

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before The Commission

NRC PUBLIC DOCUMENT ROOM



In the Matter of: )

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

Docket Nos. 50-275 OL  
50-323 OL

JOINT INTERVENORS' REQUEST  
THAT THE COMMISSION WITHHOLD ISSUANCE  
OF AN OPERATING LICENSE FOR THE DCNPP

I.

The Joint Intervenors, SCENIC SHORELINE PRESERVATION CONFERENCE, INC., SAN LUIS OBISPO MOTHERS FOR PEACE, SANDRA SILVER, ECOLOGY ACTION CLUB, and JOHN J. FORSTER, request that the Commission, in exercise of its general supervisory powers over all Commission activities, withhold issuance of a license to operate the Diablo Canyon Nuclear Power Plant (DCNPP), pending a determination as to whether the facility should be modified in view of the information obtained from the analysis of the accident at Three Mile Island (TMI). Because we believe the Commission is best qualified to address the policy considerations raised in this motion, we raise it directly with the Commission rather than with the Licensing Board or the Appeal Board. <sup>1/</sup>

<sup>1/</sup> Should the Commission grant this request, we expect that first, the Applicant would document proposed modifications in an amendment to the FSAR; second, the Staff would review the proposed modifications in a supplement to the SER; and third, parties might initiate hearings on the modifications by submitting legally sufficient contentions to the Licensing Board.

## II.

The Commission is currently investigating the recent accident at the TMI Nuclear Power Plant. That reactor, like the one at Diablo Canyon, is a pressurized water reactor. The results from these ongoing investigations have not been made public. However, reports in the press indicate that the Advisory Committee on Reactor Safeguards (ACRS) has written the Commission regarding problems encountered at TMI that may apply to all pressurized water reactors. Apparently, two identified problems are (1) the failure of pressure gauges to advise reactor operators of the water level in the reactor vessel, and (2) the absence of any mechanism for automatically venting gasses that may collect at the top of the reactor vessel. In addition, statements by NRC officials indicate that in-containment instruments have failed in the post-accident environment. Further analysis may uncover other safety problems generic to pressurized water reactors and, therefore, relevant to the DCNPP.

Permitting DCNPP to go critical may preclude modifications to that facility, indicated from TMI analysis and, in any event, would likely make such modifications more expensive and dangerous to workers engaged in modifying the facility.

Public safety is the first, last, and permanent question in any decision on the issuance of a construction permit or a license to operate a nuclear facility. Power Reactor Co.

v. Electricians, 367 U.S. 346, 402 (1961). That consideration, we submit, requires the Commission to withhold issuance of a license to operate the DCNPP until it is determined whether, and, if so, to what extent the DCNPP should be modified. <sup>2/</sup>

Respectfully submitted,

*David S. Fleischaker*

David S. Fleischaker, Esq.  
1025 Fifteenth Street, N.W.  
Suite 602  
Washington, D.C. 20005  
(202) 638-6070

John R. Phillips, Esq.  
Steven Kristovich, Esq.  
CENTER FOR LAW IN THE PUBLIC INTEREST  
10203 Santa Monica Boulevard  
Los Angeles, California 90067  
(213) 879-5588

Attorneys For Joint Intervenor  
SCENIC SHORLINE PRESERVATION  
CONFERENCE, INC.  
SAN LUIS OBISPO MOTHERS FOR PEACE  
ECOLOGY ACTION CLUB  
SANDRA A. SILVER  
JOHN J. FORSTER

April 12, 1979

---

<sup>2/</sup> We would like to stress that we are not suggesting that the ASLB stay issuance of a partial initial decision on the seismic issues. To the contrary, we believe that such a decision should be issued as expeditiously as possible. The record is complete in that complex matter, and it makes no sense to stall the Licensing Board's decision and appellate review of that decision.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

---

In the Matter of:	)	
	)	
PACIFIC GAS & ELECTRIC COMPANY	)	Docket Nos. 50-275 OL
(Diablo Canyon Nuclear Power	)	50-323 OL
Plant, Units 1 & 2)	)	

---

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of April, 1979, served copies of the foregoing JOINT INTERVENORS' REQUEST THAT THE COMMISSION WITHHOLD ISSUANCE OF AN OPERATING LICENSE FOR THE DCNPP upon all of the parties listed below either by depositing copies thereof in the U.S. Mails, first class, postage prepaid, or by hand delivery (\*).

Dr. Joseph Hendrie, Chairman (\*)  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
11th Floor  
Washington, D.C. 20555

Peter A. Bradford, Commissioner (\*)  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
11th Floor  
Washington, D.C. 20555

Victor Gilinsky, Commissioner (\*)  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
11th Floor  
Washington, D.C. 20555

John F. Ahearne, Commissioner (\*)  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
11th Floor  
Washington, D.C. 20555

Richard T. Kennedy, Commissioner (\*)  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
11th Floor  
Washington, D.C. 20555

Alan Rosenthal, Chairman (\*)  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

W. Reed Johnson, Member (\*)  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Richard S. Salzman, Member (\*)  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Elizabeth S. Bowers, Esq., (\*)  
Chairman  
Atomic Safety &  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Mail Drop East West 450  
Washington, D.C. 20555

Mr. Glenn O. Bright (\*)  
Atomic Safety &  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Mail Drop East West 450  
Washington, D.C. 20555

Docket & Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. William E. Martin  
Battelle Memorial Institute  
Columbus, Ohio 43201

James R. Tourtellotte, Esq. (\*)  
L. Dow Davis, Esq.  
Lawrence Brenner, Esq.  
Office of Executive Legal  
Director - BETH 042  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mrs. Elizabeth Apfelberg  
1415 Cozadero  
San Luis Obispo, CA 93401

Sandra A. & Gordon Silver  
1760 Alisal Street  
San Luis Obispo, CA 93401

John Phillips, Esq.  
Center For Law In  
The Public Interest  
10203 Santa Monica Boulevard  
Los Angeles, CA 90067

Paul C. Valentine, Esq.  
321 Lytton Avenue  
Palo Alto, CA 94302

Janice E. Kerr, Esq.  
Lawrence Q. Garcia, Esq.  
J. Calvin Simpson, Esq.  
California Public Utilities  
Commission  
5246 State Building  
350 McAllister Street  
San Francisco, CA 94102

John C. Morrissey, Esq.  
Philip A. Crane, Esq.  
Pacific Gas & Electric Company  
77 Beale Street, Room 3127  
San Francisco, CA 94106

Arthur C. Gehr, Esq.  
Snell & Wilmer  
3100 Valley Center  
Phoenix, Arizona 85073

Bruce Norton, Esq.  
3216 N. Third Street  
Suite 202  
Phoenix, Arizona 85012

Mr. Yale I Jones, Esq.  
100 Van Ness Avenue  
19th Floor  
San Francisco, CA 94102

Mrs. Raye Fleming  
1920 Mattie Road  
Shell Beach, CA 93449

MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, CA 95125

Carl Neiburger  
Telegram Tribune  
P.O. Box 112  
San Luis Obispo, CA 93402

*David S. Fleischer*  
DAVID S. FLEISCHAKER, ESQ.