

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victory Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

In the Matter of)

PACIFIC GAS AND ELECTRIC CO.)

(Humboldt Bay Power Plant, Unit 3))

)
)
) Docket No. 50-133
) (Guenther 2.206 Petition)

INTERVENORS' STATEMENT WITH RESPECT
TO DIRECTOR'S DECISION UNDER
10 CFR 2.206

TO THE HONORABLE COMMISSIONERS:

Private citizen Ron Guenther by letter dated January 16, 1982 petitioned the Atomic Safety and Licensing Board to decommission Humboldt Bay Power Plant, Unit No. 3 ("the Plant"). On July 7, 1982, Harold R. Denton, Director, Office of Nuclear Reactor Regulation, denied the petition. By Order dated August 20, 1982, the full Nuclear Regulatory Commission extended, until September 10, 1982, the time within which the Commission may act to review that denial.

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Intervenors^{1/} respectfully make the following statement with respect to the Director's denial of the

^{1/} Intervenors are Thomas K. Collins, Dr. Elmont Honea, Frederick P. Cranston, Wesley Chesbro, Demetrios L. Mitsanas, the Six Rivers Branch of Friends of the Earth, and the Sierra Club.

Guenther petition. In summary, Intervenors believe that the Commission should reverse the Director's Decision, and order the Plant decommissioned now. In the alternative, and at a minimum, the Commission should make clear that the Director's Decision is to be construed as a denial without prejudice to the decommissioning issue being raised again in the future, whether by private petition to the NRC or the Board, or by either the Board or the Commission on its own motion.

Intervenors have for nearly three years now been urging the Atomic Safety and Licensing Board in this proceeding either to order PG&E to perform the retrofiting necessary to render the Plant seismically safe, or to permanently shut down and decommission the Plant. See Intervenor's Answer in Opposition to Licensee's Motion to Hold Proceedings in Abeyance filed herein on October 15, 1979, together with Intervenors' Memorandum in Support of Answer In Opposition to Licensee's Motion to Hold Proceedings in Abeyance, filed on October 19, 1979; Intervenors' Answer in Opposition to Licensee's [Fourth] Motion to Hold Proceedings in Abeyance filed on October 22, 1980; Intervenors' Answer In Response To Motion To Withdraw Application for License Amendment, filed on January 19, 1981; Intervenors' Response to PG&E's Response to Board's Order of July 14, 1981, filed on September 19, 1981; and Intervenors' Comments on NRC Staff's

Answers to Atomic Safety and Licensing Board's Questions,
filed on December 7, 1981.

The basis for Intervenors' position has been that the record in this matter as it presently exists gives the Commission (or, by delegation, the Board) ample cause to revoke PG&E's operating license for the Plant, and to order it decommissioned. In summary, the undisputed facts as set forth and documented in the various memoranda referred to above submitted by

Intervenors are as follows: The plant, which has been inoperative for nearly seven years, is not designed and has not been constructed to withstand a maximum credible earthquake along any of three capable faults immediately adjacent to it. The plant therefore cannot safely be operated as presently constructed. PG&E has no plans and indeed no stated intention whatsoever of expending the funds necessary to upgrade the plant so that it can safely be operated in "earthquake country". The useful life of the plant, therefore, is for all practical purposes at an end, and has been for seven years. Moreover, PG&E is in continuing and knowing default of its legal obligation, contained in Paragraph E of its operating license and in various specific orders of this Board, to demonstrate that the plant is seismically safe. See Intervenors' Response to PG&E's Response to Board's Order of July 14, 1981, pp. 2 - 5 for a fuller discussion of these facts and citations to the record, including the Board's own prior findings.

In light of these facts, Intervenors have contended before the Board that it is certainly justified, and perhaps legally mandated, to revoke PG&E's operating license now and to order the plant permanently shut down and decommissioned, regardless of whether, in its present cold shut-down condition, it presents an immediate danger to the public health and safety. Id., pp. 5 - 10.

In response to these urgings, first the Staff and then the Board itself have become increasingly less sympathetic to PG&E's continuing dilatory tactics, and have agreed that, sooner or later, PG&E must either make a decision to spend the necessary funds to make the Plant safe for operations (assuming that is possible at all, which Intervenors do not concede), or must permanently shut down and decommission the Plant.

For example, in a document entitled NRC Staff Request for Extension of Time In Which to Answer Applicant's Motion to Hold Proceedings in Abeyance, dated November 1, 1979, the Staff stated:

"A central tenet of NRC practice is that licensing proceedings be concluded as expeditiously as possible in a manner consistent with due process of law. [citations omitted] . . . In this regard, the Appeal Board has observed:

If [a particular] plant is safe and environmentally sound, then there is every reason to have the facility approved promptly. If, on the other hand, the plant fails to pass muster, the public interest will be served if this fact is known sooner rather than later. For, in that event, there will be a need either to initiate corrective action to bring the facility into compliance (if possible) or to develop some alternative solution. 2 NRC at 684-85."

Id. at pp. 2 - 3. The Staff went on to note that in this case,

"To date, the NRC Staff has not been provided [by the licensee, Pacific Gas and Electric Company, or PG&E] with any information which would demonstrate satisfactory compliance with the operative provisions of the May 21, 1976 Order for Modification and, thus, demonstrate that the present license amendment application should be granted. . . .

The 60-day status reports submitted under the May 7, 1979 Board Order have not provided much insight into the substantive findings of the Applicant's current investigation. . . . Moreover, the instant motion fails to explain why these investigations have not progressed further and the date by which the additional work outlined in the September 1, 1979 consultant's report will be completed."

Id. at pp. 3 - 4.

In the NRC Staff Response to Applicant's Motion to Hold Proceeding in Abeyance, dated December 26, 1979, the Staff stated that it would not object to PG&E's then pending motion to hold the licensing proceedings on the Plant in abeyance for a year, to October 1, 1980. The staff also stated, however, that

"At the same time, the Staff believes that a continuance until October 1, 1980 provides Applicant [PG&E] with a generous period of time within which to proceed with the presentation of its direct case. The Staff would not be receptive to any further motions of this kind and believes it reasonable to expect the Applicant either to proceed with its application by October 1, 1980, and the prehearing process resumed, or to withdraw its application."

Id. at p. 4.

On May 22, 1981, Thomas M. Novak, Assistant Director for Operating Reactors, Division of Licensing, Office of Nuclear Reactor Regulation, sent a Request for Information to Mr. P. A. Crane, Vice President and General Counsel of PG&E. Mr. Novak's cover letter stated that

"Since Humboldt Bay Unit 3 does not meet current operational requirements and no plans have been proposed to NRC for bringing it into compliance with these requirements, it appears that the useful life of Unit 3 as an operating nuclear power reactor may be at an end.

Therefore, I am requesting that you submit information under 10 CFR 50.54(f) as described in the enclosed Request for Information. This information

. . . will be used to determine whether the operating authority in License No. DPR-7 should be revoked." (emphasis supplied).

The Request for Information itself elaborated as follows:

"Humboldt Bay Unit No. 3 does not meet current operational requirements, e.g., the ECCS analysis and evacuation plans are inadequate, and none of the post-TMI lessons learned requirements have been implemented. The licensee has completed studies relating to the costs and economics of returning the facility to power operation. The studies indicate that the potential costs of bringing the plant into compliance with current operational requirements are high when measured against the size of the facility and its remaining useful life . . .

[S]ince June 1976, Facility Operating License No. DPR-7 has been an "operating" license in name only. Since Humboldt Bay Unit 3 does not meet current operational requirements and no plans have been proposed to NRC by the licensee for bringing it into compliance with these requirements, it appears that the useful life of unit 3 as an operating nuclear power reactor may be at an end."

Id. at p. 4.

The Request for Information concluded:

"Accordingly, in order to determine whether the operating authority in License No. DPR-7 should be revoked, the licensee is requested to submit information . . . within 30 days of the date of this request which states whether or not the licensee plans to bring the Humboldt Bay facility into compliance with current operational requirements and, if so, describes these plans and provides a schedule therefor. If the licensee has not decided whether or not to make the Humboldt Bay facility operational again, the licensee is requested to identify the time when it intends to make such a decision, the reasons for delaying a decision until that time and the reasons why the operating authority for the Humboldt Bay facility should not be revoked pending that decision.

The staff will consider the licensee's response to this request for information to determine in the near future whether the operating authority of the Humboldt Bay facility should be revoked."

Id. at p. 5.

On July 14, 1981, the Board issued a Memorandum and Order in which it stated, among other things:

In our view, Licensee has in effect conceded that presently it is unable or unwilling to expend the funds necessary either to complete the seismic and geologic investigations ordered by the Commission more than five years ago, and to upgrade the plant as necessary, or to bring the plant into compliance with newly issued post-Three Mile Island safety regulations promulgated by the Commission. It is apparent that the design of Humboldt Bay Unit 3 has become deficient in a number of respects.

Since June 1976, License No. DPR-7 has been an "operating" license in name only . . .

Since Humboldt Bay Power Plant, Unit 3 does not meet current operational requirements and, to our knowledge, no plans exist for bringing it into compliance with current requirements, this Board has under consideration the issuance of an order requiring Licensee to show cause why the operating authority provided in Facility Operating License No. DPR-7 should not be revoked and why Licensee should not submit a plan to decommission Humboldt Bay Power Plant, Unit 3. Accordingly, we will defer ruling on Licensee's motion to withdraw its application for a license amendment and at this time require Licensee to provide us with a definitive statement of its present intentions regarding required plant modifications and a schedule for completing them."

Id. at p. 8 (emphasis supplied.)

The Board thereupon ordered PG&E in 30 days to "set forth its intentions regarding plant modifications required to bring Humboldt Bay Power Plant, Unit 3 into compliance with current NRC requirements." Id. at 9

PG&E did not do so, of course, but instead responded vaguely that additional studies needed to be completed and NRC regulations needed to be clarified before it could decide what to do with the Plant. See Response of Pacific Gas and Electric Company to Board Order

of July 14, 1981, dated August 13, 1981. In response to this, the Board asked the Staff and PG&E a series of questions, see Memorandum and Order filed October 21, 1981, which the Staff and PG&E subsequently answered. Finally, the Board by Memorandum and Order dated February 16, 1982 determined, based on Staff's and PG&E's answers, that "the public health and safety is being protected despite the fact that the Licensee has not complied with several existing NRC regulatory requirements."^{2/} Id. at p. 3. The Board went on to say:

"However, it is clear that the status quo at this shutdown facility cannot be allowed to continue indefinitely. The problem presented in this proceeding is that the Commission's regulations simply have never contemplated a long shutdown such as has occurred with the Humboldt Bay Plant. The time has come to set a time-table for resolving that problem." (emphasis supplied).

Id. at 3.

The Board thereupon ordered PG&E to report to it within six months after the Commission reaches a final decision on adoption of a reactor safety policy statement and its associated goals and guidelines,

"a) that it is then ready to take actions necessary to permit resumption of operation of Humboldt Bay Power Plant, Unit No. 3, or
b) that it will then commit to the submittal to the Commission of a plan to decommission the Unit."

Id., p. 5

^{2/} Intervenors do not concede that this finding is correct.

There matters stood until receipt by the Board of the Guenther Petition for Decommissioning.

The foregoing history makes clear that Interveners have been urging the Board to revoke PG&E's license for the Plant and to order the Plant decommissioned for nearly three years, and that the Board itself has been moving closer and closer over the years to agreement with Interveners' position. The Board has on a number of occasions expressly contemplated ordering the Plant to be decommissioned sometime in the future unless PG&E commits itself to taking the actions necessary to render the Plant safe to operate. The most recent such order, dated February 16, 1982, remains in effect.

Thus, read in this context, as it must be, the Director's Decision Under 10 CFR 2.206 dated July 7, 1982 denying the Guenther Petition for Decommissioning must be construed as a denial without prejudice to the decommissioning question being raised again in the future, and specifically when PG&E makes its decision on what it will do with the Plant within six months after the Commission reaches its decision on adoption of an industry wide nuclear reactor safety policy, as per the Board's pending February 16, 1982 order. The Director's Decision does not, in other words, purport to overturn the Board's February 16, 1982 Memorandum and Order, or to pre-empt the Board from ordering the Plant to be decommissioned at a future date, or to preclude any private citizen, including Mr. Guenther, from again petitioning it to do so.

To the contrary, the Director's Decision states that ". . . no basis exists to require the decommissioning of the Humboldt Bay Plant at this time," id. at p. 1 (emphasis supplied), and refers to the February 16, 1982 Memorandum and Order, noting that "the Board established a time table for the licensee to decide whether it would resume operation of the plant or decommission it." Id. at 2 (emphasis supplied).

Because the Director's Decision does not expressly make clear that it constitutes merely a denial without prejudice, however, Intervenors' request that at the very least this Commission do so. Indeed, given the history of these proceedings outlined above, Intervenors go further and respectfully suggest that there is no reason to wait any longer, and that the Commission could properly and perhaps at this time should reverse the Director's Decision denying Mr. Guenther's Petition for Decommissioning, and order the Plant to be decommissioned, and PG&E to submit a plan forthwith to accomplish the decommissioning.

DATED: September 1, 1982

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing document, Intervenors' Statement with Respect to Director's Decision Under 10 CFR 2.206, has been served today on the following by deposit in the United States mail, properly stamped and addressed:

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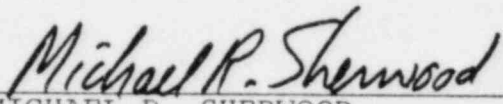
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