

UNITED STATES OF AMERICA DOCKETED
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

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OFFICE OF THE
DOCKETING & SERVICE
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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.

PACIFIC GAS AND ELECTRIC COMPANY'S
ANSWER IN OPPOSITION TO
JOINT INTERVENORS'
APPLICATION FOR STAY

On July 25, 1984. Joint Intervenors filed with the Commission and the Appeal Board a document styled "Application for Stay" seeking a stay of an anticipated decision by this Commission authorizing issuance of a license for full power operation of Diablo Canyon Nuclear Plant Unit 1. On July 27, 1984, the Appeal Board referred the Application to the Commission. This filing constitutes Pacific Gas and Electric Company's (PGandE's) opposition to Joint Intervenors' stay request.

I

BACKGROUND

On March 20, 1984 the Appeal Board issued its decision in the reopened design quality assurance hearings. ^{1/} The Board found that PGandE's verification efforts "provide adequate confidence that the Unit 1 safety-related structures, systems, and components are designed to perform satisfactorily in service and that any significant design deficiencies in that facility resulting from defects in [PGandE's] design quality assurance program have been remedied." The Appeal Board further concluded that there was reasonable assurance that the facility can be operated without endangering the health and safety of the public. In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant Units 1 and 2) ALAB-763, _____ NRC _____ (1984).

II

LEGAL STANDARDS FOR A STAY

The four requirements which must be considered in deciding a stay are set forth in 10 CFR 2.788(e). They are:

- "(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;

^{1/} Those reopened hearings were conducted in Avila Beach, California, from October 31, 1983 to November 21, 1983.

- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies."

As we will show below, Joint Intervenors have not made the requisite showing under these criteria to warrant issuance of a stay.

A. Joint Intervenors Have Not Shown A Likelihood Of Prevailing On The Merits.

In their application Joint Intervenors raised several issues which they contend would be decided in their favor. Issues concerning alleged design and construction quality deficiencies have been decided in PGandE's favor by the Appeal Board in its decisions of December 19, 1983 (CQA ALAB-756) and March 20, 1984 (DQA ALAB-763) and June 28, 1984 (DQA and CQA ALAB-775). In each case, the Appeal Board examined in detail the Joint Intervenors claims and found them wanting.

The issue of operator training claimed as a basis for the stay motion was finally resolved against the Joint Intervenors by the Commission in its Order CLI-84-5 dated April 13, 1984, authorizing low power testing.

There is no NEPA issue. Contrary to the assertion of Joint Intervenors, NEPA does not require that the Final EIS be supplemented following TMI since remote and speculative matters need not be discussed. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551, (1978) quoting NRDC v. Morton, 458 F.2d 827, 838 (D.C. Cir. 1972).

An accident of the magnitude of class 9 is no more reasonable today than when the original EIS was completed. See Metropolitan Edison Co. v. People Against Nuclear Power, 460 U.S. ____ , 103 S.Ct. 1556, 1561, n. 9 (1983).

The issue of seismic design adequacy of Diablo Canyon has been decided and final agency action has taken place by the Commission, CLI-82-12A, 16 NRC 7 (1982). While a motion to reopen was recently filed by the Joint Intervenors before the Appeal Board, the new seismic data does not alter the prior decision of the Appeal Board, because the possibility of higher ground motion readings was accounted for in the Board's decision already. In the Matter of Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) 13 NRC 903, 933 (1981). Consequently, the Joint Intervenors are not likely to fulfill the requirement for a motion to reopen that the new information would either be significant or have an effect upon the outcome. In the Matter of Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1) ALAB-461, 7 NRC 320, 338 (1978). The mere pendency of a motion to reopen does not in any way provide grounds to support a stay.

With regard to the matter of the effects of earthquakes on emergency planning, this matter is currently pending before the Commission and there is no reason for the Joint Intervenors to assume they will prevail on the matter.

In summary, Joint Intervenors have not prevailed on any issues they have raised before the Boards and the Commission. Accordingly, they have failed to show any likelihood of prevailing on the merits.

B. Joint Intervenors Have Not Shown Any Irreparable Injury If A Stay Is Not Granted.

Joint Intervenors, relying on a one and one half page affidavit of Mr. Bridenbaugh that refers to the 3 year old affidavit of Messrs. Hubbard and Bridenbaugh, argue that when the plant goes to full power the potential risks that were present during low power testing will be increased by a significant factor since components will become more radioactive and in case of an accident during full power operation there are potential risks to the public. Hence, they argue that there is irreparable harm to them if full power operation is authorized.

Neither argument has merit. Taken to its logical extreme, the radioactive contamination argument would require the indefinite staying of any license pending resolution of an appeal since the inevitable result of the operation of a nuclear power plant is the existence of radioactivity. However, this is hardly a basis for delaying action as Joint Intervenors request.

As for the argument regarding "fission product hazard" from a hypothetical accident, the short answer is that speculation about a nuclear accident does not, as a

matter of law, constitute the imminent, irreparable injury required to justify a stay of a licensing decision. State of New York v. NRC, 550 F.2d 745, 756-57 (2 Cir. 1977); Virginia Sunshine Alliance v. Hendrie, 477 F.Supp. 68, 70 (D. D.C. 1979). Further, the issues of fission product inventory and the potential risk of accidents during full power operation have been implicitly addressed by the Licensing Board and found to be acceptable. In the Matter of Pacific Gas and Electric Co. (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP-82-70, 16 NRC 756, (1982). Accordingly, we see no support for this argument and no need for the Commission to delay full power licensing because of it.

C. PGandE Will Be Harmed If A Stay Is Granted And The Public Interest Favors Denial Of A Stay.

With the completion of Commission action, PGandE stands ready to commence full power operation of Diablo Canyon Unit 1. As the Commission is no doubt aware, any delay in the issuance of the full power license impacts the commercial operation date of the facility. Each day that passes causes the total cost of the facility to dramatically increase and further delays the time when the plant can be relied upon to serve the needs of PGandE's customers. Since any delay ultimately harms PGandE's customers, the public interest lies in favor of denying a stay.

III

CONCLUSION

Joint Intervenors have failed to satisfy any of four criteria of 10 CFR 2.788(e) which would warrant a stay of PGandE's request for a full power license for Diablo Canyon Nuclear Power Plant, Unit 1. Accordingly, the stay motion should be denied in its entirety.

Respectfully submitted,

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