

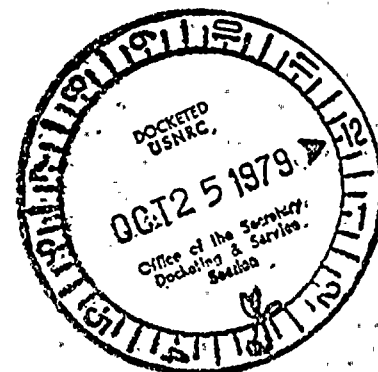


CHAIRMAN:

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 24, 1979

DOCKET NUMBER
PROD. & UTIL. FAC. 50-275 323 04



MEMORANDUM FOR: Public Document Room and Parties to Diablo Canyon
Licensing Proceeding

FROM: Joseph M. Hendrie

SUBJECT: MEETING WITH PACIFIC GAS AND ELECTRIC COMPANY OFFICIALS
CONCERNING REPORTING STATUS ON GENERIC MATTERS RELATED TO
LICENSING -- DIABLO CANYON

The attached "Notes to Files" and this memorandum have been prepared pursuant to section 557(d)(1)(C) of the Administrative Procedure Act and 10 CFR § 2.780(c). The documents relate to a meeting held on October 19, 1979 at which, in addition to myself, the following were present: Frederick Mielke, Chairman of the Board, Pacific Gas and Electric Company (PG&E); Bart Shackelford, President, PG&E; Gene Blanc, PG&E employee; Donald Hassell, Legal Assistant to the Chairman of the NRC; Leonard Bickwit, Jr., General Counsel of the NRC. The meeting was requested by the company to discuss the status of the Diablo Canyon licensing proceeding and generic matters related to that proceeding.

At the time of the meeting neither the General Counsel nor I believed that the discussion was "relevant to the merits of the proceeding," as stated in 5 U.S.C. § 557(d), because we did not discuss the facts in the case, and the general thrust of the discussion involved generic issues. However, after the meeting the General Counsel researched the matter and, on balance, has come to a different conclusion which I share. The term "relevant to the merits of the proceeding," in the words of both the Senate and House Committees charged with drafting this section, was "intended to be construed broadly and to include more than the phrase 'fact in issue' currently used" in 5 U.S.C. § 554(d). Furthermore, both committees concluded that "[i]n doubtful cases the agency official should treat the communication as ex parte so as to protect the integrity of the decisionmaking process." Consequently, to resolve any doubts that exist, the General Counsel and I agree that the communications in question should be treated as ex parte communications.

In accordance with our procedures, we are notifying the parties to the proceeding of this conclusion and are sending them a copy of these documents, which will also be filed in our Public Document Room.

Attachments:

1. Note, 10/23/79, Hassell
to Files
2. Note, 10/24/79, Hendrie
to Files



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 24, 1979



NOTE TO: Files

FROM: Joseph M. Hendrie

SUBJECT: ACTIONS SUBSEQUENT TO MEETING WITH OFFICIALS OF PACIFIC GAS & ELECTRIC ON OCTOBER 19, 1979

This note is intended to complete the record on the meeting with PG&E officials on October 19, 1979, and my subsequent actions. A summary of that meeting has been prepared at my request by Mr. Donald F. Hassell, my Legal Assistant.

Late in the afternoon of October 19th, I called the Director/NRR. Mr. Denton was out and I talked to Mr. Edson Case, Deputy Director/NRR. I inquired as to the status of the Diablo Canyon case. I told Mr. Case of the PG&E concern that Diablo Canyon might be singled out for some sort of unique procedural treatment with regard to Three Mile Island-related issues, and that the NRC staff members most familiar with Diablo Canyon might not be available for further work on the case.

Mr. Case said that Diablo Canyon was being treated from a procedural standpoint in the same way as other well-advanced operating license applications in which there were ongoing proceedings before a Licensing Board, and that staff members familiar with the case would continue to work on it to the extent practical in view of the many demands on staff time. He said that Diablo Canyon had recently been discussed by the ACRS and that further discussions were planned with ACRS on the project.

I told Mr. Case I thought the staff should continue its work on Diablo Canyon just as it was doing. I suggested the staff should try to be well-prepared for the coming ACRS meeting, since my own experience on the ACRS indicated that a high quality staff presentation to the ACRS would best serve the objective of reaching an early decision on the application.

On Monday, October 22nd, the General Counsel informed me of his concerns about the nature of the meeting with PG&E.



OFFICE OF THE
CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

October 23, 1979



NOTE TO FILES

FROM: Donald F. Hassell
Legal Assistant

W. J. D. H.

SUBJECT: MEETING BETWEEN CHAIRMAN HENDRIE AND OFFICIALS OF PACIFIC GAS & ELECTRIC (PG&E) CONCERNING REPORTING STATUS ON GENERIC MATTERS RELATED TO LICENSING -- DIABLO CANYON

On Friday, October 19, 1979 at 10:50 AM Chairman Hendrie met with officials from PG&E, namely, Frederick Mielke, Chairman of the Board, PG&E, Bart Shackelford, President, PG&E, and Gene Blanc, a representative of PG&E. Leonard Bickwit and myself were also present.

Mr. Frederick Mielke opened the meeting by indicating that the meeting's purpose was to convey PG&E's concerns about the procedural and timing aspects of addressing TMI issues, and recent NRC staffing changes. Specifically, he noted that it appeared that the TMI issues should be addressed generically for all PWR's including Westinghouse plants. He felt that NRC should avoid any discrimination procedurally against Diablo Canyon in the treatment of TMI issues. In short he expressed the concern that Diablo Canyon not be singled out in this area. With regard to staffing, Mr. Mielke noted that certain organizational changes in NRR had resulted in staff members who were familiar with Diablo Canyon being disbanded and assigned to work with the Lessons Learned group.

After Mr. Mielke completed his opening remarks, Chairman Hendrie pointed out that Diablo Canyon is in adjudication and attention had to be given to ex parte considerations. Chairman Hendrie expressed his belief however, that he could discuss procedural and generic matters. The Chairman indicated that he was concerned with how NRC handles TMI issues. He set forth certain aspects of the Commission's policy statement on interim licensing. The Chairman noted that staff's short-term TMI recommendations have gone out and that the long-term TMI recommendations were about to come out. Noting that the Kemeny Commission report was about to come out, the Chairman indicated that he could not predict how NRC will go forward after completing its analysis of that report.

Mr. Mielke reiterated his feeling that TMI issues be treated generically and that Diablo Canyon should not be singled out. Speaking again to the staffing question Mr. Mielke believed that Jim Knight along with the NRC staff members who were familiar with Diablo Canyon should be used to respond to ACRS. He felt that ACRS is treating Diablo Canyon differently than North Anna or Salem.

Chairman Hendrie indicated that he saw no reason to treat Diablo Canyon differently as to generic TMI issues. He also indicated that where TMI issues are clear cut and the Commission can mandate a position, that he thought such matters would be given generic treatment. However, he said he thought that some TMI issues would be taken up in the context of a specific plant.

Mr. Mielke noted that there was the question of whether there should be a hearing and that a decision on that question shouldn't be taken lightly. The Chairman responded by guessing that petitions to reopen might be filed for some plants where there are proceedings pending and for other plants where proceedings are not pending. The Chairman also pointed out that one had to recognize that the Presidential Commission will be giving a lot of advice. Moreover, the Chairman expressed the feeling that, based on conversations with the investigators during his deposition, the Presidential Commission sees a lot of difference between shutting down a plant in operation as distinguished from allowing a plant to start operating for the first time.

Gene Blanc noted that PG&E does all of its own engineering and their engineers had submitted a lessons learned report of their own. Furthermore, he indicated that PG&E had been very responsive in that PG&E had submitted its response to the NRC's staff's lessons learned, and also filed a response to ACRS questions.

The Chairman said he felt reasonably certain that the same staff experts would go back on the Diablo Canyon case to respond to ACRS questions, although he noted that might not be the case for Mr. Knight in view of his other duties. Finally, he indicated that if Diablo Canyon had been very responsive to staff, this was good for NRC since it creates the maximum opportunity for resolution of outstanding issues.

Mr. Mielke indicated that the power supply in California had become critical this past summer because twice they came close to turning off some power. Finally, he pointed out that one of the biggest slowdowns may be the ACRS. At this point the Chairman stood up and ended the meeting at 11:25 AM.

cc: PDR
Docket No. 50-275
Docket No. 50-323

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

(Diablo Canyon, Units 1 and 2)

Docket No.(s) 50-275
50-323

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