

RAS 6268

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DOCKETED

2003 APR -2 AM 11: 26

OFFICE OF THE SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Title: Pacific Gas and Electric Company
Diablo Canyon Power Plant

Docket Number: 72-26-ISFSI; ASLBP No. 02-801-01-ISFSI

Location: (Telephone Conference)

Date: Thursday, March 20, 2003

Work Order No.: NRC-850

Pages 420-447

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

Template=SECY-032

SECY-02

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
PREHEARING CONFERENCE

-----X

In the Matter of : Docket No.
PACIFIC GAS & ELECTRIC CO. : 72-26-ISFSI
DIABLO CANYON POWER PLANT : ASLBP No.
 : 02-801-01-ISFSI

-----X

Thursday, March 20, 2003

Teleconference

BEFORE:

G. Paul Bollwerk, III, Esq., Chairman

1 PRESENT:

2 For U.S. NRC: Stephen Lewis, Senior Attorney
3 Mail Stop 0-15 D21
4 Washington, D.C. 20555-0001
5 (301) 415-1684

6

7 San Luis Obispo Diane Curran, Esq.
8 Mothers for Peace: Harmon, Curran, Spielberg &
9 Eisenberg, LLP 1726 M Street, N.W., Suite 600
10 Washington, D.C. 20036
11 (202) 328-3500

12

13 For PG&E: Brooke D. Poole, Esq.
14 Winston & Strawn
15 1400 L Street, N.W.
16 Washington, D.C. 20005-3502
17 (202) 371-5726

18

19 For the County of Robert K. Temple, Esq.
20 San Luis Obispo: Nuclear Regulatory Legal
21 Services Network 2524 Maplewood Avenue
22 Chicago, Illinois 60647
23 (773) 292-0482

24

25

1 PRESENT:

2 For the County of Timothy McNulty, Deputy County
3 San Luis Obispo: Counsel

4 Services Network San Luis Obispo County
5 Room 386, Government Center
6 San Luis Obispo, CA 93401
7 (805) 781-5400

8
9 Robert Trubatch, Esq.
10 San Luis Obispo County
11 Room 386, Government Center
12 San Luis Obispo, CA 93401
13 (805) 781-5400

14
15
16
17
18
19
20
21
22
23
24
25

P-R-O-C-E-E-D-I-N-G-S

4:00 p.m.

ADMIN. JUDGE BOLLWERK: I'm Judge Paul Bollwerk, B-o-l-l-w-e-r-k.

I called this status conference this afternoon to talk about some questions that have arisen with respect to the Limited Appearance Sessions that are scheduled for this coming Sunday and next Monday.

Did someone just come on, please?

MR. TRUBATCH: Yes, this is Sheldon Trubatch.

ADMIN. JUDGE BOLLWERK: All right, Sheldon. We're just beginning to start.

If I could, I'd like to have all the counsel identify themselves for the record and why don't you go ahead, and spell your last name for the court reporter.

Let's go ahead and start with the Applicant, please.

MS. POOLE: Brooke Poole, on behalf of Pacific Gas & Electric Company, that's "P", as in Peter, o-o-l-e.

ADMIN. JUDGE BOLLWERK: All right, thank you.

1 How about, then, the San Luis Obispo
2 County, please?

3 MR. McNULTY: I'm Timothy McNulty, M-c-N-
4 u-l-t-y.

5 MR. TRUBATCH: We're at Rumshult
6 (phonetic) and Trubatch, T-r-u-b-a-t-c-h.

7 MR. TEMPLE: I'm Robert Temple, T-e-m-p-l-
8 e.

9 ADMIN. JUDGE BOLLWERK: And you're all
10 appearing on behalf of San Luis Obispo County?

11 MR. TEMPLE: Right.

12 MR. TRUBATCH: Correct.

13 ADMIN. JUDGE BOLLWERK: All right.

14 How about, then, the Intervener, please?

15 MS. CURRAN: This is Diane Curran, C-u-r-
16 r-a-n, representing the San Luis Obispo Mothers for
17 Peace, as well as other Interveners in the case,
18 including Peg Pinard and Avila Valley Advisory
19 Council.

20 ADMIN. JUDGE BOLLWERK: All right, and,
21 then, the NRC staff, please?

22 MR. LEWIS: Stephen, with a p-h, Lewis, L-
23 e-w-i-s, counsel for the NRC staff.

24 ADMIN. JUDGE BOLLWERK: All right. Is
25 there anybody I missed in terms of who's on the line?

1 All right. I should mention that Susan
2 Lynn, a panel law clerk, is with me in the room as
3 well.

4 I want to give a little background about
5 why we are here, we're speaking this afternoon and get
6 a little of the Board's perspective on this and then
7 I'll allow the parties to state whatever positions
8 they might have with respect to what I understand is
9 at issue and then we'll talk about the situation a
10 little bit.

11 I should also ask you, because we're on a
12 conference call, to the degree you begin to speak, if
13 you could identify yourselves for the court reporter,
14 it would make his job much easier.

15 As you are all aware there is a series of
16 Limited Appearance Sessions that are scheduled for
17 this upcoming Sunday afternoon and Monday, both a
18 morning, evening and an afternoon session on Monday.

19 A question has arisen, I guess as a result
20 of an order that the Board sent out, asking for
21 identification of which parties, or Section 2.715c,
22 Interested Governmental Entities would be being
23 represented at the Limited Appearance Session. We
24 received responses from several Special Governmental
25 Entities that weren't going to be there, some that

1 are.

2 From the Interveners, I received a
3 response from Ms. Curran by e-mail indicating that
4 while she was not going to be attending, several
5 individuals associated or affiliated with the
6 different groups were going to be sitting in as
7 representatives of the Intervening parties. The
8 question arose when I saw some of the names, some of
9 those individuals signed up to speak as part of the
10 Limited Appearance Session to be actual speakers that
11 requested five minutes to address the Board.

12 In response to the email to Ms. Curran, I
13 pointed out that, of course, Limited Appearance
14 Sessions were for the public, as we'd indicated in at
15 least one order that we'd issued and it was not really
16 for the parties to be making statements at. That then
17 resulted in at least one email back from one of the
18 individuals, I guess from Mrs. Phil Becker questioning
19 why she wasn't going to be allowed to speak. I also,
20 as a separate matter, had received an email from Peg
21 Pinard indicating that she wished to speak as well.
22 Of course, as Ms. Curran indicated she's one of the
23 named Intervening Parties.

24 That, in a nutshell, is where we're at at
25 this point. I thought that it was probably a good

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 idea, then, to try to get everybody on the same page
2 to talk this situation over. A few perspectives I'd
3 like to offer from the Board's point of view and then,
4 perhaps, Ms. Curran, if you'd like to speak first and
5 then we'll go around and see what everyone else has to
6 say.

7 From the Board's perspective, we're not
8 going out there and spending a day and a half out
9 there because we don't want to hear people speak. I
10 mean that's the whole purpose of being out there. We
11 want to hear as many people as we can that have a
12 point of view to present. So that's the baseline with
13 the Board.

14 Having said that, what's also been clear
15 since certainly the little bit of time that I've been
16 here is that the Limited Appearance Sessions are not
17 for the parties, they're for members of the public.
18 If you're a party, you have other avenues of access to
19 the Board, other ways that you can address the Board
20 and make your views known. These Limited Appearance
21 Sessions are for the parties [sic].

22 So, with those two thoughts in mind, let
23 me turn to Ms. Curran and see what she has to say on
24 the subject.

25 MS. CURRAN: Well, first, Judge Bollwerk,

1 I wanted - if I could just get a little clarification.

2 I hadn't been thinking about Peg Pinard
3 when I said this to my client because, of course, she
4 is an individual I'm representing. But the other
5 individuals, these are people who are members of civic
6 groups and environmental groups out there, and they
7 want to make a personal statement, you know, what they
8 as individuals think and they are very anxious to
9 speak to you.

10 Is there a problem if they don't sit at
11 the table for them to get up and be heard? I think
12 they've registered with - you know, they've gone
13 through the process of registering and getting a time
14 slot.

15 ADMIN. JUDGE BOLLWERK: Right.

16 From my perspective, someone can be
17 affiliated with any group that they wish to be.

18 My concern is that someone that sits at
19 one of the tables in the front that holds themselves
20 out as a representative of a group, as representative
21 of a party, to then stand up and simply move across to
22 the podium is not appropriate, given what we're about
23 here.

24 MS. CURRAN: Well, I can understand that,
25 and if that's the case, then what I would say to them

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is to please have the person who sits at the table not
2 be a person who wants to make a statement on their own
3 behalf. Those people should just sit in the audience
4 and await their turn to speak.

5 Is that going to be acceptable, because I
6 think they can handle that?

7 ADMIN. JUDGE BOLLWERK: Let me hear from
8 the other parties.

9 If anyone else has - and let's deal with
10 Ms. Pinard separately. I think she raises a separate
11 question.

12 MS. CURRAN: Right.

13 ADMIN. JUDGE BOLLWERK: Let's just deal
14 now with the folks representing the Intervener group.

15 Anyone else want to speak to what Ms.
16 Curran has said or to what I've said at this point?

17 MR. LEWIS: This is Steve Lewis.

18 On behalf of the staff, we had the same
19 view that there were two separate status's here and
20 there can be enough confusion as it is, sometimes, as
21 to what the role of particular parties are in the
22 proceeding and I tend to think that having a person
23 who is a representative of an Intervener and therefore
24 has significant status in the case, to also then give
25 a Limited Appearance adds to the confusion of the

1 public.

2 I think it's a matter of election. If a
3 person is there, sitting at the table as a
4 representative of one of the parties, I had
5 envisioned, although it is not necessarily going to
6 happen, that that person might be asked a question by
7 the Board, in which case they would then be speaking
8 on behalf of the Intervener.

9 So, I think, it then becomes even more
10 confusing to hear them subsequently speak individually
11 as a non-party.

12 MS. CURRAN: Judge, I'd just like to
13 respond to that for a minute?

14 ADMIN. JUDGE BOLLWERK: Yes.

15 MS. CURRAN: In the context of when you're
16 a party, what you have to do is you have to formulate
17 your concerns in a certain way that meets a certain
18 standard to get into the formal hearing and obviously
19 we were unable to do that for most of the issues we
20 raised.

21 But these are people who are neighbors of
22 this facility and who have concerns about it. There's
23 a representative, three representatives of the NRC,
24 coming to hear what the public cares about. They
25 don't have to meet the admissibility standard to tell

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the judges what they are concerned about. I've seen
2 these before. If there are issues that come up, the
3 staff is taking notes and the judge always says I'm
4 going to refer this to the staff.

5 So, I don't see why this is so confusing
6 or a big problem. I'm telling my clients you may be
7 able to speak in your own personal capacity. You will
8 not be allowed to speak as a member of the Mothers for
9 Peace or AVAC or another group. They understand that.

10 ADMIN. JUDGE BOLLWERK: Anything that any
11 of the county representatives want to say at this
12 point?

13 MR. McNULTY: No.

14 MR. TRUBATCH: No.

15 ADMIN. JUDGE BOLLWERK: Mr. Lewis,
16 anything that you want to say in response?

17 MR. LEWIS: No. Just simply, that I,
18 perhaps, misled Ms. Curran just a drop by not
19 indicating that, in fact, I also find the suggestion
20 of the chairman, that anyone who is going to make a
21 Limited Appearance statement simply not be the person
22 or one of the persons who sits at the table on behalf
23 of the Mothers for Peace, that that is perfectly
24 acceptable to me.

25 ADMIN. JUDGE BOLLWERK: All right.

1 Let me talk with Ms. Curran for a second
2 to just explore this.

3 The concern I have, again, is that the
4 parties be the parties and the members of the public
5 be the members of the public. Having said that,
6 people can belong to any number of different groups.

7 What I would contemplate is that when we
8 go around at the beginning of the proceeding as we do
9 and there are individuals sitting at the tables and
10 they have them identify themselves, in that session to
11 the degree that they identify themselves as the
12 representative of the party sitting at the table, I
13 would not view that person as eligible at that session
14 to make a Limited Appearance statement.

15 MS. CURRAN: Then would it be possible for
16 that person to come to a different session like on a
17 different day and not sit at the table and make a
18 statement in the personal capacity?

19 ADMIN. JUDGE BOLLWERK: At this point I
20 think I'm indicating, at least tentatively, I don't
21 have a problem with that. But, let me hear if the
22 staff or anyone else has anything to say about that.

23 MR. LEWIS: This is Steve Lewis. I have
24 no problem with that.

25 ADMIN. JUDGE BOLLWERK: Anything from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C 20005-3701

1 county?

2 MR. McNULTY: No comment, again.

3 ADMIN. JUDGE BOLLWERK: I think then, Ms.
4 Curran, if you could make it clear to your clients
5 that the folks that identify themselves and sit at the
6 table at that session of the proceeding are not
7 eligible to make a statement, that that would be
8 consistent with what the Board would feel is
9 appropriate.

10 MS. CURRAN: Okay. Let me ask you just
11 one logistical question.

12 ADMIN. JUDGE BOLLWERK: No problem.

13 MS. CURRAN: This may mean that they need
14 to shift around a little bit.

15 ADMIN. JUDGE BOLLWERK: Makes sense.

16 MS. CURRAN: Who's sitting at the table
17 when or getting another person to sit at the table who
18 wasn't planning to sit at the table. So, is there
19 still time to send you another email?

20 ADMIN. JUDGE BOLLWERK: Yes.

21 MS. CURRAN: Okay.

22 ADMIN. JUDGE BOLLWERK: If they can get
23 that to us by tomorrow that would be perfectly
24 acceptable to us.

25 MS. CURRAN: Okay, thank you.

1 ADMIN. JUDGE BOLLWERK: So, again, I'd
2 hope that the person who sits at the table remains
3 that person. We don't have people coming and going.

4 MS. CURRAN: Yes.

5 ADMIN. JUDGE BOLLWERK: I'm sure that they
6 will do this in good faith. I just want to make that
7 clear.

8 MS. CURRAN: Yes.

9 I think they will and I don't expect that
10 anybody's going to be jumping up and down or changing
11 places. They've only identified a couple of people
12 who will be there for long periods.

13 ADMIN. JUDGE BOLLWERK: Right.

14 MS. CURRAN: I also wanted to mention one
15 other thing which was I was a little surprised to see
16 my client emailing you directly.

17 ADMIN. JUDGE BOLLWERK: Right.

18 MS. CURRAN: I wrote to them and said you
19 really shouldn't do that, you know. This is partly
20 for your protection that I'm the one that needs to
21 talk to the judge on your behalf. Rochelle commented
22 to me, well, Judge Bollwerk sent a note to me, so I
23 hit the reply button.

24 What you had done was cc:'ed her.

25 ADMIN. JUDGE BOLLWERK: I cc:'ed everybody

1 the email you sent me.

2 MS. CURRAN: Well, it was kind of email
3 culture, I think, that you hit the reply button. But
4 they understand now that that really shouldn't be the
5 case.

6 ADMIN. JUDGE BOLLWERK: Okay.

7 Well, that sounds like a resolution then
8 in terms of the group Interveners.

9 So, what we will anticipate then as we go
10 around at the beginning and the individuals identify
11 themselves as representing a party that those
12 individuals, then, will not be speaking, making a
13 Limited Appearance at that session of the Limited
14 Appearance Session.

15 Obviously, if they're not sitting at the
16 table at that session and they are on the list or they
17 sign up later and can be heard, then, they can do
18 whatever they wish.

19 MS. CURRAN: Okay.

20 ADMIN. JUDGE BOLLWERK: All right?

21 MS. CURRAN: Great.

22 ADMIN. JUDGE BOLLWERK: Let's deal, then,
23 with Ms. Pinard. Am I pronouncing that correctly?

24 MS. CURRAN: Pinard.

25 ADMIN. JUDGE BOLLWERK: Pinard. She

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 raises a different question.

2 She is a name party to this proceeding and
3 she will remain that however and in whatever shape she
4 is in.

5 What do you want to say on that subject?

6 MS. CURRAN: Well, that presents a harder
7 case and I would just say to you - I mean certainly if
8 you're going to follow this policy to the letter, you
9 wouldn't let her speak. But the fact is that she is
10 somebody who lives in the area and who has concerns.

11 As I was saying before, part of it is that
12 when you submit an issue to the Licensing Board, it
13 has to be in a certain way and to a certain standard
14 and it seems to me that the purpose of this Limited
15 Appearance Session is to hear concerns of the
16 neighbors of the plant that might not otherwise be
17 raised.

18 So, I guess to me, it seems like - I guess
19 I would ask you, if you could make an exception for
20 that just to hear what she has to say.

21 I understand everyone has a time limit.
22 I don't think she's going to take a lot of your time.

23 MR. McNULTY: Judge, this is Tim McNulty.

24 Ms. Pinard is also an elected member of
25 the Board of Supervisors that is, of course, my client

1 and I have lots of experience with her.

2 It would be my advice that you just go
3 ahead and let her talk because it's bound to be less
4 time-consuming and easier on everyone then if you
5 tried to prevent it.

6 ADMIN. JUDGE BOLLWERK: Does staff have
7 anything they want to say? Mr. Lewis?

8 MR. LEWIS: No.

9 ADMIN. JUDGE BOLLWERK: No. All right,
10 you're going to pass on that one?

11 MR. LEWIS: Yes, I'll pass on that one.

12 ADMIN. JUDGE BOLLWERK: Well, the problem
13 that's presented - I mean the line here is clear that
14 the parties are the parties and again if Ms. Pinard
15 were simply a member of one of these groups, then we
16 wouldn't be having the problem, I guess, given the
17 resolution we've reached.

18 MS. CURRAN: Well, here's a question that
19 just came to my mind, Judge Bollwerk.

20 ADMIN. JUDGE BOLLWERK: All right.

21 MS. CURRAN: Well, you remember, she first
22 tried to intervene as a supervisor?

23 ADMIN. JUDGE BOLLWERK: Right. Correct.

24 MS. CURRAN: And she wound up having to
25 intervene as an individual?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D. C. 20005-3701

1 ADMIN. JUDGE BOLLWERK: Correct.

2 MS. CURRAN: Could she speak as the
3 Supervisor?

4 ADMIN. JUDGE BOLLWERK: I've actually
5 thought about this question.

6 My feeling would be, and I'll put it with
7 a caveat, San Luis Obispo County is a participant in
8 this proceeding very clearly and she is a member. I
9 understand the Board of Supervisors is like what we
10 would refer to as a County Commissioner?

11 MS. CURRAN: Yes.

12 ADMIN. JUDGE BOLLWERK: If were about the
13 same terminology.

14 Let's put it this way, if San Luis Obispo
15 County were not already in this proceeding in the way
16 that it is and she were appearing as the official
17 representative of the Board of Supervisors, I might
18 look at that somewhat differently.

19 But, at this point, she is simply an
20 individual supervisor, as I understand it. She does
21 not represent the Board of Supervisors. In fact, I
22 think the reason the county is in this proceeding the
23 way they are is because the Board of Supervisors
24 decided not to formally intervene.

25 I guess I have a problem with allowing her

1 to make a statement. She is essentially a party.

2 MS. CURRAN: Well, Judge Bollwerk, she
3 does represent the constituents who elected her,
4 right?

5 I mean she is a political representative
6 and I would think that has some weight, that she has
7 constituents who elected her.

8 ADMIN. JUDGE BOLLWERK: The problem is
9 we're trying to split the baby here in ways that it
10 doesn't seem to me to be necessarily appropriate.

11 I mean, she can't have it every way and
12 that's kind of what's going on here.

13 But is there anything else you want to say
14 on the subject?

15 MR. McNULTY: I think this might be a good
16 time to let substance rule over form, but it's just my
17 advice.

18 I mean, you can, obviously, judge, do
19 whatever you feel you need to do. But I think that,
20 I mean she's probably going to talk for about five
21 minutes and that would be a lot easier than hearing
22 her talk about this for like three or four weeks or
23 however long it's going to be if you don't let her
24 talk.

25 ADMIN. JUDGE BOLLWERK: Ms. Curran, do you

1 have anything further you want to say?

2 MS. CURRAN: I agree with you that there's
3 a problem and I'd just love to think of some way to
4 let her be heard, even to say --

5 ADMIN. JUDGE BOLLWERK: I take it she is
6 not willing to withdraw as a party?

7 MS. CURRAN: Oh, I haven't discussed that
8 with her, but I would doubt it.

9 ADMIN. JUDGE BOLLWERK: Well, let me make
10 a suggestion. Do you want to discuss this with her?

11 MS. CURRAN: Not really.

12 ADMIN. JUDGE BOLLWERK: Would a Written
13 Statement be adequate for her purposes?

14 MR. McNULTY: She's a person who really
15 expresses herself best on television.

16 MS. CURRAN: I'm sure she would like to be
17 heard. You know, standing there and being heard by
18 the audience.

19 You know, it's another thing that these
20 forums do is that people communicate to each other.

21 These are my concerns.

22 ADMIN. JUDGE BOLLWERK: Right. All right.

23 Let me ask a separate question. If we
24 allow Ms. Pinard to speak, am I then going to have
25 some problems with the individuals or the Intervener

1 group saying, well, why allow her? Why not us?

2 MS. CURRAN: No, because they're going to
3 get to speak. They're going to come on two different
4 days. You know, one day they'll sit at the table and
5 the next day they'll get up and speak.

6 I think they'll be fine with that and I
7 think they would probably agree with Tim that it would
8 be a good thing to let Peg Pinard speak.

9 ADMIN. JUDGE BOLLWERK: Right.

10 MS. CURRAN: So, I guess, if it were me in
11 that position, I would say that in recognition of the
12 fact that she is an elected official with a
13 constituency that she be allowed to speak.

14 MR. LEWIS: This is Steve Lewis, Judge
15 Bollwerk.

16 Although I passed on the first time, may
17 I speak on the second round?

18 ADMIN. JUDGE BOLLWERK: Surely.

19 MR. LEWIS: I think the fact that Ms.
20 Pinard is an elected official is really spoken to in
21 the fact that she was involved in and, I think, sought
22 to have the county participate as an Intervener, but
23 that did not transpire and so she is now as an
24 individual being represented by Ms. Curran.

25 I'm sensitive to this issue about

1 confusion of who parties are because there is such a
2 common misperception that the NRC staff is counsel to
3 the Board. People constantly think we're counsels to
4 the Board and I constantly have to explain to them
5 we're not counsel to the Board. We're a party before
6 the Board.

7 So being sensitive to it, I think that a
8 person who is a named party, I don't think that that
9 person can really cure the confusion.

10 By speaking separately and individually,
11 I think the confusion continues to exist. I don't
12 think that it can really be removed in the same way
13 that it can for some one named party individual doing
14 it at a different session as you had indicated.

15 So I tend to have that same concern that
16 you do, your Honor.

17 ADMIN. JUDGE BOLLWERK: All right.

18 MS. CURRAN: Judge Bollwerk?

19 ADMIN. JUDGE BOLLWERK: Yes.

20 MS. CURRAN: It's Diane Curran.

21 I was just thinking. What if Peg Pinard
22 had been a dissenting Commissioner who had not wanted
23 to intervene and who just had a different opinion of
24 the whole thing?

25 Would that have been an appropriate thing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to hear? I mean, would that have been legitimate?

2 ADMIN. JUDGE BOLLWERK: You're saying that
3 this dissenting Commissioner is a party to the
4 proceeding?

5 MS. CURRAN: Well, as an individual. I
6 mean we still have this issue that she is not
7 participating in the case as a Commissioner. Well,
8 she's an admitted Intervener as an individual. She is
9 participating as a Supervisor in the sense that the
10 Board voted to supervise.

11 But just taking the hypothetical, what if
12 she'd been a Commissioner who voted against it? Would
13 you hear from that Commissioner? Just, you know, that
14 different point of view or that individual
15 Commissioners have perspectives that they would like
16 to share with the NRC.

17 ADMIN. JUDGE BOLLWERK: Well, again, they
18 do as long as they are not parties.

19 MS. CURRAN: Well, as a Commissioner, she
20 - well, yes, that's right. She's a party. Well,
21 forget that.

22 MR. McNULTY: See the problem for her is
23 she's a represented party. This is Tim McNulty.

24 So, my guess is, and I haven't spoken with
25 her about this, is that she probably feels like, at

1 this point, her ability to personally present
2 information is limited because she's represented by
3 counsel and, you know, she's not going to be a
4 percipient witness and this is her chance to represent
5 to her constituents that she's, you know, ready to
6 champion their cause.

7 It concerns me a great deal that the NRC
8 would come all the way out here and then have the
9 member of the Board of Supervisors who represents the
10 area around the plant not be able to address it on
11 this issue.

12 I mean I understand the, sort of,
13 procedural argument for not allowing her to speak, but
14 I don't think it's going to sell well and I think the
15 cost of having her speak pales in comparison to the
16 consequences of not doing so.

17 ADMIN. JUDGE BOLLWERK: Notwithstanding
18 that you're there to represent the county's interest?

19 MR. McNULTY: I won't be talking either,
20 right?

21 ADMIN. JUDGE BOLLWERK: Sure. But,
22 nonetheless if a question does come out, you're the
23 county representative.

24 MR. McNULTY: That's right, I will be.

25 That's why I decided to stay on this phone

1 call because of all the county representatives, I'm
2 going to be the only one who actually has to go on
3 Sunday afternoon and give up the nice weather we're
4 having.

5 MS. CURRAN: I think what Tim is trying to
6 say is this is not going to play very well in the
7 newspapers.

8 ADMIN. JUDGE BOLLWERK: I understand that.

9 MR. McNULTY: I'm being on your side,
10 Judge.

11 ADMIN. JUDGE BOLLWERK: I understand what
12 you're saying. I appreciate your input, put it that
13 way.

14 Anything else you want to say, Mr. Lewis?

15 MR. LEWIS: No, no.

16 ADMIN. JUDGE BOLLWERK: All right.

17 Ms. Curran, anything further you want to
18 say?

19 MS. CURRAN: No, I don't.

20 ADMIN. JUDGE BOLLWERK: Do you think it
21 would be - given my concern about this -- is it worth
22 talking to Ms. Pinard or not?

23 MS. CURRAN: You mean about whether she'd
24 like to withdraw as a party?

25 ADMIN. JUDGE BOLLWERK: Yes.

1 MS. CURRAN: Well, I would advise her
2 against it.

3 So, I guess I'd tell her that if you want
4 to speak this weekend you can withdraw as a party, but
5 I would advise against doing that. If you'd like to
6 pursue this case to the nth degree, then that's the
7 end for you.

8 ADMIN. JUDGE BOLLWERK: All right.

9 I'm going to take Ms. Pinard's question
10 under advisement and think about it over night.

11 I had not really planned to issue an order
12 here, but I may well have to do that simply given what
13 we're dealing with.

14 Would it be useful, Ms. Curran, if I
15 included in that order some explanation with respect
16 to your clients or do you think they understand what
17 the parameters will be as you explained them to them?

18 MS. CURRAN: Yes.

19 When we hang up, I'm going to send them
20 all an email and tell them what you said and I think
21 that will be fine for them.

22 ADMIN. JUDGE BOLLWERK: Okay.

23 Anything anyone wants to say further on
24 this subject? Someone want in or out?

25 MR. TRUBATCH: I'm still here, Judge.

1 Thanks for your time and I appreciate the
2 difficulty of what you're faced with.

3 ADMIN. JUDGE BOLLWERK: I appreciate your
4 input. I'm glad you were able to join us.

5 All right. If there's nothing else then
6 we'll bring this to a close.

7 Ms. Curran, I appreciate you're making
8 yourself available, and thank you Mr. Lewis and the
9 other representatives from the county.

10 MS. CURRAN: Thank you.

11 ADMIN. JUDGE BOLLWERK: Thank you very
12 much. Good bye.

13 [Whereupon, the above matter adjourned at
14 4:30 p.m.]

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Pacific Gas & Electric Co.

Diablo Canyon Power Plant

Docket Number: 72-26-ISFSI;

ASLBP No. 02-801-01-ISFSI

Location: telephone conference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Gary Cross
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701