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3 UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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4
5 BEFORE THE COMMISSION

6
7 In the Matter of)

8 PACIFIC GAS AND ELECTRIC)
COMPANY)

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

9 Diablo Canyon Nuclear)
10 Power Plant)
Units 1 and 2)
11 _____)

12 ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY
13 TO JOINT INTERVENORS' PETITION FOR
14 REVIEW OF ALAB-811

15 I

16 INTRODUCTION

17 On July 12, 1985 the joint intervenors filed, pursuant
18 to 10 CFR 2.786, a petition for review of ALAB-811, _____
19 NRC _____ (June 27, 1985.) In that decision the Atomic
20 Safety and Licensing Appeal Board ("Appeal Board") held that
21 Pacific Gas and Electric Company's ("PGandE's") Diablo
22 Canyon Unit 2

23
24 verification program is sufficient to
25 establish that the design of Diablo Canyon
26 Unit 2 meets its licensing criteria. That
program provides adequate confidence that the
Unit 2 safety-related structures, systems and
components are designed to perform

1 satisfactorily in service. Accordingly, we
2 conclude that there is reasonable assurance
3 Unit 2 can be operated without endangering
4 the health and safety of the public and the
5 license authorization previously granted to
6 the Director of NRR by the Licensing Board's
7 initial decision remains effective. (Slip
8 Op. at 25.)

9 For the reasons set forth below PGandE respectfully
10 submits the petition for review should be denied.

11 II

12 FACTUAL BACKGROUND

13 While the Diablo Canyon design verification efforts
14 were ongoing the Appeal Board granted the motions of the
15 joint intervenors and the Governor of California to reopen
16 the operating license proceeding on the issue of the
17 adequacy of PGandE's design quality assurance program. At
18 the request of the parties the Appeal Board presided over
19 the reopened proceeding. In ALAB-763 (19 NRC 571, (1984))
20 the Appeal Board set forth its findings on the contested
21 issues concerning the adequacy of the design of Unit 1.¹ In
22 order to avoid any unnecessary delay in the full power
23 licensing of Unit 1 the Appeal Board severed its findings on
24 the contested issues for Unit 2 and, in effect, stayed the
25 full power license authorization for that unit granted
26

1 The Commission decided not to review ALAB-763
(20 NRC 285 (1984)).

1 previously by the Licensing Board's initial decision. (16
2 NRC 756 (1982). ALAB-811 contains the Appeal Board's
3 findings on Diablo Canyon Unit 2, and it is that decision
4 that the joint intervenors ask this Commission to review.
5

6 On September 10, 1984, the Appeal Board entered an
7 Order requesting the parties to provide their views on how
8 the Board should proceed with respect to Diablo Canyon Unit
9 2. The Board directed the parties to address whether
10 further hearings were necessary and, if so, to identify
11 those issues identified in ALAB-763, 19 NRC 571 (1984),
12 which could not be resolved for Unit 2 on the existing
13 record and to fully explain why the record evidence was
14 insufficient.
15

16 In their September 28, 1984 filing, the joint
17 intervenors ignored the Appeal Board's plain request that a
18 party must specify those issues decided in ALAB-763 which
19 could not be resolved for Unit 2 on the existing record and,
20 more importantly, specify why the record was insufficient as
21 to those issues. (Board Order, p. 2.) Rather than
22 complying with the straightforward requirements of the
23 Board's Order, the joint intervenors suggested that
24 contentions (issues allegedly not resolved for Unit 2) be
25 finalized only after further hearings were decreed by the
26 Board.

1 Joint intervenors completely ignored the fact that
2 specific Unit 2 contentions were at issue in the
3 October-November 1983 reopened design proceedings and
4 evidence was adduced concerning those contentions. Joint
5 intervenors failed to even discuss, much less justify, what
6 additional evidence was needed on any specific contention.
7 Rather, they made sweeping generalizations of a need for
8 further hearings on Unit 2 while at the same time ignoring
9 the considerable evidence in the record relating to Unit 2
10 design verification activities. Nowhere did they dispute
11 that the same criteria, methodology, design processes and
12 basic procedures were used for Unit 2 as were used for Unit
13 1. Nowhere did they articulate why the evidence and
14 conclusions reached by the Board in ALAB-763 did not apply
15 with equal force to Unit 2. Nowhere did they dispute that
16 the Independent Design Verification Program (IDVP) reviewed
17 the seismic design criteria, methodology, and processes
18 applicable to both units when it conducted its review of
19 Unit 1. Instead, they relied on generalized statements of
20 concern about the scope of the verification effort for Unit
21 2 and whether PGandE had in fact done what it said it was
22 going to do in unrebutted testimony. In the face of
23 uncontroverted evidence that the same criteria,
24 methodologies, design processes, and basic procedures were
25 utilized in the Internal Technical Program's (ITP's) review
26

1 of the design of Unit 2, vis-a-vis Unit 1, joint intervenors
2 failed to present even arguments to the contrary.

3
4 III

5 ARGUMENT

6 Joint intervenors now continue their non-specific,
7 generalized attack on the verification program for Unit 2
8 before this Commission. As before the Appeal Board, they
9 continue to ignore the plain facts and simply offer
10 generalized conclusions and arguments with either no
11 reference to the record or, at best, a handful of citations
12 taken out of context. ALAB-811 is a well-reasoned decision
13 which sets forth with specificity the bases for the decision
14 and the factual predicates underlving those bases. The
15 petition for review of that decision simply argues that the
16 decision should have been the reverse of what it was without
17 any legal authority or factual bases supporting that
18 argument.

19
20 A reading of the 26-page decision in conjunction with
21 ALAB-763 indicates that ALAB-811 is an accurate and
22 comprehensive discussion of all the issues in contest in
23 this proceeding, complete with numerous citations to the
24 record. The citations indicate that the overwhelming weight
25 of the evidence supports the Appeal Board's opinion. That
26 alone should preclude Commission review of this

1 well-documented opinion. However, in addition, joint
2 intervenors have failed to include in their petition the
3 matters required to be included by 10 CFR 2.786(b)(2)(ii).
4 The petition should be denied on this basis as well.

5 IV

6 CONCLUSION

7 Joint intervenors have failed to establish any basis
8 for this Commission to review ALAB-811 and the petition for
9 review should be denied accordingly.

10 Respectfully submitted,

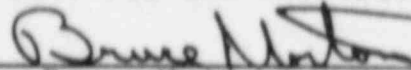
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Dated July 26, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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