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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
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4

5 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
6

7 In the Matter of)
8)
9 PACIFIC GAS AND ELECTRIC COMPANY)
Humboldt Bay Power Plant)
Unit No. 3)
_____)

Docket No. 50-133 02
License No. DPR-7

11 RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY
12 TO MOTION TO TERMINATE PROCEEDING
13

14 I

15 INTRODUCTION

16 On October 11, 1985 the NRC Staff filed a motion
17 with the Licensing Board seeking an order dismissing this
18 proceeding. In its motion the NRC staff argued that (1) the
19 matter was moot because the Licensee had sought to withdraw
20 its application for a license amendment which was the
21 subject of this proceeding and had submitted an application
22 for decommissioning pursuant to which the staff had recently
23 amended the operating license to authorize "possession only"
24 of the facility and (2) the Board did not have jurisdiction
25 to consider the decommissioning application, but rather a
26 separate proceeding and opportunity for a hearing on the

1 decommissioning would be available when the staff noticed
2 for consideration the decommissioning application.

3 For the reasons set forth below, Pacific Gas and
4 Electric Company (PGandE) believes that termination of the
5 proceeding is warranted and that, accordingly, the motion
6 should be granted.

7 II

8 DISCUSSION

9 A. Background.

10 PGandE agrees with the essential facts set forth
11 as pages 2-6 of the staff's motion and, thus for the
12 purposes of this motion and in the interests of brevity will
13 not repeat them.

14 B. The Proceeding Is Moot.

15 As the staff noted in its Brief, PGandE has
16 decided not to seek resumption of power operations at
17 Humboldt Unit 3. Instead, PGandE has sought to withdraw its
18 application for a license amendment to delete the conditions
19 of paragraph E of the Staff's Order of May 21, 1976 and, in
20 addition, filed an application to decommission the Unit
21 using the Safstor Plan. These actions clearly evidence
22 Licensee's intention not to seek resumption of power
23 operation. Indeed, as part of the proposed SAFSTOR method
24 of decommissioning, PGandE sought and was granted an
25 amendment of its license to "possession only" of the plant.
26 Taken together these actions compel the conclusion that the

1 issues originally raised by PGandE's application for a
2 license amendment to resume power operation are moot.
3 Puerto Rico Power Authority (North Coast Nuclear Plant,
4 Unit 1) ALAB. 605, 12 NRC 153, 154-155 (1980).

5 This conclusion is further buttressed by the fact
6 that the only admitted contention (paragraph G(7))
7 concerned the adequacy of the Safe Shutdown Earthquake (SSE)
8 for the plant. Since future power operation is not
9 contemplated, this contention (or any related amended
10 contentions) need not be considered. Since the Notice set
11 the scope of the matters to be considered -- in this case
12 deletion of paragraph E to permit resumption of power
13 operation -- it restricts the scope of the proceeding and
14 the Board's authority. Pacific Gas and Electric Co.
15 (Stanislaus Nuclear Project, Unit No. 1), ALAB-400, 5 NRC
16 1175, 1177-88 (1977). Again, the passage of time and events
17 have rendered the issues and this proceeding moot.
18 Accordingly, the Board should grant the pending Licensee
19 Motion to withdraw its amendment application and dismiss the
20 proceeding as moot.

21 C. The Board Lacks Jurisdiction To Consider
22 Decommissioning Of Humboldt Bay Unit 3.

23 While, as noted above, the license amendment
24 request and related contention(s) have become moot, the only
25 potential issue that could remain involves the
26 decommissioning of the Unit. However, that issue is not one

1 which this Board is empowered to consider under the notice
2 of opportunity for hearing pursuant to which this Board was
3 convened (42 Fed. Reg. 31847, June 23, 1977). That notice
4 only concerned an amendment to the license which "...
5 would delete requirements relating to seismic upgrading of
6 safety related equipment and resolution of geologic/seismic
7 concerns, based on satisfactory of these requirements, and
8 allow for restart of Humboldt Bay Power Plant Unit No. 3."
9 42 Fed. Reg. 31847. Obviously, this notice dealt with
10 issues for resuming power operation not those related to
11 decommissioning. As such, the Board has no power to
12 consider issues not contained in the Notice of hearing which
13 effectively limits its jurisdiction. Commonwealth Edison
14 Co. (Zion Station Units 1 and 2), ALAB-616, 12 NRC 419, 426
15 (1980); Portland General Electric Co., ALAB-534, 9 NRC 287,
16 289-290 (1979).

17 D. Conclusion.

18 With PGandE's decision to decommission Humboldt
19 Bay Power Plant Unit No. 3, the issues raised in the Notice
20 of Hearing have been rendered moot. Since no other basis
21 for continued jurisdiction of this Board exists the

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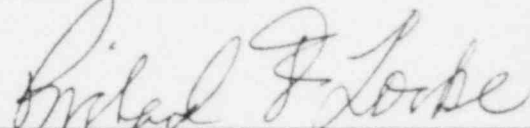
1 proceeding should be terminated. Accordingly, the NRC
2 Staff's motion to terminate should be granted.

3 Dated: October 28, 1985

4 Respectfully submitted,

5 ROBERT OHLBACH
6 PHILIP A. CRANE, JR.
7 RICHARD F. LOCKE

8 By



9 RICHARD F. LOCKE

10 Attorneys for
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-133
)	License No. DPR-7
(Humboldt Bay Power Plant, Unit No. 3))	
)	

CERTIFICATE OF SERVICE

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

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Dated: October 28, 1985

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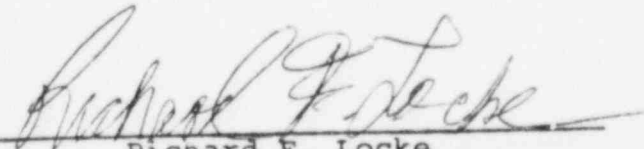
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