



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-8064**

January 14, 2000

EA 99-157

Gregory M. Rueger, Senior Vice President  
and General Manager  
Nuclear Power Generation Business Unit  
Pacific Gas and Electric Company  
Nuclear Power Generation, B32  
77 Beale Street, 32nd Floor  
P.O. Box 770000  
San Francisco, California 94177

**SUBJECT: ALLEGED DISCRIMINATION (2000-ERA-3)**

Dear Mr. Rueger:

This letter is in reference to recent events related to a discrimination complaint brought by a former shift foreman at the Diablo Canyon Power Plant, Neil J. Aiken. In a complaint filed with the U.S. Department of Labor (DOL) on November 2, 1998, Mr. Aiken's attorneys claimed that Mr. Aiken was suspended from his duties at Diablo Canyon as a result of his engaging in protected activities, i.e., raising nuclear safety issues. On November 19, 1999, the DOL's Occupational Safety & Health Administration (OSHA) informed Pacific Gas & Electric Company (PG&E) of the results of its investigation into this complaint. The Regional Administrator of OSHA's Region 9 office in San Francisco, California, informed PG&E that Neil J. Aiken was a protected employee engaging in protected activities within the scope of the Energy Reorganization Act and that discrimination as defined and prohibited by the statute was a factor in the actions which comprised his complaint. PG&E requested a hearing, which is now pending before an Administrative Law Judge. In late December, PG&E informed the NRC by telephone that it had terminated Mr. Aiken's employment on December 13, 1999.

On October 6, 1999, the NRC informed you by letter that NRC's investigation of the same matter did not substantiate that discrimination had occurred. The NRC has reviewed the OSHA Regional Administrator's determination, and our view of this matter has not changed. As is our normal practice, we will continue to monitor the DOL proceeding, particularly as to whether information developed in the proceeding would affect our conclusion.

While the NRC recognizes that PG&E does not agree with OSHA's determination, the NRC is concerned about the potential negative effect on the safety conscious work environment at Diablo Canyon that may occur as a result of OSHA's determination and the termination of Mr. Aiken's employment. Therefore, the NRC is requesting that PG&E inform the NRC of any actions it has taken or plans to take to prevent these events from having a negative effect on the willingness of other employees to raise safety concerns. In addition, the NRC requests that you provide information regarding your recent survey regarding the safety conscious work

Pacific Gas & Electric Co.

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environment at Diablo Canyon, including a discussion of the methodology used in implementing the survey instrument. Please include: 1) a copy of the survey instrument and any instructions associated with it; 2) a summary of the results; and 3) a summary of any actions that you have taken or plan to take to address the results. After reviewing your response, the NRC will determine whether any further action is warranted.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your response will be placed in the NRC Public Document Room.

Sincerely,

**/RA/**

Ellis W. Merschoff  
Regional Administrator

Docket Nos.: 50-275; 50-323  
License Nos.: DPR-80; DPR-82

cc:

Dr. Richard Ferguson  
Energy Chair  
Sierra Club California  
1100 11th Street, Suite 311  
Sacramento, California 95814

Nancy Culver  
San Luis Obispo Mothers for Peace  
P.O. Box 164  
Pismo Beach, California 93448

Chairman  
San Luis Obispo County Board of  
Supervisors  
Room 370  
County Government Center  
San Luis Obispo, California 93408

Truman Burns\Mr. Robert Kinosian  
California Public Utilities Commission  
505 Van Ness, Rm. 4102  
San Francisco, California 94102

Robert R. Wellington, Esq.  
Legal Counsel  
Diablo Canyon Independent Safety Committee  
857 Cass Street, Suite D  
Monterey, California 93940

Steve Hsu  
Radiologic Health Branch  
State Department of Health Services  
P.O. Box 942732  
Sacramento, California 94234-7320

Christopher J. Warner, Esq.  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, California 94120

David H. Oatley, Vice President  
Diablo Canyon Operations and Plant Manager  
Diablo Canyon Nuclear Power Plant  
P.O. Box 3  
Avila Beach, California 93424

Managing Editor  
Telegram-Tribune  
1321 Johnson Avenue  
P.O. Box 112  
San Luis Obispo, California 93406

Frank Stasheim, Regional Administrator  
U.S. Department of Labor  
Occupational Safety and Health Administration  
71 Stevenson Street, Suite 420  
San Francisco, California 94105

Neil J. Aiken  
P.O. Box 548  
Santa Maria, California 93456-5048

A. Alene Anderson  
Project On Liberty & the Workplace  
6814 Greenwood Avenue N.  
Seattle, Washington 98103

Robert C. Seldon  
Project On Liberty & the Workplace  
1612 K Street  
Suite 1004  
Washington, D.C. 20006

bcc:

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