

**UNION OF
CONCERNED
SCIENTISTS**

November 24, 1999

Dr. William Travers
Executive Director for Operations
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: PETITION PURSUANT TO 10 CFR 2.206: ILLEGAL ACTIVITIES AT DIABLO
CANYON**

Dear Dr. Travers:

On behalf of the San Luis Obispo Mothers for Peace and the Project on Liberty & the Workplace, the Union of Concerned Scientists (UCS) submits this petition pursuant to the provisions of 10 CFR 2.206. Based on the findings dated November 19, 1999, by the United States Department of Labor (DOL) that the Pacific Gas & Electric Company (PG&E) illegally discriminated against Mr. Neil J. Aiken for voicing concerns about safety at the Diablo Canyon nuclear plant, the petitioners request that the operating licenses for Diablo Canyon Units 1 and 2 be suspended on December 20, 1999, if PG&E has not fully satisfied the nine conditions of the enclosed DOL findings. The petitioners request that the operating license remain suspended until such time that PG&E satisfies these nine terms. The petitioners request that the NRC issue an order requiring PG&E to have an independent contractor assess the safety culture at Diablo Canyon. The petitioners also request a public meeting to present our concerns to the NRC staff.

Background

Mr. Neil J. Aiken, a long time worker at the Diablo Canyon nuclear plant, received adverse job action from his employer, PG&E, after he voiced safety concerns to the PG&E Board of Directors. Mr. Aiken filed a complaint with the United States Department of Labor. In its ruling dated November 19, 1999, the DOL stated:

Evidence obtained during the course of the investigation indicated that while the respondent [i.e., PG&E] may have had prior concerns about your performance, at the time of your removal your performance was improving, as reflected in your latest performance appraisals. The evidence further indicates that while the respondent claimed to have concerns over your mental state of mind, based upon their interpretations of your protected written and verbal complaints and beliefs, they provided biased and incomplete evidence to a series of medical professionals in their effort to remove you from the plant to stop your engagement in activities protected under the Energy Reorganization Act.

The DOL ordered PG&E to compensate Mr. Aiken and to provide him with continued employment pending the outcome of an independent medical evaluation.

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Basis for Requested Action

The San Luis Obispo Mothers for Peace are a non-profit group that has been actively involved in legal proceedings regarding safety at Diablo Canyon for over 25 years. Representing members of the community and throughout California, they have brought safety concerns of licensing, construction, operating, and radioactive waste storage before the NRC, the California Public Utilities Commission, the California State Water Board and elected officials at the local, state, and national level. As residents of San Luis Obispo living in close proximity to the Diablo Canyon plant, Mothers for Peace fear that the illegal treatment of Mr. Aiken by the plant's owner reduces safety levels at Diablo Canyon and inhibits further disclosure of safety concerns by him and by other employees.

Project LAW is a public-interest law firm devoted to protecting the civil rights and civil liberties of individuals and community groups against threats from government and corporate institutions. Project Law is counsel for Mr. Aiken.

The Union of Concerned Scientists (UCS) is a non-profit, public-interest organization with members across the United States, including California. UCS has an office in Berkeley, California. UCS monitors performance at nuclear power plants in the United States against safety regulations promulgated by the NRC to protect the public and plant workers. When real or potential erosion of mandated safety margins is detected, UCS engages the NRC, the media, and other authorities to resolve the safety concerns.

Workers at nuclear plants are commonly referred to as the "eyes and ears" for the NRC. The NRC openly admits that it can only oversee a small portion of the safety issues and relies heavily on employee, especially operations personnel to identify potential safety issues to management and, if necessary, to the NRC. The actions taken against Mr. Aiken for raising safety concerns have been very visible to the PG&E workforce. As many as forty of Mr. Aiken's co-workers have objected to the actions taken by PG&E against Mr. Aiken for raising potential safety issues.

If PG&E continue to resist the reinstatement of Mr. Aiken, a clear message will be sent to the Diablo workforce - if you question either management or the NRC, your nuclear career will be ended as in the case of Mr. Aiken.

Information from the NRC already indicates that the willingness of personnel to bring safety issues has been severely repressed. The latest report from the NRC¹ states that the number of concerns brought to the NRC has averaged about twenty per year for the Diablo Nuclear Plant. The NRC also reports that through October 31, 1999, only three issues have been submitted to the NRC. This appears to be an indication of a severely "chilled" work environment, with the potential consequences of many safety issues not being addressed for fear of retaliation. The petitioners feel that the NRC must issue an order requiring PG&E to have an independent contractor assess the safety culture at Diablo Canyon for the same reasons that the agency took this action at Millstone in 1996.

If a "chilled" work environment does exist at Diablo Canyon, it was created by PG&E through its actions such as the illegal discrimination against Mr. Aiken. In America, crime is not supposed to pay. If PG&E is allowed to operate Diablo Canyon while at the same time stalling and delaying the resolution of Mr. Aiken's situation, then the company will reap very real dividends from its illegal acts through continued use of Mr. Aiken's plight to suppress other conscientious workers. The NRC will take away this

¹ <http://www.nrc.gov/NRC/PUBLIC/ALLEGATION/rcvd.html>

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economic incentive for PG&E to stall justice for Mr. Aiken by suspending the operating licenses for the Diablo Canyon units until the company satisfies the Department of Labor's ruling.

The petitioners are concerned that a conscientious nuclear worker, Mr. Neil Aiken, was illegally discriminated against by his employer, PG&E. The requested action would hold PG&E accountable for violating Section 211 of the Energy Reorganization Act of 1974 until such time that the DOL-ordered actions have been satisfied. The requested action serves the dual purposes of ensuring that Mr. Aiken's condition is remedied as soon as possible and also of reinforcing to other conscientious workers at Diablo Canyon that PG&E might not get away with infringing on their rights under federal law.

Requested Actions

The petitioners request the NRC to suspend the operating licenses of Diablo Canyon Units 1 and 2 on December 20, 1999, if PG&E has not satisfied the nine conditions detailed by the United States Department of Labor in its November 19, 1999, finding. If said license is suspended, the petitioners request the NRC to keep it suspended until such time that PG&E satisfies these nine conditions. The petitioners request that the NRC order PG&E to have an independent contractor assess the safety culture at Diablo Canyon. In addition, the petitioners request a public meeting with the NRC staff to discuss our concerns in this matter.

Sincerely,



David A. Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists

Enclosure: United States Department of Labor letter dated November 19, 1999, to Neil J. Aiken

U.S. Department of Labor

**Occupational Safety and Health Administration
71 Stevenson Street, Suite 420
San Francisco, California 94105**

Reply to the Attention of:



By U.S. Certified Mail

November 19, 1999

**Neil J. Aiken
P.O. Box 548
Santa Maria, CA 93456-5048**

RE: Pacific Gas & Electric Diablo Canyon Nuclear Power Plant/Aiken/1082585

Dear Mr. Aiken:

This is to notify you of the results of the investigation in the above noted case, in which you alleged violations of Section 211 of the Energy Reorganization Act of 1974, 42 U.S.C. 5851. Our initial efforts to conciliate the matter did not result in a mutually agreeable settlement. A fact-finding investigation was then conducted. Based on our investigation, the weight of evidence indicates that you were a protected employee engaging in a protected activity within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute(s) was a factor in the actions which comprised your complaint. The following information supported this determination:

Evidence obtained during the course of the investigation indicated that while the respondent may have had prior concerns about your performance, at the time of your removal your performance was improving, as reflected in your latest performance appraisals. The evidence further indicates that while the respondent claimed to have concerns over your mental state of mind, based upon their interpretations of your protected written and verbal complaints and beliefs, they provided biased and incomplete evidence to a series of medical professionals in their effort to remove you from the plant to stop your engagement in activities protected under the Energy Reorganization Act.

This letter is notification to you that the following actions are required to remedy the violation:

PG&E must compensate you in the following amounts:

- 1. \$8070.00 for nuclear and shift premiums at a rate of \$1345 per month that have not been paid for six months as a result of the discrimination.**

2. **\$35,000 in compensatory damages.**
3. **\$18,000 in lost overtime from two outages during the removal from duty.**
4. **\$2,500 lost in merit increases which would have been earned during 1999.**
5. **\$8,500.00 for lost overtime wages which would have been earned for relief work.**
6. **The interest on the back wages.**
7. **Attorney fees in the amount of \$33,612.**
8. **\$10,579.30 for the costs of litigation including medical examinations, telephone, copies, travel, mail, fax, etc.**

Also, PG&E must provide continued employment for you pending the outcome of an independent medical evaluation to determine your fitness for duty.

PG&E must post copies of the decision in at least three prominent places at the Diablo Canyon Nuclear Power Plant for at least 60 days.

This letter is also notification to you that, if you wish to appeal the above findings and remedy, you have the right to a formal hearing on the record. To exercise this right you must, within five (5) business days of receipt of this letter, file your request for a hearing by facsimile, overnight/next day delivery mail or telegram to:

**Chief Administrative Law Judge
U.S. Department of Labor
Suite 400, Techworld Building
800 K Street
Washington D.C. 20001-8002
Telephone: 202/565-5341
FAX: 202/565-5325**

Unless a request for appeal is received by the Administrative Law Judge within the five-day period, this notice of determination will become the final Order of the Secretary of Labor which must be implemented within 30 days. By copy of this letter, Pacific Gas & Electric is being advised of the determination and the right to a hearing. A copy of this letter and complaint have also been sent to the Chief Administrative Law Judge. If you decide to request a hearing, it will be necessary for you to send copies of the request to Pacific Gas & Electric and to this office at the address noted in the above letter head. After copies of your request are received, appropriate preparations can be made.

It should be made clear to all parties that the U.S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a

recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Sincerely,



Frank Strasheim
Regional Administrator

cc: **A. Alene Anderson**
Nuclear Regulatory Commission
Office of the Chief Administrative Law Judge

**UNION OF
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SCIENTISTS**

1616 P St NW, Suite 310, Washington DC 20036
202-332-0900 * Fax: 202-332-0905

~~(Muss)~~
I gave copy to
Frank/Travers
& Mike +
Pat

To: DR. TRAVERS

Date: 11-24-99

Fax No. _____

From: DAVE LOCKBURN

Pages (including cover sheet): 7

Comments: Hard copy + follow via regular mail.