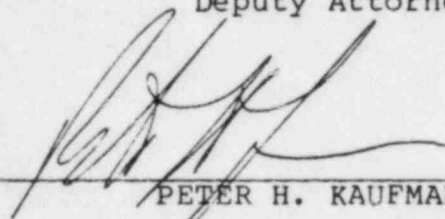
6. Indeed, the present schedule is in large measure the product of PG&E's earlier prediction of a June 30 publication date for the IDVP Final Report. We now know that that date was imposed on the IDVP without its agreement by the Diablo Canyon Project. (See IDVP Final Report, vol. III, § 7.1.) Indeed, it is a measure of how well PG&E's full court press has been working that these discussions of scheduling no longer even turn on the timing of the IDVP Final Report, much less on the SER that, for purposes of low-power testing and full power operation, appears to have been postponed well beyond even the dates proposed in this motion for the hearing.

Governor Deukmejian therefore asks the board to modify the hearing schedule as set out above to permit a full and complete hearing on the serious safety issues this board has to resolve.

Respectfully submitted,

JOHN K. VAN DE KAMP, Attorney General
of the State of California
ANDREA SHERIDAN ORDIN, Chief
Assistant Attorney General
MICHAEL J. STRUMWASSER, Special
Counsel to the Attorney General
PETER H. KAUFMAN,
SUSAN L. DURBIN,
Deputy Attorneys General

By



PETER H. KAUFMAN

Attorneys for Governor George Deukmejian