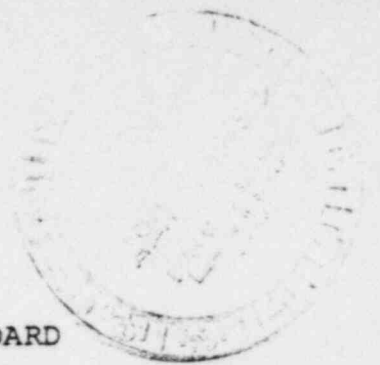


NRC PUBLIC DOCUMENT ROOM

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



In the matter of: )

Pacific Gas and Electric Company )  
(Stanislaus Nuclear Project, )  
Unit No. 1) )

NRC Docket No. P-564-A

MOTION FOR A PROTECTIVE ORDER

Pursuant to 10 C.F.R. § 2.740(c), Pacific Gas and Electric Company ("PGandE") hereby moves that the deposition of Mr. Robert H. Gerdes -- noticed on behalf of Intervenors and Staff by Anaheim and Riverside by telecopy on March 26, 1979 -- not be taken. Alternatively, PGandE moves that the Board condition the taking of this deposition by order as requested below.

Section 2.740(c) of the Nuclear Regulatory Commission ("NRC") Rules of Practice provides that the presiding officer may issue a protective order whenever justice requires, and in particular to protect "a party or person from annoyance, embarrassment, oppression, or undue burden or expense..." A protective order is required to prevent the taking of Mr. Gerdes' deposition at this time. As stated more fully below, protection is appropriate because in noticing this deposition Intervenors and Staff have ignored the Board's plain directives as to the witnesses to

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be deposed, scope of the examination and circumstances of the depositions, because the notice calls for a massive and unreasonable new document production, and because protection is necessary to avoid repeated examinations of this witness on the same subjects.

1. The deposition noticed is contrary to this Board's directives.

An examination of the transcript of the most recent prehearing conference in the Stanislaus proceeding reveals that it is not appropriate to depose this witness at this time and that the scope of subject matter to be covered at the deposition and of the document request are entirely out of line.

The taking of depositions at this stage of the proceeding was suggested by the Chairman (e.g., Transcript, January 25, 1979, at pp. 2174-77), for the purpose of narrowing issues (and, hopefully, discovery) and to explore specific, discrete lines of inquiry into subjects which Intervenor and Staff could identify at present as being relevant and fruitful. The depositions were to be before the Board to acquaint the Board with the issues in the case and to provide a method for quick resolution of objections. The subject matter was to be limited, and the witness chosen was to be the proper person to deal with the subject. (Tr. p. 2180.)

The problem of deposing a witness whose experience covered a broad range of matters, and the attendant problem of a broad document request, was specifically discussed. (Tr. 2185-88.) The Chairman then directed:

"Now, don't start giving me some of the worst cases immediately to work on. Let's take it where we get some that will be perhaps reasonably productive and will require a couple of satchels of documents but not that million."

In direct contravention of the Chairman's directives, Intervenors have selected the "worst case" with which to begin the process, the man who was, before his retirement as an officer, President, and subsequently Chairman of the Board of PGandE. Instead of noticing the deposition before the Board, it was noticed to be taken before a notary. Instead of limiting the scope of inquiry to a manageable topic, Intervenors and Staff have proposed to examine Mr. Gerdes on the Pacific Intertie Agreement, its history, and all "related agreements" (which NCPA and Southern Cities have claimed exceed 150 by letter dated February 9, 1979 to Judge Howe in FERC E-7777(II)), the California Power Pool Agreement and its history; Contract 2948A between PGandE and the Bureau of Reclamation and its history; all of PGandE's contractual arrangements with other utilities; and PGandE's activities in relation to other utilities' bulk power

arrangements. Instead of asking for a limited number of specifically identified documents, Intervenor's have issued a broad request calling for truckloads.

The document request contained in the deposition notice is a particularly egregious attempt to abuse the discovery process suggested by the Board. The Chairman specifically stated that the Intervenor's and Staff were to choose a witness who would not need "truckloads" of documents to support his testimony. (Tr. p. 2186.) PGandE objects to responding to any "subject matter" document request at this time. Intervenor's and Staff have had approved the broadest possible document request in this proceeding, one which PGandE continues to regard as unreasonable and unduly burdensome. The "one massive sweep" rule of this case was developed to give the Company some measure of protection against abuse of discovery, and Intervenor's and Staff have been instructed numerous times on the record that any further document requests would have to be extremely particularized, the result of studying documents already produced and generally in the nature of a "follow-up." (Tr. November 30, 1977, pp. 751-52).

The document request included in this deposition notice does not even attempt to specify the documents to be produced by the witness. Instead, Mr. Gerdes is requested

to bring all documents which relate to the listed topics.\* Mr. Gerdes is further asked to bring all "relevant" documents "shown to him since his retirement by attorneys for PGandE or other PGandE employees, including consultants..." Leaving aside that ten years' worth of documents would be a considerable number, it would be impossible for Mr. Gerdes to recall -- or for the Company's attorneys to identify -- which documents he has seen in this time period. In fact, no record has been kept of which documents Mr. Gerdes may have reviewed, even in the last ninety days. As the Board is well aware, all parties to this proceeding have had the "CID documents" for over a year. (See Tr. p. 2187.) NCPA and Southern Cities attached many of them to their testimony in the FERC Dockets and to various pleadings in this proceeding. There is no excuse for the lack of specificity in this request, under these circumstances.

Because the notice of deposition for Mr. Gerdes contravenes the direction of the Board in every particular, PGandE requests that the deposition be ordered not taken.

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\* Although Mr. Gerdes is retired, he is a consultant to the Company and his only files are the Company's files. Therefore, the request for documents in his "custody or control" is virtually a request to produce all of PGandE's files. Alternatively, it is an attempt by Intervenor to use PGandE attorneys' work product in the selection of documents.

2. Under the circumstances, the noticed deposition is an attempt to harass the witness and PGandE.

Mr. Gerdes is almost seventy-five years old. His normal week as a consultant to the Company consists of two days. He has been retired from the position of chief executive officer for ten years.

In addition to the noticed deposition, Mr. Gerdes has been requested as a witness by Spiegel & McDiarmid on behalf of the Northern California Power Agency and Southern Cities in a pending Federal Energy Regulatory Commission ("FERC") proceeding, Docket E-7777(II), which will begin hearings in early June. It is likely, therefore, that if the noticed deposition is taken, Mr. Gerdes would be subjected to another round of questioning sometime in the next few months. At the hearing on January 25, Intervenors made clear that they intended that any depositions taken pursuant to the Board's suggestions would not be definitive and that later depositions of some witnesses were contemplated. Accordingly, a third round of testimony appears to be planned for Mr. Gerdes.

An offer to make Mr. Gerdes available as a witness in the FERC proceeding in lieu of the deposition was rejected. An inquiry about substituting the deposition for a later appearance before FERC was similarly rejected. The conclusion which suggests itself is that Intervenors have

taken advantage of the Board's suggested procedure and converted it to a "free shot" preliminary round to the FERC testimony. Mr. Gerdes has a basic right to be protected from multiple examinations and this Board has a basic responsibility to prevent abuses of its process.

Finally, the deposition is noticed in Washington, D.C., and for a period only two weeks before the next scheduled prehearing conference. Travel to Washington is onerous for the witness and burdensome for the attorneys. As will be appreciated by the Board, some of the same attorneys who are preparing for the prehearing conference in this proceeding, and the filing of testimony in FERC Docket E-7777(II), must undertake the substantial and time-consuming task of preparing Mr. Gerdes for his testimony now and then again in a few months. Such a schedule is unduly difficult and burdensome, especially when some other witness would much better serve the purpose of this sort of deposition at this time.

For these reasons also, PGandE requests the Board to order that the deposition of Robert H. Gerdes not be taken as noticed.

If, notwithstanding the considerable objections which are set forth above, the Board orders the deposition to proceed, PGandE requests that the following conditions be placed on the taking of Mr. Gerdes' deposition:

1) That the testimony be taken before the Board as suggested by the Chairman (Tr. p. 2175.); PGandE believes that the presence of the Board is essential to prevent harassment of the witness and to insure the quick resolution of objections.

2) If necessary, PGandE and Mr. Gerdes are prepared to have the deposition in Washington to secure the presence of the Board. However, if taken in Washington, PGandE requests that Mr. Gerdes' travel, hotel and incidental expenses be paid by Intervenor.

3) That the deposition be held no earlier than the May 15 prehearing conference.

4) That the subject matter of the deposition be limited to one subject or in such other specific reasonable manner as the Board should direct.

5) To avoid duplicate examinations, that the parties who are also parties to the FERC E-7777(II) proceeding be precluded from examining Mr. Gerdes concerning any matter to be explored in that proceeding.

6) To avoid multiple examinations, that Mr. Gerdes' deposition not be taken again in this proceeding.

7) That no documents or, at most only a limited number of specifically identified documents, be required to be produced at the deposition.

PGandE respectfully requests that the Chairman act on this matter as soon as it is feasible, to allow Mr. Gerdes to make appropriate plans for May.

Respectfully submitted,

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Dated: March 31, 1979

CERTIFICATE OF SERVICE BY MAIL

Meredith J. Watts certifies that she is an active member of the State Bar of California; 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

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