

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

James R. Schlesinger, Chairman
James T. Ramey
Wilfrid E. Johnson
Clarence E. Larson
William O. Doub

IN THE MATTER OF

PACIFIC GAS & ELECTRIC COMPANY
(Diablo Canyon Nuclear Power Plant
Units 1 and 2)

DOCKET NOS. 50-275
50-323

MEMORANDUM AND ORDER

On December 7, 1971, the Commission's Director of Regulation (Director) published in the Federal Register (36 F.R. 23265) his determination under 10 CFR Part 50, Appendix D, Section E, that, with certain exceptions, construction of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (authorized pursuant to Construction Permits CPPR-39 and CPPR-69) should not be suspended pending completion of the environmental review under the National Environmental Policy Act of 1969 (NEPA). The Federal Register notice also provided that persons whose interests may be affected could request a hearing. A request was filed on December 30, 1971, by the Scenic Shoreline Preservation Conference, Inc., (petitioner). The request alleged, inter alia, that geothermal power is available as an alternative source of power to meet the needs

3/11/73
[Signature]

to be served by the units involved; that continued construction of the units and associated transmission lines would result in severe environmental impact; and that further evaluation of the seismic design of the units is essential. The request is opposed by the licensee. The regulatory staff states that a hearing would be appropriate but it requests that the contention regarding seismic design be excluded from hearing consideration.

We conclude that a hearing is warranted and that a hearing will be held on the question whether construction activities under the construction permits for the Diablo Canyon Nuclear Power Plant Units 1 and 2, should be suspended pending completion of the ongoing NEPA review. For purposes of this proceeding on the above question, parties shall be the licensee, the Regulatory Staff and the petitioner.

In this regard, on April 7, 1972, the United States Court of Appeals for the District of Columbia Circuit remanded the record of a determination made in another case under 10 CFR Part 50, Appendix D, Section E. Coalition for Safe Nuclear Power, et al. v. United States Atomic Energy Commission, D.C. Cir., No. 71-1396. Noting that the utilities there would commit substantial financial resources in proceeding with construction pending completion of NEPA review, the Court stated that the Commission should consider certain additional matters in the context of balancing environmental harm and economic cost of abandonment. The Court stated:

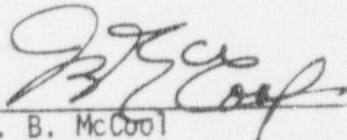
"On remand, the Commission should consider in detail whether this additional irretrievable commitment of substantial resources might affect the eventual decision reached on the N.E.P.A. review. The degree to which this expenditure might affect the outcome of the final N.E.P.A. process should be a paramount consideration in the decision on suspension reached after the hearings on remand."

The matters to be considered in this hearing shall be the factors specified in 10 CFR Part 50, Appendix D, Section E.2, together with the considerations specified in the Court's remand.

As respects petitioner's seismic design contention, this is the very same allegation which petitioner advanced during the construction permit hearings for Unit 2. The seismic design for Unit 2 was found to be adequate by the Atomic Safety and Licensing Board. That decision was reviewed and upheld by the Atomic Safety and Licensing Appeal Board -- once upon exceptions taken by the petitioner and again upon a petition for reconsideration largely involving the same material presented by the instant request. In these circumstances, we see no warrant in considering the question of the adequacy of the seismic design for still another time. While the seismic design contention was earlier raised in connection with Unit 2, the Licensing Board, of course, independently reviewed the seismic design for Unit 1 -- which is located at the same site and utilizes the same criteria -- and found the design to be adequate.

A hearing notice implementing this decision, and reflecting the need for expedition of this proceeding, is appended hereto as Attachment A.

By the Commission.



W. B. McCool
Secretary of the Commission

Attachment:
Notice of Hearing

Dated at Germantown, Maryland
this 21st day of April , 1972.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of

PACIFIC GAS & ELECTRIC COMPANY
(Diablo Canyon Nuclear Power
Plant, Units 1 and 2)

)
)
)
)

DOCKET NOS. 50-275
50-323

NOTICE OF HEARING ON SUSPENSION OF CONSTRUCTION ACTIVITIES AT THE DIABLO
CANYON NUCLEAR POWER PLANT, UNITS 1 and 2, AUTHORIZED PURSUANT TO CPPR-39
and CPPR-69 PENDING COMPLETION OF NEPA ENVIRONMENTAL REVIEW

On December 7, 1971, the Director of Regulation of the Atomic Energy Commission published in the FEDERAL REGISTER, 36 F.R. 23265, pursuant to 10 CFR Part 50, Appendix D, Section E, a determination with certain exceptions, not to suspend construction activities at the Diablo Canyon Nuclear Power Plant, Units 1 and 2, pending completion of an environmental review under the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), 10 CFR Part 50, Appendix D.^{1/} A request for a hearing was filed on December 30, 1971, by the Scenic Shoreline Preservation Conference, Inc. (petitioner).

Upon analysis of the request and the responses filed by the Regulatory Staff and the Pacific Gas & Electric Company (licensee), it has been determined by Memorandum and Order dated April 21, 1972, that a hearing is

^{1/} Construction of these Units is authorized by Construction Permits Nos. CPPR-39 and CPPR-69.

warranted and that a hearing will be held. Accordingly, pursuant to 10 CFR Part 50, Appendix D, Section E.4(b) and §2.703 of the Commission's "Rules of Practice", 10 CFR Part 2, notice is hereby given that a hearing will be held at a time and place to be announced by the Atomic Safety and Licensing Board specified below, and published in the FEDERAL REGISTER.

The issue to be considered at the hearing will be whether the activities under the construction permits for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, should be suspended pending completion of the NEPA environmental review. In resolving that issue, the following criteria should be considered and balanced:

Criteria

- (a) Whether it is likely that continued construction during the review period will give rise to a significant adverse impact on the environment; the nature and extent of such impact, if any; and whether redress of any such adverse environmental impact can reasonably be effected should modification, suspension or termination of the permit or license result from the ongoing NEPA review.
- (b) Whether continued construction during the prospective review period would foreclose subsequent adoption of alternatives in facility design or operation of the type that could result from the ongoing NEPA environmental review.

- (c) The effect of delay in facility construction or operation upon the public interest. Of primary importance under this criterion are the power needs to be served by the facility; the availability of alternative sources, if any, to meet those needs on a timely basis; and delay costs to the licensee and to consumers.
- (d) In the context of balancing environmental harm and economic cost of abandonment, a paramount consideration shall be whether the commitment of substantial financial resources, in proceeding with construction pending completion of the NEPA review, might affect the eventual decision reached on that review; and, if so, the degree to which such an effect might occur.^{2/}

The Licensing Board shall render a de novo decision based upon the criteria above. The burden of proof shall be upon the licensees.

For purposes of this proceeding, on the question whether activities under the construction permits should be suspended pending completion of NEPA review, the parties shall be the licensee, the Regulatory Staff and the petitioner. An answer shall be filed by the licensee within three days of the date of publication of this notice following 10 CFR §2.705 to the extent appropriate. A reply to an answer may be filed within three days after it is served.

^{2/} See Coalition for Safe Nuclear Power, et al. v. U.S.A.E.C., D.C. Cir., No. 71-1396.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR §2.708 of the Commission's "Rules of Practice", an original and twenty conformed copies of each such paper with the Commission.

A copy of the Director of Regulation's determination and the accompanying staff discussion and findings are available for inspection by members of the public in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Copies of those documents are also available at the San Luis Obispo County Free Library, 1354 Bishop Street, San Luis Obispo, California, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

We direct that all matters involving the above question be concluded with utmost expedition so that final decision will be reached within sixty days of publication of this notice. For these purposes, the proceeding shall be conducted under the following requirements:

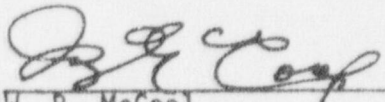
1. The hearing will be held before an Atomic Safety and Licensing Board (Licensing Board) composed of the following members:
Dr. Franklin C. Daiber, Dr. M. Stanley Livingston, and

Michael Glaser, Esq., Chairman. Pursuant to 10 CFR §2.785(a)(1), the Commission hereby delegates to the Atomic Safety and Licensing Appeal Board (Appeal Board) the authority and the review function which would otherwise be exercised and performed by the Commission. The Appeal Board shall be composed of the following members: Dr. John H. Buck, Dr. Lawrence R. Quarles, and Algie A. Wells, Esq., Chairman.

2. The Licensing Board shall render its initial decision within forty days from the date of publication of this notice. In order to meet this schedule, the Licensing Board shall conduct the hearing as soon as possible.
3. The Licensing Board's initial decision shall constitute the final decision of the Commission unless exceptions are filed within five days after its date or unless, within the same time period, the Appeal Board or Commission directs that the record be certified to it for final decision.

Insofar as this notice and these requirements reflect shortening of time periods otherwise prescribed in 10 CFR Part 2, we find good cause for such action under 10 CFR §2.711 and 10 CFR Part 50, Appendix D, Section E.4(c). We further note that the authority of 10 CFR §2.711 also extends to the Licensing Board.

By the Commission.


W. B. McCool
Secretary of the Commission

Dated: April 21, 1972

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the matter of:)

Docket No. 50-275, 323

)
PACIFIC GAS AND ELECTRIC Co.)

4-21-72.

CERTIFICATE OF SERVICE

I hereby certify that copies of the Commission MEMORANDUM AND ORDER dated April 21, 1972 with Attached Notice of Hearing were served on the following by deposit in the United States mail as first class or air mail this 21st day of April, 1972:

Michael Glaser, Esq, Chairman
Atomic Safety and Licensing Board
1150 17th Street, N. W.
Washington, D. C. 20036

Dr. Franklin C. Daiber
Dept. of Biological Sciences
University of Delaware
Newark, Delaware 19711

Dr. M. Stanley Livingston
1005 Calle Largo
Santa Fe, New Mexico 87501

Joseph Scinto, Esq.
Regulatory Staff Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Philip A. Crane, Jr., Esq.
Pacific Gas & Electric Co.
245 Market Street
San Francisco, Calif. 94106

Mr. Frederick Eisler, President
Scenic Shoreline Preservation Conf.
Inc.

Mr. Ian I. McMillan
Box 63
Sandon, California 93416

4623 More Mexa Drive
Santa Barbara, Calif. 93105

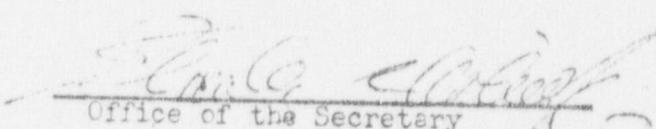
Elson L. Kidwell, Chairman
San Luis Obispo County Bd. of
Supervisors
County Courthouse
San Luis Obispo, Calif. 93401

Dr. John M. Heslep, Chief
Environmental Health and Consumer
Protection Program
Dept. of Public Health
2151 Berkeley Way
Berkeley, Calif. 94704

Attorney General
State of California
Sacramento, Calif. 95841

Mr. Hal Stroube, Manager of Public
Relations
Luigi Marre Land and Cattle Co.
San Luis Obispo Bay Properties, Inc.
Avila Beach, Calif. 93424

CC: Wells
Goodrich
Scinto
Staff Assistant
Regulatory Files
Glaser


Office of the Secretary

Leaving