

UNITED STATES OF AMERICA

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USNRC

NUCLEAR REGULATORY COMMISSION '83 OCT 17 A11:37

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

PACIFIC GAS AND ELECTRIC COMPANY)

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

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

JOINT INTERVENORS' REPLY
RE SUPPLEMENT TO MOTION
TO REOPEN THE RECORD ON
THE ISSUE OF CONSTRUCTION
QUALITY ASSURANCE

On September 9, 1983, the Joint Intervenors supplemented their pending motion to reopen the record on the issue of construction quality assurance by filing a recently discovered Nuclear Services Corporation ("NSC") audit of Pullman Power Products ("Pullman"), one of the principal construction contractors for Diablo Canyon Nuclear Power Plant ("Diablo Canyon"). Responses were filed by Governor Deukmejian in support of the motion on September 21 and by PGandE and the NRC staff in opposition to the motion on September 21 and October 6, respectively. This brief reply addresses several points raised by PGandE and the Staff in their responses.

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I. PGandE's RESPONSE

A. PGandE first seeks to persuade the Board that the NSC audit and all of its findings should be ignored, on the grounds (1) that the Joint Intervenors have allegedly "drop[ped the document] out of thin air on the Board . . ." (PGandE Response, at 3); (2) that the audit is not "new evidence," even though only recently discovered (id.); and (3) that the report should have been produced at the July hearing where "PGandE could have responded to it as appropriate" (id., at 4).

Simply stated, such assertions by PGandE are no more than a distortion of reality. The plain and simple fact is that PGandE -- and only PGandE -- has had the NSC audit report since its issuance in late 1977-early 1978.^{1/} Instead of disclosing the report to the NRC, the parties, or the licensing board then considering the specific issue of construction quality

^{1/}Significantly, in its Response, at 6 n.3, PGandE states that "the results of the NSC audit were not communicated to [Russell Wischow, PGandE's Director of Quality Assurance], until early 1978." In contrast, Mr. Wischow's affidavit states only that at the time of his October 1977 testimony the "NSC audit was not complete . . . and no definitive results were provided for us to review and evaluate prior to early 1978" (emphasis added). Wischow Affidavit, at 2. No definition of "definitive results" is offered by PGandE, leaving ambiguous the true extent of its knowledge of the NSC findings at the time of the October 1977 hearings. Nonetheless, PGandE's failure to disclose the audit report immediately to the licensing board at whatever time the report was issued is never explained, presumably because there is no legitimate excuse for such failure. See In re Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), 4 NCRI 480, CCH Nucl. Reg. Rptr., at 27,718 (1976); In re Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 ARC 623, 625-26 (1973).

assurance, PGandE buried the report for six years, apparently in the hope that no one would notice. Now, incredibly, six years later, when the report is obtained by another party to the proceeding, PGandE seeks to prevent its consideration on the ground that the report is not new evidence! Such a contention is patently absurd.

Further, PGandE claims that the audit should have been disclosed at the July mini-hearing to permit "response as appropriate," completely ignoring the fact that PGandE was the only party at the July hearing that was even aware of the audit's existence! Why didn't PGandE itself disclose the report? Why should disclosure of so devastating a document depend solely on the integrity of an anonymous plant worker? Instead, PGandE's witnesses at the July hearing testified under oath that Pullman was a prime example of a contractor with a fully adequate quality assurance program, rating Pullman as a "10 on a scale of 10." (Tr. 605.) The NSC audit report flatly and unequivocally contradicts that testimony. The Joint Intervenors believe that there is absolutely no excuse for PGandE's misleading, irresponsible conduct in a nuclear power plant licensing proceeding.

B. With regard to the substance of the audit report, PGandE submits the affidavit of Russell Wischow, former PGandE Director of Quality Assurance, who contends (1) that the audit and associated actions actually establish the existence of an adequate Pullman quality assurance program; (2) that the audit

should be discounted because NSC conducted a "programmatic review" rather than a "hardware review" and applied 1977 standards in areas requiring interpretation; and (3) that Pullman, PGandE, and the NRC Staff each conducted audits and inspections during the period in question, thereby correcting any deficiencies and ensuring the adequacy of the Pullman quality assurance program.

Mr. Wischow's affidavit simply ignores the fundamental fact that NSC, as an independent auditor, conducted a detailed and documented review of the Pullman quality assurance program for the period 1971 through 1977 and found the program virtually nonexistent prior to early 1974 and riddled with deficiencies from late 1974 through 1978. By any measure, therefore, such findings are significant, regardless of whether PGandE and Pullman would have preferred a "hardware review" and regardless of whether PGandE and Pullman disagree with some of the NSC findings. Given their obvious self-interest in the outcome of the audit, such disagreement is not surprising. Indeed, PGandE took vehement issue with the critical design quality assurance findings of Roger Reedy when they were first issued in 1982, asserting among other things that Reedy had erroneously applied current quality assurance standards to past design work. Just as Reedy's design findings warranted reopening of the record on design, so also do the NSC findings of programmatic construction quality assurance deficiencies mandate reopening to permit

closer scrutiny of the construction work done by Pullman and others during the period of the audit.^{2/}

PGandE further contends that any deficiencies existing in the Pullman program were promptly corrected in 1978. Such a contention misconstrues the basic tenet that quality assurance cannot be built into a facility post hoc; it is a process considered essential in order to maintain quality throughout the design and construction period. NSC found that from 1971 through 1978 -- the period during which Diablo Canyon was substantially constructed -- Pullman suffered a breakdown in its quality assurance program. That such a failure could have occurred and gone uncorrected during such a critical period cannot be excused by the minimal attempts at corrective action instituted by PGandE in 1978 and later years.

Finally, as if to excuse PGandE's failure to reveal the audit report, Mr. Wischow asserts in paragraph 9 of his affidavit that "this documentation was available both on site and in the General Office for NRC inspection." PGandE believes, apparently, that it has no obligation to bring such significant safety information to the attention of the NRC, relying instead on the NRC somehow to stumble across it in the PGandE offices.

^{2/}PGandE fails to mention that the detailed findings in Section IV of the NSC report apply to the quality assurance program as it then existed in 1977. At page 42 of the report, NSC states that "the present program and controls still do not meet the 10 CFR 50, Appendix B requirements in those areas as delineated in Section IV of the audit report." Thus, even under current standards in 1977, the Pullman quality assurance program was grossly deficient.

Not only is such an attitude highly troublesome with respect to the NSC audit of Pullman, it raises the possibility that other, similarly adverse audit reports, studies, or test results for construction activities have not been revealed and lie buried in PGandE's files awaiting NRC discovery. Only PGandE knows whether other such reports currently exist or have existed in the past. Without reopening the record and providing the associated right of discovery, this Board, the parties to this proceeding, and the public generally have no alternative but to rely on PGandE's candor. Given PGandE's record and its recently discovered failure to disclose the NSC report, such reliance provides no substitute for the legally required reasonable assurance that can only come from reopening the record on construction quality assurance.

II. NRC STAFF RESPONSE

In its five-page response, the NRC Staff attempts to dismiss the NSC audit as essentially "old news," identifying deficiencies "similar in kind to the breakdowns identified by the NRC through its inspection efforts" Staff Response, at 3. Instead of supporting this claim with a point-by-point comparison of the NSC findings with NRC inspection reports, the Staff appends a number of Region IV audit reports relating to Pullman's Paramount fabrication facility and refers the Board generally to the Region V inspection reports for Diablo Canyon issued during the audit period (Hernandez Affidavit, at 7).

First, because the NSC audit concerned Pullman's Diablo Canyon site quality assurance program, the Region IV reports concerning the Pullman Paramount facility are simply beside the point. The issue in this proceeding has always been quality assurance for the Diablo Canyon facility and not for the Pullman Paramount facility.

Second, the Staff nowhere denies the existence of the breakdown in quality assurance practices found by NSC. Instead, it confirms NSC's findings and states explicitly that no one on the current Region V staff had reviewed the NSC audit nor had it been provided by PGandE to the Region V office. (Id., at 1.)

Third, and most important, the Staff fails even to address the fact that the NSC audit covers a seven-year period and that the deficiencies cited remained uncorrected, at least during that critical period. Thus, even assuming that the Staff issued Notices of Violation during that time, apparently little or no effective corrective action was taken since NSC found widespread deficiencies continuing even at the time of the audit in 1977. Indeed, one of the NSC findings is that "[b]ased on the results of this audit and the problems encountered in the past, it appears that a corrective action system has not been operative." (NSC Audit, at 37.) Thus, both with regard to the deficiencies themselves and the subsequent failure to institute effective corrective action, the NSC audit constitutes significant new evidence directly relevant to the motions pending before this Board.

CONCLUSION

[illegible]

For all these reasons, the Joint Intervenors believe that the NSC audit report provides irrefutable evidence in support of their May 10, 1983 Motion to Reopen the Record on the Issue of Construction Quality Assurance and, accordingly, that their motion should be granted.

DATED: October 13, 1983

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 1983, I have served copies of the foregoing JOINT INTERVENORS' REPLY RE SUPPLEMENT TO MOTION TO REOPEN THE RECORD ON THE ISSUE OF CONSTRUCTION QUALITY ASSURANCE, mailing them through the U.S. mails, first class, postage prepaid.

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