

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 4294

DOCKETED 04/12/02
SERVED 04/12/02

COMMISSIONERS

Richard A. Meserve, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)

PACIFIC GAS AND ELECTRIC CO.)

(Diablo Canyon Power Plant, Units 1 and 2))
_____)

Docket Nos. 50-275-LT, 50-323-LT

CLI-02-12

MEMORANDUM AND ORDER

This is an unusual license transfer proceeding in that two of the four petitioners raise numerous arguments that do not challenge Pacific Gas & Electric Company's (PG&E) instant license transfer application, but rather call into question certain antitrust-related language in the NRC staff's notice of opportunity for hearing (67 Fed. Reg. 2455 (Jan. 17, 2002)). In that notice, the staff indicated that it may reject some of PG&E's requested changes to the antitrust conditions in its current licenses. More specifically, the staff suggested that it might approve changes to the antitrust conditions such that the conditions would apply solely to those entities that would own and operate the Diablo Canyon plant following the transfer, but *not* to any of the other entities that PG&E has proposed retaining or including on the licenses for antitrust purposes. Under PG&E's pending Bankruptcy Reorganization Plan, those other entities would not, after bankruptcy, be involved in activities requiring an NRC license.

Two of the four petitioners to intervene have endorsed the licensee's proposal and object to the staff's contemplated approach. A third petitioner has broadly supported PG&E's

transfer proposal, including, presumably, the proposed amendments to the antitrust conditions. Therefore, the legal underpinning for PG&E's proposal to amend the antitrust license conditions to include entities who would not be engaged in activities requiring an NRC license is central to deciding whether to grant intervention or admit issues for adjudication. See 10 C.F.R. §§ 2.1306, 2.1308.

Before proceeding further, we seek briefs from the petitioners and the applicant on the following questions:

1. What is the Commission's authority under the Atomic Energy Act to approve the proposed license transfers and related license amendments where the current licensee (PG&E) as well as a company engaged solely in transmission activities would not, after the transfer, be engaged in activities at Diablo Canyon requiring a license, yet would remain or become named licensees on the Diablo Canyon licenses?
2. Have recent filings and developments in PG&E's bankruptcy proceeding had any effect on the pending motions to hold this license transfer proceeding in abeyance?

The briefs should not exceed 25 pages and should be filed by May 10, 2002.

IT IS SO ORDERED.

For the Commission¹

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 12th day of April, 2002

¹ Commissioners Dicus and Merrifield were not present for the affirmation of this Order. If they had been present, they would have approved it.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-02-12) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution with copies by electronic mail as indicated.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 12th day of April 2002