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USNRC
JUN 12 1979
Office of the Secretary
Docketing & Section
CRB

Before the Atomic Safety and Licensing Board

Docket Numbers
50-275 O.L.
50-323 O.L.

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This motion concerns the attempts of Intervenor San Luis Obispo Mothers For Peace (SLOMFP) to participate in the ASLB hearing on the adequacy of the Diablo Canyon Nuclear Power Plant security plan (10 CFR part 75). Said hearing was held February 12 and 13, 1979, outside presence of Intervenor's counsel, despite an urgent request by Intervenor's counsel that he be allowed to participate.

The Licensing Board's barring of Intervenor's counsel was improper. PG and E and NRC staff have long objected to the disclosure of the Diablo Canyon security plan. PG and E and NRC staff have maintained that disclosure of the plan would be a breach of security; Intervenor have contended that the plan may not meet NRC regulations and will not work.

The Atomic Safety and Licensing Appeal Board in ALAB-410 (June 9, 1977) decided that the Diablo security plan was not classified (p. 6-8) and rejected PG and E's contention that the plan can be kept in its entirety out of the view of all but PG and E and NRC employees (p. 6).

The Appeal Board also recognized in ALAB-410 the great value to public health and safety of intervenor participation in review of the adequacy of an applicant's security plan. See also, Consolidated Edison Co. of New York (Indian Point, Unit 2), ALAB-197 and 197R, 7 AEC 473, 826, on review, CLI-74-23. 7 AEC 947, 949-50, on remand, ALAB-243, 8 AEC 850, 853-54 (1974). The Appeal Board, in ALAB-410, also explicitly noted that participation by an intervenor's expert in Indian Point 2

"helped . . . in assuring that the (security) plan eventually adopted for the plant was adequate." (p. 9)

As Mr. Salzman stated in his additional comments to the Appeal Board's Memorandum in ALAB-410: "(C)onsiderable benefit can be derived from the independent scrutiny of such (security) plans which litigation engenders." (p. 26)

Against this background, these events took place leading to the result that the security plan hearing was held, on February 12 and 13, 1979, over the strong objections of Intervenor's counsel, with Intervenor's counsel excluded and no representative of any party other than NRC and PG and E present:

(1) Intervenor San Luis Obispo Mothers For Peace (SLOMFP) attempted to qualify four individuals as experts for the purpose of examining and preparing a challenge to the security plan. On August 29, 1977, SLOMFP petitioned the Licensing Board to certify Dr. Douglas L. DeNike, holder of a doctoral degree in clinical psychology and a recognized expert on the psychology of human terrorist activities. On November 3, 1977 the Board refused to certify Dr. DeNike. On February 1, 1978, SLOMFP petitioned the Board to certify Dr. Bruce L. Welch, who had experience with military security plans and direct professional experience in the psychology of human terrorist activities. On February 1, 1978, the Board refused to certify Dr. Welch. On March 31, 1978, SLOMFP petitioned the Licensing Board to certify Mr. Richard Hubbard, who had expertise in nuclear quality engineering and sixteen years of experience in the nuclear industry. On May 11, 1978 the Licensing Board refused to certify Mr. Hubbard.

On May 23, 1978, SLOMFP petitioned the Licensing Board to certify Mr. David Dinsmore Comey, who had previously reviewed nuclear power plant security plans, who had testified and cross-examined on these plans in NRC proceedings, and who had recognized expertise in the area of nuclear power plant sabotage. On September 5, 1978, the Licensing Board refused to certify Mr. Comey. On September 22, 1978, SLOMFP appealed the Licensing Board's September 5 decision to the Appeal Board. On October 27, 1978, the Appeal Board reversed the Licensing Board and remanded the matter of Mr. Comey's certification to the Licensing Board. On November 3, 1978, the Licensing Board again refused to certify Mr. Comey. SLOMFP on November 20, 1978, petitioned the Atomic Safety and Licensing Appeal Board for directed certification and review of the November 20 ruling. On December 22, 1978, the Appeal Board denied the SLOMFP petition. On January 5, 1979, Mr. Comey was killed in an automobile accident in Wisconsin.

(2) On January 19, 1979, counsel for SLOMFP, Mr. Paul Valentine, responded to the Licensing Board as follows:

This Intervenor has been denied access to the security plan and has been denied the qualification of expert witnesses to review the plan, either for preparation for cross-examination or the presentation of affirmative evidence as to the inadequacy of the applicant's security plan. Without the qualification of an expert witness to inspect the plan and advise Intervenor's attorney, it is impossible for this Intervenor to prepare, either for significant cross examination on the inadequacies of the applicant's security plan or to present affirmative evidence to support Intervenor's contentions.

Therefore, this Intervenor will not be able to participate in the hearings now scheduled for the first week of February as to the adequacy of the applicant's security plan.

(3) The Licensing Board on February 8 and 9, 1979, received telegrams from Andrew Baldwin, an attorney representing SLOMFP, entering an appearance on behalf of SLOMFP and requesting to participate in the security system inspection and hearings then scheduled for February 12.

In discussions February 8 and 9, the Licensing Board refused the request, both as to participation in the security systems tour and as to participation in the hearing on the adequacy of the plan. (Hearing transcript 9103-9108, February 8, 9080-9099, February 9.) The Licensing Board's reasoning was apparently based on the Board's interpretation of Mr. Valentine's January 19 letter as a withdrawal of the SLOMFP security contention (TR106). The Licensing Board acknowledged that it had not entered an order withdrawing the contention (TR9105, 9106).

Mr. Baldwin appeared Monday, February 12, and argued to the Licensing Board that he be allowed to participate in the security systems tour and hearings on behalf of SLOMFP. The Board again refused the request, stating as grounds for the denial that Mr. Valentine's January 19, 1979 letter was a "voluntary default" under 10 CFR § 2.707 (TR 3968).

SLOMFP'S JANUARY 19, 1979 RESPONSE WAS NOT
A REQUEST TO WITHDRAW SLOMFP'S SECURITY CONTENTION.

The argument is simply made - Mr. Valentine's letter does not say that SLOMFP requests to withdraw its security contention. It says:

"... this Intervenor will not be able to participate in the hearings now scheduled for the first week in February as to the adequacy of the applicant's security plan."

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SLOMFP had decided as of January 19, 1979, not to participate in the February hearings. No where at any time, directly or indirectly, in any document did SLOMFP ever indicate that it wished to withdraw its contention. Withdrawal of SLOMFP's security contention would have been a different and much more drastic step than deciding not to participate in the hearings. SLOMFP had substantial rights of appeal concerning the security contention to the Appeal Board, the Nuclear Regulatory Commission, and the courts. SLOMFP would have prejudiced these rights by withdrawing the security contention. Had SLOMFP decided to take this drastic step and withdraw its security contention, it would have said so. There was no statement, clear or unclear, of intent to withdraw.

Therefore, SLOMFP moves this board for an order as follows:

1. That the Diablo Canyon Nuclear Power Plant security plan be produced by PG and E for inspection by SLOMFP;
2. That a discovery schedule be established to govern SLOMFP's examination of the security plan;
3. That hearings be scheduled to determine the adequacy of the security plan.

Respectfully submitted,

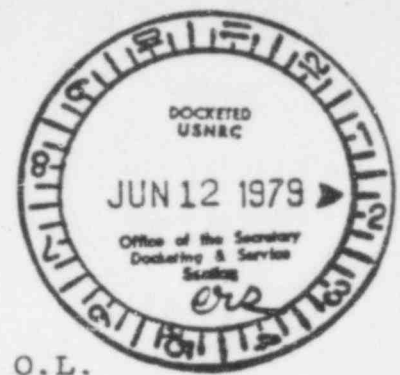
W. Andrew Baldwin

W. Andrew Baldwin
Attorney for Intervenor
San Luis Obispo Mothers for Peace

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



In the Matter of)
)
PACIFIC GAS AND ELECTRIC CO.)
)
(Diablo Canyon Nuclear Power)
Plan, Units 1 and 2))

Docket Nos. 50-275 O.L.
50-323 O.L.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO REOPEN HEARINGS ON THE ADEQUACY OF THE DIABLO CANYON NUCLEAR POWER PLANT SECURITY PLAN has been served as of this date by personal delivery or first class mail, postage prepaid, to the following:

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