UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

9/16/76

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Dockets 50-275-OL
	)	50-323-OL
Units 1 and 2	)	
	)	
Diablo Canyon Site	)	
	)	

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY
TO INTERVENORS' MOTION TO ADD NEW CONTENTIONS

In yet another motion, this one dated September 7, 1976, Intervenors seek to add three contentions for consideration at the environmental hearings. During a conference call on September 14, 1976, in view of the Board's order dated September 1, 1976 counsel for Intervenors agreed to defer the first requested contention and the first half of the second until hearings on the seismic issues are held. The second half of the second proposed contention will be covered by the proposed NRC generic rulemaking, and the NRC has announced it will not consider these issues in individual cases (NRC Policy Statement dated August 13, 1976, Docket RM-50-3). Accordingly, PGandE will limit its response herein to the proposed third contention dealing with energy conservation and alternate sources of power.

Under 10 CFR 2.714 Intervenors must make "a substantial showing of good cause" in order to file additional contentions. PGandE submits that the vague and unsupported allegations in their motion do not constitute good cause and that the requested contention should be rejected.

1. In the first place the issues sought to be raised in the "new" contention have already been explored in detail before this Atomic Safety and Licensing Board (In the Matter of Pacific Gas and Electric Company, 8 AEC 277, 287-300, August 2, 1974). Moreover, the data in the Addendum to the Final Environmental Statement dated May 1976 (pp. 11-1 to 11-4) show that without the Diablo Canyon units the net reserve capacity and reliability index fall to unacceptably low levels in 1977. Thus, the evidence already in the record directly contradicts the allegations in the motion.

2. In addition, Intervenors' allegations concerning alleged sources of solar power or conservation measures which provide alternatives to the new plant ignore the realities of the situation, which are that PGandE shortly will have two nuclear generating units with a total capacity of over 2100 mw ready and able to generate power. Intervenors' motion fails to take into account PGandE's investment in these facilities or the excess fuel costs PGandE would incur as a result of a delay in starting up the units. As covered in the affidavit of H. R. Perry dated June 20, 1975, these costs would amount to about $12 million per month. As pointed out at the previous hearing, PGandE legally cannot mandate energy conservation measures on its own (8 AEC 300). Regarding solar generation Intervenors allege it will be an

> ". . . available alternative later in the expected life of the Diablo Canyon plant." (Motion pp. 23, 24)

Just when this alleged solar alternative will be available is not specified in the motion nor are the alternatives available in the interim. Intervenors thus present the type of remote and speculative alternatives

which it has been judicially determined agencies are not required to consider as pointed out in Aeschilman v. NRC, (slip opinion), D.C. Cir., July 21, 1976).

> "Thus, for example, agencies are not required to consider alternatives which are 'remote and speculative,' Life of the Land v. Brinegar, 485 F 2d 460 (9th Cir. 1973), cert. denied, 416 U.S. 961 (1974), but may deal with circumstances 'as they exist and are likely to exist.'" Carolina Environmental Study Group v. U.S. [510 F 2d 796 (D. C. Cir. 1975)] . . . (slip opinion p. 12)

Incidentally, Carolina Environmental Study Group v. U.S., supra, is directly in point here:

> "The Study Group argues that because the nuclear plant is to operate for several decades, alternative power sources which may be developed, such as oil shale, geothermal energy, and solar energy, should be considered. That contention presupposes future developments which are both speculative developments which are both speculative and remote. Natural Resources Defense Council v. Morton, supra, is dispositive; . . .
>
> "The requirement is not to explore every extreme possibility which might be conjectured. Rather, we view NEPA's requirement as one of considering alternatives as they exist and are likely to exist."

3. Intervenors reliance on Aeschilman v. NRC, supra, is misplaced because the conservation and alternatives contentions involved in that proceeding were heard by the ASLB and factored into the required NEPA analysis in this proceeding (8 AEC 277). Thus, there was no "overly rigorous" test applied by the ASLB in the earlier proceeding. As far as this proceeding is concerned the ASLB cannot be faulted for failing to accept a late filed contention which on its face is in conflict with evidence already available in the record and is of the remote and speculative type which it has been

held agencies need not consider (see authorities cited under point 2.

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CERTIFICATE OF SERVICE

The foregoing document of Pacific Gas and Electric Company has been served today on the following by deposit in the United States mail, properly stamped and addressed:

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