

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

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original

SEP 24 1984

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Docket No. 50-275  
License No. DPR-76  
EA 84-88

Pacific Gas and Electric Company  
ATTN: J. O. Schuyler, Vice President  
Nuclear Power Generation  
77 Beale Street, Room 1435  
San Francisco, California 94106

Gentlemen:

In July 1977, Pacific Gas and Electric Company (PG&E) requested Pullman Power Products to obtain an independent audit of its quality assurance program. Pullman, with PG&E's concurrence, selected Nuclear Services Corporation (NSC) to perform the audit, which was subsequently conducted between August 22 and September 20, 1977. PG&E received a copy of the audit report in February 1978. The NSC audit identified problems with Pullman's quality assurance program. PG&E, after completing its own review of the NSC findings on June 1, 1978, determined that the problems did not reveal a significant breakdown in quality assurance.

At the time that the NSC audit was conducted and was being reviewed by Pullman and PG&E, the Atomic Safety and Licensing Board, on its own initiative, was considering the issue of quality assurance in the Diablo Canyon operating license proceeding. PG&E did not report the existence of the NSC audit to the NRC during this phase of the licensing process.

On October 20, 1983, the Joint Intervenors filed a motion to revoke the low power license for Diablo Canyon Nuclear Power Plant Unit No. 1 or, alternatively, to continue the suspension of the license on the basis that PG&E had failed to make NRC aware of the 1977 NSC audit. In a decision dated March 26, 1984 (DD-84-8, 19 NRC 924), the Director, Office of Inspection and Enforcement (Director), denied the Joint Intervenors' petition. However, the Director found that PG&E's failure to report the results of the NSC audit to the NRC constituted a material false statement under section 186 of the Atomic Energy Act of 1954, as amended, and that issuance of a Notice of Violation was appropriate. Intent to mislead or to withhold information is not a prerequisite to the finding of a material false statement under section 186. No intent to mislead was found in this case.

On August 20, 1984, the Commission issued an Order affirming the Director's decision to issue a Notice of Violation, and directed that the violation be classified as a Severity Level III violation in accordance with the NRC Enforcement Policy (10 CFR Part 2, Appendix C).

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Normally, a civil penalty is proposed for a Severity Level III violation. However, a civil penalty will not be proposed in this case since the violation is now more than six years old, the material false statement did not seem to have affected the Licensing Board's Partial Initial Decision in 1981, and the NSC audit did not identify a significant quality assurance breakdown.

However, the NRC expects licensees to ensure that information relevant and material to the regulatory process be promptly furnished. Licensees and applicants are required to ensure that material information which is capable of influencing a reasonable agency expert in the licensing process is promptly furnished to the Commission. The Commission has noted that "[a]t the hearing stage...where agency decisionmaking is imminent, arguably relevant data must be promptly furnished if the agency is to perform its function." <sup>1/</sup> PG&E should take steps to ensure compliance with this requirement in the future.

In accordance with section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosure will be placed in the NRC Public Document Room.

The responses directed by the attached Notice are not subject to the clearance procedures of the Office of Management and Budget, as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,



Richard C. DeYoung, Director  
Office of Inspection and Enforcement

Enclosure:  
Notice of Violation

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<sup>1/</sup> Virginia Electric Power Co. (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480, 488 (1976), aff'd sub nom. Virginia Electric & Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978).



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