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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Thomas S. Moore, Chairman
Dr. W. Reed Johnson

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

July 26, 1985

SERVED JUL 29 1985

In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY)
)
(Diablo Canyon Nuclear Power)
Plant, Units 1 and 2))

Docket Nos. 50-275 OL
50-323 OL

ORDER

On Thursday, July 25, 1985, we received by express mail an application from the joint intervenors for "an order staying the effectiveness [of] the issuance of a license for full power operation of Diablo Canyon Nuclear Power Plant, Unit 2, . . . in the event the Commission authorizes such operation." The application then states that joint intervenors seek "a stay of the Commission's anticipated authorization of full power operation of Unit 2 and all orders previously issued by the Commission or its licensing boards underlying the licensing of such reactor, including ALAB-781, -782, and -811." In a cover letter accompanying the stay application the joint intervenors note that the Commission, on July 30, 1985, is scheduled to consider the effectiveness of the Licensing Board's previous full power

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authorization for Unit 2 and thus they request that we decide the stay question no later than July 29.*

Putting to one side all other questions, the joint intervenors' stay application is not timely filed. Nor have the joint intervenors explained why their application was not filed earlier. The Commission's Rules of Practice, 10 CFR 2.788(a), require that the stay application be filed "[w]ithin ten (10) days after service of a decision or action" Here, the latest decision the joint intervenors seek to stay and, in any event, the only decision we could properly stay, is ALAB-811 and that decision was served on June 27, 1985. The joint intervenors' stay application was filed July 24, 1985, long after the ten-day period expired.

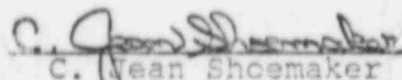
We are nevertheless referring the stay application to the Commission because the Commission currently has the question whether to permit full power operation of Diablo Canyon, Unit 2, before it. Additionally, the issues in the stay application that the joint intervenors assert they are likely to prevail upon on the merits -- one of the critical showings for obtaining a stay under 10 CFR 2.788(e) -- all appear to be issues that we already have decided against

*/We are now informed by the Office of the Secretary of the Commission that consideration of the matter has been deferred to August 1, 1985.

them, or that we never had before us, or on which the Commission has taken a litigation position against the joint intervenors in the United States Court of Appeals for the District of Columbia Circuit. In these circumstances, referral of the stay application is appropriate.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board