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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 SEP 14 P3:37

BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket Nos. 50-275 O.L.
)	50-323 O.L.
(Diablo Canyon Nuclear Power)	
Plant, Units 1 and 2))	(Low Power Test Proceeding)
)	
)	

JOINT INTERVENORS' REPLY TO
PACIFIC GAS AND ELECTRIC COMPANY'S
OPPOSITION TO REQUEST FOR HEARING

On August 3, 1982, Pacific Gas and Electric Company ("PGandE") applied, pursuant to 10 C.F.R. § 50.9, for an amendment to the suspended facility operating license DPR-76 for Diablo Canyon Nuclear Power Plant, Unit 1 ("Diablo Canyon"). By telephone on August 11, the Joint Intervenors requested a hearing on the proposed amendment and submitted a formal request in writing to the Commission one week thereafter. PGandE's response in opposition to that request raises several questions which necessitate this brief reply.

PGandE's principal contention -- that the proposed amendment is not an amendment within the meaning of § 189(a) of the Atomic Energy Act -- is belied by the terms of its own application. Indeed, PGandE repeatedly characterized its request as "an application for an amendment to Facility

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Operating License No. DPR-76." That characterization is included twice in the first two sentences of the formal application:

As provided in 10 C.F.R. 50.90, Pacific Gas and Electric Company (PGandE) hereby proposes to amend its Diablo Canyon Power Plant (DCPP) Facility Operating License DPR-76 (License).

The proposed change is to amend Condition 2.k. of the license. . . . (Emphasis added.)

Its attempt, therefore, to disavow that characterization in its response to Joint Intervenor's request for hearing is disingenuous at best. Not only does the application seek by its very terms to amend the suspended license, the regulation upon which PGandE explicitly relies -- 10 C.F.R. § 50.90 -- is titled "[a]pplication for amendment of license or construction permit." That provision states the procedures for amending a license as follows:

Whenever a holder of a license or construction permit desires to amend the license or permit, application for an amendment shall be filed with the Commission, fully describing the changes desired, and following as far as applicable the form prescribed for original applications.

The regulation provides no support for PGandE's novel distinction between an amendment to a license and an amendment seeking renewal of a license.

Nor does the sole authority cited by PGandE in support of the proposed distinction -- Brooks v. Atomic Energy Commission, 476 F.2d 924 (D.C.Cir. 1973) -- provide any legal basis to deny a hearing in this case. On the contrary, the court in Brooks upheld the right of local residents to a hearing under § 189(a)

of the Atomic Energy Act prior to a decision by the AEC on an application to extend completion dates under previously issued construction permits. The decision only undermines the contention advanced by PGandE in this case. Indeed, the language cited by PGandE indicates that both the court and the utilities seeking to extend the permits assumed that an amendment was necessary. Thus, Brooks stands for the principle that a hearing is required under § 189(a) when a holder of a previously issued permit seeks to extend its term.

That principle applies with equal force here. PGandE's attempt to change the label of its application is a transparent ploy to evade the plain meaning of § 189(a). In light of the Commission's prior acknowledgement that the operating license for Diablo Canyon would not have been granted had the design errors in question been disclosed prior to its issuance, PGandE's desire to avoid public hearings on the proposed amendment is perhaps understandable. Nevertheless, the right of interested parties to a hearing prior to a decision on the license amendment is unequivocal. A valid and timely request having been made, Joint Intervenors' request must be granted.

PGandE's other contentions are equally meritless. The Commission's November 19th Order suspending the Diablo Canyon license and mandating an audit of the facility in no way diminishes Joint Intervenors' right to a hearing on the proposed amendment. In fact, the suspension suggests the contrary. The Commission's unprecedented action in suspending the license

issued only two months before was based on compelling evidence of widespread design errors and quality assurance deficiencies at the plant. The license should not have been issued in the first instance. To grant an amendment renewing it without first providing interested parties with a hearing to ensure that all deficiencies have been corrected would render meaningless the explicit language of § 189(a).

The suspended license granted last September provides for a term of one year. Absent an amendment extending that term, the license expires and with it PGandE's legal authority to operate the facility. PGandE has applied for such an amendment, and a hearing has been requested. Notwithstanding the ongoing design verification program, § 189(a) mandates that the hearing request be granted.

Finally, PGandE's discussion of possible legislative action regarding the Sholly decision of the U.S. Court of Appeals for the D.C. Circuit is a complete "red herring." As discussed in Joint Intervenor's Request for Hearing, the amendment proposed by PGandE has obvious safety significance. It is an attempt to double the term of a suspended license which the Commission itself has acknowledged would not have been granted in the first place had the errors disclosed through last November been revealed prior to its issuance. The initial findings of the audit mandated by the Commission have uncovered evidence of significant violations of applicable regulations, including, according to the NRC's Administrator for Region V, "potentially serious and wide-ranging inadequacies in QA programs for design

of the Diablo Canyon plant."^{1/} The series of revelations described in the Request for Hearing unquestionably undermine the reasonable assurance of safety and regulatory compliance which is the mandatory prerequisite to licensing of Diablo Canyon.

If the Commission's licensing standards have safety significance, then an amendment which depends on compliance with those standards must have similar significance. That is clearly the case here. Because Sholly involved only an amendment without significant hazards considerations, PGandE's discussion of possible future legislative action with respect to it is irrelevant. In order to ensure that past errors in the licensing of Diablo Canyon are not repeated, the public's right to a hearing under § 189(a) must be enforced.

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^{1/} Memorandum to Harold Denton from R.H. Engelken, Diablo Canyon Design Verification Program (March 29, 1982).

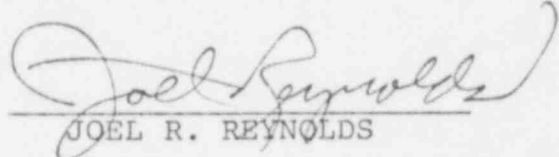
For the reasons stated above and in their Request for Hearing, Joint Intervenors respectfully urge that an adjudicatory hearing be held with respect to PGandE's application for an amendment to Facility Operating License DPR-76.

DATED: September 13, 1982 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 1982, I have served copies of the foregoing JOINT INTERVENORS' REPLY TO PACIFIC GAS AND ELECTRIC COMPANY'S OPPOSITION TO REQUEST FOR HEARING, mailing them through the U.S. mails, first class, postage prepaid.

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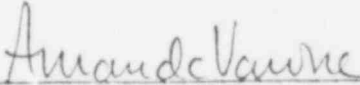
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