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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-275
Diablo Canyon Nuclear Power Plant)	Docket No. 50-323
Units 1 and 2)	

ANSWER IN OPPOSITION TO JOINT INTERVENORS'
RENEWAL OF APPLICATION FOR STAY

On March 20, 1984, Joint Intervenors filed with the Commission and the Appeal Board a document styled "Renewal of Application for Stay" seeking a stay of an anticipated decision by this Commission authorizing criticality and low power testing for Diablo Canyon Nuclear Plant Unit 1. On March 22, 1984 the Appeal Board certified the Application to the Commission pursuant to 10 CFR 2.718(i). This filing constitutes Pacific Gas and Electric Company's (PGandE's) opposition to Joint Intervenors' stay request.

I

BACKGROUND

On October 31, 1983, Joint Intervenors filed an application for an order to stay the Commission's then

1 anticipated reinstatement of PGandE's suspended low power
2 operating license. 1/ They also filed a similar application
3 with the Commission. The stay request was denied by the
4 Appeal Board in an oral ruling issued on November 8, 1983
5 during the reopened hearings on design quality assurance
6 issues. (Trans. D-1445-46).

7 On November 8, 1983 the Commission issued its
8 Order restoring PGandE's authority to load fuel and conduct
9 cold system testing (CLI-83-27, _____ NRC _____ (1983). On
10 December 9, 1983 the Commission issued its order (CLI-83-32,
11 _____ NRC _____, (1983) declining review of the Appeal Board
12 decision (ALAB-728, 17 NRC 777 (1983)) affirming the
13 Licensing Board decision (other than quality assurance)
14 granting PGandE's application for a license to load fuel and
15

16 1/ They asked specifically for an:
17 "[O]rder staying the effectiveness of
18 the Atomic Safety and Licensing Board's
19 ("licensing board") July 17, 1981 Par-
20 tial Initial Decision ("PID") which
21 authorized the issuance of licenses to
22 load fuel and conduct low power tests at
23 Diablo Canyon Nuclear Power Plant
24 ("Diablo Canyon"), Units 1 and 2;
25 (2) the Appeal Board's May 18, 1983
26 decision affirming the licensing board's
July 17, 1981 PID; and (3) the Commis-
sion's September 21, 1981 decision
authorizing issuance of a low power
operating license for Diablo Canyon,
Unit 1."

By letter of even date Joint Intervenors asked for
similar relief from the Commission.

1 conduct low power testing. Thereafter on January 16, 1984
2 the Commission issued an order denying Joint Intervenor's
3 October 31, 1983 request for a stay (CLI-84-1, _____ NRC
4 _____ (1984). The most recent order of _____ Commission
5 (CLI-84-2) issued on January 25, 1984 ~~granted~~ PGandE
6 authority to conduct precriticality hot system testing.

7 On March 20, 1984 the Appeal Board issued its
8 decision in the reopened design quality assurance
9 hearings. ^{2/} The Board found that PGandE's verification
10 efforts "provide adequate confidence that the Unit 1
11 safety-related structures, systems, and components are
12 designed to perform satisfactorily in service and that any
13 significant design deficiencies in that facility resulting
14 from defects in [PGandE's] design quality assurance program
15 have been remedied." The Appeal Board further concluded
16 that there was reasonable assurance that the facility can be
17 operated without endangering the health and safety of the
18 public. Accordingly, the Appeal Board affirmed the license
19 authority previously granted to the Director of NRR in the
20 Licensing Board's August 31, 1982 initial decision
21 (LBP-82-70, 16 NRC 756, 854). In The Matter of Pacific Gas
22 and Electric Company (Diablo Canyon Nuclear Power Plant
23 Units 1 and 2) ALAB-763, _____ NRC _____ (1984)
24

25 _____
26 ^{2/} Those reopened hearings were conducted in Avila Beach,
California from October 31, 1983 to November 21, 1983.

1
2 II

3 LEGAL STANDARDS FOR A STAY

4 The four requirements which must be considered in
5 deciding a stay are set forth in 10 CFR 2.788(e). They are:

- 6 "(1) Whether the moving party has made a
7 strong showing that it is likely to
8 prevail on the merits;
9 (2) Whether the party will be
10 irreparably injured unless a stay
11 is granted;
12 (3) Whether the granting of a stay
13 would harm other parties; and
14 (4) Where the public interest lies."

15 As we will show below, Joint Intervenor's have not
16 made the requisite showing under these criteria to warrant
17 issuance of a stay.

18 A. Joint Intervenor's Have Not Shown A Like-
19 lihood Of Prevailing In The Merits.

20 In their applications (October 31 and March 20)
21 Joint Intervenor's raised several issues which they contend
22 would be decided in their favor. They centered on alleged
23 design and construction quality deficiencies at Diablo
24 Canyon. However, these matters have been decided in
25 PGandE's favor by the Appeal Board in its decisions of
26 December 19, 1983 (CQA) and March 20, 1984 (DQA). In both
cases, the Appeal Board examined in detail the Joint
Intervenor's claims and found them wanting. The issues of
the license suspension and amendment, and validity of the
license, were resolved in the Commission's November 8, 1983
Order restoring the low power license to load fuel and

1 conduct cold system testing CLI-83-27, supra, slip opinion
2 at 3-5. As for the issues of earthquake emergency planning
3 (for low power) and Class Nine Accident Analysis, those
4 issues were resolved when the Commission declined to review
5 the Appeal Board decision on low power testing. CLI-83-32,
6 ____ NRC ____ (1983).

7 In their March 20 Application, Joint Intervenors
8 cite recent allegations of past and present workers at
9 Diablo Canyon as additional evidence of design and
10 construction problems and assert that they must be resolved
11 prior to the Commission authorizing criticality and low
12 power testing. Suffice it to say, those matters have been
13 examined in great detail by the Staff and periodic reports
14 made by the Staff to the Commission. At a March 19, 1984
15 briefing of the Commission, the Staff reported that no items
16 of significance had been discovered in their investigations
17 which would preclude criticality and low power testing.
18 These conclusions were documented in SER Supp. 22 which was
19 issued on the same day. SER Supp. 22 at E-14-15. In
20 addition, the Staff stated that they are continuing their
21 review of the additional Government Accountability Project
22 (GAP) allegations. Based on their review, the Staff stated
23 that they appeared to be similar to those already reviewed
24 and found not to be of any safety significance. In summary,
25 Joint Intervenors have not prevailed on any issues they have
26 raised before the Boards and the Commission. Accordingly,

1 they have failed to show any likelihood of prevailing on the
2 merits.

3 B. Joint Intervenors Have Not Shown Any
4 Irreparable Injury If A Stay Is Not
5 Granted.

6 Joint Intervenors, relying on the affidavits of
7 Messers. Hubbard and Kaku, argue that when the plant goes
8 critical some components will become radioactive, and in
9 case of an accident during low power testing, there are
10 potential risks to the public. Hence, there is irreparable
11 harm to them if criticality and low power testing are
12 authorized.

13 Neither argument has merit. Taken to its logical
14 extreme, the radioactive contamination argument would
15 require the indefinite staying of any license pending
16 resolution of an appeal since the inevitable result of the
17 operation of a nuclear power plant is the existence of
18 radioactivity. However, this is hardly a basis for delaying
19 action as Joint Intervenors request.

20 As for the argument regarding "fission product
21 hazard" from a hypothetical accident, the short answer is
22 that speculation about a nuclear accident does not, as a
23 matter of law, constitute the imminent, irreparable injury
24 required to justify a stay of a licensing decision. State
25 of New York v. NRC, 550 F.2d 745, 756-57 (2 Cir. 1977);
26 Virginia Sunshine Alliance v. Hendrie, 477 F.Supp. 68, 70
(D. D.C. 1979). Further, the issues of fission product

1 inventory and the potential risk of accidents during low
2 power testing were expressly discussed and found to be
3 acceptable by the Licensing Board. In the Matter of Pacific
4 Gas and Electric Co. (Diablo Canyon Nuclear Plant, Units 1
5 and 2), LBP-81-21, 14 NRC 107, 123-126, 130. In any event,
6 since both the Appeal Board and the Commission have already
7 considered these matters in their review of the case and
8 affirmed the Licensing Board, we see little justification
9 for further argument by the Joint Intervenors.

10 C. PGandE Will Be Harmed If A Stay Is
11 Granted And The Public Interest Favors
Denial Of A Stay.

12 With the completion of appellate review and
13 Commission action, PGandE stands ready to commence
14 criticality and low power testing operations. As the
15 Commission is no doubt aware, any delay in low power testing
16 impacts the commercial operation date of the facility. Each
17 day that passes causes the total cost of the facility to
18 increase and further delays the time when the plant can be
19 placed in commercial operation and relied upon to serve the
20 needs of PGandE's customers. Since any delay harms PGandE's
21 customers ultimately, the public interest lies in favor of
22 denying a stay.

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III

CONCLUSION

Joint Intervenors have failed to satisfy any of four criteria of 10 CFR 2.788(e) which would warrant a stay of PGandE's request for authorization to achieve criticality and conduct low power testing of Diablo Canyon Nuclear Power Plant Unit 1. Accordingly, the stay motion should be denied in its entirety.

Respectfully submitted,

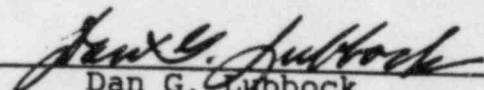
ROBERT OHLBACH
PHILIP A. CRANE, JR.
RICHARD F. LOCKE
DAN G. LUBBOCK
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, California 94120
(415) 781-4211

ARTHUR C. GEHR
Snell & Wilmer
3100 Valley Center
Phoenix, Arizona 85073
(602) 257-7288

BRUCE NORTON
Norton, Burke, Berry & French, P.C.
P.O. Box 10569
Phoenix, Arizona 85064
(602) 955-2446

Attorneys for
Pacific Gas and Electric Company

By


Dan G. Lubbock

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BRANCH

Chairman
Atomic Safety and Licensing
Board Panel
US Nuclear Regulatory Commission
Washington DC 20555

Chairman
Atomic Safety and Licensing
Appeal Panel
US Nuclear Regulatory Commission
Washington DC 20555

* Secretary
US Nuclear Regulatory Commission
Washington DC 20555

Attn: Docketing and Service
Section

Lawrence J. Chandler, Esq.
Henry J. McGurren
US Nuclear Regulatory Commission
Office of Executive Legal Director
Washington DC 20555

Mr. Richard B. Hubbard
MHB Technical Associates
1723 Hamilton Avenue Suite K
San Jose CA 95125

Mr. Carl Neiberger
Telegram Tribune
P. O. Box 112
San Luis Obispo CA 93402

Michael J. Strumwasser, Esq.
Susan L. Durbin, Esq.
Peter H. Kaufman, Esq.
3580 Wilshire Blvd. Suite 800
Los Angeles CA 90010

Maurice Axelrad, Esq.
Newman & Holtzinger, P.C.
1025 Connecticut Ave. NW
Washington DC 20036

Judge Thomas S. Moore
Chairman
Atomic Safety and Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington DC 20555

Judge W. Reed Johnson
Atomic Safety and Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington DC 20555

Judge John H. Buck
Atomic Safety and Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington DC 20555

*Commissioner Nunzio J. Palladino
Chairman
US Nuclear Regulatory Commission
1717 H Street NW
Washington DC 20555

*Commissioner Frederick M. Bernthal
US Nuclear Regulatory Commission
1717 H Street NW
Washington DC 20555

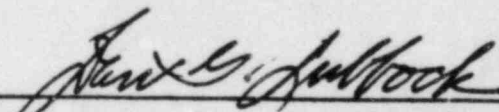
*Commissioner Victor Gilinsky
US Nuclear Regulatory Commission
1717 H Street NW
Washington DC 20555

*Commissioner James K. Asselstine
US Nuclear Regulatory Commission
1717 H Street NW
Washington DC 20555

*Commissioner Thomas M. Roberts
US Nuclear Regulatory Commission
1717 H Street NW
Washington DC 20555

Date: April 6, 1984

*Via Sky Courier Network


Dan G. Lubbock