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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Thomas S. Moore, Chairman
Dr. John H. Buck
Dr. W. Reed Johnson

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July 27, 1984

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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 OL
50-323 OL

ORDER

Late Thursday afternoon, July 26, 1984, we received (by express mail) an application from the joint intervenors for a stay of the Licensing Board's authorization of full power operation of Diablo Canyon, Unit 1. That authorization is contained in the Board's August 31, 1982 initial decision. See LBP-82-70, 16 NRC 156 (1982). The stay application recites that it is "filed in anticipation of the Commission's scheduled July 30, 1984 vote on issuance of a full power license for Diablo Canyon, Unit 1." In a letter accompanying the stay application, the joint intervenors request that we decide the stay question by today, July 27, 1984.

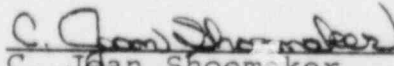
The joint intervenors' letter request concerning the timing for deciding their stay application is denied. The joint intervenors have not explained why this stay

application was not filed earlier and no such reason is discernible from the filing itself.

Rather than decide the stay application on the twenty four hour basis sought by the joint intervenors, we are referring it to the Commission. In this instance, referral is advisable because the Commission currently has the question whether to permit full power operation of Diablo Canyon, Unit 1, before it. Additionally, the issues in the stay application that the joint intervenors assert they are likely to prevail upon on the merits -- one of the critical showings for obtaining a stay under 10 CFR 2.788(e) -- all appear to be issues that we already have decided against them, or that we have never had before us, or that the Commission has taken a litigation position against the joint intervenors in the United States Court of Appeals for the District of Columbia Circuit. Further, the joint intervenors have raised several of these same issues in previously denied stay applications filed with the Commission and the Court of Appeals. In these circumstances, referral of the stay application is appropriate.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board