UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 O.L. 50-323 O.L.
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	

JOINT INTERVENORS'
REQUEST FOR HEARING

Pursuant to § 189(a) of the Atomic Energy Act, 42 U.S.C. § 2239(a), 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 ("Joint Intervenors") hereby request a hearing with respect to the August 17, 1983 application of Pacific Gas and Electric Company ("PGandE") for an amendment to the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") Facility Operating License No. DRP-76.[1/] The license amendment in question is License Amendment Request No. 83-08 (attached hereto as Exhibit A).

The proposed license amendment seeks an extension of the term of the suspended low power license from one year to three years from date of issuance. A similar application was

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[1/] This written request formalizes the oral request for hearing communicated by telephone on August 29 by Joint Intervenors' counsel to the NRC Office of General Counsel, Richard Parrish.

filed by PGandE on August 3, 1983, seeking extension of the license to two years. On August 17, 1982, the Joint Intervenors filed a Request for Hearing on the August 3 amendment application, which request was denied by the Commission by order dated December 23, 1982. The Commission has not acted on the August 3 amendment application.

The Joint Intervenors oppose PGandE's August 17, 1983 license amendment request No. 83-08 for the reasons stated in opposition to the August 3, 1982 application. Because of the similarity of the proposed amendments and of the issues raised by them, the Joint Intervenors hereby incorporate by reference their August 17, 1982 Request for Hearing (attached hereto as Exhibit B) and respectfully refer the Commission to the arguments set forth therein.

For the reasons stated, the Joint Intervenors request that an adjudicatory hearing be held with respect to PGandE's license amendment application No. 83-08 and, specifically, that such application be (1) referred to the responsible NRC adjudicatory panel; (2) set for prehearing conference to establish a schedule for hearing on the application; and

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(3) noticed in the Federal Register for hearing no less than 30 days after the date of publication.

DATED: August 29, 1983

Respectfully submitted,

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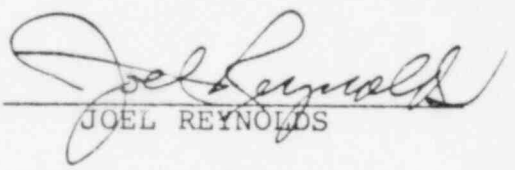
By 
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COPY

PACIFIC GAS AND ELECTRIC COMPANY

PG&E 77 BEALE STREET, SAN FRANCISCO, CALIFORNIA 94106 TELEPHONE (415) 781-4211

August 17, 1983

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

Re: Docket No. 50-275, OL-DPR-76
Diablo Canyon Unit 1
License Amendment Request 83-08
Extension of Term of Facility License

Dear Mr. Denton:

Enclosed are three (3) signed and thirty-seven (37) conformed copies of an application for an amendment to Facility Operating License No. DPR-76.

On August 3, 1982, PGandE filed a request for an amendment to License No. DPR-76 changing the expiration date to September 22, 1983. A further extension of the license now appears to be necessary, and is the subject of the enclosed license amendment request.

Since there was no action on the August 3, 1982 request, PGandE assumes that the check forwarded with that application may be applied to the enclosed application as well.

Kindly acknowledge receipt of this material on the enclosed copy of this letter and return it in the enclosed addressed envelope.

Sincerely,

J. O. Schuyler

Enclosures

cc: J. O. Ward
Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of PACIFIC GAS AND ELECTRIC COMPANY Diablo Canyon Power Plant Unit No. 1	Docket No. 50-275 Facility Operating License No. DPR-76 License Amendment Request No. 83-08

As provided in 10 CFR 50.90, Pacific Gas and Electric Company (PGandE) hereby proposes to amend its Diablo Canyon Power Plant (DCPP) Facility Operating License DPR-76 (License).

The proposed change is to amend Condition 2.K. of the License to change the expiration date of the License from one year from the date of issuance to three years from the date of issuance.

On September 22, 1981, the NRC issued Facility Operating License DPR-76 for a term of one year. This License authorized operation of the Diablo Canyon Power Plant, Unit 1 at up to five percent of rated power.

On November 19, 1981, the Commission suspended portions of the license (CLI-81-30) pending completion of an Independent Design Verification Program (IDVP). On August 3, 1982, PGandE filed an application for an amendment to the License extending the expiration date to two years from the date of issuance, or September 22, 1983. The IDVP is now essentially complete, but work associated with fuel load and low power testing will extend beyond this date.

The proposed change is administrative in nature and presents no significant hazards considerations as defined in 10 CFR 50.92.

Subscribed to in San Francisco, California this 17th day of August, 1983.

Respectfully submitted,

Pacific Gas and Electric Company

By /s/ J. O. Schuyler
J. O. Schuyler
Vice President
Nuclear Power Generation

Subscribed and sworn to before me
this 17th day of August, 1983.

/s/ Nancy J. Lemaster
Nancy J. Lemaster, Notary Public in
and for the City and County of
San Francisco, State of California

SEAL

My commission expires April 14, 1986.

NANCY J. LEMASTER
NOTARY PUBLIC-CALIFORNIA
CITY AND COUNTY OF
SAN FRANCISCO
My Commission Expires April 14, 1986

Robert Ohlbach
Philip A. Crane, Jr.
Richard F. Locke

Attorneys for Pacific Gas
and Electric Company

By /s/ Philip A. Crane, Jr.
Philip A. Crane, Jr.

EXHIBIT B

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 O.L. 50-323 O.L.
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	

JOINT INTERVENORS'
REQUEST FOR HEARING

Pursuant to § 189(a) of the Atomic Energy Act, 42 U.S.C. § 2239(a), 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 ("Joint Intervenors") hereby request a hearing with respect to the August 3, 1982 application of Pacific Gas and Electric Company ("PGandE") for an amendment to the Diablo Canyon Nuclear Power Plant ("Diablo Canyon") Facility Operating License No. DPR-76.1/ In essence, PGandE seeks by the proposed amendment to renew the low power operating license granted by the Nuclear

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1/ This written request formalizes the oral request for hearing communicated by telephone on August 11 by Joint Intervenors' counsel to the office of Edson Case (acting on behalf of the Director of Nuclear Reactor Regulation) and to Donald Hassell and Lawrence Chandler, NRC Staff counsel. Such request was confirmed that same day by letter to Mr. Hassell (attached hereto as Exhibit A).

Regulatory Commission ("Commission") on September 21, 1981.[2/] Less than two months thereafter, on November 19, 1981, the Commission suspended the license in light of design and construction errors discovered at the facility which, the Commission acknowledged, "had [they] been known to the Commission on or prior to September 22, 1981, Facility License No. DPR-76 would not have been issued."[3/] The suspension is still in effect.

The Joint Intervenors oppose the proposed license amendment and are, therefore, requesting an adjudicatory hearing to contest PGandE's entitlement to, and the appropriateness of, the proposed amendment. In so doing, they are not appealing to the Commission's discretion, but are asserting their statutory right to a hearing prior to disposition of the application by the Commission. This right is guaranteed by § 189(a) of the Atomic Energy Act, as amended, which provides, in pertinent part, as follows:

> In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license. . ., the Commission shall grant a hearing

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2/ Pacific Gas and Electric Company's ("PGandE") proposed license amendment is attached hereto as Exhibit B. As described in the application, at 1, the "proposed change is to amend condition 2.K. of the license to change the expiration date of the license from one year from the date of issuance to two years from the date of issuance."

3/ CLI-81-30, at 3.

> upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. * * *4/

Section 189(a) has repeatedly been held to make mandatory an adjudicatory hearing prior to the issuance, revocation, suspension, or amendment of an operating license once such a hearing has been requested by an interested person. Brooks v. U.S. Atomic Energy Commission, 476 F.2d 924, 926 (D.C.Cir. 1973) (per curiam); Westinghouse Electric Corp. v. U.S. Nuclear Regulatory Commision, 598 F.2d 759, 772-773 (3d Cir. 1979); Sholly v. U.S. Nuclear Regulatory Commission, 651 F.780 (D.C.Cir. 1980) (per curiam), cert. granted, ___ U.S. ___, 101 S.Ct. 3004 (1981). The legislative history of this section indicates that "it was Congress' intent to lessen the mandatory hearing requirement only when there was no request for a hearing." Brooks v. U.S. Atomic Energy Commission, 476 F.2d at 927.

The Joint Intervenors have been parties to this proceeding for almost a decade and, as such, they are unquestionably persons "whose interest may be affected by the proceeding. . . ." 42 U.S.C. § 2239(a). They have requested a hearing with respect to a proposed license amendment having clear safety significance -- e.g., renewal of a nuclear facility operating license -- and they have done so in a timely fashion. Accordingly, their request must be granted.

4/ 42 U.S.C. § 2239(a); see also 10 C.F.R. §§ 2.104, 2.105, 50.91.

PGandE's assertion in its application that the proposed amendment is "administrative in nature" and has "no safety or environmental significance" is a flagrant mischaracterization of the amendment's effect. In fact, PGandE is seeking to double the effective term of a suspended license which the Commission has explicitly acknowledged would not have been granted in the first place had the errors disclosed through last November been revealed prior to its issuance.5/ Since that time, over 200 additional serious design and construction errors at the plant have been revealed, and even the auditor selected by PGandE to review its quality assurance/quality control program has concluded that the program was deficient in "policy, procedures, and implementation."6/ Within the past month, the NRC Staff issued a detailed Brookhaven National Laboratory report which establishes significant flaws in the fundamental design basis for Diablo Canyon, flaws so pervasive that PGandE has conceded that reverification of the entire seismic design of the facility is necessary.7/

5/ Indeed, in an October 9, 1981 meeting with PGandE, NRR Director Denton observed that the low power license would not have been issued had the design errors then discovered been known to the Staff prior to issuance of the license. Meeting Transcript, at 117 (October 9, 1981).

6/ Quality Assurance Review and Audit Report, Phase I (March 8, 1982).

7/ Independent Seismic Analysis of the Diablo Canyon Unit 1 Containment Annulus Structure and Selected Piping Systems (July 1, 1982); Meeting Transcript (August 6, 1982).

In light of such a record, PGandE's proposed license amendment is far more than a mere administrative detail. On the contrary, it is an unprecedented attempt to obtain renewal of a license which PGandE never should have received in the first instance, for a facility designed and constructed in violation of the Commission's basic safety regulations, and in complete disregard of a continuing series of revelations which unquestionably undermine the reasonable assurance of safety and regulatory compliance which is the mandatory prerequisite to licensing of a nuclear facility. See 42 U.S.C. § 2233(d); 10 C.F.R. §§ 50.40, 50.57(a). Thus, the proposed amendment can be considered "administrative" and without "safety or environmental significance" only by ignoring the basic Commission standards promulgated to assure that public safety and the environment will be protected. Under such circumstances, the opportunity to challenge the proposed amendment through an adjudicatory hearing is critical.

Even were the proposed amendment not a matter of safety significance, however, the law is well settled that the hearing right guaranteed by § 189(a) applies nonetheless. First established in Brooks v. U.S. Atomic Energy Commission, supra, this principle was recently reaffirmed by the U.S. Court of Appeals for the D.C. Circuit in Sholly v. U.S. Nuclear Regulatory Commission, supra, where the court held unlawful the NRC policy of making immediately effective license amendments without holding a hearing, even though petitioners request one, whenever the NRC finds that the amendment involves "no

significant hazards consideration."[8] Citing Brooks, the court concluded that the doctrine of stare decisis compelled the conclusion that a determination of "no significant hazards consideration" did not obviate the hearing right and, moreover, that the legislative history of § 189(a) left no ambiguity as to this result. The court explained the law as follows:

> [W]e are confident that Brooks was properly decided and that it dictates the construction that must be attached to the last sentence of section 189(a). Because the NRC's finding of "no significant hazards consideration" did not entitle the Commission to dispense with a requested hearing prior to issuance of the [license amendment], we hold that its failure to provide a hearing violated section 189(a) of the Atomic Energy Act.[9]

The Joint Intervenors are entitled to an adjudicatory hearing prior to a decision by the Commission regarding PGandE's August 3rd application for an amendment to the Diablo Canyon low power operating license. Under the circumstances of this proceeding, renewal of the suspended low power license would make a mockery of the Commission's licensing standards.

For the reasons stated above and consistent with the terms of § 189(a) of the Atomic Energy Act, the Joint Intervenors respectfully request that an adjudicatory hearing be held with respect to PGandE's license amendment

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[8] At issue was an amendment to the operating license for Unit 2 of the Three Mile Island Nuclear Power Plant authorizing the venting of hydrogen gas from the containment building into the atmosphere as part of the decontamination process.

[9] 651 F.2d at 789.

application and, specifically, that such application be (1) referred to the responsible NRC adjudicatory panel; (2) set for prehearing conference to establish a schedule for hearing on the application; and (3) noticed in the Federal Register for hearing no less than 30 days after the date of publication.

DATED: August 17, 1982

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 1983, I have served copies of the foregoing JOINT INTERVENORS' REQUEST FOR HEARING, mailing them through the U.S. mails, first class, postage prepaid.

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Chairman
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* Delivered via Express Mail