

5976

DOCKETED
USNRC

March 31, 1988

'88 APR -1 P3:31

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC)	Docket Nos. 50-275 OLA
COMPANY)	50-323 OLA
)	
(Diablo Canyon Nuclear Power Plant,)	Long Term Seismic Program
Units 1 and 2))	(ASLBP No. 88-566-03-OLA)

RESPONSE OF THE NRC STAFF TO PETITION FOR LEAVE
TO INTERVENE FILED BY SAN LUIS OBISPO MOTHERS FOR PEACE

I. INTRODUCTION

In a Memorandum and Order ^{1/} dated March 11, 1988, the Atomic Safety and Licensing Board established to preside over any hearing conducted in this matter granted the Pacific Gas and Electric Co. (Licensee) ten days and the NRC staff (Staff) 15 days to respond to the Petition to Intervene that had been filed herein. The NRC staff's response to the petition filed on November 20, 1987, by Edie Clark for the San Luis Obispo Mothers for Peace (Mothers for Peace) is set forth below.

II. BACKGROUND

The Nuclear Regulatory Commission published in the Federal Register on October 21, 1987, a "Notice of Consideration Of Issuance of Amendment

1/ Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) Providing for Answers to Petition for Leave to Intervene, (March 11, 1988).

8804050054 880331
PDR ADOCK 05000275
G PDR

D507

to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" in connection with the captioned matter. ^{2/} The proposed amendment would revise License Condition 2.C.(7) of the Diablo Canyon full power license, DPR-80, to allow the submittal of the Long Term Seismic Program (LTSP) final report by July 31, 1989, rather than by July 31, 1988. The reasons cited by the Licensee for the one year extension request involve several proceedings that are pending before the California Public Utilities Commission (CAPUC) that now have firm schedules for the submission of testimony, related studies and other matters. In order to respond in a timely and complete fashion to the geoseismic issues pending before the CAPUC the Licensee requires the assistance of several key LTSP personnel and corresponding support personnel. The Licensee estimates that approximately one year will be required for these personnel to participate in the CAPUC proceedings.

The information developed to date as part of the LTSP has led to a better geotectonic understanding of the area surrounding the Diablo Canyon Power Plant. 52 Fed. Reg. 39304. Although the Licensee has not concluded its studies, based on the state of information available, the seismic design of the power plant remains adequate. Id. In Staff's view, there are no adverse safety considerations associated with the requested schedule change. Id. Based upon the foregoing and the information furnished by the Licensee, the Staff has proposed to

^{2/} 52 Fed. Reg. 39296 and 39304.

determine that the amendment request involves a no significant hazards consideration. Id.

On November 20 and 21, 1987, the Mothers for Peace filed objections to the Licensee's requested amendment and requested a hearing thereon. As the Licensing Board noted, because the hearing requests were sent to the Rules and Procedures Branch instead of the Office of the Secretary, the fact that the Mothers for Peace were seeking a hearing on this Amendment was not noted by cognizant NRC officials until approximately March 4, 1988. Memorandum and Order at 2. Also on November 20, 1987, the Santa Lucia Chapter of the Sierra Club submitted comments on the proposed amendment. The Staff's comments on the Mothers For Peace petitions are set forth below.

III. DISCUSSION

A. The Standards for Intervention

Section 189a of the Atomic Energy Act of 1954, amended, 42 U.S.C. § 2239(a), provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

10 C.F.R. Section 2.714(a)(2) of the Commission's Rules of Practice, which implements Section 189a, requires that a petition to intervene in a Commission proceeding set forth with particularity:

- (1) the interest of the petitioner in the proceeding;
- (2) how that interest may be affected by the results of the proceeding; and

- (3) the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

In order for intervention to be granted, the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing must find that the petition satisfies these standards.^{3/}

In determining whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the Commission's Rules of Practice is present, the Commission has held that contemporaneous judicial concepts of standing are controlling. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Thus, there must be a showing (1) that the action being challenged could cause "injury-in-fact" to the person seeking to intervene and (2) that such injury is arguably within the "zone of interests" protected by the Atomic Energy Act^{4/} or the National Environmental Policy Act.^{5/} See also Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970).

^{3/} Intervention may also be granted as a matter of discretion to some petitioners who are not entitled to intervention as a matter of right if the petitioner can show that the Commission's specific criteria weigh in favor of discretionary intervention. See Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). As described herein, the Mothers for Peace do not seek and the Staff believes they do not merit discretionary intervention. Therefore, the NRC staff will not discuss discretionary intervention further.

^{4/} 42 U.S.C. § 2011 et seq.

^{5/} 42 U.S.C. § 4321 et seq.

"Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on a petitioner will not confer standing. See, In the Matter of Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC 525, 531 (1977); Pebble Springs, CLI-76-27, supra, 4 NRC at 613. Rather, the asserted harm must have some particular effect on a petitioner, Ten Applications, CLI-77-24, supra, and a petitioner must have some direct stake in the outcome of the proceeding. See Allied-General Nuclear Services et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

An organization may gain standing to intervene based on injury to itself. Edlow International Company, CLI-76-6, 3 NRC 563, 572-74 (1976). If the organization seeks standing on its own behalf, it must establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. Ten Applications, CLI-77-24, supra, at 531. On the other hand, an organization may establish standing through members of the organization who have an interest which may be affected by the outcome of the proceeding. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). When an organization claims that its standing is based on the interests of its members, the organization must identify one or more individual members (by name and address) whose interests may be affected and give some concrete indication that such members have authorized the organization to represent their interests in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station,

Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973); Duquesne Light Company, et al. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 at n.2 (1973). Specific representational authorization of a member with personal standing is not required where the sole or primary purpose of the petitioning organization is to oppose nuclear power in general or the particular facility at bar. Allens Creek, ALAB-535, supra, at 396. ^{6/}

Under 10 C.F.R. § 2.714, a petitioner, to be admitted as a party, must not only demonstrate interest and identify an appropriate aspect, but must also submit at least one admissible contention. In normal circumstances, Section 2.714(b) requires the submission of the contention or contentions at least 15 days prior to the first prehearing conference held in the proceeding. In this case, Petitioners have not submitted any contentions.

^{6/} Further, under Section 2.713 of the Commission's Rules of Practice, a "partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law." 10 C.F.R. § 2.713(b) (emphasis added). Thus, where an organization is represented by one of its members, the member must demonstrate authorization by that organization to represent it. It is clear that groups may not represent persons other than their own members, and individuals may not assert the interest of other persons. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483 (1977); Watts Bar, ALAB-413, supra, at 1421; Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474 n.1 (1978). There is, under the Atomic Energy Act and the Commission's regulations, no provision for private attorneys general. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976); Long Island Lighting Company, LBP-77-11, supra, at 483.

B. Evaluation of Mothers for Peace Petition

1. Interest and Standing

In a Petition, dated November 20, 1987, Edie Clark on behalf of herself and other unnamed members of the Mothers for Peace set forth their interest and standing in this matter with the general assertion that she (Edie Clark) and the other members of the Mothers for Peace live within twelve miles of the Diablo Canyon Nuclear Power Plant.^{7/} The Petition asserts that a number of serious questions exist regarding the documentation of the seismic review and its relationship to the seismic design and construction of the Diablo Canyon Plant. Petition at 1. The Petition then refers to the examples and issues set forth in a communication from C. Trammell of the NRC to the Licensee of comments resulting from the Ground Motion Workshop of July 15-16, 1987. The Petition raises concerns as to the safety of the citizens living near the Diablo Canyon Power Plant and objects to the Licensee's request for a time extension. In the Staff's view, the Petition filed by Edie Clark generally satisfies the interest and standing requirements of Section 2.714 as set forth above.

However, the Petition's present assertions are not sufficient to satisfy the criteria for establishing the interest and standing of organizations and it appears that Edie Clark's Petition attempts to speak for the

^{7/} In another Petition, dated November 21, 1987, Sandra A. Silver, a member of the Mothers for Peace, filed comments on the proposed amendment and requested standing as a party in the event a hearing is held. The Staff regards this Petition as being filed in support of the petition filed by Edie Clark, otherwise it does not satisfy the requirements of 10 C.F.R. Sec. 2.714 as set forth above and must be rejected.

Mothers for Peace. The present assertions are not sufficient to support a finding that the Mothers for Peace have the requisite standing as an organization to participate in this proceeding. The fact that the Mothers for Peace have been admitted in other proceedings concerning the Diablo Canyon Nuclear Power Plant does not excuse it from demonstrating that the requirements for intervention are met in this proceeding, which is separate from prior Diablo Canyon proceedings. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 454-55, (1975); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), LBP-73-26, 6 AEC 612 (1973). The Petition has failed to establish how the organization itself will be injured by the proposed amendment. Edlow International Company, CLI-76-6, supra at 572-574; Ten Applications, CLI-77-24, supra at 531. Finally, the petition does not identify by name, address, or position, a member of the Mothers for Peace who has authorized the organization to represent their interests in this proceeding. North Anna, ALAB-522, supra; and Allens Creek, ALAB-535, supra, at 393-397.

Petitioner is aware that these deficiencies can be remedied by amending its Petition to demonstrate standing based on injury to the organization or based on the standing of one of its members along with the requisite authorization by such individual that the organization represents his or her interests in the proceeding. In view of the Petitioner's long and active participation in Diablo Canyon licensing matters the Staff anticipates that the foregoing deficiencies can be readily remedied.

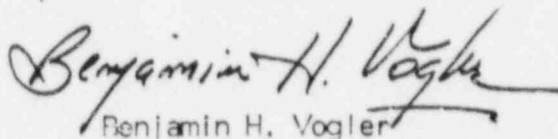
2. Aspect

The Mothers for Peace have expressed a concern that falls within the scope of this proceeding, that is whether the findings to date of the LTSP are of such a nature that completion of the program should not be delayed because the findings may reveal defects in the seismic design of the Diablo Canyon Plant. Accordingly, the Staff finds that the Petition properly sets forth a specific aspect of the proposed amendment on which it desires to intervene.

IV. CONCLUSION

In view of the foregoing, the Staff believes that the Petition filed on behalf of the Mothers for Peace satisfies the aspect requirements for intervention, but fails to satisfy the standing requirements for organizations. Therefore, Staff believes that the Mothers for Peace be permitted to remedy this deficiency with respect to standing and to proffer at least one admissible contention in accordance with 10 C.F.R. Section 2.714(b).

Respectfully submitted,



Benjamin H. Vogler
Senior Supervisory Trial Attorney

Dated at Rockville, Maryland
this 31st day of March, 1988

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 APR -1 P3:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

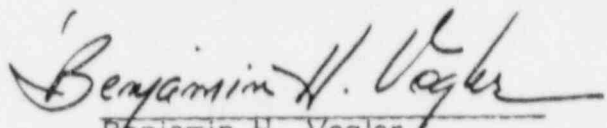
In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC)	Docket Nos. 50-275 OLA
COMPANY)	50-323 OLA
)	
(Diablo Canyon Nuclear Power Plant,)	Long Term Seismic Program
Units 1 and 2))	(ASLBP No. 88-566-03-OLA)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part , the following information is provided:

Name:	Benjamin H. Vogler
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Washington, D.C. 20555
Telephone Number:	(301) 492-1520
Admissions:	Supreme Court of Ohio U.S. Court of Appeals for the District of Columbia
Name of Party	NRC Staff

Respectfully submitted,



Benjamin H. Vogler
Senior Supervisory Trial Attorney

Dated at Rockville, Maryland
this 30th day of March, 1988

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 APR -1 P3:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
PACIFIC GAS AND ELECTRIC) Docket Nos. 50-275 OLA
COMPANY) 50-323 OLA
)
(Diablo Canyon Nuclear Power Plant,) Long Term Seismic Program
Units 1 and 2) (ASLBP No. 88-566-03-OLA)

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF THE NRC STAFF TO PETITION FOR LEAVE TO INTERVENE FILED BY SAN LUIS OBISPO MOTHERS FOR PEACE" and "NOTICE OF APPEARANCE" for Benjamin H. Vogler, in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 31st day of March, 1988:

Ivan W. Smith, Chairman Administrative Judge Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555*	Bruce Norton, Esq. c/o R. F. Locke, Esq. Pacific Gas and Electric Co. P.O. Box 7442 San Francisco, CA 94120
Gustave A. Linenberger, Jr. Administrative Judge Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555*	Nancy Culver 192 Luneta Street San Luis Obispo, CA 93401
Dr. Jerry Harbour Administrative Judge Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555*	Mrs. Jacquelyn Wheeler San Luis Obispo Mothers for Peace 3033 Barranca Court San Luis Obispo, CA 93401
Richard E. Blankenburg Co-publisher Wayne A. Soroyan, News Reporter South County Publishing Company P.O. Box 460 Arroyo Grande, CA 93420	Richard F. Locke, Esq. (77 Beale Street, 31st Floor) P.O. Box 7442 San Francisco, CA 94120 (94106)

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

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

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

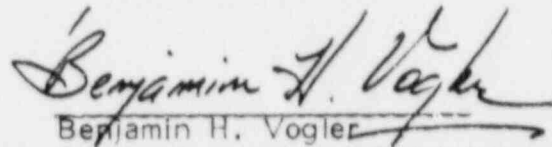
Managing Editor
San Luis Obispo County
Telegram-Tribune
1321 Johnson Avenue
P.O. Box 112
San Luis Obispo, CA 93406

Mr. Lee M. Gustafson
Pacific Gas and Electric Co.
Suite 1100
1726 M Street, N.W.
Washington, D.C. 20036-4502

Dr. Richard Ferguson
Vice-Chairman
Sierra Club
Rocky Canyon Star Route
Creston, CA 93432

Laurie McDermott, Co-ordinator
C.O.D.E.S.
731 Pacific Street
Suite #42
San Luis Obispo, CA 93401

Dian M. Grueneich, Esq.
Marcia Preston, Esq.
LAW OFFICE OF DIAN M. GRUENEICH
380 Hayes Street, Suite 4
San Francisco, CA 94102


Benjamin H. Vogler
Senior Supervisory Trial Attorney