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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

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.

JOINT INTERVENORS'
PETITION FOR REVIEW
OF ALAB-763

Pursuant to 10 C.F.R. § 2.786, the SAN LUIS OBISPO MOTHERS FOR PEACE SCENIC SHORELINE PRESERVATION CONFERENCE, INC., ECOLOGY ACTION CLUB, SANDRA SILVER, GORDON SILVER, ELIZABETH APFELBERG, and JOHN FORSTER ("Joint Intervenors") hereby petition the Commission to review ALAB-763, issued by the Atomic Safety and Licensing Appeal Board ("Appeal Board") in the above-entitled proceeding on March 20, 1984. In that decision (attached as an exhibit hereto), the Appeal Board upheld the adequacy of the design of Diablo Canyon Nuclear Power Plant, Unit 1 ("Diablo Canyon"), after reopened hearings on the issue in November 1983. Briefly stated, the Board concluded that "the scope and execution of the applicant's verification programs have been sufficient to establish that Diablo Canyon Unit 1 design adequately meets its licensing criteria." ALAB-763, at 101.

In order to remedy the manifest error of the Appeal Board -- as outlined below -- the Joint Intervenors request the

Commission to (1) grant review of ALAB-763 and (2) reverse the Appeal Board's decision set forth therein.^{1/}

I. COMMISSION REVIEW SHOULD BE EXERCISED

Once again, the Appeal Board has cast the Commission's well established standards aside in order to issue a decision essential to licensing of Diablo Canyon. In disregard of the fundamental requirement that an applicant must demonstrate on the record that a facility for which an operating license is sought has been designed consistent with the Commission's regulations and the license application, 10 C.F.R. § 50.57(a), the Appeal Board has placed its stamp of approval on the Diablo Canyon design reverification program without even considering a substantial body of evidence that the Board itself has recognized involves matters "that directly bear upon the issues in this proceeding." ALAB-763, at 103. Further, with respect to the evidence actually adduced, the Board has effectively nullified the requirement that an applicant meet all licensing criteria, concluding instead that conceded deviations are permissible where, in the subjective judgment of the NRC Staff and without any supporting analysis, those deviations are deemed "insignificant," even where, as here, they apply to safety-related structures, systems, and components. Id. at 31-32.

^{1/} All matters of fact and law discussed herein were previously raised. For a listing of the principal filings, see the Joint Intervenor's filings in the reopened design proceeding from June 1982 through March 1984.

Commission review is essential in this case, because the Appeal Board, by its decision in ALAB-763, has taken one more step away from a rule of law and the heretofore essential principle that a license is a privilege to be granted only once standards are met, not a right that accrues regardless of a utility's repeatedly demonstrated inability to meet those standards.

II. THE APPEAL BOARD'S DECISION IS ERRONEOUS

A. Motion to Augment

At the conclusion of the design hearings in late November 1983, the Appeal Board explicitly declined to close the formal hearing record, choosing instead to await the results of the then-ongoing NRC Staff investigation of design-related allegations from plant workers and, ultimately, to permit consideration of relevant evidence arising out of that investigation. Hearing Transcript, D-3246 (November 21, 1983). On that basis, on February 14, 1984, the Joint Intervenors moved to augment the record with new information arising out of allegations by former Diablo Canyon engineer Charles Stokes and others, as well as the NRC Staff's own investigative findings, made public on January 31, 1984.^{2/}

Without ruling on the Joint Intervenors' motion, the Appeal Board issued its design decision on March 20, 1984, and explicitly deferred any consideration of the concededly relevant new information. Because the matters raised "directly bear upon

^{2/} Joint Intervenors' Motion to Augment or, in the Alternative, to Reopen the Record (February 14, 1984).

the issues in this proceeding," the Board concluded that "these findings may have to be amended or withdrawn in their entirety depending upon the nature of the new evidence." ALAB-763, at 103. In so doing, it ignored significant and concededly relevant evidence and arbitrarily "slammed the door" on the still-developing record, solely in order to issue its decision -- albeit an incomplete decision -- as soon as possible.

The Board's action is a patent abuse of discretion that violates both its own explicitly stated course of action as well as the well established principle that an administrative board may not refuse to hear relevant evidence bearing on matters of public safety.^{3/} Accordingly, its decision must be reversed.

B. Standard of Review

Few requirements are more fundamental in Commission proceedings than that mandating demonstrated compliance with the licensing criteria prior to issuance of an operating license. Therefore, based on the concession of all parties -- including the Independent Design Verification Program ("IDVP") -- that numerous violations of those criteria remain undetected at Diablo

^{3/} Where an agency refuses to receive new evidence or ignores factors relevant to the public interest, the courts will remand for further hearings. See Hudson River Fishermen's Association v. Federal Power Commission, 498 F.2d 827, 832-33 (2d Cir. 1974); Brennan v. Occupational Safety and Health Review Commission, 492 F.2d 1027, 1031-32 (2d Cir. 1974); WMOZ, Inc. v. Federal Communications Commission, 120 U.S. App.D.C. 103, 344 F.2d 197 (1965); see also Michigan Consolidated Gas Co. v. Federal Power Commission, 283 F.2d 204, 226 (D.C.Cir.), cert. denied, 364 U.S. 913, 81 S.Ct. 276 (1960). See also Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 365 (1973).

Canyon,^{4/} the Joint Intervenor's contended that PGandE had not yet provided the requisite "reasonable assurance" that the safety-related design of Diablo Canyon was adequate. 10 C.F.R.

§ 50.57(a).

True to form, rather than conclude that the Commission's standards had not been met, the Board chose instead to rewrite those standards. Although conceding the undisputed evidence of undetected "Class A or B" errors -- violations of the licensing criteria -- the Board decided that "the central issue with respect to the design of Diablo Canyon, or any other facility, is the conformance of the design to the significant and substantive safety requirements and licensing criteria." ALAB-763, at 31-32 n.68 (emphasis added). The obvious effect of its ruling is to nullify the licensing criteria for all practical purposes and to substitute an amorphous, subjective, and virtually unenforceable standard of "significance." In support of this holding, the Board cited no authority, provided essentially no analysis, and gave no consideration to the implications of its holding for this or other proceedings.

The adequacy of a design must be and has always been judged by compliance with licensing criteria. The Board's decision ignores that principle, and, accordingly, it must be reversed.

C. Appendix A

The Appeal Board concluded below that PGandE was not required to establish and implement a quality assurance program for

^{4/} Joint Intervenor's Proposed Findings of Fact and Conclusions of Law, at 14-16 (December 23, 1983).

structures, systems, and components important to safety but not safety-grade because, historically, the terms had been used synonymously. Prehearing Conference Transcript, at D-67-68 (August 23, 1983). In so doing, it ignored the express terms of 10 C.F.R. Part 50, Appendix A, GDC 1, as well as the prior decisions of the Appeal Board in Metropolitan Edison Co. (Three Mile Island, Unit 1), ALAB-729, 17 NRC __ (May 26, 1983), and of the Licensing Board in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-57 at 164, et seq., __ NRC __ (September 21, 1983). Of particular note, also, is the Concurring Opinion of Board Chairman Moore, in which he cites the recent Board Notification 85-011 on this issue. Noting the Staff's conclusion that the Commission has long distinguished between components important to safety and safety-related, he concludes that "it would appear that the Governor and the Joint Intervenors must be given an opportunity to litigate the issues regarding the applicant's compliance with Appendix A." ALAB-763, at 105-06.

In disregard of this conclusion by its Chairman, the Board as a whole has denied the Joint Intervenors that right. Accordingly, ALAB-763 must be reversed.

D. Lack of Substantial Evidence of Design Adequacy

The Board's decision must be reversed as well because its conclusion that the design reverification program has restored the requisite confidence in the facility's design is not supported by the weight of the evidence.

(1) The Board ignored completely the evidence submitted by the Joint Intervenors based on the allegations of Charles

Stokes and the subsequent NRC investigation, including the detailed findings by NRC Region III Inspector Isa Yin. That evidence establishes continuing significant deficiencies in the critical small and large bore piping and supports, deficiencies undetected and uncorrected by the IDVP or the Diablo Canyon Project ("DCP"). The deficiencies cover a broad range of design deficiencies, from lack of training to lack of manual control, from lack of adequate corrective action to retaliation and intimidation, and, incredibly, they include errors in 95% of the design calculation packages reviewed by the NRC Staff and PGandE.^{5/}

(2) The IDVP and DCP failed even to include the bulk of design work by Westinghouse in the review, despite the fact that Westinghouse was the responsible design organization for 70% of the safety-related systems at Diablo Canyon. This omission, which has recently been strongly criticized by NRC Inspector Yin,^{6/} was sanctioned by the Board without a factual basis on the record establishing any greater reason for confidence in the Westinghouse work than in that of other design contractors.

(3) Despite significant errors in the nonseismic design, PGandE and the IDVP employed only a sampling approach to that

^{5/} See e.g., Joint Intervenor's Motion to Augment or, in the Alternative, to Reopen the Record (February 14, 1984); Commission Meeting Transcript, at 79-102, 249-256 (March 26-27, 1984); NRC/PGandE Meeting Transcript, at ___ (April 2, 1984).

^{6/} Commission Meeting Transcript, at 251 (March 27, 1984).

aspect of the reverification program, as opposed to the 100% review instituted by the DCP with respect to seismic design. This limitation on audit scope was particularly important in light of the complete failure by both the DCP and the IDVP to use recognized statistical techniques in the sampling process or even to consult a statistician regarding the desirability of using statistical methods in the reverification program. The Board essentially disregarded the expert statistical testimony offered by the Joint Intervenors and Governor Deukmejian that such methods were an essential prerequisite to adequate confidence in the adequacy of the unsampled portions of the design. ALAB-763, at 32-34 n.68-71.

(4). The Board did not even consider the body of recent evidence that the QA program for the Diablo Canyon corrective action program was deficient in numerous aspects. Such evidence includes, for example, the NRC Staff findings of deficiencies in training, design control, corrective action, document control, procedures, and audits.^{7/} PGandE's continuing inability to establish and implement an effective QA program -- as well as its extensive reliance on an informal "Quick Fix" program for design changes -- undermines confidence in the adequacy of the design, even as "corrected"

^{7/} Joint Intervenors' Motion to Augment or, in the Alternative, to Reopen the Record, at 12-16 (February 14, 1984). Recently, the NRC's Inspector Yin who conducted the on-site inspection has found 49 separate categories of design deficiencies. See Commission Meeting Transcript, at 83-84 (March 26, 1984).

by PGandE. This lack of confidence is confirmed by the shockingly high rate of errors found by the NRC inspectors in their review of design calculations. See discussion supra at II.D(1).

(5) Despite repeated efforts to remedy as-built deficiencies at Diablo Canyon, the record adduced at the Diablo Canyon hearing and recently confirmed indicates (1) that the plant is still not built as prescribed in the as-built drawings, and (2) that the as-built drawings remain inconsistent with the design analysis. The continuing existence of this problem stems both from PGandE's QA failures and from its decision to expedite production, at the expense of a methodical and controlled redesign effort. Once again, while conceding the existence of configuration control deficiencies, the Board simply concluded that such deficiencies can be expected in a project such as this. ALAB-763, at 77.

(6) The Board failed to address continuing evidence that PGandE's management remains a basic cause of the unremedied QA breakdown in the design of Diablo Canyon. Although finding that PGandE's management cannot escape responsibility, the Board cited recent improvements, including the massive redesign program. ALAB-763, at 88-89. However, the Board's failure also to note the adverse design consequences of PGandE management's decision to institute a "Quick Fix" design change program and to expedite the redesign process beyond the point of adequate control belies its stated confidence in the

identification and resolution of all basic causes of the QA
breakdown at Diablo Canyon.

III. CONCLUSION

For the reasons stated herein, the Joint Intervenors
request that this Petition for Review be granted and ALAB-763 be
reversed.

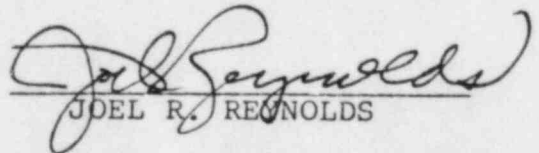
Dated: April 5, 1984

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 1984, I have served copies of the foregoing JOINT INTERVENORS' PETITION FOR REVIEW OF ALAB-763, mailing them through the U.S. mails, first class, postage prepaid, to the attached list.

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