

May 5, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

May 11, 2004 (12:02PM)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

Pacific Gas and Electric Co.

(Diablo Canyon Power Plant,
Units 1 and 2)

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)
)
)

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

PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO CITY OF SANTA CLARA
REQUEST FOR ORDER DECLARING TRANSFER ORDERS NULL AND VOID

On April 23, 2004, the City of Santa Clara ("Santa Clara") filed a response¹ to the Pacific Gas and Electric Company ("PG&E") motion to terminate this proceeding as moot.² Santa Clara supported the motion to terminate. Santa Clara additionally in its "response" made a "request" that the NRC "[d]eclare all orders previously issued in this license transfer proceeding to be null and void." Response, at 4. Because Santa Clara's Response requests relief, PG&E herein responds in opposition to that request.

This proceeding concerns the NRC order issued on May 27, 2003 approving the transfer of the operating licenses for Diablo Canyon Power Plant ("DCPP"). The transfers were required in connection with a plan of reorganization for PG&E. By its terms the NRC's transfer order will become null and void if the transfers are not completed by May 31, 2004. By letter

¹ "City of Santa Clara, California's Response to Pacific Gas and Electric Company's Motion to Terminate Proceeding," April 23, 2004 ("Response").

² "Pacific Gas and Electric Company's Motion to Terminate Proceeding," April 13, 2004.

dated April 12, 2004,³ PG&E notified the Commission that it will not complete the transfers and will allow the transfer order to expire. Accordingly, the relief requested by Santa Clara is unnecessary.

Santa Clara compares the present situation to one involving the aborted merger of Baltimore Gas & Electric Company ("BG&E") and Potomac Electric Power Company ("PEPCo"). There, the NRC had approved the transfer of the operating licenses for the Calvert Cliffs Nuclear Power Plant by order dated October 18, 1996, and subsequently extended that order by separate order dated December 19, 1997. Upon cancellation of the proposed merger, the NRC issued another order, dated April 30, 1998, "terminating the effectiveness of the approval of the transfer of licenses." That final NRC order declared the prior approval orders "null and void." The NRC took that action specifically because of a request from the licensee (dated January 30, 1998) "that the order approving the transfer of licenses be cancelled." In the present situation, PG&E has not made a request to cancel the license transfer order. In fact, such an action is unnecessary, given that the transfer order will expire by its terms later this month. Moreover, the order has no effect in any event if PG&E does not complete the related transactions. PG&E, of course, at this juncture will not pursue the plan of reorganization addressed in the transfer order. Accordingly, a further cancellation order is unnecessary.

In the Response Santa Clara specifically "notes that it was aggrieved by certain aspects of the orders issued herein, including the Memorandum and Order, CLI-03-02 issued on February 14, 2003, through, *inter alia*, that order's treatment of the DCPD antitrust conditions." To the extent Santa Clara is requesting vacatur of this Commission decision (rather than the

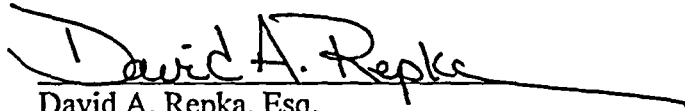
³ PG&E Letter DCL-04-043, G.M. Rueger to Nuclear Regulatory Commission, Document Control Desk, April 12, 2004.

May 27, 2003 transfer order), PG&E also opposes that request. The Commission's February 14, 2003 order addressed significant legal and policy issues associated with the status of the antitrust conditions included in the DCPD operating licenses. The decision provides important guidance that may be instructive to PG&E and other licensees in the future. Conversely, that decision can cause no harm to Santa Clara or any other party because it addresses a specific license transfer that will not go forward. If PG&E or any other NRC licensee were to make any new proposal to transfer a license, or any other proposal based upon the conclusions announced by the Commission on February 14, 2003, it would need to make a new application to the NRC. Vacating or otherwise declaring the Commission's decision null and void is unnecessary to prevent harm to any party.⁴

Accordingly, the relief requested by Santa Clara is unwarranted and should not be granted.

⁴ The February 14, 2003 Memorandum and Order, CLI-03-02, is also, of course, a Commission decision. This is not a case involving a lower board ruling unreviewed by the Commission. The Commission's Memorandum and Order, as noted by Santa Clara (Response, at 2 n. 1), was appealed to the United States Court of Appeals for the District of Columbia Circuit in *Northern California Power Agency v. NRC*, Case No. 03-1038. The petitioner in that case has requested an order from the Court vacating the NRC's February 14, 2003 decision. On May 3, 2004, PG&E opposed that request.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a long horizontal line extending to the right.

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Dated in Washington, District of Columbia
This 5th day of May 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)	
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Pacific Gas and Electric Co.)	Docket Nos. 50-275-LT
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CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO CITY OF SANTA CLARA REQUEST FOR ORDER DECLARING TRANSFER ORDERS NULL AND VOID" in the above captioned proceedings has been served as shown below by electronic mail, this 5th day of May 2004. Additional service by deposit in the United States mail, first class, has also been made this same day as shown below.

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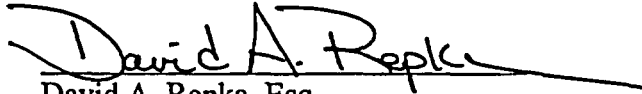
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