

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'82 APR 22 P4:38

COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Victor Gilinsky  
John F. Ahearne  
Thomas M. Roberts

SERVED APR 22 1982

In the Matter of  
PACIFIC GAS AND ELECTRIC COMPANY  
(Diablo Canyon Nuclear Power Plant,  
Units 1 and 2)

Docket Nos. 50-275 OL  
50-323 OL  
(SECURITY)

ORDER

CLI-82- 7

On September 9, 1981 the Atomic Safety and Licensing Appeal Board held in ALAB-653 (RESTRICTED) that the physical security plan for the Diablo Canyon Nuclear Power Plant conformed to the applicable provisions of the Atomic Energy Act of 1954, as amended, and the Commission's regulations. Governor Edmund Brown and San Luis Obispo Mothers For Peace filed petitions for review with the Commission, setting forth numerous allegations of Appeal Board error. The Commission, upon examining the pleadings and the Appeal Board opinion, has denied the petitions for review.

However, one issue, the Appeal Board's interpretation of the word "several" as used in the design basis threat of 10 CFR 73.1(a)(1)(i), merits further comment. In its earlier decision reviewing the Appeal Board's decision authorizing issuance of a fuel loading and low power testing license for Diablo Canyon, the Commission stated that it "does not necessarily agree with the

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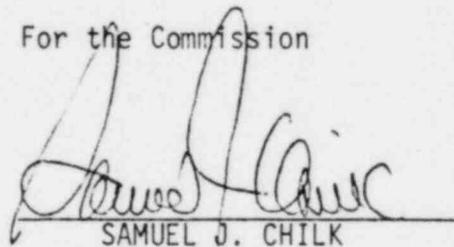
Board's conclusion regarding the definition of the word 'several' found in 10 CFR 73.1(a)(1)(i). The Commission will provide guidance on this matter at a later date." In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-22, 14 NRC 598, 600 (1981). After further examining this matter, the Commission has decided that this issue does not warrant Commission review within the context of this proceeding.

Nonetheless, in its Statement of Considerations accompanying the adoption of Section 73.1(a)(1), the Commission stated that "the kind and degree of threat and the vulnerabilities to such threats will continue to be reviewed by the Commission. Should such reviews show changes that would dictate different levels of protection the Commission would consider changes to meet the changed conditions." 42 Fed. Reg. 10836 (February 24, 1977). Five years have elapsed since the adoption of Section 73.1(a)(1)(i), and the Commission believes that the design basis threat should be reevaluated. The Commission will handle this reevaluation generically.

The separate views of Commissioner Gilinsky and additional views of Commissioners Ahearne and Roberts are attached.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this 22nd day of April, 1982.

SEPARATE VIEWS OF COMMISSIONER GILINSKY

I would affirm the Appeal Board's conclusion that the Diablo Canyon physical security plan is adequate. However, I would reverse the Appeal Board's interpretation of the term "several". When the Commission, on which I sat, adopted the rule requiring facilities to be capable of defending against "several" armed attackers, it did not intend to limit the threat to some fixed number, as the staff and Board apparently think, but instead intended the word to mean what it plainly means: "more than two but fewer than many".

The Commission deliberately chose not to require that a system be capable of defending only against a specific number of attackers precisely because the Commission intended that the security system be relatively insensitive to minor changes in the number of attackers. This is a terribly important point which has been entirely overlooked in this proceeding, and of which the Appeal Board seems unaware. This extra margin of security would be lost if the Commission were to endorse the Board's interpretation. Fortunately, it appears that a majority of the Commission does not support such an interpretation.

I would ask the staff to explain its reasons for selecting the number of armed responders required at licensed sites and its present views on the number of armed responders which should be required.

ADDITIONAL VIEWS OF COMMISSIONERS AHEARNE AND ROBERTS

Commissioner Gilinsky's opinion may be read as indicating the Commission denied review because it was convinced beyond doubt that (1) the Appeal Board correctly characterized the Commission's intent in using the term "several" and (2) its interpretation is the correct approach.

A more accurate statement of our basis for declining review is that the Appeal Board decision is reasonable, there is no real question about adequacy of the physical security plan in this case, and the questions we believe should be addressed are more appropriately discussed in a generic context. The Commission has agreed to do so.