

THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety & Licensing Board

9/11/78

In The Matter Of:)
)
PACIFIC GAS & ELECTRIC COMPANY) Docket Nos. 50-275 O.L.
) 50-323 O.L.
(Diablo Canyon Nuclear Power)
Plant, Units 1 & 2))

INTERVENORS' REQUEST FOR THE ISSUANCE
OF LICENSING BOARD SUBPOENAS

INTERVENORS, SCENIC SHORELINE PRESERVATION CONFERENCE,
SAN LUIS OBISPO MOTHERS FOR PEACE, SANDRA SILVER, ECOLOGY
ACTION CLUB and JOHN J. FORSTER, request this Board to sub-
poena the following persons to appear as Board witnesses in
the upcoming licensing hearing:

1. Dr. Eli Silver
University of California - Santa Cruz
Division of Natural Sciences
Applied Sciences Building
Santa Cruz, California 95064
2. Dr. Stephen Graham
Chevron
575 Market Street
San Francisco, California 94103
3. Dr. Clarence Hall, Jr.
University of California
Department of Earth & Space Sciences
Los Angeles, California 90024
4. Dr. W. Gawthorp
Cooperative Institute For Research
In Environmental Sciences
University of Colorado - NOAA
Boulder, Colorado 80309



5. Dr. William R. Dickenson
Stanford University
Department of Geology
Palo Alto, California 94305
6. Mr. Holly Wagner
U.S. Geological Survey
345 Middlefield Road
Menlo Park, California 94025
7. Mr. David McCulloch
U.S. Geological Survey
345 Middlefield Road
Menlo Park, California 94025
8. Dr. M.G. Bonilla
U.S. Geological Survey
345 Middlefield Road
Menlo Park, California 94025
9. Dr. Robert Mark
U.S. Geological Survey
345 Middlefield Road
Menlo Park, California 94025
10. Mr. William J. Joyner
U.S. Geological Survey
345 Middlefield Road
Menlo Park, California 94025
11. Dr. James Brune
University of California - San Diego
IGPP - Mail Code A-205
La Jolla, California 92093
12. Dr. Enrique Luco
University of California - San Diego
AMES - Mail Code B-010
La Jolla, California 92093
13. Dr. Mihailo Trifunac
University of Southern California
School of Engineering -
Department of Civil Engineering
Vivian Hall
Los Angeles, California 90007



As set out fully in the attached Affidavit of Richard B. Hubbard and accompanying Attachments A through R, the proposed witnesses will make a significant contribution to the record. ^{1/} Each is an acknowledged expert in seismology, geology or structural engineering. Ten of the thirteen proposed witnesses have extensively studied the Hosgri-San Gregorio fault system or the engineering design of the Diablo Canyon Nuclear Power Plant ["Diablo Canyon"]. The remaining three witnesses (Drs. Mark, Bonilla and Joyner - with the United States Geological Survey ["USGS"]) have conducted substantial research relating to the earthquake potential of fault systems (Drs. Mark and Bonilla) and near-field accelerations (Joyner), issues at the heart of the controversy before this Board.

Issuance of subpoenas for the above-listed experts is justified because of the special circumstances of this proceeding. The scientific controversy surrounding the safety of Diablo Canyon is unique. Few facilities have provoked as much debate among recognized experts. ^{2/} The record of this

^{1/} Dr. W. Gawthrop is the only proposed witness whose work is not discussed in the Hubbard Affidavit. As pointed out in the Supp. 4 to the Safety Evaluation Report, at C-19 and C-15, Dr. Gawthrop has studied the location of the 1927 earthquake (7.2 M) and its relationship to the Hosgri-San Gregorio fault.

^{2/} See, e.g., Attachment P - "Review of the Seismic Evaluation for Postulated 7.5 M Hosgri Earthquake, Units 1 & 2, Diablo Canyon Site," J. Enrique Luo; Attachment Q - "Comments on Seismic Design Levels for Diablo Canyon Site in California," M.D. Trifunac.



licensing proceeding must reflect a full development of the issues of that debate. No less is required to provide the basis for a definitive finding of safety.

Moreover, serious questions have been raised regarding the integrity of the Staff's review and the Applicant's candor in fully and timely disclosing technical information to the Commission. A cloud of public doubt hangs over this proceeding. Issuance of the subpoenas would demonstrate to the public a concern for the fullest possible development of the record and thereby help to restore public confidence in the licensing process.

I.

The Licensing Board has the authority to issue the requested subpoenas. The Commission's Rules of Practice do not squarely address the Board's authority to subpoena a witness as its own on the motion of a party. However, that authority may be fairly implied from a reading of the Rules of Practice. 10 C.F.R. §2.720 states as follows:

(a) On application by a party, the designated presiding officer ... will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence ...

* * *

(c) ... [W]hen the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered and the subpoena may be served by registered mail.

The inclusion of subparagraph (c) anticipates the Licensing Board calling experts as Licensing Board witnesses.



Furthermore, while not restricted to a rigid application of the rules of evidence adopted by the Federal Courts, Licensing Boards often refer to those rules as guidelines. The Federal Rule of Evidence 614(a) provides as follows:

(a) The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

II.

A. The Licensing Board should subpoena the listed experts because of the special circumstances of this proceeding. Those special circumstances relate mainly to the fact that Diablo Canyon was designed and constructed without knowledge of the existence of the Hosgri-San Gregorio fault. That fault runs within 2-1/2 miles of the facility and, by general agreement, is capable of supporting a great earthquake - one substantially greater than that for which the original design of the facility was calculated. Had the existence of the Hosgri-San Gregorio fault been known in the late 1960's, it is highly unlikely that the Staff would have approved the Diablo Canyon site for the location of a nuclear power plant.

For the last three years, the Staff and Applicant have engaged in a reanalysis of the adequacy of Diablo Canyon's seismic design. The reanalysis focuses on two basic questions: (1) what is the maximum earthquake potential of the Hosgri-San Gregorio fault, and (2) how will that maximum event affect



Diablo Canyon? ^{3/}

Both questions are the subject of substantial scientific debate. Mr. Hubbard's Affidavit describes in detail the elements of that debate. The experts we have requested this Board to subpoena are, in each instance, central figures in the debate.

B. A license to operate a nuclear power plant may issue only where a Licensing Board has made a definitive finding of safety. Power Reactor Development Co. v. Electricians, 367 U.S. 396, 408 (1961). The finding must rest on a record that thoroughly explores the safety issues in contention. In this case, issuance of the requested subpoenas will assist the Licensing Board in building a complete record.

C. Substantial questions have been raised concerning the integrity of the Staff review and the timing and completeness of the Applicant's disclosures of the existence of the Hosgri-San Gregorio fault. Internal Commission memoranda provided to the Subcommittee on Energy and Environment, House Interior Committee, provoked hearings into the adequacy of the Staff's review of the application for this operating license. The Department of Justice has conducted an investigation into the licensing review.

^{3/} The two issues are cast in more elaborate language as Intervenor's Contention 1, 2, and 3.



These events are evidence of the public controversy relating to the licensing of Diablo Canyon. They underscore a growing skepticism concerning the adequacy of the whole licensing process. Issuance of the requested subpoenas will help to restore public confidence in the licensing process.

III.

This request is not an attempt to circumvent the Commission policy against providing financial assistance to Intervenor. There are basically three reasons why the Intervenor seeks to have the Board call the above-listed experts as Board witnesses.

First, many of the witnesses are government employees (USGS) or were consultants to the Advisory Committee on Reactor Safeguards and, therefore, are not in a position to testify as Intervenor witnesses.

Second, the other witnesses, most of whom were contacted, expressed a strong reservation against testifying "on behalf" of any party, but a willingness to testify as "neutral" or Board-sponsored witnesses.

Third, the Intervenor wants the opportunity to cross-examine each witness.



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IV.

For the reasons set forth above, the Intervenors respectfully request the Board to issue the subpoenas to the persons enumerated above.

Respectfully submitted,

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