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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'87 SEP 21 A9:55

ATOMIC SAFETY AND LICENSING APPEAL PANEL

Alan S. Rosenthal, Chairman

September 18, 1987
(ALAB-873)

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

(Diablo Canyon Nuclear Power)
Plant, Units 1 and 2))

SERVED SEP 21 1987

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

Marcia Preston, San Francisco, California, for
the intervenor Sierra Club.

MEMORANDUM AND ORDER

This is a proceeding on the application of the Pacific Gas and Electric Company for amendments to the outstanding operating licenses for its Diablo Canyon nuclear facility. The requested amendments would enable the applicant to increase the storage capacity of the facility's spent fuel pools.

While the proceeding was still pending before the Licensing Board, the intervenor Sierra Club sought the admission of an additional contention. In an interlocutory order entered on September 2, 1987,¹ the Board denied that relief. The Sierra Club now seeks to appeal that order under 10 CFR 2.714a.

¹ See LBP-87-24, 26 NRC ____.

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The appeal will not lie. In terms, section 2.714a permits an interlocutory appeal from an order rejecting one or more contentions at the threshold only if the effect of the rejection is to deny in its entirety a petition for leave to intervene in the proceeding.² In this instance, the September 2 order patently had no such effect.

This does not mean, however, that the Sierra Club has no appellate remedy available to it. On September 11, 1987, the Licensing Board rendered its initial decision in the proceeding, authorizing the issuance of the requested operating license amendments.³ That decision is subject to an appeal as a matter of right under 10 CFR 2.762(a). On any such appeal, the Sierra Club may challenge, if it is so inclined, the rejection of the contention in question.⁴

Appeal dismissed.

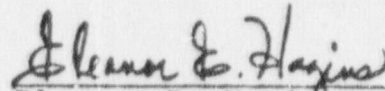
² See, e.g., Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-599, 12 NRC 1 (1980), and cases there cited.

³ See LBP-87-25, 26 NRC ____.

⁴ See ALAB-599, supra, 12 NRC at 2 n.1.

It is so ORDERED.

FOR THE APPEAL PANEL CHAIRMAN



Eleanor E. Hagins
Secretary to the Appeal Panel

This action was taken by the Appeal Panel Chairman under the authority of 10 CFR 2.787(b).