

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'82 AGO -4 AIO:28

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

(Diablo Canyon Nuclear Power Plant,
Units 1 and 2))

) Docket Nos. 50-275 O.L.

) 50-323 O.L.

) (Full Power License
) Proceeding)

MOTION TO REOPEN THE PROCEEDING TO TAKE
EVIDENCE ON QUALITY ASSURANCE

Governor Edmund G. Brown Jr., representing the State of California, hereby moves this Board to reopen the pending Diablo Canyon full power license proceeding in order to permit the parties to submit evidence on quality assurance, to interrogate expert witnesses, and to advise the Board on the state of quality assurance at Diablo Canyon and the serious uncertainties affecting the safety of the as-built plant. Such reopening is essential because the Board does not have before it in the evidentiary record crucial data concerning the implementation of the quality assurance program of PG&E. Without such data being part of the evidentiary record, this Board will be unable to make findings required by 10 C.F.R. §50.57(a).

The instant Motion presents this Board with a single overriding issue: Whether the as-built Diablo Canyon plant, which is pending before this Board for a full power license, satisfies the public health and safety standards of the Atomic Energy Act and the NRC's Regulations thereunder? The Governor submits that the plant does not and, indeed, that the extent of the deficiencies

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at Diablo Canyon can be uncovered only by a systematic design review and physical inspection of the as-built plant to determine the quality of what has actually been constructed by PG&E. The indispensable first step, however, is for the Board to reopen the record and evaluate the extent to which the structures, systems, and components important to safety at Diablo Canyon have been adversely affected by PG&E's widespread and undeniable QA breakdowns.

The Governor is entitled to formal findings of fact, based on lawfully compiled evidence of record, as to PG&E's implementation of quality assurance requirements at Diablo Canyon and the consequences of PG&E's failures to comply with such requirements, as set forth in 10 C.F.R. Part 50 and Appendix B thereto. The Atomic Energy Act and the Administrative Procedure Act provide the Governor with the right to present evidence, to interrogate expert witnesses, and to advise the Commission on the extent and implications of PG&E's QA failures on the safety of the as-built Diablo Canyon plant.

Further, the Atomic Energy Act and the NRC's regulations impose an obligation on this Board to make findings regarding PG&E's compliance with the NRC's regulations, including the quality assurance requirements of Part 50. Such findings cannot be made unless the Board reopens the record to take cognizance of the newly discovered evidence of quality assurance breakdowns at Diablo Canyon. In short, even if the Governor were not making

this Motion, the Board, on its own, would be required to reopen the record because of the undeniable safety significance of the recent revelations.

It is important for this Board to recognize that the instant Motion is not affected by the ongoing Independent Design Verification Program ("IDVP"). The IDVP is narrowly limited in the scope of its QA review. The instant Motion, however, addresses PG&E's overall implementation of its QA program, and it is this overall QA program on which the Board must make findings of fact. Indeed, even if the IDVP covered the matters addressed by the instant Motion, the IDVP could not be a substitute for the Governor's right to a hearing on the broader QA issue. The reason is that this is a contested proceeding which requires that the NRC's decision be based on the evidence of record. The IDVP is outside the record and, thus, has no legal effect on the evidence to which this Board must look in formulating its findings.

Accordingly, unless the Board grants the instant Motion and takes evidence on QA, there will be no record before the Board on which to make the indispensable findings of fact, whether favorable or unfavorable to PG&E. The result is that, absent the requisite evidentiary record, any full power license issued by the Board would, as a matter of law, be arbitrary and capricious and without substantial evidence. Such licensing action, of course, would be in derogation of the Atomic Energy Act and the Administrative Procedure Act.

The Governor has joined in the Joint Intervenors' Motion of June 8, 1982, to reopen the low power license proceeding pending before the Appeal Board. This Board has been served with copies of the Joint Intervenors' Motion, the accompanying affidavit of Richard B. Hubbard, and the Governor's Response of July 2, 1981, which supported and joined the Motion to Reopen. Accordingly, in the interest of avoiding unnecessary duplication of materials already available to the Board and parties, the Governor hereby adopts and incorporates herein such previously served Motion to Reopen, the Hubbard affidavit, and the Governor's Response, as integral parts of the Governor's instant Motion before this Board.^{*/}

In support of the instant Motion, the Governor respectfully refers this Board to the following matters in addition to those incorporated by reference:

1. At the outset, it is important to characterize properly the Commission's November 19, 1981 action which suspended PG&E's low power license. The Commission did not suspend the license because PG&E violated the terms of that license, but because the Commission found that PG&E was not entitled to the license in the first place. In substance, the Commission did not take enforcement action to penalize PG&E, but acted instead to correct a

^{*/} The Board is also requested to take notice of the Appeal Board's Memorandum and Certification to the Commission, dated July 16, 1982. That Certification concerns PG&E's low power license, which was suspended by the Commission on November 19, 1981, and thus concerns a matter different from the subject of the instant Motion. The subject here, of course, is PG&E's pending application for a full power license.

mistake in having issued the license on the erroneous assumption that PG&E had satisfied the NRC's regulations and was therefore qualified to be issued the license. Indeed, the Commission's action represented a finding that Diablo Canyon is unfit to operate, not that it was operated improperly. As the Commission itself made clear, had the flaws in PG&E's quality assurance been known before the Commission issued the license, the license would not have been issued.

Subsequent to suspension of the low power license on November 19, the seriousness of PG&E's initial seismic design errors was underscored by multiple findings of deficiencies in PG&E's implementation of quality assurance requirements. The net effect of these disclosures was to demonstrate that the proliferating problems at Diablo Canyon could not be passed off as mere "paper problems." In fact, equipment was in some instances installed incorrectly; in other cases, it was designed incorrectly. Clearly, there were breakdowns in QA, and these breakdowns undermined any possible factual basis on which to predicate assurance that the as-built Diablo Canyon plant could withstand the M7.5 Hosgri earthquake. Therefore, the issue presented to this Board by the instant Motion is one of utmost practical consequence. It is not whether PG&E's QA paperwork is adequate. It is whether the Diablo Canyon plant is safe.

2. The Governor refers this Board to the recent findings of the report entitled "Independent Seismic Evaluation of the Diablo Canyon Unit 1 Containment Annulus Structure and Selected Piping Systems," which was prepared for the NRC by the Brookhaven

National Laboratory. A copy of such report has been previously served on the Board and is incorporated herein in support of this Motion. The Brookhaven Report underscores the significance of the QA discrepancies which were uncovered in the Reedy Report. Even given the narrowly defined scope of the Reedy QA review in the IDVP, there is already compelling evidence of QA breakdowns at Diablo Canyon that documents PG&E's fundamental disregard of Appendix B. The clear indication is that QA is deficient as a generic matter at the Diablo Canyon plant; not only in the narrowly confined areas addressed by the IDVP. The need therefore is for both an evaluation of PG&E's implementation of design and construction QA programs and an evaluation of the actual quality of the as-built plant. The purpose of these evaluations would be not to review mere paperwork. It would be to test the safety features of the plant.

3. The issue presented by the instant Motion is not covered by the ongoing IDVP, which deals with a far more limited scope of review and which was established at a date when there were only a handful of known errors, albeit significant errors. The issue presented here, instead, addresses the fact that the QA discrepancies disclosed to date, coupled with the Reedy Report, the Brookhaven Report, and the other data referenced herein and in the documents incorporated by reference, signal fundamental and generic breakdowns in the implementation of QA at Diablo Canyon. This is a safety issue of major significance, because compliance with the NRC's QA requirements is widely recognized as the lynchpin of nuclear plant safety. This issue,

therefore, can be resolved only if this Board orders an evaluation of the implementation of PG&E's QA program for design and construction. It cannot and will not be resolved by the limited scope of the ongoing IDVP, which has been constrained to examine only discrete subject areas and a discrete time-period. Thus, to the extent that QA is touched by the IDVP, the IDVP contains at best a narrow subset of the critical QA issue. While the IDVP of course provides useful data and suggests the most compelling need for a QA evaluation of comprehensive scope, it does not in any way reach the merits of the instant Motion.

This Board should consider the instant Motion in light of the legal standards for reopening the record that have been settled since the Wolf Creek decision. Indeed, the instant Motion asks for resolution of the QA issue in view of significant new information which has come forth since the Commission suspended PG&E's low power license; that new information precludes the Board from making QA findings;^{*/} and, the Motion is timely and ripe for an order directing the parties to address the issue of the safety significance of PG&E's failure to comply with the NRC's QA requirements.

There is no reason for this Board to certify the instant Motion to the Commission or to defer a prompt ruling granting the Governor's request. It is understandable that the Appeal Board certified questions to the Commission for guidance, because in

^{*/} Indeed, if QA findings had been made, the new data would clearly nullify those findings and also require reopening of the record.

that case the Appeal Board had before it the pending appeal of the low power license proceeding. Therefore, the Appeal Board was dealing with the same license that the Commission had already suspended, and there was a basis for uncertainty as to the Commission's intent.

The instant Motion, however, does not raise the issue confronted by the Appeal Board. Here, unlike the Appeal Board's situation, this Board has before it PG&E's application for a full power license. Thus, the Board is not being asked to revoke a license already suspended by the Commission. This Board, rather, is being apprised of significant new information which demonstrates that the Board cannot make findings to support a full power license and which requires that a formal evidentiary record on QA be compiled.

The Governor, as the representative of an interested State under Section 274 of the Atomic Energy Act and Section 2.715(c) of the NRC's regulations, has the right to a determination on the evidentiary record of the adequacy of the design and construction of structures, systems, and components important to safety at the Diablo Canyon plant. The threshold question before this Board is whether the new information being brought to the Board's attention concerning QA deficiencies at Diablo Canyon is significant. The Governor submits that there can be no conclusion other than that these data are of exceptional significance, as demonstrated by the Hubbard affidavit, the 200-plus discrepancies already disclosed, the Reedy Report, the recent Brookhaven Report, and the other data cited herein. Thus, the Board

must reopen the record to take evidence on the implementation of PG&E's quality assurance program and the safety significance of PG&E's failure to comply with the NRC's requirements.

The Governor submits that the necessary on-the-record examination of PG&E's QA implementation would lead the Board to find that Diablo Canyon does not satisfy the licensing requirements of Part 50 and Appendix B. Such a finding would require a single remedial action: a design review and physical inspection of Diablo Canyon's structures, systems, and components important to safety in order to determine first-hand the actual quality of the as-built plant. Given the sweeping disclosures of QA discrepancies to date, no paperwork alternative to a design review and physical inspection would or could be an adequate remedy. Indeed, it is already clear that at Diablo Canyon the problem is not only with the quality of recordkeeping; it is with the quality of the plant itself.

Accordingly, the Governor respectfully requests that this Board grant the instant Motion and direct that the record be reopened so that the Board can consider critical data relevant to the following issues:

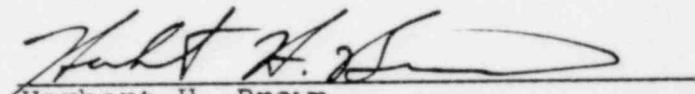
1. The implementation of PG&E's quality assurance programs for design and construction of Diablo Canyon does not satisfy the licensing standards set forth in the Atomic Energy Act and the Commission's regulations thereunder, particularly 10 C.F.R. Part 50, Appendix B. Therefore, the adequacy of the structures, systems, and components important to safety at the as-built Diablo Canyon plant cannot now be determined.

2. In order to determine the adequacy of the structures, systems, and components important to safety at the as-built Diablo Canyon plant, a design review and physical inspection of such structures, systems, and components must be performed.

In order to move this critical matter forward without undue delay, the Governor respectfully requests an expedited ruling in favor of the instant Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "MOTION TO REOPEN THE PROCEEDING TO TAKE EVIDENCE ON QUALITY ASSURANCE" have been served to the following by U.S. Mail, first class, this 2nd day of August, 1982.

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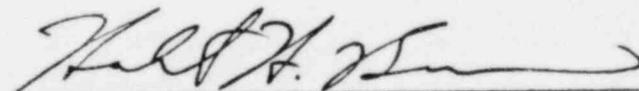
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