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 FACIL: 50-275 Diablo Canyon Nuclear Power Plant, Unit 1, Pacific Gas & Electric Co. 05000275  
 50-323 Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Gas & Electric Co. 05000323  
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 RECIP. NAME: DENTON, H.R. RECIPIENT AFFILIATION: Office of Nuclear Reactor Regulation, Director

SUBJECT: Forwards objections to ASLB 810212 order. NUREG-0737 does not apply to licenses to load fuel & conduct low power tests. Requests relief from Items III A.1.1 & III A.2 requiring compliance w/App. E to 10CFR50 prior to fuel load.

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8. The eighth part of the report deals with the future prospects of the country and the measures taken to improve it.

9. The ninth part of the report deals with the conclusions of the report and the measures taken to improve it.

PACIFIC GAS AND ELECTRIC COMPANY

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MALCOLM H. FURBUSH  
VICE PRESIDENT AND GENERAL COUNSEL

February 27, 1981

Dr. Harold R. Denton, Director  
Office of Nuclear Reactor Regulation  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Re: Docket No. 50-275  
Docket No. 50-323

Dear Dr. Denton:

This concerns PGandE's pending motion to load fuel and conduct low-power tests.

As you may be aware, PGandE believes it has persuasive arguments to support the proposition that NUREG-0737 does not apply to licenses to load fuel and conduct low-power tests. For your reference I am enclosing as Attachment I a copy of our pleading entitled "Objections of PGandE To ASLB Order Dated February 13, 1981" which at pages 2-4 sets forth the bases for our position.

However, in the event the Staff does not accept our argument concerning the applicability of NUREG-0737 and out of an abundance of caution, as authorized in Mr. Darrell E. Eisenhut's letter dated October 31, 1980 forwarding NUREG-0737 we hereby request relief from Items III A.1.1. and III A.2. of Enclosure 2 to NUREG-0737 which would require us to comply with Appendix E to 10 CFR 50 and NUREG-0654 prior to "fuel load."

Prior to issuance of NUREG-0737 it was established under NUREG-0694 and the Commission's Statement of Policy dated June 16, 1980 (45 F.R. 41737) that updated emergency preparedness requirements were not required prior to issuance of a full-power license (NUREG-0694 p. 25). Indeed, during 1980 licenses to load fuel and conduct low-power tests were issued to Sequoyah, North Anna, Salem and Farley. In January of this year we understand a fuel load and zero power license was issued to McGuire. Earlier a FEMA/NRC interim agreement (Attachment II) provided that

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Dr. Harold R. Denton

February 27, 1981

"The FEMA/NRC Steering Committee has agreed that for the purposes of low power testing (up to 5% power) at new commercial nuclear facilities that the public health and safety is adequately protected if such facility is located in a State which had received a concurrence under the previous voluntary concurrence program, administered by the NRC and based on evaluation by a multi-agency Federal Regional Advisory Committee. In addition, operator plans at individual sites must be consistent with both the existing NRC Appendix E to 10 CFR Part 50 and NRC Regulatory Guide 1.101 in order to assure adequate protection of the public health and safety prior to low power testing."

The agreement notes that California had received prior NRC concurrence in its State plans. In August 1980 the Staff found that PGandE also complied with then existing Appendix E to 10 CFR 50 and NRC Regulatory Guide 1.101 and concluded

"In summary, based on our review of the combined applicant, State and local emergency plans, we conclude that the current plan provides an acceptable state-of-emergency preparedness for a fuel load and low power license." (SER Supp. 10, pp. III. B-1, III. B-2, NUREG-0675.)

The only thing that has changed since these findings were made was the issuance of 10 CFR 50 Appendix E in final form, issuance of Rev. 1 to NUREG-0654, and issuance of NUREG-0737 and the Commission's Statement of Policy dated December 18, 1980. Nothing has occurred that would change the conclusions regarding the safety implications of a license to load fuel and conduct low-power tests, and we cite Footnote 9 to the December Statement of Policy which repeated Footnote 8 from the June Statement of Policy as authority for this statement. Accordingly, we submit that these earlier findings and the issuance of fuel load/low-power licenses by the Commission provide ample authority for the Staff to relieve PGandE of the need to comply with III A.1.1. and III A.2. of Enclosure 2 to NUREG-0737 prior to issuance of a license to load fuel and conduct low-power tests.

PGandE recognizes that for a full-power license NUREG-0737, 10 CFR 50 Appendix E and NUREG-0654 must be substantially complied with, and PGandE is actively engaged in upgrading its site emergency plan and working with state and local authorities in upgrading their emergency plans.

Respectfully submitted,

*Malcolm H. Furber*

Enclosures

CC w/encs.: Service List  
Darrell E. Eisenhut

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