

November 8, 1982



SECY-82-451

ADJUDICATORY ISSUE

(Notation Vote)

For: The Commissioners

From: Martin G. Malsch
Deputy General Counsel

Subject: REVIEW OF DIRECTOR'S DECISION DD-82-10
(IN THE MATTER OF PACIFIC GAS & ELECTRIC
COMPANY)

Purpose: To inform the Commission of the denial
of a request for action pursuant to 10
CFR 2.206 and to recommend

Review Time Expires: November 22, 1982, as extended.

Discussion: Summary and Conclusion

EX. 5

Contact:
Rick Parrish, OGC
X43225

821190367 XA

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA- 92-436

5/39

show cause why PG&E should not be directed to file amendments to the operating license application to reflect the addition of Bechtel Power Corporation to the Diablo Canyon project management and organization, and (2) provide a hearing on the amendments. Petitioner's concerns focused upon the modification of the quality assurance program at Diablo Canyon, though other functions "essential to design, construction, and completion of the facility," such as engineering management, were noted to be affected by the reorganization.

The Director responded to Mr. Reynolds' petition on September 22, 1982, denying the requested order and hearing. We conclude that

Gx. E

The Director's Decision

The Director explained that Bechtel had been incorporated in the Diablo Canyon Project Organization as the project manager, responsible for completion of the work necessary to:

- 1) restore the low-power license for Unit 1,
- 2) obtain a full-power license for the plant,
- 3) complete construction of Unit 2, and
- 4) provide start-up engineering and construction support needed to bring both units into commercial operation.

The Director determined that the requested order was unnecessary for a

number of reasons. Staff has reviewed and found acceptable the revised Project Quality Assurance Program, based primarily on the previous approval of Bechtel's own QA program. Furthermore, PG&E remains in ultimate control of the general design and construction of both units and pre-operational testing. Thus, the Director reasoned, the introduction of Bechtel into the project organization does not represent a significant change in PG&E's construction permit application. Citing the Commission's decision on the short-pilings issue in Bailly, ^{1/} the Director reasoned that an amendment to a construction permit is required only when there are significant changes in the information supplied by the licensee in support of an application.^{2/}

The Director also noted that Mr. Reynolds requested that the FSAR (which is part of the operating license application) be amended. The FSAR, however, applies to plant operation. 10 CFR 50.34 (b). Bechtel's participation in the project and the modified QA program are apparently limited to pre-operational activities and therefore need not be reflected in the FSAR.

In addition, the Director noted that the staff could request from PG&E any

1 Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear - 1), CLI-79-11, 10 NRC 733, 737, 740 (1979), reversed and remanded, State of Illinois v. NRC, D.C. Cir. No. 81-1131, decided July 1, 1981.

2/

Gx.5

information it deemed necessary to its review of the OL application without resorting to the formality of a show cause order.

Ex. 5

B/ The Director noted as a final basis for denial that the question of the necessity and scope of further proceedings on the issue of quality assurance at Diablo Canyon is pending before the Commission and the Appeal Board. In view of this, initiation of further proceedings by the Director was deemed inappropriate. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-81-6, 13 NRC 443 (1981).

OGC Analysis

OGC believes

Ex. 6

3/ The staff did solicit additional information in this instance. See, e.g., Board Notification No. 82-53 (June 2, 1982), Meeting Summary -- re. April 30, 1982 Discussion of Role of Bechtel Power Corporation; See also Letter from NRC (Eisenhut) to PG&E (Crane) tentatively approving the modified QA program and requesting additional information (August 2, 1982).

Ex. 5

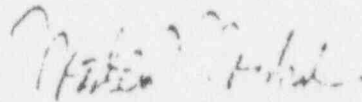
In conclusion, we believe

5/ An August 2, 1982 letter to PG&E (Crane) from NRC (Eisenhut) conveyed the staff's tentative approval of the modified QA program. Staff has advised that final approval has been conveyed informally to the licensee and that a letter transmitting this approval is being drafted.

Ex. 5

Ex. B

EX L
 Recommendation:



Martin G. Malsch
 Deputy General Counsel

Attachments: May 12, 1982 Petition
 Sept. 22, 1982 Decision, DL-82-10

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Monday, November 22, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, November 15, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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ATTACHMENT 1

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ERIC HAYAN
BRUCE WILLIAMSON

May 12, 1982

Mr. Harold Denton
Director of Nuclear Reactor
Regulation
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

Dear Mr. Denton:

This is a request for action by the Director of the Office of Nuclear Reactor Regulation ("NRR") pursuant to 10 C.F.R. § 2.206(a).

On behalf of the Joint Intervenors^{1/} to the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") licensing proceeding, we hereby request (1) the issuance of an order to show cause why Pacific Gas and Electric Company ("PG&E") should not be directed to file forthwith the requisite amendments to the pending operating license applications for Diablo Canyon in light of the extensive and conceded restructuring by PG&E of the Diablo Canyon Project organization and management; and (2) subsequent to the filing of such amendments, a hearing to determine the consistency of the restructured organization and management with all applicable provisions of the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., and the Commission's regulations.

^{1/} The San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, Elizabeth Apfelberg and John J. Forster.

Mr. Harold Denton
May 12, 1982
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The actions requested are authorized by 10 C.F.R. § 2.202(a) and § 189(a) of the Atomic Energy Act, respectively, and are essential prerequisites to NRC approval of the pending license applications (or reinstatement of the suspended low power license) in order to assure compliance with 10 C.F.R. § 50.34 and 10 C.F.R. Part 50, Appendix B.

By letters dated March 22 and April 22, 1982, and in a meeting held on March 25, 1982, PG&E informed the NRC Staff that the Diablo Canyon Project organization would be substantially restructured in order to integrate Bechtel Power Corporation ("Bechtel") as the new project manager. Although the scope of the work and the precise division of functions has not yet been specified in detail, PG&E has apparently delegated to Bechtel the responsibility for completing the remaining work necessary to obtain operating licenses for Units 1 and 2. As G.A. Maneatis, PG&E Senior Vice President for Facilities Development, explained in a General Information Bulletin (see attached) submitted to the NRC on April 22:

Effective immediately, the existing Diablo Canyon Project organization is restructured. . . . Mr. Howard B. Friend of Bechtel Corporation is Project Completion Manager and will direct a closely integrated project team of PG&E and Bechtel personnel. . . .

Reporting to Mr. Friend will be a Management Team which will direct the day-to-day work required to bring Units 1 and 2 into early commercial operation. The project team will be supported by a matrix of chief engineers, managers, and staff specialists from both companies. . . .

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The contemplated reorganization affects every essential component of the Diablo Canyon Project organizational structure. According to the new project organization chart, Bechtel will supervise quality assurance for the project, licensing management, engineering management, quality assurance management, and various other functions essential to design, construction, and completion of the facility. The magnitude of this organizational change is plainly evidenced by the fact that, in order to accomplish its task, Bechtel expects to assign 150 to 200 of its personnel to the project. Meeting Transcript, at 17 (March 25, 1982). Moreover, with regard specifically to the critical question of quality assurance at Diablo Canyon, project manager Friend has informed the NRC Staff that "PG&E will use Bechtel['s quality] assurance program" and that "it may be a more beneficial way for the project to proceed to have the Bechtel people . . . work under the traditional Bechtel [quality assurance] program. . . ." Id., at 18.

Despite the obvious significance of this reorganization, PG&E has failed to submit any amendment to its applications for operating licenses at Diablo Canyon. In so doing, it has ignored the explicit regulatory requirements imposed by 10 C.F.R. § 50.34, regarding the information essential to applications for construction permits and operating licenses, and 10 C.F.R. Part 50, Appendix B, regarding quality assurance. Subsection (b) of 50.34 requires that:

[e]ach application for a license to operate a facility shall include a final safety analysis report . . . [which] . . . shall include the following:

* * *

Mr. Harold Denton
May 12, 1982
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(6) The following information concerning facility operation:

(i) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements.

(ii) Managerial and administrative controls to be used to assure safe operations. Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," sets forth the requirements for such controls for nuclear power plants and fuel reprocessing plants. The information on the controls to be used for a nuclear power plant or a fuel reprocessing plant shall include a discussion of how the applicable requirements of Appendix B will be satisfied.

* * *

(7) The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

* * *

10 C.F.R. Part 50, Appendix B, incorporates the provisions of § 50.34 as follows:

Every applicant for a construction permit is required by the provisions of § 50.34 to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components of the facility. Every applicant for an operating license is required to include, in its final safety analysis report,

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information pertaining to the managerial and administrative controls to be used to assure safe operations.

* * *

Appendix B then details specific requirements governing the applicant's quality assurance program, requirements plainly applicable at Diablo Canyon regardless of the fact that the responsibility for design, management, and control of the quality assurance program for the facility has now been unilaterally transferred by PG&E to Bechtel.

Neither PG&E nor Bechtel has even acknowledged -- much less complied with -- these unequivocal regulatory requirements. No demonstration of the adequacy of Bechtel's quality assurance program has been made, no amendment to PG&E's license applications or to the Diablo Canyon FSAR has been submitted, and no detailed delineation of the changes in the Diablo Canyon Project organizational structure, responsibilities, or managerial controls has been provided. Given the undeniable breakdown of PG&E's quality assurance program revealed during the past several months,^{2/}

^{2/} See R.F. Reedy, Inc., "Quality Assurance Review and Audit Report of Pacific Gas and Electric Company" (March 8, 1982), which concluded that:

1. The PG&E Quality Assurance program for design work was not adequate in areas of policy, procedures and implementation. The Quality Assurance organization had insufficient program responsibility.
2. A general weakness existed in internal and external interface and document controls. This questions

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the extensive restructuring by PG&E and the delegation of its obligations under the regulations must be closely scrutinized to assure that PG&E's past failures will not be repeated.

Section 50.34 and Appendix B to 10 C.F.R. Part 50 require license application amendments in order to reflect the precise nature and effect of Bechtel's involvement in the design, construction, and management of Diablo Canyon. Issuance of an order to show cause is clearly warranted, therefore, to compel the filing of such amendments by PG&E. In order to determine the propriety and implications of such amendments, the parties to this proceeding are entitled to a hearing prior to approval or denial by the NRC of any of the pending Diablo Canyon operating license applications. See Sholly v. U.S. Nuclear Regulatory Commission, 651 F.2d 780 (D.C. Cir. 1980), cert. granted, 101 U.S. 3004 (1981); Brooks v. Atomic Energy Commission, 476 F.2d 924 (D.C. Cir. 1973) (per curiam); Westinghouse

(footnote 2 cont'd)

whether appropriate design information was being exchanged and utilized by design groups and consultants. One concern is if the latest Hosgri seismic data was (sic) inputted for design analysis.

3. The design verification program was not formalized and was inconsistently implemented and documented. This included major gaps in design overviews of the design approach for mechanical and other equipment.

Mr. Harold Denton
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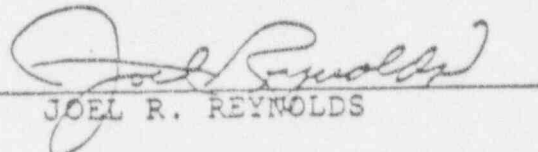
Electric Corporation v. U.S. Nuclear Regulatory
Commission, 598 F.2d 759 (3d Cir. 1979).

Very truly yours,

JOEL R. REYNOLDS, ESQ.
JOHN R. PHILLIPS, ESQ.
Center for Law in the Public
Interest
10951 West Pico Boulevard
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DAVID S. FLEISCHAKER, ESQ.
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GORDON SILVER
ELIZABETH APFELBERG
JOHN J. FORSTER

JRR/rd
Enclosures

cc: Diablo Canyon Service List

COPY

PACIFIC GAS AND ELECTRIC COMPANY

PG&E +

77 BEALE STREET, SAN FRANCISCO, CALIFORNIA 94106
P. O. BOX 7442, SAN FRANCISCO, CALIFORNIA 94120

TELEPHONE (415) 781-4211
TELECOPIER (415) 543-7813

April 22, 1982

Mr. Harold R. Denton, Director
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Docket No. 50-275
Docket No. 50-323
Diablo Canyon Units 1 and 2
Facility Operating License No. DPR-76

Dear Mr. Denton:

In our March 25 meeting, we briefly described Bechtel Power Corporation's role in the completion of Diablo Canyon Units 1 and 2. In that meeting, we promised to provide additional information as Bechtel's role was more clearly defined. Attached for your information is an announcement letter and organization chart of the Diablo Canyon Project organization which integrates PGandE and Bechtel resources.

April 22, 1982

We believe this new project organization will assure timely completion, licensing, and operation of Diablo Canyon Units 1 and 2. PGandE and Bechtel are available to meet with you and your Staff at its convenience to discuss any questions you may have regarding this new project organization. As additional information relating to the new project organization becomes available, it will be provided to you.

Very truly yours,

Philip A. Crane, Jr.

PAC:LS
Attachment

cc (w/enc.): Mr. Frank J. Miraglia, Jr., Chief
Licensing Branch No. 3
Division of Licensing
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Hans Schierling, Project Manager
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Washington, D. C. 20555

Mr. Bart Buckley, Project Manager
Licensing Branch No. 3
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U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Service List

GENERAL INFORMATION BULLETIN

DIVISION OR DEPARTMENT SR. VICE PRESIDENT
FACILITIES DEVELOPMENT

RE LETTER OF SUBJECT Diablo Canyon Nuclear Power Plant
Integrated Project Organization

April 22, 1982

OFFICERS
DEPARTMENT HEADS
DIVISION MANAGERS

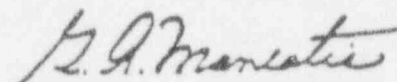
Mr. F. W. Mielke's letter of March 22, 1982, announced the engagement of Bechtel Power Corporation to act as project manager for the Diablo Canyon Project with responsibility for completion of the remaining work necessary to:

- Restore the Company's suspended low-power license for the plant
- Obtain a full-power license for the plant
- Complete construction of Unit No. 2
- Provide start-up engineering and construction support needed to bring both units into commercial operation

Effective immediately, the existing Diablo Canyon Project Organization is restructured as shown on the attached organization chart. Mr. Howard B. Friend of Bechtel Corporation is Project Completion Manager and will direct a closely integrated project team of PGandE and Bechtel personnel. Mr. Friend will report to me, and I will report directly to Mr. Mielke on all matters relating to the Diablo Canyon Project.

Reporting to Mr. Friend will be a Management Team which will direct the day-to-day work required to bring Units 1 and 2 into early commercial operation. The project team will be supported by a matrix of chief engineers, managers, and staff specialists from both companies. You will be notified of the location and telephone numbers of the project team members as soon as this information becomes available.

We welcome Mr. Friend and his Bechtel associates to PGandE, and look forward to working together to bring the remaining Diablo Canyon effort to an early and successful conclusion. I know I can count on your continued excellent support and cooperation.

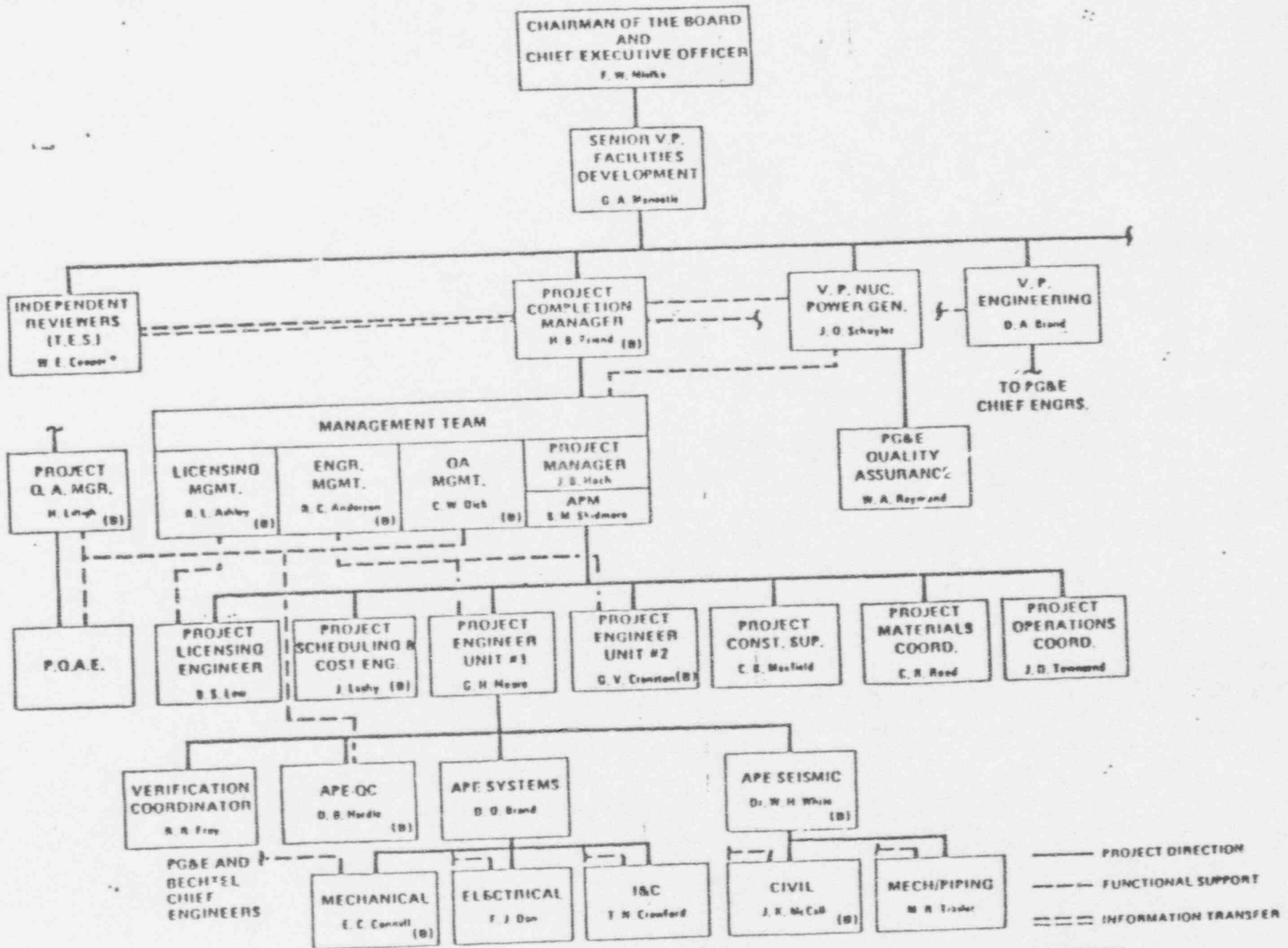

G. A. MAREATIS

GAM:adb

Attachment

DISPOSITION:
IF TO BE FILED SHOW
FILE NUMBER HERE

DIABLO CANYON PROJECT ORGANIZATION



* REPORTS INDEPENDENTLY TO THE DIRECTOR NUCLEAR REACTOR REGULATION

ATTACHMENT 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Harold R. Denton, Director

In the Matter of)	
)	
PACIFIC GAS & ELECTRIC COMPANY)	Docket Nos. 50-275
(Diablo Canyon Nuclear Power Plant,)	50-276
)	
Units 1 & 2))	10 C.F.R. 2.206

DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

In a letter dated May 12, 1982, the Joint Intervenors ^{1/} to the Diablo Canyon Nuclear Power Plant licensing proceeding directed a request for action pursuant to 10 C.F.R. 2.206 to the Director of the Office of Nuclear Reactor Regulation. Specifically, Joint Intervenors requested:

"(1) the issuance of an order to show cause why Pacific Gas and Electric Company '(PG&E)' should not be directed to file forthwith the requisite amendments to the pending operating license applications for Diablo Canyon Units in light of the extensive and conceded restructuring by PG&E of the Diablo Canyon Project organization and management; and (2) subsequent to the filing of such amendments, a hearing to determine the consistency of the restructured organization and management with all applicable provisions of the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq. and the Commission's regulations."

They assert that given the breakdown of PG&E's quality assurance program in the past, the extensive restructuring of PG&E and its impact on quality assurance activities must be closely examined to assure that past failures are not repeated. Petition at 5-6.

^{1/} The San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, Elizabeth Apfelberg, and John J. Forster.

Their request was supplemented by an additional letter, dated May 25, 1982, which asserted that a license amendment application submitted by PG&E on May 10, 1982, requesting certain changes to its technical specifications for Diablo Canyon Unit 1, did not satisfy the Joint Intervenors' concerns. Notice of receipt of the Joint Intervenors' petition was published in the Federal Register on June 22, 1982 (47 FR 26954).

Discussion

On September 22, 1981, following the Licensing Board's low power decision and Commission review under the immediate effectiveness rule ^{2/} a license was issued to PG&E for fuel loading and low-power testing up to 5% of rated power for the Diablo Canyon Plant Unit 1. Subsequently, on November 19, 1981, the Commission suspended the low-power license pursuant to 10 C.F.R. 2.202, because new information had been developed which raised doubts about the adequacy of PG&E's quality assurance program. ^{3/} The Commission further ordered the

^{2/} Pacific Gas & Electric Co. (Diablo Canyon Nuclear Plant, Units 1 & 2), LBP-81-21, 14 NRC 107 (1981); Pacific Gas & Electric (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-81-22, 14 NRC 598 (1981).

^{3/} Pacific Gas & Electric Company, (Diablo Canyon Nuclear Power Plant, Unit 1), CLI-81-30, 14 NRC 950 (1981).

licensee to conduct an independent design verification program on all safety-related activities performed prior to June 1978 under all seismic service-related contracts. Verification of quality assurance program effectiveness was identified as a major element of the remedial program. That program is now underway.

On March 22, 1982, PG&E announced that the Diablo Canyon Project Organization was being restructured in order to integrate Bechtel Power Corporation as the project manager, with responsibility for completion of the work necessary to:

- 1) Restore the low power license for Unit 1,
- 2) Obtain a full power license for the plant,
- 3) Complete construction of Unit 2, and
- 4) Provide start-up engineering and construction support needed to bring both units into commercial operation.

The role of Bechtel Power Corporation was further clarified in a meeting with NRC personnel on March 25, 1982 and in a letter to the Director of Nuclear Reactor Regulation on April 22, 1982.

For Diablo Canyon Unit 1, Bechtel Power Corporation personnel, as part of the single totally integrated Diablo Canyon Project Organization, will act in support of PG&E personnel to help establish objectives, schedules, programs and to monitor those items. The above activities will be conducted in accordance with the Project Quality Assurance Program. The Project Quality Assurance Program was developed using the previously NRC approved Bechtel Power Corporation Topical Report on Quality Assurance, BQ-TOP-1, modified to conform to the Diablo Canyon

Project Organization. The NRC Staff has reviewed the Project Quality Assurance Program and found it acceptable following receipt of certain additional information contained in the Licensee's letter of August 13, 1982. Bechtel does not plan to do any actual construction work at either Unit 1 or Unit 2, although some design activities involving additional personnel may be performed for Unit 2.

PG&E continues to be in control of the general design and construction of both Units. Consequently, the introduction of Bechtel Power Corporation into the overall Diablo Canyon Project Organization and its related quality assurance program does not represent a significant change to the information supplied by the licensee and reviewed by the NRC concerning the requirements of 10 C.F.R. 50.34(a)(7). Thus, no amendment to the construction permits for the Diablo Canyon facilities is required. ^{4/}

The information required by 10 C.F.R. 50.34(b)(6)(i) & (ii) to be submitted in the Final Safety Analysis Report of the operating license application describes the organizational structure and managerial and administrative controls for the plant during operation. None of the changes described so far by PG&E with respect to Bechtel's participation

^{4/} An amendment to a construction permit is only required if there are changes of significance affecting the principal architectural and engineering design criteria and other bases on which the facility was licensed. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-79-11, 10 NRC 733, 737 (1979), remanded on other grounds, State of Illinois v. NRC, D.C. Cir. No. 81-1131, decided July 1, 1981.

in the Diablo Canyon project alter previously supplied information concerning how the facilities would function as operational plants. ^{5/}

However, even if the NRC Staff believed at this time that more information is needed with respect to the operating license applications, an order to show cause pursuant to 10 C.F.R. 2.202 would be inappropriate. In the course of the review of operating license applications, amendments to the application to supplement or update information previously submitted or to demonstrate compliance with regulatory requirements may be required. A licensee must either provide the amendments voluntarily or in response to Commission requests if consideration of the license application is to continue. As a means of obtaining information for a licensing review, an order pursuant to 10 C.F.R. 2.202 to modify, suspend or revoke a license is unnecessary where no license has issued.

There is an additional reason why I decline to initiate a proceeding with respect to the quality assurance program at the Diablo Canyon project at this time. On June 8, 1982, the Joint Intervenors filed a motion before the Atomic Safety and Licensing Appeal Board requesting that the Board revoke the Diablo Canyon low power operating license, vacate the Licensing Board's conclusions in its July 17, 1981

^{5/} The proposed amendments to technical specifications submitted by PG&E on May 10, 1982 address Technical Specifications which govern the operation of the facility. Thus, Joint Intervenors' concern that these proposed changes are insufficient to address their concerns is misplaced because the technical specifications to be amended do not describe activities at the Unit 1 facility with which Bechtel Power Corporation is involved.

Partial Initial Decision as to quality assurance, and reopen the record to consider the quality assurance and quality control issues. In response to that motion, the Appeal Board on July 16, 1982, certified to the Commission questions concerning the extent of its jurisdiction to consider QA/QC issues at Diablo Canyon. ^{6/}

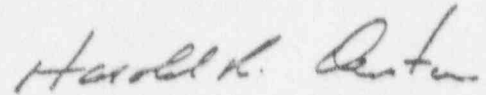
Thus, the question of the necessity and scope of any further proceedings on the issue of quality assurance at the Diablo Canyon project is before both the Commission and the Appeal Board. In view of the pendency of these matters before the Commission and the Appeal Board, initiation of further proceedings by me would be inappropriate. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-81-6, 13 NRC 443 (1981).

For the reasons set forth above, the Joint Intervenors' request is denied.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulation. As provided in 10 CFR 2.206(c), this decision will constitute the final action of the Commission twenty-five (25) days

^{6/} Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-681, _____ NRC _____ (July 16, 1982).

after the date of issuance, unless the Commission on its own motion institutes the review of this decision within that time.



Harold R. Denton, Director
Office of Nuclear Reactor
Regulation

Dated at Bethesda, Maryland
this 22 day of September 1982.