

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
 )  
Pacific Gas and Electric Company ) NRC Docket No. P-564-A  
(Stanislaus Nuclear Project, )  
Unit No. 1) )  
\_\_\_\_\_ )

PACIFIC GAS AND ELECTRIC COMPANY'S  
RESPONSE TO DEPARTMENT OF WATER RESOURCES'  
MOTION FOR PROTECTIVE ORDER REGARDING  
PACIFIC GAS AND ELECTRIC COMPANY'S  
FIFTH SET OF INTERROGATORIES

Pacific Gas and Electric Company (hereinafter "PGandE") hereby responds to the Department of Water Resources' (hereinafter "DWR") motion for protective order regarding PGandE's fifth set of interrogatories and requests that the Board deny said motion and order DWR to answer the interrogatories.

The interrogatories which are the subject of this motion were served on July 19, 1979. The addressees of the interrogatories, including DWR, requested and obtained various extensions of time within which to respond. Having had nearly three months in which to respond to the interrogatories, DWR objects to certain of them on the grounds that they are "premature." This proceeding is approaching its third anniversary. Initially the Board had hoped that all discovery would be concluded within eight months. Instead, the Board now finds itself having to rule on claims that interrogatories are "premature."

The notion of prematurity in this proceeding was

1371 219

7911140

056

advanced first by intervenors in objecting to an earlier set of "contention" interrogatories. The intervenors then claimed that it would require substantial diversion of attorney time to answer the "contention" interrogatories and that a more productive use of attorney time would be to continue the analysis of the documentary material being produced by PGandE. The Board was evidently concerned about the proper use of attorney time, and ruled that interrogatories seeking factual information should be answered promptly, but that interrogatories which would require substantial attention by attorneys should be deferred:

"We think counsel can sit down and can determine those matters which are factual in nature which do not require study of tactics, the interposition of lawyers whether they be paralegals or counsel of record or anything like that. These data questions should be easily discernible by counsel on an objective basis and they should be promptly responded to . . . .

Now so far as the contention type matters, or mixed fact and contention, to the extent that it would require a not insubstantial amount of either time or effort on the part of lawyers we are inclined to defer, not forever and not until spring, but to defer until there is a bit more progress in discovery and an opportunity for counsel to get seasonally to contention matters, and to the legal and mixed questions of law and fact."

(Transcript, pp. 2501, 2504)

The interrogatories which are the subject of DWR's motion should not require any substantial amount of time or effort on the part of lawyers. These interrogatories are not contention interrogatories, and they do not involve questions of law and fact. They inquire as to factual matters, largely the identification of particular documents. DWR's motion does not suggest

1371 220

anything to the contrary. Furthermore, DWR does not suggest that answering any of the interrogatories would impose any particular burden on it; it offers no affidavits or other evidence of burden.

Finally, DWR does not suggest why the "prematurity" argument which was accepted last spring should continue in full force now. Even as to the pure contention interrogatories, the Board noted that it was not going to defer those "forever." Conversely, DWR does not suggest when, in its view, answers to these interrogatories would be appropriate. DWR has not met the Board's test of last spring, has not offered any reason why that test should continue in any event, and has offered no other reason for its attempt to defer indefinitely its discovery obligations. The particular interrogatories will be discussed separately below.

Interrogatory Nos. 4(f), 8(c) and 15(c)

Each of these interrogatory subparts requests the identification of documents relating to specific topics. Interrogatory No. 4 inquires regarding DWR studies of the possible construction or acquisition of transmission facilities; subpart (f) requests the identification of documents "containing or commenting upon the study or the minutes of any meeting" at which the study was discussed. This interrogatory does not require counsel to decide as a matter of tactics how to characterize a particular document. It merely requires someone at DWR -- presumably not an attorney -- to identify those documents which contain

1771 221

the studies. Evidently that has already been done because the studies are discussed in the response.\*

PGandE is entitled to an identification of those studies and to an identification of the ancillary documents requested in subpart (f) (e.g., minutes of meetings in which the study was discussed). PGandE is mindful of the Board's long standing request for all parties to use discovery tools to narrow and focus discovery. PGandE has endeavored to do that. It is entitled now to a response.

DWR does not suggest that lawyers would be required to spend substantial time or effort in identifying the requested documents. The question does not require any legal characterization of documents or any consideration of tactics. DWR does not suggest when the identification of documents would be appropriate. PGandE requires this information before it can proceed to the next logical step in discovery: inquiry of percipient witnesses.

Interrogatory No. 8 inquires regarding DWR's efforts to utilize various funding sources to construct or acquire transmission facilities. Subpart (c) requests an identification of documents reflecting any consideration of such efforts. Again, DWR does not suggest that any substantial involvement of attorneys is required to provide the information. PGandE needs the information to continue discovery on the item.

Similarly, Interrogatory No. 15 inquires regarding DWR's

---

\* In the response to subpart (e), for example, DWR states: "The studies in each case showed the proposed facility to be feasible, economical and advantageous . . ."

277

effort to use certain funding sources for the purpose of constructing or acquiring generating capacity. Subpart (c) requests the identification of documents reflecting consideration of such use, including reports or requests made to DWR's governing body. The above comments as to Interrogatory No. 8(c) apply here.

Interrogatory No. 23

Interrogatory No. 23 is limited by its terms to facts of which DWR is aware. The interrogatory was designed to focus attention on any instances presently known to DWR (or any other intervenor) in which PGandE supposedly refused to sell power at wholesale or to provide any other electrical service for the purpose of preventing a governmental takeover of retail facilities. This interrogatory does not require the substantial effort of attorneys. All it requires is an inquiry to the relevant personnel at DWR. If anyone had any information, it could be provided; if no one has any information, an answer to that effect could be drafted easily.

PGandE is entitled to know, nearly three years after this proceeding has been filed, whether the intervenors presently have any information suggesting to them that PGandE has ever refused to provide the specified services for the purpose of preventing government takeover. If there is no such information now, PGandE can put that discovery issue on the shelf. If there is some information, PGandE wants to pursue its discovery of the matter. Once again, DWR does not suggest that it would be any

1771 228<sup>3</sup>

particular burden to answer this interrogatory now, nor does it suggest when it will be ready to provide some information.

Interrogatory Nos. 50(c), 50(d), 52(c), 52(d),  
54(c), 54(d), 56(c) and 56(d)

Interrogatory No. 50 relates to invitations to DWR to participate in certain power projects. Subpart (c) requests the identification of persons having knowledge of the facts upon which DWR based its evaluation of such projects, and subpart (d) relates to documents referring to or relating to any facts forming the basis of or supporting DWR's evaluation of such projects. Neither subpart requires the substantial effort of attorneys. Both subparts will be helpful to focus further discovery in compliance with the Board's repeated suggestions.

DWR also objects to subpart (c) on the ground that it is overbroad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. It bases this objection on an interpretation of the interrogatory which would require the identification of persons who have knowledge of universally known facts. DWR is creating problems in an effort to avoid any response whatever. The interrogatory subpart is obviously designed to identify those persons who have particular knowledge of DWR's evaluation of the project or proposal so that these persons can be deposed if that appears useful. PGandE anticipated a response identifying such individuals, and believes that its interrogatory, reasonably interpreted, requests only that information. PGandE is entitled to a prompt response to both subparts (c) and (d); DWR has suggested no substantial reason for deferral of its obligations in this connection.

224

Interrogatory No. 52 relates to invitations to DWR to enter into certain capacity or energy exchange arrangements. Subparts (c) and (d) request the identification of persons having knowledge of or documents relating to such proposed arrangements. The observations made above with respect to Interrogatory No. 50 apply equally here.

Interrogatory No. 54 relates to DWR's belief regarding the necessity of construction of new transmission facilities. Subparts (c) and (d) request the identification of persons having knowledge of the facts or documents relating to the facts from the basis of that belief regarding facility need. The observations made above with respect to Interrogatory No. 50 apply equally here.

Interrogatory No. 56 relates to DWR's belief regarding the necessity of new transmission facilities to make efficient use of certain generation capabilities. Subparts (c) and (d) request the identification of persons having knowledge of the facts or documents relating to the facts which form the basis of such belief. The observations made above with respect to Interrogatory No. 50 apply equally here.

#### CONCLUSION

DWR bases most of its motion upon a claim of prematurity based solely on the decision made by the Board at its May conference among counsel. The standard announced by the Board at that time related entirely to the substantial involvement of counsel in answering "contention" interrogatories. These interrogatories

1771 228<sup>5</sup>

were drafted with that standard in mind and addressed strictly factual matters. None of the interrogatory subparts involved in this motion are "contention" interrogatories. None would involve counsel in any substantial way. They are factual inquiries designed to focus further discovery efforts.

DWR has not attempted to suggest that there would be any burden in providing a response. It has not submitted a single affidavit or even a representation by counsel that the information is unavailable or difficult to obtain. This case is fast approaching its third anniversary, and it is not premature for PGandE to ask for an identification of particular documents or witnesses. The motion should be denied.

McCutchen, Doyle, Brown & Enersen  
Morris M. Doyle  
William H. Armstrong  
Meredith J. Watts  
Three Embarcadero Center  
San Francisco, CA 94111

Malcolm H. Furbush  
Philip A. Crane, Jr.  
Jack F. Fallin, Jr., Esq.  
Richard L. Meiss, Esq.  
77 Beale Street  
San Francisco, CA 94106

By WILLIAM H. ARMSTRONG  
William H. Armstrong  
Attorneys for Pacific Gas  
and Electric Company

Dated: October 24, 1979.

cc: All Parties on Service List

1771 224<sup>6</sup>



CERTIFICATE OF SERVICE BY MAIL

Mary Tobias certifies that she is not a party to the within cause; that her business address is Three Embarcadero Center, San Francisco, California 94111; and that she caused an envelope to be addressed to each of the following named persons, enclosed and sealed in each envelope a copy of the foregoing document(s) and deposited each envelope with postage thereon, fully prepaid, in the United States mail at San Francisco, California on October 24, 1979.

Honorable Thomas L. Howe  
Administrative Law Judge  
Federal Energy Regulatory Commission  
825 North Capitol Street, N.E.  
Washington, D.C. 20426

George Spiegel, Esq.  
Robert C. McDiarmid, Esq.  
Daniel I. Davidson, Esq.  
Thomas Trauger, Esq.  
Spiegel & McDiarmid  
2600 Virginia Avenue, N.W.  
Washington, D.C. 20037

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Marshall E. Miller, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Steven R. Cohen  
Edward J. Terhaar  
Department of Water Resources  
1416 9th Street  
P. O. Box 388  
Sacramento, California 95802

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

1371 225<sup>7</sup>

Gordon W. Hoyt  
Utilities Director  
City of Anaheim  
P. O. Box 3222  
Anaheim, California 92803

Joseph J. Saunders, Esq.  
Antitrust Division  
U.S. Department of Justice  
Washington, D.C. 20530

Everett C. Ross  
PUC Director  
City Hall  
3900 Main Street  
Riverside, California 92501

Sandra J. Strebels, Esq.  
Peter K. Matt, Esq.  
Bonnie S. Blair, Esq.  
Spiegel & McDiarmid  
2600 Virginia Avenue, N.W.  
Washington, D.C. 20037

Jerome Saltzman, Chief  
Antitrust and Indemnity Group  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Seymour Wenner, Esq.  
Atomic Safety and Licensing Board  
4807 Morgan Drive  
Chevy Chase, Maryland 20015

Sheldon J. Wolfe, Esq.  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Joseph Rutberg, Esq.  
Benjamin H. Vogler, Esq.  
Jack R. Goldberg, Esq.  
David J. Evans, Esq.  
NRC Staff Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Michael J. Strumwasser  
Deputy Attorney General of  
California  
3580 Wilshire Blvd., Suite 600  
Los Angeles, CA 90010

1371 228<sup>8</sup>

H. Chester Horn, Jr.  
Deputy Attorney General  
Office of the Attorney General  
3580 Wilshire Blvd., Suite 800  
Los Angeles, California 90010

Clarice Turney, Esq.  
Office of the City Attorney  
3900 Main Street  
Riverside, California 92521

1371 229

*Mary Tobias*

---

Mary Tobias