NRC Faulted on Diablo Canyon

Licensing Actions Probably Broke Laws, Memo by House Unit Says

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A House subcommittee memorandum says the Nuclear Regulatory Commission, while considering the ability of the Diablo Canyon plant in California to withstand earthquakes, probably violated federal laws and regulations by using off-the-record information and closing hearings to the public.

The 22-page staff memo, released yesterday by the Energy and Commerce subcommittee on energy conservation and power, also quotes NRC officials and Commission Chairman Nunzio J. Palladino as admitting in closed hearings that they erred in not pursuing a 1981 NRC finding that reactor designs and their capacity to survive earthquakes may be a generic problem not limited to Diablo Canyon.

The memo says the NRC refused to grant a public hearing about the emergency systems at Diablo Canyon "because of concern over the economic costs that would be incurred by a delay."

The Atomic Energy Act prohibits considerations of economic costs in deliberations touching public safety.

Sue Gagner, a public affairs officer at the NRC, said yesterday that the agency would have no comment until several of the commissioners appear at a subcommittee hearing today.

But NRC officials responded to similar charges when they were raised in private letters from Commissioner James K. Asselstine to subcommittee Chairman Edward J. Markey (D-Mass.). Asselstine had dissented from the NRC's decision to license the reactor, which is located near San Luis Obispo, midway between San Francisco and Los Angeles.

Last August the NRC cleared the way for an operating license for Diablo Canyon when it ruled, 4 to 1, that the agency need not consider the impact of earthquakes on the facility's emergency systems.

In its opinion, the commission said it was following a 1981 NRC decision that the effect of earthquakes on emergency systems "should be addressed as a generic matter" and should not hold up Diablo Canyon's licensing.

The NRC has acknowledged, however, that it had not considered the effects of earthquakes since the 1981 decision.

"We have taken [the NRC staff's] stuff and just sat on it," Palladino reportedly said in a closed hearing last August.

At a closed meeting four days later, according to transcripts provided to the subcommittee, Palladino said, "[W]e really don't have any good reason as to why we didn't do it two or three years ago... I think we should include an explanation of why we did not do it earlier, even if we say we goofed."

Two weeks ago, in response to written questions, the NRC said it "was diverted from this issue by the press of other important commission business."

Asselstine's charge that the NRC had relied on off-the-record information about Diablo Canyon surfaced in an October letter from the commission, responding to questions by Markey about the release of secret transcripts of the NRC's deliberations. According to the staff memo, the information was a report prepared by the operator of the site, Pacific Gas & Electric Co., saying that Diablo Canyon's emergency system was sufficient to withstand earthquakes.

Asselstine also asserted that the commission's decision ignored the advice of NRC lawyers and technical advisers and was aimed solely at avoiding delay.

In the same letter, the other commissioners rejected all of Asselstine's complaints.

"Simply because Commissioner Asselstine did not prevail is not a valid reason for him to castigate the majority, impugn their motives and use his disagreement as a basis to urge release of the transcripts to the public," the letter said.

The commission further responded to Asselstine's charges in February, writing to Markey that Diablo Canyon was adequately designed against earthquakes and is in a region of relatively few quakes. The commission said it had read the Pacific Gas & Electric Report but had not used it "as a justification for its ultimate rationale."

In a June letter to the subcommittee, the NRC said it had "relied only on information in the record and reasonable inferences from that information" for its decision.

The plant started operating in January, shortly after the U.S. Court of Appeals for the District of Columbia struck down a challenge to the NRC's decision that was based, in part, on Asselstine's dissent.

In May, the full panel of the U.S. Court of Appeals for the District of Columbia agreed to review that ruling. The case is pending.

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