

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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April 12, 1976

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

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

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

NRC STAFF REPLY TO SCENIC SHORELINE MOTION ON
NOTIFICATION OF MEETINGS, SEISMIC REVIEW
COMMITTEE AND EXAMINATION OF
DESIGN CALCULATIONS

In an undated motion postmarked March 29, 1976, Intervenor, Scenic Shoreline Preservation Conference, Inc. (Scenic Shoreline or Intervenor), requested the following:

1. That all U. S. Nuclear Regulatory Commission Staff (Staff) meetings on both seismic and other issues be noticed in advance and open to the public and the press.
2. That Dr. Newmark be removed as the "single arbiter" of differences on geological-seismic matters between the United States Geological Survey and the United States Nuclear Regulatory Commission and a five person committee appointed in his stead.
3. That a detailed independent review of the analysis, design calculations, and construction plans for the Diablo Canyon Plant be conducted by the Staff and that a review of that analysis be conducted by the State of California.

Because the Intervenor misunderstands the nature of Dr. Newmark's relationship to the NPC and this proceeding and misconceives the process of regulatory review as contemplated by the Atomic Energy Act and the Commission's regulations, its requests are without legal or factual merit and should be denied.

1. Staff Meetings

Scenic Shoreline alleges that a closed meeting was held between the Staff and the Applicant in San Francisco the week of March 22, 1976 and that Dr. Nathan Newmark was selected to resolve interagency differences over the seismic implications of the Hosgri Fault. It asks that all future meetings be pre-noticed and open to the press and public. Intervenor's position misapprehends the relationship between the NRC and Dr. Newmark and thus misconceives the role public participation would play in such a meeting.

In order to assist it in its geologic and seismic analysis of the Diablo Canyon Project, the NRC Staff has hired Dr. Newmark as a consultant. Dr. Newmark, as a recognized leader in structural engineering, who has been used by the Staff in other projects of this kind, will be used by the Staff to augment the work of its own in-house structural and mechanical engineers. While his duties may require consultation with the United States Geological Survey (USGS) (which is another

consultant of the NRC) he is by no means to be a "single arbiter" of interagency differences of opinion. USGS will express its views on the seismic issues in this proceeding in the usual form of a report to the NRC Staff, and all parties to this proceeding will have full opportunity to explore the bases upon which both the USGS and NRC Staff conclusions were reached.

An unannounced meeting between the NRC and Dr. Newmark was held in San Francisco, California on March 23, 1976. Representatives of the United States Geological Survey were also in attendance. The right of the NRC to confer ex parte with a party or, in this case, its own experts or consultants is provided for by Section 2.102(a) of the Commission's regulations. That right was detailed in Northeast Nuclear Energy Company (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, NRCI-75/4-436 (April 23, 1975), which recognized the right of the Staff as an independent, autonomous entity to prepare its review of a nuclear license application in the manner it sees fit. Under the rationale of the Commission's regulations and the Montague decision, the Staff may confer privately with its own consultants and expert witnesses, just as the Intervenor would be entitled to consult privately with its consultants and contemplated expert witnesses.

2. Appointment of a Seismic Committee

Scenic Shoreline has requested the appointment of an independent committee of five experts to review the design of the Diablo Canyon Plant and, presumably, report its findings to the Licensing Board. This request is based upon the misconception of the role of Dr. Newmark which we identified in the preceeding section and thus is without merit.

The ultimate resolution of the seismic problem will be by the Licensing Board after hearing the testimony of the Staff's in-house experts or its consultants, such as Dr. Newmark or the U.S. Geological Survey, or the testimony of other witnesses presented by the Applicant or by the Intervenor. Dr. Newmark's opinions, like any other person's opinions, will have only such weight in this proceeding as they are shown to be entitled to on the public hearing record. The Staff has not presumed to usurp the important Licensing Board function of evaluating the evidence and determining what conclusions that evidence supports.

The Staff feels that the evidence to be presented to the Board at the safety hearing will be sufficient to enable it to carry out its function of determining whether the Diablo Canyon Plant can be operated with appropriate regard for the health and safety of the public. Since it is the Applicant's burden to show compliance with all safety regulations, should the cumulative testimony of all witnesses at the hearing be insufficient to convince the Board of the seismic safety of the Plant, it will not authorize issuance of a license.

3. Staff Analysis

Intervenor's third request demands that a detailed, independent review and analysis of the Diablo Canyon facilities be made by the Staff and the State of California. While the Staff does not debate the importance of a thorough review of the Applicant's analysis^{1/} it does resist the Intervenor's attempt to dictate how it should prepare its case.

As the Montague decision supra recognized, the Commission's regulations impose upon the Staff an independent duty to review applications for licenses and report its findings to the Commission in the form of safety evaluations and environmental assessments. The thrust of the Montague decision is that the Licensing Board should recognize the responsibility of the Staff to conduct its investigation of a case in the manner in which it sees fit, just as the Staff and the other parties must observe and not encroach upon the Licensing Board's delegated authority to hear and decide matters in controversy. Any decision to the contrary would upset the balance of separation

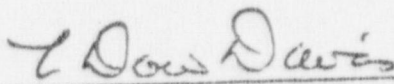
1/ For example, an extensive seismic audit of the Diablo Canyon was conducted by the NRC Staff's mechanical and structural engineers in May of 1975. Meetings and discussions were held not only with the Applicant's engineers but also with its consultants and vendors' technical experts.

In connection with the current analysis and review being conducted for the upcoming safety hearing, the NRC Staff has several geologists, seismologists, structural engineers and mechanical engineers doing extensive review of the plant. Thus, the Staff plans to conduct an extensive study of the plant design prior to the safety hearing date.

of responsibilities of the parties and weaken the adversary hearing procedure envisioned by the Commission's regulations. The Staff, of course, would be interested in receiving any information or opinions possessed by California State officials which are pertinent to the matters being considered in the Staff review. If the State of California wishes to advise the Licensing Board of its views with respect to any of its issues in this proceeding, the Commission rules provide a mechanism by which it may do so. 10 CFR §2.715(c). For these reasons, the motion to require the NRC Staff to conduct its review in a particular manner acceptable to the Intervenor should be denied.

For the reasons stated above, the Staff asks that Intervenor, Scenic Shoreline's motion be denied in its entirety.

Respectfully submitted,



L. Dow Davis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of April, 1976

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REPLY TO SCENIC SHORELINE MOTION ON NOTIFICATION OF MEETINGS, SEISMIC REVIEW COMMITTEE AND EXAMINATION OF DESIGN CALCULATIONS," dated April 12, 1976 in the above captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 12th day of April, 1976:

Elizabeth S. Bowers, Esq.
Atomic Safety and Licensing
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. William E. Martin
Senior Ecologist
Battelle Memorial Institute
Columbus, Ohio 43201

Philip A. Crane, Jr., Esq.
Pacific Gas and Electric Company
77 Beale Street
San Francisco, California 94106

Elizabeth Apfelberg
1415 Cozadero
San Luis Obispo, California, 93401

Andrew J. Skaff, Esq.
California Public Utilities Commission
5246 State Building
350 McAllister Street
San Francisco, California 94102

Raye Fleming
1746 Chorro Street
San Luis Obispo, California 93401

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

Mrs. Sandra A. Silver
5055 Radford Avenue
North Hollywood, California 91607

Mr. Gordon Silver
5055 Radford Avenue
North Hollywood, California 91607

William P. Cornwell
P. O. Box 453
Morro Bay, California 93442

Paul C. Valentine
400 Channing Avenue
Palo Alto, California 94301

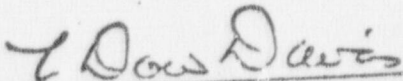
Yale I. Jones, Esq.
507 Polk Street
Suite 320
San Francisco, California 94102

Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary of the
Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Respectfully submitted,



L. Dow Davis
Counsel for NRC Staff