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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

SERVED SEP 24 1992

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Jerry R. Kline
Froderick J. Shon

In the Matter of

PACIFIC GAS AND ELECTRIC
COMPANY
(Diablo Canyon Nuclear
Power Plant, Units
1 and 2)

Facility Operating Licenses
No. DPR-80 and DPR-82

Docket Nos. 50-275-OLA-2
50-323-OLA-2

ASLBP No. 92-669-03-OLA-2

(Construction Period
Recovery)

September 24, 1992

MEMORANDUM AND ORDER
(Filing Schedules and Prehearing Conference)

Pending before us is a request for a hearing and petition for leave to intervene with respect to an application by Pacific Gas and Electric Co. ("Applicant" or "Licensee") to extend the life of the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, its two pressurized water reactors located near San Luis Obispo, California. For the reasons that follow, we are permitting the petitioner to supplement its petition and the Applicant

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and the NRC Staff to respond. We also are scheduling a prehearing conference to consider these filings.

1. Background. The proposed operating license amendments would "recover" or "recapture" into the operating licenses the period of construction for the reactors. The licenses, which are limited to a term of 40 years by § 103.c of the Atomic Energy Act, 42 U.S.C. § 2133(c), were issued consistent with a Commission policy under which that 40-year life extended from the date of issuance of the construction permit for a particular unit--for Unit 1, a term running from April 23, 1968 to April 23, 2008, and for Unit 2, a term running from December 9, 1970 to December 9, 2010.

In 1982, the Commission began issuing the 40-year operating licenses measured from the date of issuance of the license. It has also approved license amendments for many reactors conforming the earlier licenses to this new policy. The Licensee is here seeking to amend its operating licenses to take advantage of the newer practice. As proposed, the extended expiration dates for Diablo Canyon would be September 22, 2021 for Unit 1 (more than a 13-year extension) and April 26, 2025 for Unit 2 (almost a 15-year extension).

In response to a notice of opportunity for hearing on the proposed amendments (57 Fed. Reg. 32,575 (July 22, 1992)), a group titled San Luis Obispo Mothers for Peace ("MFP" or "Petitioner") filed a timely request for a

hearing/petition for leave to intervene, dated August 18, 1992. The petition consists of a brief one-page letter setting forth in general terms MFP's reasons for wishing to take part in the proceeding. On September 4, 1992, and September 8, 1992, respectively, the Applicant and Staff filed responses: the Applicant seeks outright denial of the petition, whereas the Staff asserts that the petition in its present form is deficient but recommends that we defer any decision pending receipt and consideration of any revised MFP petition. On September 10, 1992, this Licensing Board was established to rule on the request/petition and to preside over the proceeding in the event that a hearing is ordered. 57 Fed. Reg. 43,035 (Sept. 17, 1992).

2. General Requirements. Under the NRC Rules of Practice, specifically 10 C.F.R. § 2.714, a petitioner must establish its standing, must indicate the aspects of the proceeding in which it seeks to participate and must proffer at least one acceptable contention in order to be admitted as a party to the proceeding. MFP advises that, beginning in 1973, it participated in earlier proceedings involving the Diablo Canyon facility. However, merely because a petitioner may have had standing in an earlier proceeding does not automatically grant standing in subsequent proceedings, even if the scope of the earlier and later proceedings is similar. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit No. 1), LBP-92-4,

35 NRC 114, 125-26 (1992). Moreover, because of recent revisions to the Rules of Practice, contentions are subject to much more stringent requirements than they once were.

For reasons we spell out later, MFP's one-page letter-petition is deficient in many respects. In particular, it fails adequately to demonstrate that MFP has standing. However, by generally referencing certain concerns of MFP, the petition correctly presents "aspects" of the proceeding in which MFP wishes to participate. And, notwithstanding the Applicant's extensive discussion of defects in the submitted "issues," their failure to satisfy contention requirements is not disqualifying because contentions are not yet required to be filed.

Thus, as the Staff observes, under governing rules, a petitioner may amend its petition without prior approval of the Licensing Board at any time up to 15 days prior to the holding of the first prehearing conference. 10 C.F.R. § 2.714(a)(3). That same time frame governs the initial submission of contentions. Utilizing our authority to alter those 15-day periods, 10 C.F.R. § 2.711(a), we are here establishing dates for MFP to file a revised petition, including contentions, for the Applicant and Staff to file responses, and for a prehearing conference, at which both Petitioner's standing and the sufficiency of its contentions will be considered.

3. Standing. The standing requirement stems from § 189.a of the Atomic Energy Act, 42 U.S.C. § 2239(a), which provides, in pertinent part, that the Commission shall grant a hearing upon the request of "any person whose interest may be affected" by a proceeding (emphasis supplied). To the same effect, see 10 C.F.R. § 2.714(a)(1). To determine whether a petitioner has the requisite standing, the Commission utilizes contemporaneous judicial concepts of standing. See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).

Under those standards, the petitioner must demonstrate (1) that it has suffered or will likely suffer "injury in fact" from the proposed licensing action, (2) that the injury is arguably within the zones of interest sought to be protected by the statute being enforced and (3) that the injury is redressable by a favorable decision in the proceeding in question. Public Service Co. of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-67 (1991).

Here, the "concerns" set forth by MFP concerning radiological health and safety and impact upon the environment clearly fall within the zones of interest sought to be protected by the Atomic Energy Act or NEPA. Nor is there any doubt that, to the extent litigable in this

proceeding, those "concerns" would be redressable in this proceeding. The real standing question before us is whether MFP has made a satisfactory showing of injury in fact. That showing must be real, but it need not be "substantial." Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48 (1979), aff'd, ALAB-549, 9 NRC 644 (1979).

There are several ways for a group such as MFP to demonstrate that it has suffered or will likely suffer injury in fact. It can assert either organizational injury or injury to a member that it represents. From the general reference in the letter-petition to the residences of MFP members, we presume that MFP is seeking to take the latter course and rely on representational injury. The general reference in the letter-petition, however, is insufficient.

To assert representational injury in fact, MFP must specifically identify one or more of its individual members by name and address, identify how that member may be affected (such as by activities near the plant site) and show (preferably by affidavit) that it is authorized to request a hearing on behalf of the member. South Texas, ALAB-549, supra, 9 NRC at 646-47; Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 392-97 (1979). Further, the organization must demonstrate that the person signing the petition has been authorized by the organization to do so.

Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979). An organization has sufficiently demonstrated its standing if its petition is signed by a ranking official whose own personal interest supports intervention. Duke Power Co. (Amendment to Materials License SNM-1773--Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979).

Residence of a particular organization member within 50 miles of a power plant site has, in construction permit and operating license proceedings, been recognized as sufficient to confer standing. This 50-mile presumption does not apply in every operating license amendment proceeding, however, but only in those involving "significant" amendments involving "obvious potential for offsite consequences."

Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989). In other amendments, a petitioner must demonstrate a particular injury in fact that will result from the action for which authorization is sought.

The Applicant takes the position that specific injury in fact must be demonstrated in this type of proceeding, and that mere residence within 50 miles of the site is insufficient. Response, at pp. 11-14. The Staff does not address the question.

At this stage, we take no specific position on this question, other than to note that the Applicant has cited no cases involving operating-license extension amendments (or, for that matter, construction-permit extension applications) in support of its claim that the 50-mile presumption does not apply. In contrast, the Licensing Board in an earlier operating license extension proceeding required no direct showing of injury in fact. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 90 (1990). See also the comments of the Appeal Board in Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 564 (1980).

To the extent that MFP in its revised pleading may intend to rely only on the residence of named members in support of its standing claim, we will discuss with the parties and petitioner at the prehearing conference the validity of the Applicant's position and, in particular, the significance of the license amendment before us. (If MFP should specifically demonstrate injury in fact through another method, we will not need to address this issue.)

4. Contentions. As mentioned earlier, to be admitted as a party, a petitioner must proffer at least one valid contention. The requirements for contentions have been significantly upgraded in recent years. Each contention

"must consist of a specific statement of the issue of law or fact to be raised or controverted." 10 C.F.R.

§ 2.714(b)(2). That statement must raise an issue falling within the scope of the subject matter of the particular proceeding.

In addition, the following information must be provided:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely.

(iii) Sufficient information (including that listed above) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing

to include references to the specific portions of the application (including environmental report and safety report) that the petitioner disputes and supporting reasons for each such dispute; or, if the petitioner believes that the application fails to contain relevant information, the identification of each such omission and supporting reasons.

On NEPA issues, the contentions are to be based on the Applicant's Environmental Report but are subject to amendment based on later-issued Staff documents.

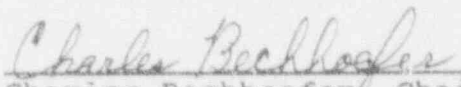
In ruling on contentions, we are to take into account factors set forth in 10 C.F.R. § 2.714(d)(1), as well as whether the contention, if proven, would be of consequence in the proceeding and entitle the petitioner to relief, 10 C.F.R. § 2.714(d)(2).

5. Filing Dates. Because MFP will be required to make extensive revisions in its petition to conform to current NRC requirements, we are setting filing dates accordingly. MFP shall file (mail) its revised petition no later than Monday, October 26, 1992. The Applicant may respond by Wednesday, November 18, 1992. The Staff may respond by Monday, November 30, 1992.

A prehearing conference will be scheduled during the week of December 7-11, 1992, in or around San Luis Obispo, California. We will announce the exact day, time and location in an order to be issued at a later date.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
September 24, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant,
Unit Nos. 1 and 2)

Docket No.(s) 50-275/323-OLA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-92-27) DTD 9/24/92 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
24 day of September 1992


Office of the Secretary of the Commission