

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

James R. Schlesinger, Chairman
James T. Ramey
Wilfrid E. Johnson
Clarence E. Larson
William O. Doub

ENVIRON, FILE (NEPA)

IN THE MATTER OF

PACIFIC GAS & ELECTRIC COMPANY
(Diablo Canyon Nuclear Power Plant
Units 1 and 2)

DOCKET NOS. 50-275
50-323

MEMORANDUM AND ORDER

On December 7, 1971, the Commission's Director of Regulation (Director) published in the Federal Register (36 F.R. 23265) his determination under 10 CFR Part 50, Appendix D, Section E, that, with certain exceptions, construction of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (authorized pursuant to Construction Permits CPPR-39 and CPPR-69) should not be suspended pending completion of the environmental review under the National Environmental Policy Act of 1969 (NEPA). The Federal Register notice also provided that persons whose interests may be affected could request a hearing. A request was filed on December 30, 1971, by the Scenic Shoreline Preservation Conference, Inc., (petitioner). The request alleged, inter alia, that geothermal power is available as an alternative source of power to meet the needs



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to be served by the units involved; that continued construction of the units and associated transmission lines would result in severe environmental impact; and that further evaluation of the seismic design of the units is essential. The request is opposed by the licensee. The regulatory staff states that a hearing would be appropriate but it requests that the contention regarding seismic design be excluded from hearing consideration.

We conclude that a hearing is warranted and that a hearing will be held on the question whether construction activities under the construction permits for the Diablo Canyon Nuclear Power Plant Units 1 and 2, should be suspended pending completion of the ongoing NEPA review. For purposes of this proceeding on the above question, parties shall be the licensee, the Regulatory Staff and the petitioner.

In this regard, on April 7, 1972, the United States Court of Appeals for the District of Columbia Circuit remanded the record of a determination made in another case under 10 CFR Part 50, Appendix D, Section E. Coalition for Safe Nuclear Power, et al. v. United States Atomic Energy Commission, D.C. Cir., No. 71-1396. Noting that the utilities there would commit substantial financial resources in proceeding with construction pending completion of NEPA review, the Court stated that the Commission should consider certain additional matters in the context of balancing environmental harm and economic cost of abandonment. The Court stated:



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"On remand, the Commission should consider in detail whether this additional irretrievable commitment of substantial resources might affect the eventual decision reached on the N.E.P.A. review. The degree to which this expenditure might affect the outcome of the final N.E.P.A. process should be a paramount consideration in the decision on suspension reached after the hearings on remand."

The matters to be considered in this hearing shall be the factors specified in 10 CFR Part 50, Appendix D, Section E.2, together with the considerations specified in the Court's remand.

As respects petitioner's seismic design contention, this is the very same allegation which petitioner advanced during the construction permit hearings for Unit 2. The seismic design for Unit 2 was found to be adequate by the Atomic Safety and Licensing Board. That decision was reviewed and upheld by the Atomic Safety and Licensing Appeal Board -- once upon exceptions taken by the petitioner and again upon a petition for reconsideration largely involving the same material presented by the instant request. In these circumstances, we see no warrant in considering the question of the adequacy of the seismic design for still another time. While the seismic design contention was earlier raised in connection with Unit 2, the Licensing Board, of course, independently reviewed the seismic design for Unit 1 -- which is located at the same site and utilizes the same criteria -- and found the design to be adequate.



A hearing notice implementing this decision, and reflecting the need for expedition of this proceeding, is appended hereto as Attachment A.

By the Commission.



W. B. McCool
Secretary of the Commission

Attachment:
Notice of Hearing

Dated at Germantown, Maryland
this 21st day of April , 1972.

