435

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety And Licensing Appeal Board

In the Matter of	)	
	)	
Pacific Gas and Electric Company	)	Docket Nos. 50-275 OL 50-323 OL
	)	
(Diablo Canyon Power Plant, Units 1 and 2.)	)	
	)	

Pacific Gas and Electric Company's
Reply to Joint Intervenors' Response
To Appeal Board Order of September 10, 1984

I

INTRODUCTION

On September 10, 1984, the Appeal Board requested that the parties provide their views on how the Board should proceed with respect to Diablo Canyon Unit 2. The Board directed the parties to address whether further hearings were necessary and, if so, to identify those issues identified in ALAB-763, 19 NRC 571 (1984), which could not be resolved for Unit 2 on the existing record and fully explain why the record evidence was insufficient. The

///

D503

Appeal Board also requested a hearing schedule be furnished if a party believed further hearings were necessary. 1/

PGandE and the NRC Staff filed responses to the Appeal Board's Order concluding that no further hearings are warranted or necessary for Unit 2. 2/ The joint intervenors, however, took the position that further hearings are necessary to confirm the design adequacy of Unit 2 and, accordingly, proposed a hearing schedule. For the reasons set forth below, PGandE opposes joint intervenors' request.

II

ARGUMENT

Joint intervenors have ignored the Appeal Board's plain request that a party must specify those issues decided in ALAB-763 which could not be resolved for Unit 2 on the existing record and, more importantly, specify why the record is insufficient as to those issues. (Board Order, p. 2.) Rather than complying with the straightforward requirements of the Board's Order, joint intervenors have the temerity to suggest that contentions (issues allegedly not resolved for Unit 2) be finalized only after further

---

1/ The Appeal Board requested that the Staff provide it with information on the expected date of issuance of a Unit 2 SSER and that PGandE indicate a schedule for Unit 2 operation.

2/ The Governor has apparently not filed a pleading in response to this Board's invitation.

hearings are decreed by the Board and discovery has been completed. (J.I. Response at p. 7). By this action, joint intervenors ignore not only the Appeal Board's Order but nullify the orderly adjudicatory process mandated by the Commission's rules of practice.

As the Staff noted in its Response, the design of Unit 2 was litigated in the October-November 1983 design hearing. (Staff Brief, p. 2.) This fact was reflected not only in the admitted contentions, discovery, prefiled testimony, and testimony at hearing, but also in the proposed findings of the parties.

Joint intervenors in effect would have this Board conclude that Unit 2 was not even a part of the case considered to this point in time. They completely ignore the fact that specific Unit 2 contentions were put at issue in those reopened proceedings and evidence was adduced concerning those contentions. Nowhere in their response do joint intervenors discuss, much less justify, what additional evidence is needed on any specific contention. Rather, joint intervenors make sweeping generalizations of a need for further hearings on Unit 2 while at the same time ignoring the considerable evidence in the record relating to Unit 2 design verification activities. Nowhere do they dispute that the same criteria, methodology, design processes and basic procedures were used for Unit 2 as were used for Unit 1. Nowhere do they articulate why the

evidence and conclusions reached by the Board in ALAB-763 do not apply with equal force to Unit 2. Nowhere do they dispute that the IDVP reviewed the seismic design criteria, methodology, and processes applicable to both units when it conducted its review of Unit 1. Instead, they rely on generalized statements of concern about the scope of the verification effort for Unit 2 and whether PGandE in fact did what it said it was going to do in unrebutted testimony. In the face of uncontroverted evidence that the same criteria, methodologies, design processes, and basic procedures were utilized in the ITP's review of the design of Unit 2, vis-a-vis Unit 1, joint intervenors have failed to present anything to the contrary. In fact, joint intervenors have already abandoned contention 2(d) which dealt with the adequacy of the ITP verification activities for Unit 2.

PGandE has clearly established by record evidence that the seismic design of Units 1 and 2 has been essentially reviewed by the IDVP and ITP (PGandE Response, pp. 6-10). PGandE has also demonstrated that for nonseismic design involving basic system functions and components, the same criteria, design, and methodologies were utilized for

///

///

///

both units since the systems and components are basically the same for both units. 3/

Joint intervenors also claim that a hearing on Unit 2 is necessary to review allegations by Messrs. Stokes and Yin concerning small and large bore piping design. However, that matter has been resolved by this Board's decision in ALAB-775. There the Appeal Board found that:

> ". . . the joint intervenors have failed to present new evidence of any significant safety issue that could have an effect on the outcome of the licensing of the proceeding. Among other things, the movants have not presented evidence that establishes uncorrected design . . . errors that endanger safe plant operation. Nor have they demonstrated that there has been a breakdown of the applicant's quality assurance program that raises legitimate doubt that the facility can operate safely." (Footnote omitted.) ALAB-775 (Slip. Op. at, 9-10.)

The Board also observed in ALAB-775 that the joint intervenors, despite being requested to address why the PGandE and Staff responses were insufficient, failed to "individually address all of . . . the matters raised." (ALAB-775, Slip Op. p. 9 fn. 19.) In similar fashion, joint

///

3/ Indeed, the Board recognized in ALAB-763 (19 NRC at 581, fn. 46) that the IDVP's findings in the nonseismic area were few in number, of relatively minor significance, and required only a few minor modifications. The Board went on to observe that it agreed with the ITP's conclusion that there was a high degree of confidence in the adequacy of the nonseismic design at Diablo Canyon. (ALAB-763, 19 NRC at 591-592.)

intervenors have failed or refused to comply with the Board's direction to give specifics on the issues (contentions) decided in ALAB-763 for which the record evidence is insufficient. This failure, standing alone, warrants denial of joint intervenors request for additional hearings.

As the Board acknowledged in its September 10, 1984 Order, in NRC licensing proceedings it is often permissible to litigate an "applicant's present plans for future regulatory compliance." This is just such a case. There are no significant design differences between Unit 1 and Unit 2. (PGandE Response, pp. 2-3.) The ITP applied the same design review approach to Unit 2 as it did for Unit 1. Accordingly, all that is necessary is for the NRC staff to confirm, as part of its normal inspection process, PGandE's compliance with the established design and licensing criteria.

As noted above, PGandE is firmly of the opinion that further hearings on Unit 2 are not required. Nonetheless, in response to the Board's request, PGandE would point out that the schedule for further hearings proposed by Joint Intervenors is far in excess of any which could be deemed reasonable. The proposed schedule is one which might be acceptable for de novo consideration of issues but is patently absurd for review of matters

///

previously reviewed in some detail in adjudicatory proceedings.

CONCLUSION

The evidence in the record is sufficient to permit this Board to conclude that the design of Unit 2 is adequate. Accordingly, it is respectfully submitted that no further hearings on the design of Unit 2 are warranted and that this Board should issue its finding that the design of Unit 2 is adequate.

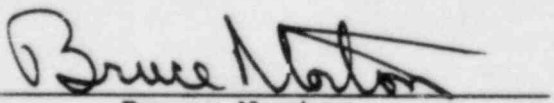
Respectfully submitted,

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 
Bruce Norton

DATED: October 10, 1984.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

The foregoing document(s) of Pacific Gas and Electric Company has (have) been served today on the following by deposit in the United States mail, properly stamped and addressed:

Judge John F. Wolf
Chairman
Atomic Safety and Licensing Board
US Nuclear Regulatory Commission
Washington DC 20555

Judge Glenn O. Bright
Atomic Safety and Licensing Board
US Nuclear Regulatory Commission
Washington DC 20555

Judge Jerry R. Kline
Atomic Safety and Licensing Board
US Nuclear Regulatory Commission
Washington DC 20555

Mrs. Elizabeth Apfelberg
c/o Betsy Umhoffer
1493 Southwood
San Luis Obispo CA 93401

Janice E. Kerr, Esq.
Public Utilities Commission
State of California
5246 State Building
350 McAllister Street
San Francisco CA 94102

Mrs. Raye Fleming
1920 Mattie Road
Shell Beach CA 93449

Mr. Frederick Eissler
Scenic Shoreline Preservation
Conference, Inc.
4623 More Mesa Drive
Santa Barbara CA 93105

Mrs. Sandra A. Silver
1760 Alisal Street
San Luis Obispo CA 93401

Mr. Gordon Silver
1760 Alisal Street
San Luis Obispo CA 93401

John Phillips, Esq.
Joel Reynolds, Esq.
Eric Havian
Center for Law in the Public Interest
10951 W. Pico Blvd. - Suite 300
Los Angeles CA 90064

David F. Fleischaker, Esq.
P. O. Box 1178
Oklahoma City OK 73101

Arthur C. Gehr, Esq.
Snell & Wilmer
3100 Valley Bank Center
Phoenix AZ 85073

Bruce Norton, Esq.
Norton, Burke, Berry & French, P.C.
P. O. Box 10569
Phoenix AZ 85064

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

* 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

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 Lando W. Zech, Jr.
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: October 10, 1984

Bruce Norton

*Copies delivered by Courier