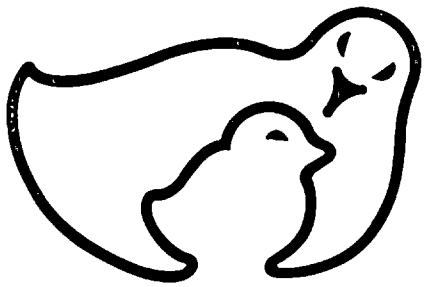

Mothers for Peace

1760 Alisal Avenue
San Luis Obispo, CA 93401

February 7, 1986

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Re: Diablo Canyon License Amendment to Rerack Spent Fuel Pools

Dear Sir:

The San Luis Obispo Mothers for Peace hereby request a hearing and petition for leave to intervene in the consideration of issuance of amendments to Diablo Canyon's (Docket Nos. 50-275 and 50-323) operating licenses DPR-80 and DPR-82. These amendments would authorize reracking of the spent fuel pools. If granted, we feel that the consequences would pose significant hazards to those of us living near Diablo Canyon.

The following information is provided as required by 10 CFR §2.714: Members of the San Luis Obispo Mothers for Peace are residents, property owners and taxpayers living in San Luis Obispo County. Some of our members have been residents of the community for generations. In 1973, the Mothers for Peace became intervenors in the operating license proceedings before the NRC, and continued to be active participants throughout those proceedings. A suit filed on our behalf before the Court of Appeals, in the D.C. Circuit, pertaining to Diablo Canyon, was heard in October of 1985, and a decision is still pending. We feel that the reracking of the spent fuel pools pose a threat to the health and safety of our families, our neighbors and our community.

In 1973, construction on Diablo Canyon's Unit 1 and 2 were almost completed when the existence of a major earthquake fault was acknowledged to be in close proximity of the reactors. Thereafter, new seismic studies, and new

untested methods were used to justify the licensing of Diablo Canyon. The "tau effect", an untested and unexplained theory (one never fully understood by members of the Advisory Committee on Reactor Safeguards, nor by some members of the Commission) was accepted by the NRC as an important factor in reducing the effects of an earthquake on Diablo Canyon. In comparison to our knowledge of other natural hazards, the scientific study of earthquakes and volcanos remains in its infancy. The state-of-the-art improves, but the scientific prediction of earthquakes is non-existent. It is generally recognized, however, that the State of California is prone to earthquakes; it is also recognized that the Hosgri Fault lies within 3 miles of the Diablo Canyon site.

Recently, new earthquake data was presented to the NRC and as a condition of licensing, the NRC directed Pacific Gas and Electric Company to conduct a long term seismic program. The results of PG&E's study are to be submitted to the NRC in 1988. Without a complete seismic record, it is not only reckless to allow reracking of the spent fuel pools, but in addition, it would show a great disregard for the health and safety of the people of this county. By creating more storage capacity, the radioactive inventory will be greatly increased and would therefore present a significant hazard to our community in the event of an accident caused by an earthquake. Without a complete seismic record, the margin of safety could be seriously jeopardized, and thus reracking would again pose a significant hazard.

For the above reasons, we request that the NRC rule that there are significant hazards involved in the reracking of the spent fuel pools, and we request that a hearing be held on the matter.

Sincerely,

Sandra A. Silver

Sandra A. Silver
San Luis Obispo Mothers for Peace

cc: Philip A. Crane
Richard F. Locke
Bruce Norton

FILED

SEP 11 1986

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

50-275

FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE and THE SIERRA CLUB, Petitioners, vs. UNITED STATES NUCLEAR REGULATORY COMMISSION, and the UNITED STATES OF AMERICA, Respondents, and PACIFIC GAS AND ELECTRIC COMPANY, Respondent-Intervenor.	No. 86-7297 O P I N I O N

Argued and Submitted
August 13, 1986 -- San Francisco, California

Petition to Review a Decision of the United States Nuclear Regulatory Commission

Before: MERRILL, NELSON and WIGGINS, Circuit Judges.

NELSON, Circuit Judge:

San Luis Obispo Mothers for Peace and the Sierra Club (petitioners) challenge an order of the Nuclear Regulatory Commission (NRC) granting operating license amendments for Units 1 and 2 of the Diablo Canyon Nuclear Power Plant (Diablo Canyon). The license amendments permit Pacific Gas & Electric Company (PG&E) to expand the capacity of the on-site radioactive spent

fuel storage pools at Diablo Canyon. The NRC found that the license amendments involved "no significant hazards consideration" and made them immediately effective without prior public hearings. Because the NRC violated its own regulations in finding no significant hazards consideration with respect to the Diablo Canyon amendments, we reverse this finding and remand to the NRC for the public hearings contemplated by the Atomic Energy Act.

BACKGROUND

Nuclear reactors are operated with fuel contained in rods that are placed in the core of the reactor. As the reactor is operated, radioactive byproducts gradually accumulate in the fuel rods. Eventually, the rods must be removed from the reactor and replaced. The exhausted fuel rods, known as "spent" fuel rods, are placed in pools of water near the reactor. After a period of storage near the reactor, the rods are removed for some other form of permanent waste disposal. See generally Lower Alloways Creek Township v. United States Nuclear Regulatory Commission, 481 F.Supp. 443, 445 (D.N.J. 1979).

Under PG&E's original licenses for Diablo Canyon, spent nuclear fuel rods were to be stored on stationary racks secured to the bottom of two pools filled with water, one pool for each of the two units at the plant. Each pool contained racks with 270 spent fuel assembly spaces. PG&E's amended license allows the storage of the spent fuel rods in free-standing racks not anchored to the base of the pools that contain 1324 spent fuel assembly

spaces in each pool. The change in the configuration of the racks in the pools is referred to as "reracking."

In October 1985, PG&E requested license amendments to permit reracking of the pools. The need for increased storage capacity seems to have been caused by the realization that federal storage facilities for spent nuclear fuel rods would not be available until at least 1998. Under the old configuration of the pools, Diablo Canyon's storage capacity would be exhausted by 1990.

In January 1986, the NRC published a notice of these proposed amendments to the Diablo Canyon licenses. This notice included a proposed no significant hazards consideration determination. Petitioners timely intervened and requested a hearing. On May 30, 1986, prior to any hearings and based on a staff finding of no significant hazards consideration, the NRC approved the proposed license amendments and made them immediately effective. PG&E began reracking the pool for Unit 1 the next day.

Petitioners then sought stays from both the NRC and this court. On July 2, this court enjoined the reracking of Unit 2 and permitted PG&E to proceed with the reracking on Unit 1 at its own risk. The court further ordered that PG&E not use the pool for the storage of radioactive nuclear waste pending further order of the court.

On July 22, the NRC modified its May 30 order in response to petitioners' stay request. The NRC order now permits reracking of the spent fuel pools prior to the hearing petitioners have requested, but prohibits PG&E from storing more spent fuel in the pools than authorized by the original licenses until the

conclusion of the hearing. On August 5, 1986, petitioners amended their petition for review to include the NRC's latest order.

ANALYSIS

Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1)(1982), sets forth the hearing framework for the amendment of licenses for nuclear power plants. The Act provides that "[i]n any proceeding . . . for the granting, suspending, revoking, or amending of any license . . ., the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding." Id. (emphasis added). The hearing shall be held after thirty days' notice and publication in the Federal Register. The NRC "may dispense with such thirty days' notice and publication . . . upon a determination by the Commission that the amendment involves no significant hazards consideration." Id.

Prior to 1980, if the NRC staff found that a license amendment presented no significant hazards consideration, the staff issued the amendment without notice or an opportunity for a prior hearing. 42 U.S.C. § 2239(a)(1)(1962)(amended 1982). In Sholly v. Nuclear Regulatory Commission, 651 F.2d 780 (D.C. Cir. 1980), vacated to consider mootness, 459 U.S. 1194 (1983), the District of Columbia Circuit held that the NRC could not make an amendment immediately effective in this manner if there was an outstanding request for a hearing. This decision prompted an amendment to Section 189a, enacted in 1982, known as the "Sholly" amendment. This amendment provides, in pertinent part, that:

> The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

42 U.S.C. § 2239(a)(2)(A)(1982). The amendment also provides that the NRC shall promulgate detailed regulations for making a no significant hazards consideration determination. 42 U.S.C. § 2239(a)(2)(C)(1982).

Under the NRC's regulations, the NRC may make a license amendment immediately effective only if the amendment does not:

> (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
>
> (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
>
> (3) Involve a significant reduction in a margin of safety.

10 C.F.R. § 50.92. Although the NRC did consider these amendments in accordance with the form of the regulations set forth above, its analysis of the second standard is contradictory and in direct contravention of Congressional intent in enacting the Sholly amendment.

The Conference Committee Report accompanying the Sholly amendment, which is entitled to great weight in analyzing Congressional intent, see American Jewish Congress v. Kreps, 574 F.2d 624, 629 n.36 (D.C. Cir. 1978), expressly states that the implementing regulations "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." House Conference Report No. 97-884, at p.37, reprinted in 1982 U.S. Code Cong. & Ad. News 3607. The Conference Committee Report further states that the standards "should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment." Id. The regulations thus appropriately require a hearing before the proposed license amendment becomes effective whenever the amendment creates the possibility of a new or different kind of accident. Petitioners have identified such an accident and they should have been granted a prior hearing.

The change from racks bolted to the floor of the the pools to free-standing racks creates the possibility that, in the event of an earthquake, the racks will collide with the walls of the pools or with each other, enhancing the risk of a nuclear reaction occurring in the pools. Diablo Canyon is located in an active seismic zone and the original Diablo Canyon licenses did not analyze the effect of an earthquake on this new rack design. The license amendments thus would seem to create the possibility of a new or different kind of accident.

The NRC does not deny that the specific kinds of accidents petitioners identify -- racks colliding with each other and with

the walls of the pools -- were not analyzed in connection with the original licenses. The NRC also admits that petitioners' claims are sufficiently serious to justify a later hearing. At the same time, however, the NRC seeks to support its finding of no significant hazards consideration by a technical analysis of why petitioners' claims lack merit. See NRC Memorandum and Order dated July 22, 1986, at 12-15. The NRC attacks certain of the assumptions underlying petitioners' contentions and concludes that the new racks "have been designed to meet the seismic force requirements previously applied to the originally intended bolted racks." Id. at 13. The NRC's arguments amount to an assertion that, because the possibility of a nuclear reaction occurring in the pools in the event of an earthquake was analyzed in connection with the original operating licenses, and because the NRC staff is satisfied that the new racks will not increase the possibility of a nuclear reaction occurring in the pools in the event of an earthquake, no new or different kind of accident is implicated by the amendments.

The very process by which the NRC attempts to rebut petitioners' contentions constitutes a tacit admission that the amendments do create the possibility of a new or different kind of accident. The claims are at least serious enough to warrant a later hearing. The NRC's own regulations require that a hearing be held before the amendments are made effective when there is a possibility of a new or different kind of accident. These regulations are in accordance with the Congressional directive that doubts be resolved in favor of a prior hearing and that the

NRC staff not prejudge the merits of a proposed license amendment. A prior hearing is required in this case.

Because we find the NRC's action to have been impermissible under its own regulations, we need not reach petitioners' additional arguments concerning the Atomic Energy Act, the Nuclear Waste Policy Act, and the National Environmental Protection Act (NEPA). With respect to petitioners' NEPA claims, however, we note that the site specific environmental assessment was based on a seven year old generic environmental assessment and that no worst case analysis, 40 C.F.R. § 1502.22, appears to have been conducted. We strongly suggest that any doubt concerning the need to supplement the NEPA documents be resolved in favor of additional documentation.

CONCLUSION

The NRC failed to comply with its own regulations in denying petitioners a hearing prior to making the Diablo Canyon reracking license amendments effective. Accordingly, the existing stay of those amendments is continued. PG&E shall not deposit any spent fuel rods in the pool for Unit 1 and shall not rerack the pool for Unit 2 until hearings have been held in compliance the the requirements of the Atomic Energy Act.[1/]

REVERSED AND REMANDED.

WIGGINS, Circuit Judge, will file his views separately.

1/ PG&E may, of course, elect to return the racks to the original configuration in accordance with its existing operating licenses and may then use the spent fuel pools prior to completion of the hearings.

San Luis Obispo Mothers for Peace v.
U.S. Nuclear Regulatory Comm., et al., 86-7297

WIGGINS, Circuit Judge, dissenting:

Presuming it has a better grasp of nuclear engineering than the NRC, the majority substitutes its judgment in this narrow technical area committed by Congress to the NRC's discretion.

When reviewing the Commission's order, this court is bound by the strictures of the Administrative Procedure Act (APA) that a reviewing court shall not set aside agency actions unless "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A)(1982). Congress has entrusted the NRC with broad authority to regulate the nuclear power industry. It is not the court's role to diminish that authority absent a clear abuse of discretion.

> Nuclear energy may some day be a cheap, safe source of power, or it may not. But Congress has made a choice to at least try nuclear energy, establishing a reasonable review process in which courts are to play only a limited role. The fundamental policy questions appropriately resolved in Congress and in the state legislatures are not subject to reexamination in the federal courts under the guise of judicial review of agency action.

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 557-558 (1978). Our role is to balance, within the confines of the APA, the efficient implementation of the Commission's mandate with the rights of interested parties to be heard and to contribute to the decision-making process.

The narrow question in this case is when, not whether, the NRC is obligated to provide San Luis Obispo Mothers for Peace and the Sierra Club with a public hearing on PG&E's license

amendments that allow reracking.[1/] On the surface this looks like a simple procedural issue--traditionally an area of high judicial competence. On closer examination, however, it is clear that the outcome is controlled by substantive technical questions applied to a procedural standard.

The NRC was authorized to set that standard by the Sholly amendment, 42 U.S.C. § 2239(a)(2)(A)(1982), one of a series of measures Congress passed to help expedite the licensing of nuclear power plants. It was necessitated in part by a Court of Appeals ruling that all licensing amendments required pre-amendment hearings on request. See Sholly v. NRC, 651 F.2d 780 (D.C. Cir. 1980), vacated to consider mootness, 459 U.S. 1194 (1983). The NRC requested relief from unnecessary disruptions or delays of nuclear power plant operation, and unnecessary regulatory burdens not related to significant safety benefits. See S. Rep. No. 113, 97th Cong., 1st Sess. 14 (1981) reprinted in 1982 U.S. Code Cong. & Ad. News 3592, 3598. The statute, quoted in the majority opinion at 6, allows a licensing amendment to take immediate effect "upon a determination by the Commission that such amendment involves no significant hazards consideration." 42 U.S.C. § 2239(a)(2)(A)(emphasis added). Congress thus created a system that requires pre-amendment hearings on request only for

---

1/ In its Memorandum and Order of July 22, 1986, the Commission, though not persuaded that its staff erred in its determination of no significant hazards for the entire reracking process, granted petitioner's request for a stay of the amendment authorizing an increase in the total spent fuel capacity of each pool. Thus, the only question before this court is the immediately effective amendment allowing installation of free-standing spent fuel racks rather than the currently authorized anchored racks. See NRC Memorandum and Order CLI-86-12 at 18 (July 22, 1986).

those changes entailing "significant hazards." When Congress delegated to the NRC the power to make no significant hazards determinations, it did not mean that the courts rather than the NRC should determine what is a significant hazard.

Petitioners hypothesize that collisions between the racks or between the racks and walls during a seismic event could result in the release of nuclear materials and could create a criticality accident, i.e., an accident that would set in motion a nuclear chain reaction. The NRC, however, evaluated the seismic sufficiency of the racks and pools and the possibility of a criticality accident. The racks and pools were designed to seismic Category I requirements, creating "no significant change in the consequences resulting from a postulated seismic event from those previously determined." NRC, Safety Evaluation by The Office of Nuclear Reactor Regulation Relating to the Reracking of the Spent Fuel Pools at the Diablo Canyon Nuclear Power Plant, 28 (May 30, 1986) [hereinafter cited as Safety Evaluation]. Moreover, the NRC had previously evaluated the potential of a criticality accident in connection with a licensing proceeding. The NRC Atomic Saftey and Licensing Appeal Board affirmed the conclusion that "[a]s long as the fuel elements are in racks, no critical mass can be formed. Should the storage racks collapse or the fuel elements be dislodged and fall into precisely that geometrical arrangement necessary to criticality, the borated pool water would preclude its occurrence. "In re Pacific Gas and Electric Co., 3 NRC 809, 820 n.26 (1976)(emphasis added).

The majority does not pretend to evaluate the technical adequacy of NRC's safety analysis, nor does it find that petitioners met their burden by showing that the NRC's determination was arbitrary and capricious. Instead, it seizes on the language "[c]reate[s] the possibility of a new or different kind of accident from any accident previously evaluated," 10 C.F.R. §50.92(2), and applies that to the potential of rack-wall collisions. There its analysis stops. The potential of such an "accident" becomes a per se violation of the NRC's standard. The NRC evaluated the consequences of seismic rack-wall collisions, and determined that no significant hazard existed. Safety Evaluation, supra 3, at 11-14, 28, and App. A at 43-48.[2/] The simple possibility of a rack-wall collision should not be sufficient to overturn an NRC order. The NRC and petitioners are concerned with the possibility of nuclear accidents and radiation leakage; it is to these consequences that the NRC directed the thrust of its technical evaluations.[3/]

2/ The NRC notes that free-standing spent fuel racks are not new to the nuclear industry, and increasingly replace anchored fuel racks. See NRC Memorandum and Order CLI-86-12 at 13 (July 22, 1986). PG&E characterizes the free-standing racks as the product of advanced technology that, by allowing sliding movement, reduces seismic stresses that can occur on racks restrained by anchor bolts.

3/ I confess to being confused about the majority's actual rationale. It asserts that the amendment "creates the possibility that, in the event of an earthquake, the racks will collide with the walls of the pools or with each other, enhancing the risk of a nuclear reaction occurring in the pools." Maj. op. at 8 (emphasis added). Thus it creates the possibility of a new or different kind of accident. Id. At the same time, the majority concedes that the NRC analyzed the possibility of an earthquake related nuclear reaction in the pools in connection with the original license, and that the NRC is satisfied that the new racks will not increase that possibility; but this does not mean that no new or different kind

(Continued)

To bolster its argument that the NRC failed to follow its own standards, the majority implies that the NRC's no significant hazards determination is inconsistent with its decision to hold later hearings. Maj. op. at 8. That interpretation is incorrect. Congress anticipated that requested hearings would follow a no significant hazards determination. To suggest otherwise is not only bad interpretation, it is bad public policy. It places the NRC in the position of either holding a pre-amendment hearing whenever a contention warrants a hearing, or denying the contentions that qualify a post-amendment hearing in order to justify its no significant hazards determination. Neither result is desirable. The court should recognize that the Commission acted responsibly in applying its threshold screening criteria to qualify contentions for a hearing, and that process does not cast doubt on its no significant hazards determinations.

In overturning the Commission's order, the majority dubiously applies its intuition to a complex technical matter. The practical and economic consequences of this decision are not trivial. The reconfiguration of the spent fuel pools will now be done "wet" after an initial load of spent fuel rods have been placed in the pool. Thus, PG&E workers will be required to work underwater in a radioactive environment. The current dry, unirradiated environment of Diablo Canyon's pools will be irretrievably lost.

(Continued from previous page)
of accident is involved. Id. Does the majority mean that the NRC is technically wrong on the nuclear reaction issue? If so, it has preempted the NRC's role, and accorded it no deference at all.

SLOMP
86-1297

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered in this case as of the file stamp date on the attached decision of the Court.

PETITION FOR REHEARING (FRAP 40)

Filing time: A petition for rehearing may be filed within fourteen (14) days after judgment.

Purpose: A petition should only be made to direct the Court's attention to one or more of the following situations:

1. A material fact or law overlooked in the decision.

2. A change in the law which occurred after the case was submitted and which appears to have been overlooked by the panel.

3. An apparent conflict with another decision of the Court which was not addressed in the opinion.

Petitions which merely reargue the case shall not be filed.

Statement of Counsel: A petition shall contain an introduction stating that, in counsel's judgment, one or more of the situations described above (in Purpose Section) exist. The points to be raised must be clearly stated. Lacking such a statement, the petition will not be filed.

Form: The fifteen (15) page limit allowed by the rule must be observed. Please use 8 1/2 x 11 inch paper. Three (3) copies of the petition and the original are required unless the petition includes a suggestion for rehearing en banc. If it does, thirty-three (33) copies and the original must be filed.

The petition must be directed to the Clerk of Court, contain an original signature of the counsel/pro per litigant submitting the petition and indicate complete proof of service to all parties.

BILL OF COSTS (FRAP 39) (LOCAL RULE 14)

If a party is allowed costs, the bill of costs must be filed within fourteen (14) days of entry of judgment. (see attached form for additional information.)

ISSUANCE OF MANDATE (FRAP 41)

The mandate issues twenty-one (21) days after entry of judgment unless the Court directs otherwise. A timely petition for rehearing will stay the issuance of the mandate. If the petition is denied, the mandate will issue seven (7) days later. If a stay of mandate is sought, an original and three (3) copies of the motion must be filed.

PETITION FOR WRIT OF CERTIORARI

For information concerning the filing of this petition, refer to the Rules of the Supreme Court of the United States. Appointed counsel should refer to Section (4)c of the Appendix to the Rules of the United States Court of Appeals for the Ninth Circuit with regard to the obligation to file a petition for certiorari.

Attachment

CA9-086 (5/7/82)

LOCAL
Rule 13.

(e)(1). Briefs. In lieu of twenty-five (25) briefs required by Rule 31(b) of the Federal Rules of Appellate Procedure, all parties shall file an original and fifteen (15) copies of their briefs.

LOCAL
Rule 14.

(a) Support For Bill of Costs. The itemized and verified bill of costs required by Rule 39(d) of the Federal Rules of Appellate Procedure shall be submitted on the standard form provided by this court. It shall include the following information:

(1) The number of copies of the briefs or other documents reproduced; and

(2) The actual cost per page for each document.

(b) Number of Briefs. Costs will be allowed for 18 copies of each brief plus 2 copies for each party required to be served, unless the court shall direct a greater number of briefs to be filed than required under Local Rule 13.

(c) Number of Excerpts. Costs will be allowed for 6 copies of the excerpt of record plus 1 copy for each party required to be served, unless the court shall direct a greater number of excerpts to be filed than required under Local Rule 13.

(d) Cost of Reproduction. In taxing costs for printed or photocopied documents, the Clerk shall tax costs at a rate not to exceed 20 cents per page, or at actual cost, whichever shall be less. See Local Rule 13(h).

(e) Filing Date. A bill of costs will be deemed timely filed if the bill of costs and proof of service is deposited in the United States mail with postage fully prepaid, within 14 days after the entry of judgment. Untimely cost bills will be denied unless a motion showing good cause is filed with the bill.

(f) Objection to Bill of Costs. An objection to a bill of costs will be deemed timely filed if the objection and proof of service is deposited in the United States mail with postage fully prepaid within 10 days after the moving party mailed the bill of costs to the objecting party. If an objection is filed, the bill of costs shall be treated as a motion under Rule 27, Federal Rules of Appellate Procedure, and the objection shall be treated as a response thereto.

The Clerk or a deputy clerk may prepare, sign, and enter an order disposing of the bill of costs, expressly subject to reconsideration by the judges of the court if exception is mailed within 10 days of the entry of the order.

(f) Filing Date for Attorneys Fees. A request for attorneys fees shall be filed with the Clerk, with proof of service, within 30 days after the entry of this court's decision, unless a timely petition for rehearing or a suggestion for rehearing en banc has been filed in which case a request for attorneys fees shall be filed within 14 days after the court's disposition of such petition or suggestion. The request must be filed separately from any cost bill.

(g) A party who intends to request attorneys fees on appeal shall include in its opening brief a short statement of the authority pursuant to which the request will be made. See Local Rule 13(b)(1)(E).

(h) Administrative agency adjudications. A request for attorneys fees and other expenses incurred in administrative agency adjudications pursuant to 28 U.S.C. 2412(d)(3) shall be filed with the Clerk, with proof of service, within 30 days after the entry of this court's decision, unless a timely petition for rehearing or a suggestion for rehearing en banc has been filed, in which case a request for attorneys fees shall be filed within 14 days after the court's disposition of such petition or suggestion. The request must be filed separately from any cost bill.

A party who intends to request attorneys fees under this statute shall include in its opening brief a short statement to that effect. See Local Rule 13(b)(1)(E).

See also Rule 39 Federal Rules of Appellate Procedure.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BILL OF COSTS

NOTE: If you wish to file a bill of costs, it must be submitted on this form and mailed to this office within 14 days of the date of entry of judgment in accordance with Local Rule 14. A late bill of costs can be processed only if accompanied by a formal motion showing good cause. Please file an original and three copies of any cost bill or motion.

_____ v. _____ Court of Appeals Docket No. _____

The Clerk is requested to tax the following costs against: _____

COSTS TAXABLE UNDER Fed. R. App. P. 39 & 28 USC 1920	REQUESTED [Local Rule 14 requires completion of each column. Failure to comply may result in denial of costs]				ALLOWED [If different from amount requested]			
	No. of Documents*	Pages per Document	Cost per Page**	Total Cost	No. of Documents	Pages per Document	Cost per Page	Total Cost
Docket fee (If paid to Court of Appeals)	////////	////////	////////		////////	////////	////////	
Excerpt of Record								
Appellant's Brief								
Appellee's Brief								
Appellant's Reply Brief								

Other: Any other request must be accompanied by a statement explaining why the item(s) should be taxed. If there is no supporting statement, the item(s) will not be taxed.

Attorneys Fees cannot be requested on this form.	Total_____	Costs are taxed in the amount of $_____

_____(date)

Clerk of Court

by _____ Deputy Clerk

State of)
County of)ss:

I, _____, swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed. THE PRINTER'S ITEMIZED STATEMENT SHOWING THE ACTUAL COSTS PER PAGE FOR THE EXCERPTS OF RECORD AND BRIEFS IS ATTACHED. (If a commercial printer was not used, prepare and attach itemization of copying costs.) A copy hereof was this day mailed to opposing counsel, with postage fully prepaid.

This _____ day of _____ 198__.

_____ (Signature)

_____ Attorney for _____

* If more than 7 excerpts or 20 briefs are requested, a statement explaining the excess number must be submitted.

** In cases where the Notice of Appeal was filed after October 1, 1981, costs per page may not exceed 20¢ or actual cost, whichever is less. Local Rule 14(d). For cases filed before 10/1/81, reproduction costs may not exceed those generally charged in the San Francisco area.

SEE REVERSE SIDE FOR LOCAL RULE 14 ON COSTS

6935N/102Q

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE and THE SIERRA CLUB, Petitioners, vs. UNITED STATES NUCLEAR REGULATORY COMMISSION, and the UNITED STATES OF AMERICA, Respondents, and PACIFIC GAS AND ELECTRIC COMPANY, Respondent-Intervenor.	No. 86-7297 ORDER

Before: FLETCHER, NELSON and THOMPSON, Circuit Judges

Petitioners moved for stay pending review of the Nuclear Regulatory Commission's (N.R.C.) order amending license of the Diablo Canyon Nuclear Power Plant. The N.R.C. and intervenor, Pacific Gas and Electric Company (P.G. & E.), have filed oppositions. The court heard argument by telephone conference July 2, 1986.

The court finding that it has jurisdiction to consider the request for stay, 28 U.S.C. § 2349(a); Fed. R. App. P. 18, and

finding that petitioners have made the requisite showing to entitle them to a partial stay, see Los Angeles Memorial Coliseum Commission v. National Football League, 634 F.2d 1197, 1200-01 (9th Cir. 1980), petitioners' emergency motion for stay pending review is denied in part and granted in part.

P.G. & E. may proceed with the reracking of the spent fuel pool for Unit 1 at the Diablo Canyon Nuclear Power Plant in accordance with the amended operating license issued by the N.R.C. on May 30, 1986. P.G. & E. shall not use the pool for the storage of radioactive nuclear waste, however, pending further order of this court. P.G. & E. proceeds with the reracking of the spent fuel pool for Unit 1 at its own risk. When this court considers the petition for review, it will not entertain any argument concerning additional costs P.G. & E. incurs as a result of a decision to proceed with reracking.

P.G. & E. is enjoined from reracking the spent fuel pool for Unit 2 at the Diablo Canyon Nuclear Power Plant pending further order of this court.

Consideration of the petition for review shall be expedited. Petitioners shall serve and file their opening brief on or before July 16, 1986. Oppositions shall be served and filed on or before July 30, 1986. The reply, if any, shall be served and filed on or before August 4, 1986. All briefs shall be served by hand if possible, or by express mail or an equivalent next day delivery service. No extensions of time will be granted. The Clerk shall schedule this matter for oral argument on the August calendar in San Francisco.