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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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Lando W. Zech, Jr.

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OFFICE OF SECRETARY
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In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant
Unit 1)

SERVED AUG 20 1984

Docket No. 50-275
(2.206)

ORDER

On October 20, 1983, the Joint Intervenors ¹ in the Diablo Canyon operating license proceeding filed a motion before the Commission to revoke or continue the suspension of the low power license for Unit 1 of the Diablo Canyon Nuclear Power Plant.² The motion was based on the alleged failure of the Pacific Gas and Electric Company (PG&E) to report the existence of a 1977 audit performed by Nuclear Services Corporation (NSC) of Pullman Power Products' quality assurance program. The motion was

¹The San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, Elizabeth Apfelberg and John Forster.

²On November 8, 1983, the Commission rescinded in part the suspension of the license to authorize PG&E to load fuel and conduct pre-criticality tests. On January 25, 1984, the Commission reinstated another part of PG&E's low-power license by authorizing precritical hot system testing and on April 13, 1984 the Commission reinstated the low-power license in its entirety.

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referred to the Director of the Office of Inspection and Enforcement ("Director") for consideration as a request for enforcement action under 10 CFR 2.206 of the Commission's regulations. On March 26, 1984, the Director issued his decision (DD-84-8) which found that PG&E had committed a material false statement by failing to report the audit. The Director classified this material false statement, pursuant to the Commission's enforcement policy set out at 10 CFR Part 2, Appendix C, Supplement VII, as a Severity Level IV violation for which a Notice of Violation was an appropriate penalty.³

We have reviewed the Director's decision and, given the facts as they currently appear do not quarrel with the selection of a Notice of Violation as the penalty, given the facts that the violation is now more

³The Commission published a revised general statement of enforcement policy on March 8, 1984 (49 FR 8583) in which minor changes were made in Supplement VII. Supplement VII categorizes violations concerning material false statements (MFS) in the following manner:

- A. Severity I - Violations involving a MFS in which the statement made was deliberately false;
- B. Severity II - Violations involving a MFS or a reporting failure, involving information which, had it been available to the NRC and accurate at the time the information should have been submitted, would have resulted in regulatory action or would likely have resulted in the NRC seeking further information; or a MFS in which the false statement was made with careless disregard;
- C. Severity III - Violations involving a MFS not amounting to a Severity Level I or II violation;
- D. Severity IV - Violations involving a false statement caused by an inadvertent clerical or similar error involving information which, had it been available to the NRC and accurate at the time the information should have been submitted, would probably not have resulted in regulatory action or the NRC seeking additional information.

than six years old and that the material false statement does not seem to have affected the Licensing Board's Partial Initial Decision in 1981. However, we believe that the violation was inappropriately classified under the enforcement policy. Since the Director's classification might be viewed as having precedential value in future similar circumstances, we find it necessary, pursuant to our supervisory power over Commission policy, to order reclassification.

The Director found that PG&E made a material false statement by omission due to its failure to disclose the NSC audit at a time when the Licensing Board was attempting to develop a record on quality assurance. The Board held a hearing on this issue in October 1977 after which PG&E submitted "Proposed Findings of Fact and Conclusions of Law" urging the Board to find that the PG&E quality assurance program met NRC regulations. PG&E received the NSC audit report from Pullman in February 1978 and conducted its own audit from April 2 through June 1, 1978 to check the NSC findings. Thus only after June 1, 1978 was PG&E able to determine that the NSC audit did not reveal a significant breakdown in quality assurance programs.

However, in March 1978, prior to the initiation of its review of the NSC findings, PG&E urged the Board to accept its earlier Proposed Findings despite its knowledge of the adverse report. The Director determined that the NSC audit, on its face, revealed significant quality assurance problems which would have prompted the NRC staff at least to seek further information. Since the Board was in the process of reaching its decision on the quality assurance issue, the Director found that PG&E

should have revealed the NSC audit in February 1978 when it was received by PG&E.


The Director selected Severity Level IV as the appropriate classification for this violation because it did not appear to be willful since there was no "deliberate, calculated effort to conceal or withhold the NSC audit", and because both PG&E and the NRC staff ultimately concluded that the audit did not identify a significant quality assurance breakdown. We do not believe that these reasons support classification at Severity Level IV which comprises violations involving a "false statement caused by an inadvertent clerical or similar error." First, the facts in this case do not appear to support the characterization of the material false statement as "inadvertent." Second, the fact that the audit results were later shown to be insignificant does not negate the fact that the Licensing Board was deprived of important information relevant to the decision it was in the process of formulating. The fact that the Board did not issue its decision until 1981, well after the audit had been shown to be insignificant, may lessen the seriousness of the material false statement to a Severity Level III violation but it does not reduce it to a mere "inadvertent clerical or similar error" as envisioned in Severity Level IV. For these reasons, we believe that this material false statement must be reclassified.

The Director should issue a Notice of Violation regarding this matter consistent with this Order.

Commissioner Roberts disapproved this Order and Commissioner Zech did not participate.



For the Commission*



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, DC
this 20th day of August 1984

* Commissioner Roberts was not present when this Order was affirmed, had he been present he would have disapproved.