

September 30, 1986

Docket Nos. 50-275
and 50-323

Mr. Thomas Devine
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Institute for Policy Studies
1901 Que Street, N.W.
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Dear Mr. Devine:

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ACRS(10)	J. Resner(2)

Enclosed is my Final Decision responding to your petition which you filed pursuant to 10 CFR 2.206 and on behalf of certain individuals. The petition and its supplements requested that the Commission take certain actions regarding the licensing of Diablo Canyon Units 1 and 2. Supplement No. 33 to the staff's Safety Evaluation Report (NUREG-0675, SSER-33, dated May 1986) was sent to you on May 27, 1986. The document completes the NRC evaluation of allegations. It is the principal basis for our conclusions in the Final Decision.

Sincerely,

Richard H. Vollmer, Acting Director
Office of Nuclear Reactor Regulation

Enclosure:
As stated

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Harold R. Denton, Director

In the Matter of

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

)
) Docket Nos. 50-275 and 50-323
) (10 CFR 2.206)
)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

INTRODUCTION AND BACKGROUND

Thomas Devine of the Government Accountability Project (GAP), on behalf of Timothy J. O'Neill and James L. McDermott, filed a request on July 27, 1984, pursuant to 10 CFR 2.206 of the Commission's regulations, that the Nuclear Regulatory Commission (NRC) defer further licensing actions on the Diablo Canyon Nuclear Power Plant (Diablo Canyon, the Plant). Specifically, the petitioners requested the authorization of commercial operation of Unit 1 and further licensing actions on Unit 2 be deferred pending the completion of specific items for which relief was requested. Supplemental documents were filed by the petitioners on July 29, 30 and 31, 1984; an Amendment to the Petition was filed on November 16, 1984, and a Supplement to the Petition was filed on March 14, 1985. In accordance with the Commission's usual practice, the Petitioner's request was referred to the staff for appropriate action. The basis for the requested actions are numerous allegations, contained in affidavits by individuals, relating to alleged inadequate design, construction, and

management of Diablo Canyon, in particular with respect to quality assurance program implementation practices, alleged personnel intimidation by the licensee management, and alleged improper investigation and evaluation of allegations by the NRC staff.

On August 20, 1984 the Director, Office of Nuclear Reactor Regulation, issued an Interim Decision regarding the Petition of July 27, 1984. See Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), DD-84-19, 20 NRC 773 (1984). The decision denied the aspects of the petition dealing with the requested deferral of any licensing action on Diablo Canyon, and stated that a final determination regarding the circumstances of the termination of the employment of Mr. O'Neill and Mr. McDermott with a contractor for the Pacific Gas and Electric Company (PG&E) would be made upon completion of investigations by the Office of Investigation (OI).

On January 11, 1985 the Director responded to the November 16, 1984 Amendment to the Petition and concluded that the Amendment did not reveal any new information necessitating a major re-investigation of the Diablo Canyon Plant or circumvention of the NRC's Region V office (this aspect was discussed in detail in a letter, dated September 24, 1984, from the NRC's Executive Director for Operations to Thomas Devine of GAP).

On April 16, 1985 the Director responded to the Supplement of March 15, 1985 to the Petition. In a letter dated May 15, 1985, the Director provided a status of the NRC's investigations, reviews and evaluations of all allegations. The letter stated that allegations concerning improper conduct by the NRC staff had been referred to the NRC's Office of Inspector and Auditor (OIA), allegations

concerning harassment and intimidation of workers at the plant had been referred to the NRC's Office of Investigations (OI), and that the status of the staff's evaluation of individual allegations, in particular the technical aspects, was documented in Supplement No. 28 (SSER-28) to the staff's Safety Evaluation Report (NUREG-0675). In summary, the letter concluded that complete resolution of all allegations was not necessary prior to the licensing of Unit 2 and that there was no need for an immediate suspension of the Unit 1 operating license.

CONSIDERATION OF ALLEGATIONS IN DIABLO CANYON LICENSING

The staff evaluation of allegations submitted by GAP and other sources since early 1983, including concerns regarding small and large bore piping and pipe supports, has been documented throughout the licensing process for Diablo Canyon Units 1 and 2 in the following Supplements (SSERs) to the staff's Safety Evaluation Report (NUREG-0675): SSER-21 (December 1983), SSER-22 (March 1984), SSER-25 (July 1984), SSER-26 (July 1984), SSER-28 (August 1985), SSER-30 (April 1985), and SSER-33 (May 1986).

The NRC staff briefed the Commission on the status of its evaluation of allegations prior to the Commission's decisions regarding the major licensing steps for Diablo Canyon Units 1 and 2. In its Memorandum and Order CLI-84-13, dated August 10, 1984, the Commission authorized issuance of a full power license for Unit 1. See Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-84-13, 20 NRC 267 (1984). The decision included the following considerations:

- (i) regarding allegations on small and large bore piping and pipe supports, including license conditions resulting, in part, from concerns expressed

by an NRC inspector, the Commission accepted the staff and Advisory Committee on Reactor Safeguards (ACRS) conclusions that these matters had been adequately resolved for issuance of a full power license;

- (2) regarding more than 1400 allegations, including those that had been filed by petitions under 10 CFR 2.206, the Commission determined that a full power license need not be deferred pending the final resolution of outstanding allegations;
- (3) regarding allegations of harassment and intimidation, the Commission accepted the staff's finding that there was no widespread pattern of purposeful harassment and intimidation; accepted the staff's approach for continuing investigations by OI and OIA; and concluded that there was no need to defer the full power decision.

The Unit 1 full power license DPR-80 was issued on November 2, 1984.

On April 23, 1985 the staff briefed the Commission on matters relating to the issuance of a low power license for Unit 2, including allegations and their significance on low power operation. The staff concluded that none of them, received as of that date, were of such safety significance to defer the proposed licensing action. The Commission, in its Memorandum and Order dated April 23, 1985 authorized the issuance of the low power license for Unit 2. The Unit 2 low power license was issued on April 26, 1985.

On August 1, 1985 the staff briefed the Commission on matters relating to the issuance of a full power license for Unit 2, including allegations and their significance on full power operation. The staff concluded that none of them

received as of that date were of such safety significance to defer the proposed licensing action. The Commission, in its Memorandum and Order CLI 85-14, dated August 1, 1985 accepted the staff's determination and authorized issuance of a full power license for Unit 2. See Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-85-14, 22 NRC 177 (1985). The Unit 2 full power license was issued on August 26, 1985.

EVALUATION OF PETITION

The Commission found the staff's evaluation acceptable, did not defer any licensing action on Diablo Canyon Units 1 and 2 pending any further evaluation, and authorized issuance of the licenses. With the issuance of SSER-33 in May 1986, the staff's evaluation of the technical aspects of all allegations has been completed and documented in SER Supplements referenced above. The staff has concluded that the technical concerns raised in the allegations have all been resolved and that no further action is required regarding the safety of the Plant.

As documented in SSER-22, allegations of intimidation and harassment of workers at the plant were considered by the staff. The staff took specific action to assess whether these conditions were a widespread problem or concern at Diablo Canyon. The staff effort on Diablo Canyon allegations involved several thousand staff man-hours on-site interfacing with hundreds of licensee and contractor personnel at all levels, including specifically questioning about 250 site personnel regarding pressures to "cut corners", intimidation, harassment, or freedom to bring forth safety and quality related concerns. During the course

of its resolution of these allegations over the past three years, the staff did not detect an attitude to suppress employee concerns or corrupt the effectiveness of those controls the NRC depends upon to assure quality and safety. The various technical concerns, including the concerns on quality control, that were raised by the alleged as a basis for intimidation and harassment, were reviewed and found to be either unsubstantiated or insignificant from a safety standpoint, as documented in SSER-33. The Office of Investigations has determined not to pursue these investigations based on the priority of other investigations, resources and available information concerning the allegations. On the basis of all of the above, the staff has concluded that further action concerning the alleged intimidation and harassment is not warranted.

As stated in the SER Supplements cited above and as discussed at the various Commission briefings, certain concerns, related to alleged improper conduct by NRC staff in its investigation and evaluation of allegations, had been referred to the NRC's Office of Inspector and Auditor. The Office conducted a review of the NRC's allegation management effort, including a detailed examination of the processing of allegations by the staff and interviews with alleged regarding the NRC staff conduct. The Office concluded that while numerous problems were encountered in dealing with alleged and processing their concerns, overall the NRC staff did a credible job of managing the vast number of allegations. See (1) Report to the Commission, "Review of Allegations Management for Diablo Canyon", NRC Office of Inspector and Auditor, March 1986 and (2) Report of Investigation, "Diablo Canyon - Allegations of Misconduct by NRC

Employees", NRC Office of Inspector and Auditor, October 21, 1985.¹ The staff has concluded that these allegations do not pertain to the safety of the Plant and do not provide a basis to take any licensing action.

In the Petition of July 27, 1984, the Petitioner requested investigations by an Inspector General at a government agency outside the NRC into the NRC's staff handling of allegations. A request for such an investigation, particularly one for an investigation of internal NRC personnel matters, does not fall within the class of requests contemplated by 10 CFR 2.206. See Duke Power Company, (Catawba Nuclear Station Units 1 and 2), DD-84-16, 20 NRC 161, 164, n.5. Section 2.206 contemplates requests to institute enforcement proceedings with respect to a license. These allegations, therefore, are not considered to be appropriate for a petition. In any event, as noted above, the NRC Office of Inspector and Auditor, which is similar to an Inspector General office, has reviewed staff actions in this case.

CONCLUSION

The Petitioner bases its request for relief on numerous allegations regarding inadequate and/or improper design, construction and management of the Diablo Canyon Plant, in particular with respect to quality assurance program implementation practices; alleged personnel intimidation by the licensee

¹ Both reports were enclosures to a letter, dated June 11, 1986, from Nunzio J. Palladino, Chairman, Nuclear Regulatory Commission, to Edward J. Markey, Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, United States House of Representatives.

management; and alleged improper investigation and evaluation of allegations by the NRC staff. The staff has completed its evaluation of the technical aspects of all allegations and concludes that no issues remain unresolved which either individually or collectively require any licensing action on Unit 1 or Unit 2. The staff did not detect any widespread company attitude, either deliberate or inadvertent, to suppress employee concerns by intimidation or harassment and concludes that the alleged harassment or intimidation circumstances do not collectively or individually require any license action for either Unit 1 or 2. The issues concerning alleged improper conduct by the staff in its investigation and evaluation of allegations, while not considered to be appropriately the subject of a petition under 10 CFR 2.206, have been reviewed; the staff has concluded that none of the allegations pertain to the safety of the plant. Therefore, the Petitioner's request for specific relief to be taken prior to or subsequent to any licensing decision on Diablo Canyon Units 1 and 2 is denied. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206 (c).

Dated at Bethesda, Maryland
 this 30 day of September, 1986

Richard H. Vollmer, Acting Director
 Office of Nuclear Reactor Regulation

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