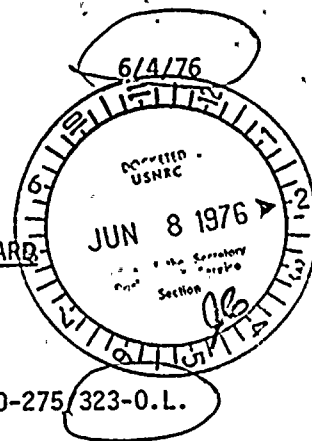


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of  
PACIFIC GAS AND ELECTRIC COMPANY }  
(Units 1 and 2, Diablo Canyon )

Docket Nos. 50-275/323-O.L.

JOINT RESPONSE OF  
SAN LUIS OBISPO MOTHERS FOR PEACE  
AND JOHN J. FORSTER  
TO BOARD'S ORDER OF MAY 18, 1976

By joint filings dated November 18, 1975, January 17, 1976, and February 3, 1976, San Luis Obispo Mothers for Peace and John J. Forster (Intervenors) urged this Board to order Pacific Gas and Electric Co. (PG&E) to comply with the discovery procedures set forth in the Commission's Rules of Practice (10 CFR Part 2). Having reversed its position several times, PG&E currently is denying security discovery to Intervenors in the absence of 10 CFR Part 2 authority.

By letter dated May 12, 1976, the Criminal Justice Administrators Association of San Luis Obispo County transmitted to the Board Chairman a copy of a resolution passed by the Association and urging this Board to deny our joint motion to compel discovery.

In its Order of May 18, 1976 the Board requested parties to respond to the resolution and to consider other alternates.

First of all, we want the record to show that we have in the past, and do now, encourage, welcome, and support all honest and sincere interest in the Diablo proceedings.

Therefore, we encourage the Association's interest in these proceedings and, in the event that it wishes to intervene, and is willing to assume the responsibilities of an intervention, we would support such a petition.

However, with respect to the Association's suggestion that we throw away our discovery rights reserved by 10 CFR 2.740 for admitted parties, we must object. We have very few degrees of freedom here and are certainly not contemplating deliberately relinquishing any of them. We urge this Board, therefore, to grant our motion to compel discovery.

The Board has suggested that

"...a committee from the Association could perhaps review the security plans with PG&E and the NRC Staff."



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In this regard we reaffirm our position that each party should be allowed to freely choose its own consultants. Thus if PG&E or the NRC Staff, or both, express an interest in getting technical assistance from the Association, and the latter is willing and able, then we, clearly, would have no objection.

If, however, such an arrangement were to be proposed as an alternate to the arrangement requested in our joint response dated February 3, 1976, it would have to be rejected immediately. This follows from the reasons stated below:

1. By its resolution of May 12, 1976, the Association has taken a position which is antagonistic to the substance of our motion to compel and would, therefore, be unreliable as a consultant in an adversary context.
2. The association is of the opinion that the NRC has sufficient expertise to pass upon the merits of security plans for nuclear power plants. It would then, as a consultant, be unmotivated.

Although it appears the Association, by its May 12, 1976 resolution, acted in good faith, it is not clear whether it was conversant with the Commission's Rules of Practice. 10 CFR 2.740 (b)(1) provides that discovery is to be allowed relative to

"those matters in controversy which have been identified by ...the presiding officer in the prehearing order entered at the conclusion of ... (the 2.751a) prehearing conference."

Thus the Association's position constitutes an attack on Commission Rules of Practice and should be presented pursuant to the provisions of 10 CFR 2.758.

In addition, the Association's position is significantly weakened by the fact that intervenors, in their January 17, 1976 joint response, cited two proceedings in which the intervenors were allowed discovery which appears similar to that we seek.

Respectfully submitted,

SAN LUIS OBISPO MOTHERS FOR PEACE

by Sandra A. Silver  
Sandra A. Silver

and

JOHN J. FORSTER

by Gordon Silver  
Gordon Silver

Dated: June 4, 1976

Xc: Board Members  
All Parties  
Docketing and Service  
Section  
Alan S. Rosenthal

