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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant
Units 1 and 2)

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Docket Nos. 50-275 OL
50-323 OL

NRC STAFF'S ANSWER TO JOINT
INTERVENORS' RESPONSE TO SEPTEMBER 10, 1984 ORDER

I. INTRODUCTION

On September 28, 1984, the Joint Intervenors filed their response to the Appeal Board's Order of September 10, 1984 directing the parties to provide their views on what further action might be necessary in regard to Diablo Canyon Unit 2, consideration of that unit having been severed from the Appeal Board's decision on design verification in ALAB-763, 19 NRC 571 (1984). In their response, the Joint Intervenors propose that a further hearing is necessary.

In accordance with the September 10 Order, the NRC staff hereby replies to the Joint Intervenors' Response.

II. DISCUSSION

Stripped to its bare essentials, Joint Intervenors argue that:

PG&E must demonstrate -- just as it was required to do for Unit 1 in November 1983 -- (1) that the scope of the verification was adequate to provide a basis for a conclusion

regarding the design of Unit 2, and (2) that the results of the Unit 2 verification effort have restored the essential reasonable assurance that Diablo Canyon has been designed and constructed [1/] consistent with the construction permit, the license application, the Commission's regulations, and the Atomic Energy Act, 10 C.F.R. § 50.57(a). (Response at 6; emphasis in original)

Underlying the foregoing are Joint Intervenors' assertions that Unit 1 and 2 are in certain respects not identical, that design errors not identified in Unit 1 could exist in Unit 2, that the IDVP did not address or verify the design of Unit 2 and that the ITP was insufficient to provide assurance of the adequacy of the design of Unit 2. Response at 2-4. Further, Joint Intervenors suggest that the subsequent findings by Isa Yin, an NRC inspector, regarding small and large bore piping at Diablo Canyon undermine any confidence in the adequacy of the ITP to serve as a vehicle for verifying the design of Unit 2. (Response at 4). In light of the foregoing and because of the ongoing nature of the Unit 2 verification program at the time of the hearing in this matter, Joint Intervenors suggest that the existing record is inadequate to support a favorable determination on Unit 2 design verification. (Response at 5).

In all respects, Joint Intervenors have failed to justify the need for a further hearing. Although Joint Intervenors have failed to explicitly identify which of the admitted issues in controversy requires further adjudication in the particular context of Unit 2 (contrary to the direction of the Appeal Board in its September 10 Order), it appears that

1/ The matter of construction of the facility raises an issue already rejected by the Appeal Board on two occasions, ALAB-756, 18 NRC 1340 (1983) and ALAB-775, 19 NRC ____ (June 28, 1984), and is clearly beyond the scope of the reopened proceeding regarding design verification.

the thrust of their response is focused on issues 1(e), 2(d), and 8 concerning the adequacy of the IDVP and ITP to verify Unit 2 design and the adequacy and timeliness of the QA program implemented in the post-1981 period. In regard to issues 1(e) and 2(d), several observations are in order. First, as noted in the NRC Staff Response to September 10, 1984 Order, the present record is wholly adequate to permit the Appeal Board to find favorably on the scope of PG&E's program for verifying the Unit 2 design. Staff Response at 3. ^{2/} Second, to the extent that it is necessary to confirm that this program has been properly implemented and and to assure that the necessary modifications have been made, these matters can be left to the Staff in the normal course of its inspection type efforts outside the adjudicatory arena. Staff Response at 4-6. And, third, in any event, Joint Intervenors, by failing to file findings on issue 2(d), have waived their rights to litigate this issue further; accordingly, this matter is no longer in controversy and the Appeal Board need not resolve this issue. See 10 C.F.R. § 2.785(a); ALAB-763, 19 NRC at 577.

Issue 8, although not explicitly applicable to Unit 2, is admittedly relevant to the matters still before the Appeal Board. But, as discussed by the Staff in its initial response to the September 10, 1984 Order, it is a fair presumption that all parties have already fully pursued their interests in this, and, indeed, all issues, at the hearing held in

^{2/} As there noted, issue 1(e) is largely irrelevant in the context of Unit 2, the IDVP having had no direct verification role in connection with that unit. The only remaining issue would thus be 2(d) addressing the adequacy of PG&E's internal review efforts.

November 1983. Staff Response at 2-3, 6. It is therefore unnecessary to conduct yet a further hearing to consider matters which were or properly should have been previously litigated except upon a finding that there now exists new information relevant and material to the Appeal Board's consideration which could not reasonably have been considered previously. Joint Intervenors have not demonstrated the existence of such information.

As noted above, Joint Intervenors rely on findings by Isa Yin, an NRC inspector involved in the Staff's efforts to review allegations, made subsequent to the November 1983 hearing to suggest that there exists a widespread breakdown in PG&E's verification efforts in regard to large bore and small bore piping. Such breakdown, they urge, undermines any assurance one might have in PG&E's verification program for Unit 2. While not stated by Joint Intervenors, these matters, presumably, bear on issue 8. Mr. Yin's findings, however, lend no support to their position. These very findings (albeit in more preliminary form) were relied on by Joint Intervenors in support of their February 14, 1984 Motion to Augment, or in the Alternative Reopen the Record and were rejected by the Appeal Board as failing to raise a significant safety issue. See ALAB-775, 19 NRC ____ (June 28, 1984). ^{3/} Consequently, the record on issue 8 should be viewed as complete and closed without the need for a further hearing.

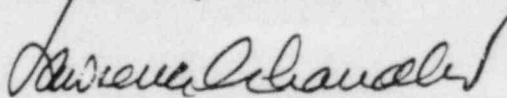
^{3/} In passing, we would note that subsequent review efforts by the Staff, reflected in SER Supplement 25 (July 1984) confirm the judgment of the Appeal Board on this matter.

It also warrants brief mention that Joint Intervenors assertion that "the conceded quality assurance breakdown, which the Board found has undermined the requisite confidence in the plant's design applied equally to Units 1 and 2," Response at 5 n.1, is unfounded. There is no evidence of record, of which we are aware, which suggests that design quality assurance breakdowns of the type found in Unit 1 exist with respect to Unit 2.

III. CONCLUSION

In light of the foregoing, the Staff opposes Joint Intervenors' recommendation that a further hearing is necessary and must be held prior to ruling favorably on the admitted issues remaining in controversy with respect to Unit 2.

Respectfully submitted,



Lawrence J. Chandler
Special Litigation Counsel

Dated at Bethesda, Maryland
this 9th day of October, 1984

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In the Matter of)
PACIFIC GAS AND ELECTRIC COMPANY) Docket Nos. 50-275 OL
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO JOINT INTERVENORS' RESPONSE TO SEPTEMBER 10, 1984 ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk by use of express mail service, this 9th day of October 1984:

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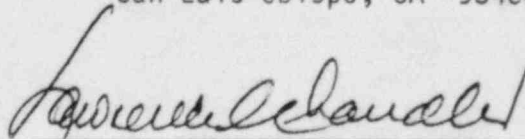
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