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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

PACIFIC GAS AND ELECTRIC COMPANY'S

ANSWER IN OPPOSITION TO JOINT INTERVENORS'

MOTION TO REOPEN THE RECORD ON THE ISSUE OF

CONSTRUCTION QUALITY ASSURANCE AND

LICENSEE CHARACTER AND COMPETENCE

Introduction

On February 22, 1984, Joint Intervenors filed yet another motion to reopen the record, this time on three issues: construction quality assurance (CQA), licensee character, and licensee competence. Licensee character and licensee competence have never been proffered by Joint Intervenors as contentions during the sixteen years these proceedings have been ongoing. This is the second time, however, that they have attempted to put into issue a contention on CQA.

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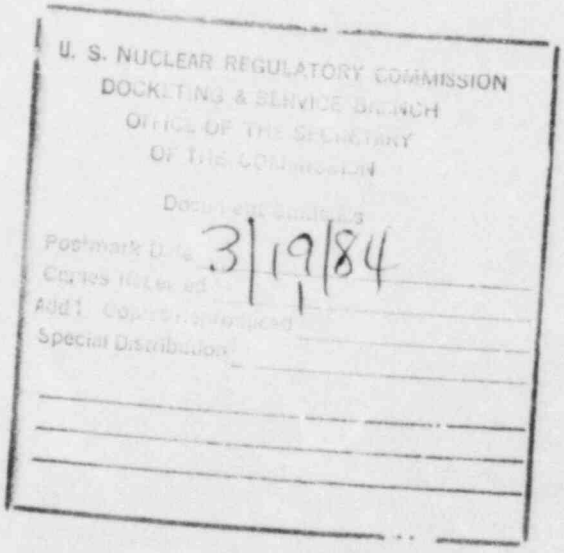

Background

On June 8, 1982, Joint Intervenors filed with this Board a motion to reopen the record in this proceeding alleging deficiencies in the quality assurance program at Diablo Canyon. On April 21, 1983, the Board issued an order requiring Joint Intervenors to refile their motion to reopen as to CQA and to submit all evidence supporting the motion.[1/] Joint Intervenors complied with that order on May 10, 1983,[2/] and PGandE filed its response on May 31, 1983. After reviewing the papers, the Board conducted a hearing on July 19-22, 1983, and issued a memorandum and order on December 19, 1983, denying the motion. In the matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC ____ (1983).[3/] Petitions for review of this decision were filed with the Commission by Joint Intervenors and the Governor on January 9 and 11, 1984, respectively. On February 22, 1984, Joint Intervenors filed the instant motion which was supplemented by their March 3, 1984, filing.

1/ In that Order the Board granted the motion to reopen on the issue of design quality assurance. Hearings were held at Avila Beach, California, from October 31, to November 21, 1983. Prior to issuance of a decision by the Board, Joint Intervenors filed a Motion to Augment Or, In The Alternative, To Reopen The Record on design quality assurance on February 14, 1984. PGandE filed its Answer in Opposition to that motion on March 6, 1984.

2/ The Governor of California filed a similar motion on May 18, 1983.

3/ On September 9, 1983, some six weeks after the hearing was completed, Joint Intervenors filed a supplement to their motion. This supplement contained a copy of a 1977 audit report by NSC Corporation of Pullman Power Products Corporation filed again as Attachment 1 to their instant Motion.

In support of their motion Joint Intervenors have submitted: (1) the 1977 NSC Audit of Pullman Power Products Corporation (Pullman); (2) the Affidavit of Harold Hudson (January 31, 1984), a former QC inspector and internal auditor for Pullman at Diablo Canyon; (3) the Affidavit of Steven Lockert (January 19, 1984), a former QC inspector for Pullman who had five months' experience; (4) an anonymous Affidavit (January 12, 1984) by an individual purporting to be a QC inspector for Pullman at Diablo Canyon; (5) an anonymous Affidavit (January 16, 1984) by an individual purporting to be a QC inspector for Pullman at Diablo Canyon; (6) the Affidavit of John Cooper (January 23, 1984), a former instrument and control technician at Diablo Canyon; and (7) two Affidavits of Charles Stokes (November 17, 1983, and February 8, 1984), a former small bore pipe support designer at Diablo Canyon.

On March 3, 1984, Joint Intervenors filed a supplement to their motion to reopen. In that supplement, Joint Intervenors incorporated additional allegations made public by the Government Accountability Project (GAP) in their 2.206 filing of March 1, 1984. This new information purportedly consists of "...four additional worker affidavits, interviews with nine additional Diablo Canyon whistleblowers (eight of whom still work at the plant), and substantial additional documentation...." (JI's Supp., at 2). Joint Intervenors did not, however, submit any of the "additional affidavits, interviews, or documents" with the Supplement under the claim that they have not been publicly released (Id. at 2).[4/]

Upon the motion of counsel for PGandE, the Board issued an Order extending the time for response to the Motion to Reopen to March 19, 1984. In

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4/ There were also no attachments to the March 1, 1984, 2.206 filing to the Staff.

accordance with that Order, PGandE is filing this answer.

The issues of licensee character and licensee competence, while currently in vogue in the nuclear industry, have not been raised in these proceedings prior to Joint Intervenors' instant Motion. The support for these two contentions appears to be a litany of recollected events occurring from 1967 to 1981, and recent allegations of intimidation, harassment, and retaliation. Joint Intervenors make no attempt to distinguish between character and competence and, in effect, seem to consider them a single contention. As shown infra, the charges of intimidation, harassment, and retaliation are simply false. They are made almost exclusively by individuals, or their close friends, who are suing their respective employers for monetary damages for wrongful discharge. In regard to licensee competence, Joint Intervenors offer no allegations that they have not been aware of since 1981. Under the timeliness standard for late filed contentions, this proposed contention must fail.

Argument

A. Overview

In their latest Motion to reopen the record in this proceeding, Joint Intervenors have relied upon unsubstantiated allegations; mischaracterized, overstated or misinterpreted the "facts" as contained in the affidavits; relied upon and created unsupported and speculative conclusions; and generally attempted to create a totally warped picture of CQA at Diablo Canyon.

The "evidence" that has been furnished in support of this Motion consists of anonymous affidavits, affidavits referring to and quoting

unidentified witnesses, affidavits that are basically untrue, affidavits containing gross speculation and voluminous hearsay, and even, affidavits and interviews which, for purposes of the instant Motion, do not exist. Plainly and simply, this is not evidence sufficient to warrant the reopening of a closed record. Rather, the motion is yet another in the mass production of filings by Joint Intervenors designed to achieve their goal of stopping Diablo Canyon from operating by any possible means.

As in their previous CQA filing, the "documentary evidence" does not support the inferences and conclusions drawn by either the affiants or counsel. Joint Intervenors have adopted cleverly misleading methods of counting "allegations." For example, they will take a single issue, write one or two sentence paragraphs, number each such paragraph, and then state each number represents an allegation. (See, e.g., Motion at 22-23, allegations 64-75, where an allegation regarding UT measurement of valves becomes 11 separate allegations.) By repeating this arbitrary subdivision they are able to, and do, announce to the world and in their motions that they have found "hundreds" of new allegations, when in fact they are exaggerating by at least an order of magnitude. In instances where quality assurance or quality control (QA/QC) personnel have, in the performance of their duties, discovered a discrepancy, inconsistency, or the like, and properly reported it, Joint Intervenors have subdivided the chronology of those events, even through resolution of the issue, and called each such paragraph an allegation. In fact, these allegations are, when viewed in light of all relevant and material facts, evidence that the QA/QC program in CQA was working as intended. (See, e.g., Motion at 19-20, allegations 53-55.) As will be shown infra, almost without exception the allegations brought forward by Joint Intervenors in the instant Motion are without truth and/or substance. They are not only

exaggerated in number, but, more importantly, intentionally misleading.

B. The Principle of Administrative Finality Requires that the Motion be Denied.

Joint Intervenors again seek to reopen by presenting "new evidence."[5/] By this strategy the Joint Intervenors submit information to the Board serially which frustrates the Board from meeting its responsibility to complete the administrative process. As such, it threatens to make a mockery of the licensing process to the extreme prejudice of the licensee/applicant. Such a result cannot and should not be countenanced or sanctioned by this Board. Rather than repeat arguments made on this issue in our answer to Joint Intervenors' Motion to augment the record in the DQA proceeding, we incorporate by reference the legal argument as set forth in our answer filed with the Board on March 6, 1984 (Answer, pp. 3-8).

However, it should be pointed out that all of the allegations set forth in Joint Intervenors' instant Motion are contained in petitions filed by their new attorneys (GAP) with the Director of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. (February 2, and March 1, 1984 filings.) The more logical and orderly procedure would be for the Staff to investigate these allegations under their appointed regulatory authority and take any appropriate action.[6/] This Board is not, and should not be, in the business

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5/ Joint Intervenors take allegations and, with a stroke of the pen, glibly turn those allegations into "evidence." In fact, the allegations of the Motion to reopen CQA are not legally admissable evidence. See Section D, infra at 8-9.

6/ As this Board and all the parties are aware, the Commission Staff has in place a comprehensive allegation management program. The presumption must be that the Staff will perform this task in a competent and timely manner and resolve all matters to its satisfaction, having sufficient authority to independently halt any activity of the licensee as it deems necessary.

of acting as an investigatory body. Rather its function is to adjudicate issues which have been properly brought before it. In the Matter of Cincinnati Gas and Electric Company, et al. (Wm. H. Zimmer Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982).

C. Standards for Reopening a Closed Record and Admitting Late Filed Contentions

It is well established that a party seeking to reopen the record in a licensing proceeding carries "a heavy burden." Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978). Just last December this Board reiterated the test for reopening a closed record in connection with Joint Intervenors' previous Motion to reopen the record on construction quality assurance observing that:

> "[T]he motion must be both timely presented and addressed to a significant safety or environmental issue. Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, AEC 520, 523 (1973); . . . Georgia Power Company (Alvin W. Vogtle Nuclear Power Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975). Beyond that, it must be established that "a different result would have been reached initially had [the material submitted in support of the motion] been considered. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974)." In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant Units 1 and 2) ALAB-756, 18 NRC _____, (slip opinion at 5 (December 19, 1983).

After acknowledging the obvious fact that errors do occur in nuclear plant construction, the Board went on to state that:

"...[p]erfection in plant construction and the facility construction quality assurance program is not a precondition for a license under either the Atomic Energy Act or the Commission's regulations. What is required instead is reasonable assurance that the plant, as-built, can and will be operated without endangering the public health and safety. 42 U.S.C. 2133 (d); 10CFR50.57(a)(3)(i); Power Reactor Development Company vs. International Union, 367 U.S. 396, 407 (1961); Maine Yankee Atomic Power Station, ALAB-161, 6 AEC 1003, 1004 (1973), Aff'd sub nom. Citizens for Safe Power vs. NRC, 524 F.2d 1291 (D.C. Cir. 1975)." Id., at 7.

Having articulated this guiding principle, the Board then adopted the requirement that a party:

". . .[m]ust establish either that uncorrected construction errors endanger safe plant operation, or that there has been a breakdown of the Quality Assurance Program sufficient to raise legitimate doubt as to the plant's capability of being operated safely. See Union Electric Co. (Callaway Plant, Unit 1), ALAB-740. 18 NRC_ __, ___ (September 14, 1983) (slip opinion at 2-3)." (footnote omitted). Id., at 7-8.

As we will demonstrate infra, the evidence submitted by Joint Intervenors does not satisfy these requirements for reopening a closed record. In addition to meeting the foregoing requirements for reopening a closed record, Joint Intervenors must also satisfy the five requirements for late filed contentions of 10 CFR 2.714(a)(1). Those requirements are:

(i) Good cause, if any, for failure to file on time.
(ii) The availability of other means whereby the petitioner's interest will be protected.
(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
(iv) The extent to which the petitioner's interest will be represented by existing parties.
(v) The extent to which the petitioner's participation will broaden the issue or delay the proceeding.

As noted above, all of Joint Intervenors' claims, as set forth in the instant Motion, are currently pending before the Director of Nuclear Reactor Regulation as part of a petition they have filed pursuant to 10 CFR 2.206. As stated previously supra (p. 6, fn. 6), the Staff has sufficient resources and authority to protect any legitimate interest Joint Intervenors may have. Since Joint Intervenors and their attorneys are contemporaneously pursuing the same claims in another forum, a sound record can be developed in that proceeding. Compare, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261, 262 (1979). It is obvious that a reopened hearing on the broad contentions proposed by Joint Intervenors would substantially harm the licensee on the eve of criticality and power generation. The financial damage alone is overwhelming. The unprecedented length of this proceeding has provided firm evidence that the Joint Intervenors' only contribution to the record has been in lengthening it, not making it more sound. During the decade that Joint Intervenors have been litigating such issues as seismic design, environmental issues, safety, emergency planning, quality assurance, and low power, not a single thing has been changed as a result of any evidence brought forth by Joint Intervenors. Contrary to the requirement of assisting in developing a sound record, Joint Intervenors' evidentiary contribution has been de minimus or, on occasion, counterproductive.

Of the three proffered contentions, CQA, character, and competence, only the first comes even close to being timely filed. Joint Intervenors offer no good cause as to why they have waited a decade to raise questions of character and competence when in offering these contentions they cite as support for their position public information that has been available as long as seventeen years ago. Accordingly, Joint Intervenors have failed to satisfy

the requirements for submitting late filed contentions.

D. Evidentiary Issues

Joint Intervenors' Motion raises several significant evidentiary problems that require consideration and resolution by this Board. As noted above, a party, in order to prevail on a motion to reopen a closed record, bears a heavy burden. Kansas Gas & Electric (Wolf Creek Generation Station), supra. To meet this burden, the evidence submitted by the proponent must be sufficient to show that a different result would have been reached. Pacific Gas and Electric (Diablo Canyon) ALAB-756 supra, slip opinion at 5. In the instant case, Joint Intervenors have accompanied their motion with affidavits containing rank hearsay and speculation, anonymous affidavits, affidavits with deletion of identifying information, and references to affidavits and "interviews" that they will not allow the licensee, or, for that matter, anyone else to see. As such, these affidavits are incompetent and inadmissible evidence. In the Matter of Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 24 (1983); In the Matter of Metropolitan Edison (Three Mile Island Nuclear Station, Unit No. 2), ALAB-525, 9 NRC 111, 114 (1979); In the Matter of Northern States Power (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973).

The inherent danger of relying on such material is the distinct inability of the responding party (or the Board) to determine if the affiant has personal knowledge (Northern States Power, supra, at 190-191) and is a reliable and knowledgeable person competent to testify to the truthfulness and correctness of the matters set forth in the affidavit. In the Matter of Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1),

ALAB-738, 18 NRC 177, 193 (1983).[7/] See e.g., Charles River Park "A" Inc. v. Department of Housing and Urban Development, 519 F.2d 935, 939 (D.C. Cir 1975). Further, it denies to the responding party the ability to compare assertions with the record and documentary evidence. In the Matter of Metropolitan Edison Co., supra, at 193.

Accordingly, the anonymous affidavits submitted by Joint Intervenors in support of the Motion (Attachments 4 and 5) should be stricken and ignored by the Board. Obviously, the anonymous affidavits and purported interviews relied upon in the Supplement of March 3, 1984, which are not allowed to be seen by anyone but Joint Intervenors' attorneys, cannot be the basis for the motion. Similarly, the portions of the affidavits of Messrs. Hudson, Lockert, Cooper, and Stokes (2) (Attachments 2, 3, 6-8) which rely in any way on hearsay information by unidentified third parties or unfounded speculation should also be stricken and disregarded by the Board. See In the Matter of Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-669, 15 NRC 453, 475, 477 (1982).

E. The Record Should Not be Reopened on the Issue of Construction Quality Assurance

Joint Intervenors have presented to this Board a pot pourri of affidavits and other documents which they claim contain significant new evidence requiring a reopening of the record on CQA. A brief historical perspective on CQA issues as they have surfaced in this proceeding is especially revealing. Over the last several years issues relating to CQA have

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7/ The danger of relying on such unreliable statements was illustrated by the dramatically different conclusions reached involving Mr. Tennyson's previous sworn statement as compared with his testimony on cross-examination in the July, 1983, hearing. In the matter of Pacific Gas and Electric Co. (Diablo Canyon) ALAB-756, supra, (slip opinion at 11-12.)

been raised by Joint Intervenors. In each instance, the quality of constructon at Diablo Canyon has been amply demonstrated.

The adequacy of CQA at Diablo Canyon was further established by the review of two major construction contractors -- G. F. Atkinson and Wismer & Becker -- as an adjunct to the Independent Design Verification Program. That independent, third party review demonstrated both the adequacy of the construction and the contractor's applicable quality assurance programs. In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), supra, (slip opinion at 15-18.)

In June/July 1983, a question regarding minimum wall thickness of the Reactor Coolant System was raised as the result of a PGandE pre-service inspection. The resolution of this question was aided in great part by reviewing the pertinent quality records (dating back over fourteen years), which scrupulously documented the adequacy of the RCS wall thickness.

Yet another example involves the NRC staff review of the 1977 NSC audit report of Pullman. In their review, the NRC staff concluded that appropriate quality controls were in place and all findings were appropriately resolved for activities dating to the origin of Appendix B. Id., at 26-27.[8/]

Having been rebuffed in their previous attempt to reopen the record on CQA, Joint Intervenors have retained a new set of attorneys, GAP, to

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8/ In a final close-out inspection Report on the NSC 1977 Audit of Pullman (NRC Inspection Report Nos. 50-275/83-37 and 50-323/83-25, February 29, 1984) the staff concluded, at page 41, that "...the NSC audit findings do not provide a basis for concluding that the Pullman-Kellogg Quality Assurance Program suffered a major breakdown during the time period prior to the NSC audit." While the staff did identify one violation (the qualification of Pullman visual welding inspectors), it did not consider this a significant item since all but two of the inspectors had adequate backgrounds and experience in the areas of welding and quality control inspections.

"obtain additional evidence" of CQA deficiencies at Diablo Canyon. As will be shown infra, this information is not timely, it does not involve a significant safety issue, and a different result would not have been reached had it been presented previously to this Board.

Before discussing in greater detail the startling lack of truth or significance of the "new" allegations by Joint Intervenors' affiants, we note that the affidavits of Cooper and Stokes (Motion, Attachments 6, 7, and 8) are the same affidavits as those filed with Joint Intervenors' Motion to reopen DQA of February 14, 1984. Those affidavits were responded to in PGandE's March 6, 1984, answer, which is incorporated herein by reference. However, neither the Cooper nor Stokes affidavits deal with construction quality assurance.[9/] Further, as this Board is well aware, the NSC 1977 audit of Pullman was placed at issue in Joint Intervenors' previous Motion to Reopen on CQA, and the issue was disposed of by the Board in its opinion. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, supra, (slip opinion, note 35 at 26-27).

The great majority of the allegations set forth in the Motion are drawn from two of the eight attachments to the Motion; the Hudson affidavit of January 31, 1984 (Motion, Attachment 2); and the Lockert affidavit of January 19, 1984 (Motion, Attachment 3). There are a few allegations from the two relatively short anonymous affidavits of January 12 and 16, 1984 (Motion, Attachments 4 and 5, respectively). These four affidavits primarily address four subject areas: (I) nondestructive examination (NDE); (II) welding;

9/ There is one matter concerning CQA from Stokes' affidavit of November 17, 1983, which is addressed in the affidavit of Mr. R. Etzler, Attachment J.

(III) auditing activities; and (IV) charges of harassment, intimidation, retaliation, and management refusal to be concerned with quality. In addition, there are several miscellaneous allegations (area V).

As in our answer to Joint Intervenors' DQA Motion, we have addressed each and every allegation posited in the instant motion with legally competent affidavits.[10/] The NDE allegations are addressed in the H. R. Arnold, et al., affidavit, Attachment A. Welding allegations are addressed in the affidavits of F. J. Lyautey, et al.; F. C. Breismeister, et al.; and D. R. Geske, Attachments B, C, and D, respectively. The auditing allegations are addressed in the A. A. Eck, et al., affidavit, Attachment E. The allegations regarding intimidation, harassment, retaliation, and management's refusal to be concerned with quality are responded to in the H. W. Karner, et al., affidavit, Attachment F. The miscellaneous allegations are answered in the following affidavits: H. R. Arnold, et al., Attachment G; D. A. Rockwell, et al., Attachment H; H. W. Karner, et al., Attachment I; R. D. Etzler, Attachment J; M. R. Tresler, et al., Attachment K; and H. W. Karner, et al., Attachment L.[11/]

(I) Nondestructive Examination

There are 28 allegations in this area, almost all of which come from the Hudson affidavit. The NDE allegations center on three areas: code

10/ The allegations as contained in Joint Intervenors' Supplement of March 3, 1984, are not, in the main, addressed. Given the Joint Intervenors' propensity to distort and mischaracterize the printed word and the fact that no affidavits, interviews, or "documentation" accompanied the Supplement, it was not possible to gather information to respond to the vast majority of the allegations. Nonetheless, allegations 192, 193, 194, 197, and 198 are addressed in the M. R. Tresler, et al., and H. W. Karner, et al., affidavits, Attachments K and L, respectively.

11/ Attachments A through L and the Exhibits accompanying those attachments are incorporated as though set forth in full by this reference.

requirements, NRC program requirements for minimum wall valve measurement, and apparent paper discrepancies. All three areas of concern are creations of the mind of Mr. Hudson in spite of the full factual record which overwhelmingly draws one to a different conclusion.

The majority of the allegations stem from Mr. Hudson's unqualified assertion that certain records are required by code for NDE when in actual fact, they are not. This mindset even leads to Hudson requirements for the valve measurement program which were not part of the AEC/NRC program. The superficially apparent paper deficiencies arise where, at the worst, the situation is ambiguous but the facts underlying the records were present had Mr. Hudson cared to accept or, in some instances, look for them.

(II) Welding

There are 49 allegations dealing with welding, coming from both the Lockert and Hudson affidavits. As in the area of NDE, these allegations seem to stem from either a lack of knowledge on the part of the affiants, a stubbornness to accept countervailing information, or a deliberate withholding of information by the affiants. One only has to examine the limited qualifications of Messrs. Hudson and Lockert to realize the basic reason that these allegations have no substance. The most junior affiant in this answer has substantially more professional training, industry experience, and knowledge of the facts of Diablo Canyon than Messrs. Hudson and Lockert combined. One key issue in analyzing these allegations is the knowledge of ASME and AWS Code requirements and their application at Diablo Canyon. None of the Joint Intervenors' affiants have, or show, sufficient knowledge to be either reliable or credible.

These allegations could well be dismissed on face value, given the

independent overview that has taken place at Diablo Canyon on these precise matters. In addition to Pullman's and PGandE's CQA programs, which have not been found lacking, Pullman has received ASME certification, there has been an independent Authorized Nuclear Inspector--required by State law, and intensive NRC Staff inspection and investigatory activity without even a scintilla of significant negative evidence on CQA. However, we have chosen to rebut these allegations on a point-by-point basis and are able to show once again that there is not a single issue of safety significance .

The majority of the allegations deal with paper work requirements for welder qualification and welding procedures. Even when each paper work requirement was resolved when all the relevant facts were viewed, the Joint Intervenors' affiants apparently assumed a sinister interpretation and attribute substantial safety importance to even the smallest minor differences between the two codes. In fact, either the AWS or ASME Code will assure sound welds.

These two codes are highly developed and precise in their numerous requirements. The fact that two codes are involved and each applies to different equipment (ASME for piping and pipe supports and AWS for rupture restraints) has lead to hopeless confusion, if not deliberate misrepresentation, on the part of Messrs. Hudson and Lockert or their attorneys. As is demonstrated in the attached affidavits, the welding at Diablo Canyon met <u>all</u> requirements, including those of a fully functioning QA/QC program. This is amply demonstrated by the few instances where corrective action was required. All such discrepancies were identified by the QA/QC program and resolved. In fact, many of the allegations stem from the QA

audits performed by Mr. Hudson. As an auditor, Mr. Hudson was thorough and aggressive in identifying potential QA problems. However, for some reason, he apparently could not accept the disposition of his potential findings by his qualified technical superiors. In fact, he now appears to further question many findings he, himself, approved as closed issues.

(III) Auditing

Like NDE, these 18 allegations come from the Hudson affidavit. Unlike the NDE allegations, which seem have as a common cause a lack of understanding and expertise on Mr. Hudson's part, these allegations also have a strong overtone of deliberately misleading the reader. Mr. Hudson generally refuses to accept the opinions and facts as presented by those who are his superiors in both technical ability and experience. For reasons known only to Mr. Hudson, and presumably his attorneys, he was able to close out his audits when doing them in the early 1980s. Now, he questions the bases upon which he signed off on them as though he had no part in the process. A review of the Hudson allegations in this area and the affidavit of D. R. Geske, et al., Attachment E, shows a clear picture of a properly functioning, even overconservative, QA/QC program by Pullman and PGandE for construction activities at Diablo Canyon.

(IV) Charges of Harrassment, Intimidation, and Retaliation

Unlike NDE, welding, and auditing, there is little for the affiants to be confused about from a technical standpoint in these 33 allegations. An examination of the allegations in this group reveals a mindset approaching paranoia. Every word, every action, no matter how normal in the course of a working person's day-to-day activity, is viewed as part of a sinister conspiracy by "management" of large corporations; a conspiracy that runs from

the top of these corporations down through the lower levels of supervision; a conspiracy that, by necessity, involves hundreds of people at a time and literally thousands over the life of the project. The allegers are almost all people whose job it is to uncover inconsistencies, deficiencies, errors, etc. Obviously, these individuals can easily claim that they are being intimidated or harassed whenever anyone speaks to them in any fashion they do not like. It is easy for them to speculate that the person who spoke to them in a fashion they did not like did so because of some part of their work. It is apparently very easy to blame every missed opportunity for promotion or pay raise, a request to do an unpleasant task, a layoff, or even a deserved termination, on "retaliation" by management, as opposed to facing the discomforting thought of a personal deficiency. It is this mindset that best characterizes Joint Intervenors' affiants when viewed in light of all the relevant and material facts. As shown in the H. W. Karner, et al., affidavit, (Attachment F), when all is said and done, "management" of PGandE and its contractors has not, as alleged, engaged in a "systematic scheme of intimidation, harassment, and retaliation." PGandE and its contractors have not, as alleged, engaged in "suppressing quality concerns." Rather, Diablo Canyon has, during the life of the project, been a site where quality of construction has been paramount. Indeed, even the allegations of Joint Intervenors' affiants bear this out when examined in the full light of competent evidence.

(V) Miscellaneous

There are a small number of alleged deficiencies at Diablo Canyon which are not covered in areas addressed immediately above (I-IV). These matters are addressed in Attachments G through L. They are: (a) brazing, (b)

beam clamps, (c) incore thermocouples, (d) shims, (e) wood chips in the concrete intake structure, (f) ordering stainless steel, and (g) the use of tools on stainless steel. All of these issues are largely false and, as shown in the attached affidavits, of no merit whatsoever.

Joint Intervenors have presented 139 allegations which, after review of the affidavits attached to this response, fit into the following four basic categories.[12/]

These categories are:

(i) The material factual predicates of the allegations are, as a matter of law, demonstrably incorrect.

(ii) The material factual predicates of the allegations are partially or substantially correct from which an inference or conclusion is drawn but, upon examination of all the relevant facts, the alleger's preferred inference or conclusion is, as a matter of law, demonstrably incorrect.

(iii) The allegation recites examples of problems found during construction which, along with the documented corrective action taken, reflect a properly functioning quality program.

(iv) The factual predicates of the allegation are substantially or partially correct, but lead to an inference or conclusion of little or no safety significance.

12/ While the Motion numbers allegations 1 to 141, there is no number 87 or 88, thus the total of 139. As in the case of their February 6, 1984, Motion regarding DQA, Joint Intervenors' allegations are rife with hearsay and speculation for which there is no legally sufficient foundation. A majority of the allegations fall in this category at least in part.

Of the 139 allegations offered in the Motion, 87 fall in category (i), 38 in category (ii), 11 in category (iii), and 3 in category (iv).[13/]

(i) Demonstrably Incorrect Material Factual Predicates

Approximately 63% of the allegations fall in this category and are amply distributed throughout areas of allegations (I) through (V) discussed previously. When the material facts of the allegations are examined they are found to be inaccurate, incorrect, misleading, or outright falsehoods. By way of example, JI #28 involves Mr. Hudson's allegation that a PGandE contract requirement for Charpy tests was waived without engineering review and approval. The facts, as indicated in Attachment C, paragraphs 61 to 63, are exactly the opposite. PGandE Contract Specification 8833XR was modified by Change Notice #9, which was approved by PGandE's Engineering Department on February 12, 1973.

Another excellent example of this category of allegation is again obtained from Mr. Hudson, JI #133. This time the subject is retaliation. Mr. Hudson alleges he was laid off on January 13, 1984, as a result of his reports

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13/ Each of the allegations of the Motion is addressed in the attached affidavits. The allegations are set forth in the affidavits by the same number they carried in the Joint Intervenors' Motion as "JI #__." Those that fall in category I are: JI #s 1-3, 5, 6, 9, 11, 12, 18, 21-24, 27, 28, 30, 36-39, 43-46, 48, 49, 52, 59-64, 66-69, 71, 72, 74-81, 83-85, 89, 92-94, 96, 99, 102, 103, 105-109, 113-119, 121-125, 127-130, 132-136, 138-140.
The allegations which fall in category II are: JI #s 4, 7, 10, 14-16, 25, 26, 29, 31-35, 40-41, 47, 50, 51, 53-55, 57, 58, 70, 73, 82, 86, 90, 91, 104, 110-112, 120, 126, 131, 137, 141.
The allegations which fall in category III are: JI #s 17, 19, 20, 56, 65, 95, 97, 98, 100, 101.
The allegations which fall in category IV are: JI #s 8, 13, 42.

to the NRC.[14/] The facts, as set forth in paragraphs 19-22 of Attachment F, show that Mr. Hudson was laid off as part of a directive from Project Construction Management to Pullman to reduce their work force by approximately 50 people through an ROF (reduction of forces). In the affidavit of the general foreman who made the decision to lay off Mr. Hudson (see Exhibit 1 to Attachment F), Milton L. Andrews attests that he never received any direction from anyone regarding the layoff of Mr. Hudson and did not even know that Mr. Hudson had ever contacted the NRC. Mr. Hudson was obviously laid off in the normal course of events and any inference or conclusion to the contrary is plainly erroneous.

JI #38 cites Mr. Lockert's allegation that "Pullman used GTAW welding machines that violate contract specifications." The facts demonstrate that Mr. Lockert's assertion is false. As stated in Attachment C, paragraph 82, any contract obligation relating to welding machines which Pullman might have had were superseded by PGandE pursuant to Contract Specification 8711, Section 1, Paragraph 3.21, when PGandE supplied the welding equipment at Diablo Canyon as was done in this case. The statement, and its following inference, are both incorrect.

(ii) Demonstrably Incorrect Conclusions

Approximately 27% of the allegations fall in this category, bringing the total to 90% of the allegations where either the material facts or the conclusions are false. An excellent example of where the factual

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14/ The Joint Intervenors have made much ado about preliminary findings by the Labor Board investigators which have been favorable to Messrs. Stokes and Lockert. They failed to point out that the Department of Labor has ruled against Mr. Hudson. In any event, neither party has had an opportunity to litigate these issues before an adjudicatory body and this Board should not rely on those preliminary findings.

predicate of the allegation is partially correct, but upon examination of all the relevant facts the alleger's preferred inference or conclusion is demonstrably incorrect is JI #133. In JI #133, Mr. Hudson alleges that Mr. Karner ordered him not to identify any more problems except pursuant to Mr. Karner's specific instructions, thereby removing Mr. Hudson's organizational freedom to identify any violations except at management's whim. The facts, as indicated in paragraphs 8-9 of Attachment F, show that Mr. Hudson was instructed to stay within the scope of his assigned responsibilities, but this did not in any way restrict his responsibilities, within that assignment. Instead of performing his own assignments, and following recognized channels to bring his concerns to the attention of the proper individuals by following proper procedures, Mr. Hudson continued to pursue his private agenda under the guise of performing his assigned work. It was Mr. Hudson's continued refusal to recognize the scope of his work and to follow established and proper procedures which led to whatever reprimands he did receive from his superiors. To conclude that he was being denied his "legal right" of organizational freedom is patently absurd.

In JI #33, Mr. Hudson alleges that Pullman welding procedures, WPS 88/89 and AWS 1-3 allowed the use of gas tungsten arc welding (GTAW) and A515 basemetal, which do not comply with the AWS Code provisions. In this case, Mr. Hudson either chose to ignore, or was unaware, the fact that the AWS Code specifically allows the Engineer (PGandE) to approve other materials and weld processes if they are demonstrated to be acceptable. Since A515 is an ASME IX steel with P-1 (excellent) weldability, its approval by PGandE (the Engineer) was proper. The approval of GTAW was given because this welding process is superior, though more costly, than the shielded metal arc welding process (SMAW) prequalified in ASW D1.1 (see Attachment C, paragraphs 73-77).

JI #46 cites Mr. Lockert's allegation that "five Pullman supervisors" refused his request "for copies of welding procedures for whose compliance he was responsible." As stated in Attachment C, paragraphs 101 and 102, there is no requirement that every QC inspector have a personal copy of controlled procedures. In fact, the QA/QC procedures specify distribution of these controlled copies to many, but not all, employees so that sufficient copies are readily available. These documents were available at various locations in the plant for use by Mr. Lockert at any time. While he is correct in stating that he was denied a personal copy, the inference that he was therefore denied access is erroneous and misleading.

(iii) Allegations Showing Proper Functioning of QA/QC Program

There were approximately 8% of the allegations falling in this category, bringing the total to 136 out of 139 allegations which were either false or actually demonstrated a properly functioning QA/QC program. Mr. Hudson had several allegations which were nothing more than a recitation of findings he made in his job as a QA auditor which were properly resolved. JI #17 is an excellent example of such an allegation. Here, Mr. Hudson's unscheduled Audit #35 identified five materials not specifically listed in Weld Procedure Specification (WPS) 7/8. All five materials were prequalified by the applicable welding code (AWS D1.1) so that the hardware was acceptable as welded. The corrective action was a modification of Pullman procedures to explicitly list all five materials (see Attachment C, paragraphs 39-41).

(iv) Insignificance of Inferences or Conclusions

Only 2% of the allegations, JI #8, 13, and 42, fall in this category. They are addressed in Attachment C at paragraphs 15-19, 28-31, and 89-93, respectively. A review of these allegations shows they are totally insignificant. For example, Mr. Hudson, in JI #8, identified an instance

where PGandE had directed Pullman to use ASME IX qualified welders to perform work on rupture restraints that are covered by AWS D1.1. The direction by PGandE was to differ from the contract requirements, but was technically justified and consistent with general industry practice and which has been accepted by NRC Staff at numerous other nuclear power plant sites. Even the minor documentation aspect of this issue has been resolved by issuance of a Contract Change Notice and an NCR to document the technical basis for PGandE's direction to Pullman.

F. The Record Should Not be Reopened for Admitting a Late Filed Contention on Licensee Character and Competence

The final tactic adopted by Joint Intervenors is their scurrilous attacks on the licensee's character and competence. Aside from the obvious lateness of these allegations (which standing alone should preclude their consideration), the facts developed in this answer and PGandE's answer to the Motion to reopen DQA, filed March 6, 1984, provide substantial evidence that PGandE has acted in a responsible manner in the design and construction of Diablo Canyon.[15/] In these answers we have examined Joint Intervenors' allegations and shown that the conclusions drawn from the facts by Joint Intervenors' affiants, and their counsel, are false. In particular, we have refuted the claims of harassment and shown them for what they are--the complaints of individuals who are (1) unwilling to conform to basic work requirements, (2) unable to accept technical judgments by qualified individuals, or (3) simply factually mistaken.

15/ Joint Intervenors (Motion at 48-53) recites events that occurred many years ago and obviously are, and were then, public knowledge. Further, the so-called "new evidence," as shown in the attached affidavits, is, in addition to not being new, not true.

Perhaps the most demonstrative counter to these claims is PGandE's immediate action in suspending fuel load upon PGandE's discovery of the diagram design error in September 1981. Clearly this was not the act of a corporation which, if you were to believe Joint Intervenors, would resort to any action (including harassment and intimidation) that would facilitate licensing and operation of Diablo Canyon. Rather, it was the act of a corporation which recognized a problem and took responsible action to assure a solution. Since that time, PGandE has conducted the most extensive verification program in the history of the NRC to confirm the design and construction of Diablo Canyon. That program and attitude of PGandE's management to it are deserving of praise rather than the constant rain of criticism which has cascaded from the Joint Intervenors and their new comrades in arms, GAP.

Conclusion

As quoted supra, p. 7, "...perfection in plant construction and the facility construction quality assurance program is not a precondition for a license" for Diablo Canyon or any other nuclear facility. In essence, the latest allegations being trotted before this Board by Joint Intervenors are a series of "nits" that show no safety significance and certainly would not change any prior decisions of this Board on CQA. As such, Joint Intervenors' motion to admit a contention on CQA must once again fail. In addition, the allegations arguably attributable to licensee character and competence do not meet any of the standards for reopening the record or late filed contentions.

In addition to being false, they are untimely and must also fail. It is respectfully submitted that this Board should deny Joint Intervenors' motion in its entirety.

Dated: March 19, 1984

Respectfully submitted,

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