

# NRC's Gilinsky raps rejection of Diablo issues

The Nuclear Regulatory Commission is giving opponents of the Diablo Canyon "the legal run-around" by refusing to review issues raised in licensing hearings, Commissioner Victor Gilinsky has charged.

In a statement issued this week, Gilinsky chided his fellow commissioners for not considering these issues, which Mothers for Peace raised two years ago before an NRC licensing board:

- The consequences of a "class 9 accident" — one so serious that the reactor's safety systems fail to mitigate it.

- The effect of an earthquake on emergency evacuation plans.

- Whether the Diablo Canyon plant has adequate equipment to protect against the release of hydrogen, which could burn or explode, during a reactor accident.

After the licensing board refused to hear these issues, Mothers for Peace appealed to an NRC appeal board. The appeal board issued a statement last summer indicating it would not review them, prompting Mothers for Peace to appeal to the commission itself.

Gilinsky's comments were appended to an NRC order received Friday by the Telegram-Tribune which stated that the commission would not review the issues.

A second commissioner, James K. Asselstine, issued a one-sentence statement: "I agree with Commissioner Gilinsky's separate views on the class 9 accidents issue."

The only views of the commission majority were stated in a footnote which said Gilinsky's and Asselstine's views "are of no legal significance."

"In addition," the footnote read, "they are potentially misleading. Because the commission majority provides no on-the-record explanation of the reasons for not accepting review, the separate arguments in favor of commission review are not

answered."

NRC Public Affairs Director Joseph J. Fouchard said, "The commissioners don't have to explain their votes, and they apparently chose not to in this one."

"If the commissioners would not comment on their record, I'm sure they're not going to comment anywhere else."

Gilinsky said the appeal board refused to hear the hydrogen issue because it is "not credible." However, he said, a hydrogen release problem occurred during the 1979 Three Mile Island accident.

He said the appeal board, in refusing to consider the effect of earthquakes on the emergency plan, cited a commission determination several years ago that the issue should be considered on a "generic" basis, rather than plant-by-plant.

"Now the NRC staff say that they will not undertake such a generic proceeding," Gilinsky said. "They want to deal with the problem . . . by doing plant-specific reviews."

Gilinsky accused the Diablo licensing board of "defining away" the need for a class 9 accident review through legalistic gymnastics.

Missie Pires Hobson of Pacific Gas and Electric Co., which owns the Diablo plant, said PG&E lawyers "don't have any comment on (Gilinsky's statement) because nobody's really seen it yet."

Nancy Culver of Mothers for Peace praised Gilinsky as "the only member of this commission who is really conscientious in pursuing safety."

She said, "The majority of this commission is denouncing legalisms, and yet that is precisely what they're using to squirm out of substantive issues in this case."

PG&E has loaded fuel in the first reactor of the Diablo Plant and should complete pre-operational tests by the end of December, Hobson said.