

13892

DOCKETED
(USNRC)

April 19, 1993

193 APR 20 8 4 58
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Pacific Gas and Electric Company

(Diablo Canyon Nuclear Power
Plant, Units 1 and 2))
) Docket Nos. 50-275-CLA - Z
) 50-323-OLA
) (Construction Period
) Recovery)
)
)PACIFIC GAS & ELECTRIC COMPANY'S
OPPOSITION TO REQUEST FOR
ADDITIONAL DISCOVERY RE CABLESI. INTRODUCTION

On April 2, 1993, the San Luis Obispo Mothers for Peace ("MFP") filed a motion for leave to conduct additional discovery regarding Okonite cables with bonded Hypalon jackets.^{1/} The Motion was accompanied by two sets of interrogatories/requests for production of documents -- one to be answered by Pacific Gas & Electric Company ("PG&E") and one to be answered by the NRC Staff. In the requests made to PG&E, MFP seeks additional discovery on two unrelated issues: 1) a generic issue, addressed in a December 1992 NRC Information Notice, related to the environmental qualification of Okonite cables with bonded Hypalon jackets; and 2) an issue specific to Diablo Canyon regarding an operational experience involving damaged, non-safety-related, 12kV power cables associated

^{1/} "Intervenor San Luis Obispo Mothers for Peace Motion for Leave to File Additional Discovery Re: Okonite Cables With Bonded Jackets," dated April 2, 1993 ("Motion").

D503

with the Circulating Water Pumps (none of which cables is of the type covered by the December 1992 Information Notice). PG&E opposes the request for more discovery on both issues.^{2/}

Neither of these two issues relates to the Diablo Canyon Nuclear Power Plant ("DCPP") maintenance and surveillance program. MFP, in this Motion, in effect is attempting to transform Contention I in this proceeding into an open-ended, catch-all plant operations contention. MFP seeks to inject into that contention matters unrelated to maintenance and surveillance, and unrelated to the original thesis of Contention I. MFP in this Motion asks the Licensing Board to allow discovery and litigation of these matters without justifying a late-filed contention. In fact, in filing its most recent third late contention in this proceeding,^{1/} MFP effectively concedes that these issues are really new issues that can only be admitted pursuant to the requirements of 10 C.F.R. § 2.714(a)(1). As such, for purposes of addressing the present Motion, the original scope of Contention I should be preserved and the Motion denied.

^{2/} On April 15, 1993, counsel for PG&E received "Intervenor San Luis Obispo Mothers for Peace Third Late-Filed Contention," dated April 12, 1993. In this pleading MFP seeks to have the cable issues addressed in the present Motion admitted as a separate, late-filed contention. PG&E will respond to the third late-filed contention separately, on a schedule consistent with the Commission's Rules of Practice.

^{3/} See supra, n.2.

Furthermore, MFP's Motion recognizes that the time for discovery requests in this proceeding has passed. The Motion, however, fails to recognize that the first issue on which the additional discovery is requested (bonded Hypalon jackets) is by no means "new." It is based on information issued by the NRC and publicly available four months ago, and on its face the issue is unrelated to the DCPD-specific cable failures also cited by MFP. MFP's recent focus on the issue simply does not constitute a basis for extending further discovery. As discussed in prior filings in this case,^{4/} MFP has minimally taken advantage of the initial discovery opportunities afforded in this case. With this record, MFP should not be allowed new discovery opportunities. This is especially true on a matter that 1) properly should be the subject of a late-filed contention, and 2) even if assumed to be relevant to Contention I, could easily have been pursued during the first round.

With respect to the second matter on which MFP seeks discovery (two recent failures of non-safety-related cables at DCPD), even assuming the events were somehow within the scope of Contention I, MFP's Motion seems to be premised on the faulty notion that any "new" development at the plant should lead to further discovery.

^{4/} See, e.g., "Pacific Gas & Electric Company's Response to San Luis Obispo Mothers for Peace Motion to Compel Re: Contention I," dated April 8, 1993, at 4; see also "Pacific Gas and Electric Company's Response to Second Set of Written Interrogatories and Requests for the Production of Documents Filed by San Luis Obispo Mothers for Peace," dated April 12, 1993, at 1-4.

This cannot be the case. Maintenance and surveillance at DCPD is an ongoing operational matter. If each new operating experience at the plant were to lead to further discovery, this proceeding could be forever frozen at the discovery stage. The discovery period must end in order that any legitimate technical issues can be joined and resolved.

II. BACKGROUND

The schedule for discovery in this proceeding was adopted by the Licensing Board in its Memorandum and Order (Discovery and Hearing Schedules), dated February 9, 1993 ("Scheduling Order"). All discovery requests were to be filed by March 8, 1993. Scheduling Order at 3. The Licensing Board declined to schedule a "second round" of discovery, holding open only the possibility that a party "could later request a second round for good cause shown." Id. at 4.

MFP's current Motion for a new round of discovery is premised on information purportedly revealed to MFP on March 25, 1993, by Robert Pollard of the Union of Concerned Scientists. The information, itemized in five numbered paragraphs, purportedly relates to "degradation of Okonite cables and possibly other cables with bonded jackets." Motion at 1. However, in reality, the first four paragraphs itemize documents that are all related to only one generic issue. This issue was the subject of NRC Information Notice ("IN") 92-81 (December 11, 1992). It involves the

environmental qualification ("EQ") of Okonite cables with bonded Hypalon^{2/} jackets. This generic qualification issue was also the subject of an April 2, 1993, "Board Notification" from MFP.

Briefly stated, the generic EQ issue was initiated following some EQ testing of Okonite cables with bonded Hypalon jackets by Sandia National Laboratories ("SNL"). The SNL test reports, however, are not yet publicly available. IN 92-81 reported the preliminary results of the SNL testing. The concern raised is not a maintenance and surveillance issue. Rather, it is an EQ issue related to cable operability following a design basis accident. (Absent postulated accident conditions, there is no issue regarding cable performance for the 40-year design life of a nuclear power plant.)^{3/} Based on previously available test results, the Okonite cable at issue was generally considered qualified for the plant's design life. The SNL results, however, reportedly suggest that

^{2/} Hypalon is a trade name for the chemical composition chlorosulfonated polyethylene. For the Okonite cables that are the subject of this generic issue, the conductor is insulated with ethylene propylene rubber ("EPR") and then enclosed in the Hypalon cable jacket. The Hypalon jacket is bonded to the EPR insulation by co-extruding the jacket and the insulation and simultaneously curing both materials on the conductor. The Hypalon jacket performs no operational or EQ function. The primary purpose of the jacket is to protect the EPR insulation from impact and abrasion damage during cable installation. The jacket may also act as a physical barrier once the cable is installed.

^{3/} "Qualified life" is a term used to refer to the period of time the component (here, cable) would be capable of performing its post-accident function were an accident to occur during that period. Qualified life is determined based on testing and analysis in accordance with 10 C.F.R. § 50.49.

qualified life may be shorter for Okonite cables with bonded Hypalon jackets installed at service conditions exceeding 50°C (122°F). However, this result is less than sure. The SNL testing appears to have been very conservative and to have utilized purposely damaged cable.^{2/}

The second issue addressed by MFP in its Motion (paragraph 5) concerns a specific event at DCPD identified by PG&E involving cable faulting due to jacket and shield degradation on the non-safety-related 12kV power cables for the Circulating Water Pumps ("CWP's"). Specifically, DCPD has experienced two 12kV cable failures in recent months on the Unit 1 CWP motor feeder circuits between the Turbine Building and the Intake Structure. The first was experienced on February 5, 1993, on CWP 1-1. The second was experienced on March 12, 1993, on CWP 1-2. The cable involved in both cases does not have a bonded Hypalon jacket (the jacket is neoprene) and is not of the type discussed in IN 92-81. PG&E is still investigating the root cause; however, preliminary assessments are that the cables experienced degradation due to prolonged submergence and an unknown corrosive. NRC inspectors have been aware of these developments and have been updated regularly by PG&E. The events did not affect public health and safety. PG&E has also committed to the NRC to file a voluntary

^{2/} In addition, cable manufacturers argue that the usual NRC-endorsed method for calculating the qualified life of cables is very conservative, and elimination of conservatism could counterbalance any qualified life reductions should those reductions materialize.

report on this issue later this month. That report will of course be publicly available and, as is the normal practice, will be distributed to MFP.

In the MFP "Board Notification" of April 2, 1993, MFP cites another operational experience not cited in the present Motion involving three 4kV cable failures in circuits associated with the Auxiliary Salt Water ("ASW") pumps experienced between October 1989 and October 1992. These failures are unrelated to either the generic EQ issue or the February 1993 CWP cable failures, since the 4kV cables (like the 12kV cables) do not use Hypalon jackets (they use neoprene jackets). Moreover, the jackets are not bonded to the cable shield or insulation and the ASW 4kV cables do not require environmental qualification. Therefore, IN 92-81 is not applicable to these cables. The 4kV problems also appear to be due to a different root cause than the 12kV failures.^{8/} MFP, in the Board Notification, and again in the Motion, is essentially comparing apples, oranges, and bananas.

MFP apparently realizes that further discovery on the 4kV occurrences is unjustified, and does not seek any such discovery in the Motion. The most recent 4kV failure was identified by PG&E's maintenance program during an outage post-maintenance high potential (hi-pot) test. PG&E initiated a non-conformance report

^{8/} Details will follow in PG&E's voluntary report mentioned above.

("NCR") on October 10, 1991 (DC1-92-EM-N054). This NCR was identified by PG&E in the list of NCRs provided to MFP as Attachment 2 to PG&E's March 12, 1993, response to MFP's first set of discovery requests re Contention I. MFP did not ask for a copy of this NCR during document production at DCPD on March 16, 1993. MFP did ask for and receive other NCRs on the list.

III. ARGUMENT

It is essential to recognize at the outset that MFP is, in its present discovery Motion, attempting to expand the scope of Contention I. MFP, in filing (subsequent to the present Motion) a third late contention, concedes that these cable issues do not fall within the ambit of Contention I. Nonetheless, MFP has not withdrawn its present Motion. MFP would, in this Motion, inject into Contention I two new issues which are not related to the original thesis of Contention I and do not support that thesis. This should not be permitted.

Contention I, as admitted by the Licensing Board, alleges a "chronic pattern of poor maintenance and surveillance practices," evidenced by isolated incidents and low severity violations. Prehearing Conference Order (Ruling Upon Intervention Petition and Authorizing Hearing), LBP-93-1, slip op. at 17 (January 21, 1993). This "pattern" was supposed to prove that the DCPD maintenance and surveillance program is neither adequate nor effective. Id. Now, however, without justifying a late contention, MFP seeks (in the

present Motion) to conduct discovery on and litigate a generic EQ issue and isolated incidents of cable faulting totally unrelated to the EQ issue. These matters simply do not support the thesis of Contention I. To accept these issues under the umbrella of Contention I would turn the umbrella into a domed stadium. Unless and until the Licensing Board accepts a late-filed contention on these issues, discovery should not be permitted.

The EQ issue related to Okonite cables with bonded Hypalon jackets, as is the case with the ongoing Thermo-Lag issue, is a generic matter being addressed by the NRC and the industry. The NRC Staff has issued an information notice. The issue, fairly viewed, involves the testing methodology used to demonstrate post-accident cable qualification pursuant to 10 C.F.R. § 50.49. The issue in no way implicates the effectiveness of the DCPM maintenance and surveillance programs. Therefore, it can have no bearing on the merits of Contention I. With no evidence specific to DCPM, MFP is attempting to improperly inject the generic resolution of this matter into the maintenance and surveillance contention. This proceeding, however, is not an appropriate forum to litigate every generic issue currently being addressed by the NRC and the industry.

The CWP cable matter is also beyond the scope of Contention I. The event is an example of an operational experience. The issue cited represents a specific example of a non-safety-related power

cable actually degraded or damaged, with no safety consequences, due to exposure to water and/or another corrosive. This is not the EQ issue concerning qualified life of cables raised by SNL and discussed in IN 92-81.^{9/} Moreover, there is no correlation between this issue and alleged faulty maintenance and surveillance. No maintenance/surveillance program is designed to or capable of preventing all equipment failures. This is simply one case where a failure occurred and is being properly analyzed and addressed. Again, the issue does not fall within or support Contention I.

Assuming for argument that these two matters were germane to Contention I, MFP has still failed to justify its Motion for additional, late discovery. With respect to the generic EQ issue, MFP supports its need for further discovery based on allegedly "new" information. MFP cites several documents pertaining to this issue, two of which are public documents that have been available for some time. MFP argues that it was made aware of the issue on March 25, 1993. However, regardless of when it may have been revealed to MFP, this issue is not "new." It was discussed

^{9/} The SNL testing was intended to "determine minimum insulation thickness necessary for installed cable to perform its intended function should the insulation be damaged during installation, maintenance, or other activities." Toward this end, SNL purposely damaged certain cable jackets prior to the testing. The testing suggested, as discussed, that for cable at service conditions of 50°C or above, qualified life may be shorter. At design basis accident conditions, when the insulation is bonded to the jacket, cracks or splits that exist or develop in the jacket may propagate to the insulation. (The original testing for the cable performed for the vendor did not include the jacket.)

previously in the publicly available IN 92-81, cited by MFP, dated December 11, 1992. The evolving generic issue was also discussed in the publicly available letter to William Rasin of NUMARC from William Russell of the NRC, dated December 22, 1992, again expressly cited by MFP in the Motion. Obviously, this matter easily could have been pursued based on public information within the original discovery period.

MFP's record in this case has been one of woeful lethargy in actually conducting discovery on the maintenance/surveillance issue. (In contrast, MFP has been markedly more energetic in drafting discovery requests and procedural filings.) As discussed in PG&E's response to MFP's recent motion to compel responses to first round discovery requests,¹⁰ MFP has barely pursued its first round document production on the maintenance and surveillance issue. Given PG&E's identification of a large number of responsive documents, and an open invitation to the site to inspect/copy documents, MFP arrived late and then spent only a few hours at the plant actually reviewing the responsive documents.¹¹ A more rigorous approach to the first round discovery afforded in the Licensing Board's Scheduling Order certainly could have precluded

¹⁰ See supra, n.4.

¹¹ Similarly, MFP fought aggressively to expand the scope of discovery that would be allowed during a scheduled site inspection of Thermo-Lag fire areas. Once the discovery was generally allowed (including an opportunity for follow-up after the inspection), MFP cancelled the Thermo-Lag site inspection.

the need for further discovery rounds and the attendant inefficiency and delay.

With respect to the DCPD cable events, MFP has shown no need for discovery. To the extent this issue remains of interest to MFP, adequate information is, or soon will be, available from public sources. The NRC addressed the cable failures at DCPD in Inspection Report Nos. 50-275/93-03 and 50-323/93-03, dated April 8, 1993; NRC expressly found no violation of regulations or deviation from licensee commitments. This document was distributed to MFP. Moreover, as mentioned above, PG&E will in the near future also be filing a voluntary report on the issue which will be distributed to MFP. Therefore, even assuming this issue was somehow germane to Contention I, there is no demonstrated need for discovery by MFP beyond this publicly available information. If MFP believes that the event proves some relevant point, it has enough information and should try to do so. It is unreasonable to allow discovery to be reopened each time there is a new operating experience at DCPD such as the CWP cable situation.^{12/}

The Commission has emphasized that in its proceedings it "expects licensing boards to set and adhere to reasonable

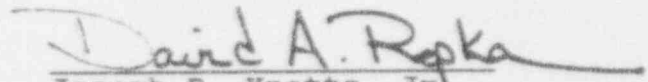
^{12/} As noted on other occasions in this proceeding, MFP's discovery requests have evidenced a pattern of delay and misdirection. MFP consistently seeks to expand the scope of discovery, while at the same time fails to take advantage of the discovery allowed. MFP, perhaps reflecting its longstanding opposition to the plant, essentially seeks to expand the scope of discovery as an end in itself.

schedules." Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981). Furthermore, discovery should be managed to reduce the number of interrogatories, to narrow the issues for hearing, and to limit evidence to that which is relevant. Id. at 455-56. MFP would have the Licensing Board adopt the opposite approach: an ever expanding inquiry into anything related to plant operation (couched, of course, in terms of plant maintenance). Such an all inclusive approach was not the tenor of the original Content'ion I and supporting basis. Rather than more discovery, PG&E believes that the proceeding should go forward. MFP has had access to publicly available documents, as well as to procedures, NCRs, LERs, vendor manuals, and other information produced or made available in discovery. The administrative process dictates that MFP be asked now to turn over its cards and show its hand. To the extent it has any real litigable issues, and any real technical basis for those issues, now is the time to close out the discovery process and address those issues on the merits.

IV. CONCLUSION

For the reasons stated, there has been no good cause shown by MFP to support its Motion for additional discovery. Accordingly, MFP's Motion to conduct additional discovery on two issues related to cables should be denied.

Respectfully submitted,



Joseph B. Knotts, Jr.
David A. Repka

WINSTON & STRAWN
1400 L Street, N.W.
Washington, DC 20005-3502
(202) 371-5726

Christopher J. Warner
Richard F. Locke

PACIFIC GAS AND ELECTRIC COMPANY
77 Beale Street
San Francisco, CA 94106

Attorneys for Pacific Gas and
Electric Company

Dated in Washington, DC
this 19th day of April, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 93 APR 20 P4:58

In the Matter of:

Pacific Gas and Electric Company

(Diablo Canyon Power
Plant, Units 1 and 2)

)
) Docket Nos. 50-275-OLA
) 50-323-OLA
) (Construction Period
) Recapture)
)
)

OFFICE OF SECRETARY
DOCKETING & SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS & ELECTRIC COMPANY'S
OPPOSITION TO REQUEST FOR ADDITIONAL DISCOVERY RE CABLES" in the above-
captioned proceeding have been served on the following by deposit in
the United States mail, first class, or, as indicated by an asterisk
(*), by deposit for Federal Express overnight delivery, this 19th day
of April, 1993.

Charles Bechhoefer, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Frederick J. Shon*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service
Section
(original + two copies)

Ann P. Hodgdon, Esq.*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Adjudicatory File
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Peter Arth, Jr.
Edward W. O'Neill
Peter G. Fairchild
California Public Utilities
Commission
505 Van Ness Avenue
San Francisco, CA 94102

Nancy Culver, President
Board of Directors
San Luis Obispo Mothers for Peace
P.O. Box 164
Pismo Beach, CA 93448

Robert R. Wellington, Esq.
Diablo Canyon Independent Safety
Committee
857 Cass Street, Suite D
Monterey, CA 93940

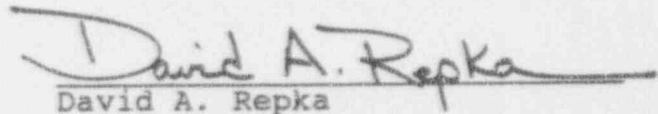
Robert Kinoshian
California Public Utilities
Commission
505 Van Ness, Rm. 4102
San Francisco, CA 94102

Mr. Gregory Minor
MHB Technical Associates
1723 Hamilton Ave., Suite K
San Jose, CA 95125

Truman Burns
California Public Utilities
Commission
505 Van Ness, Rm. 4103
San Francisco, CA 94102

Christopher J. Warner, Esq.*
Richard F. Locke, Esq.
Pacific Gas & Electric Company
77 Beale Street
San Francisco, CA 94106

Jill ZamEk*
1123 Flora Road
Arroyo Grande, CA 93420


David A. Repka

Counsel for Pacific Gas &
Electric Company