UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

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

JOINT REPLY OF THE NORTHERN CALIFORNIA POWER AGENCY AND THE CITIES OF ANAHEIM AND RIVERSIDE, CALIFORNIA TO PREHEARING CONFERENCE BRIEFS OF PACIFIC GAS AND ELECTRIC COMPANY AND THE DEPARTMENT OF WATER RESOURCES

The Northern California Power Agency ("NCPA") and the Cities of Anaheim and Riverside, California ("Southern Cities") hereby respond to the prehearing conference briefs submitted by the Department of Water Resources ("DWR") and Pacific Gas and Electric Company ("PG&E").

A. Brief of PG&E

PG&E argues in its brief that its commitments negotiated with the Department of Justice moot many of the issues in these proceedings. It attaches great importance to the fact that these conditions should by this time be attached to the Diablo Canyon Construction Permits. PG&E's position is identical to that position taken by PG&E in its Motion for Summary Disposition of this proceeding filed December 13, 1976. The Atomic Safety and Licensing Board by Order issued July 8, 1977 disposed of that argument by PG&E. It stated:

Finally, PG&E contends that the issues raised by the intervenors are mooted by the Commitments accompanying the Attorney General's advice letter. We do not agree, and regard this issue as settled by the decision of the Appeal Board in Wolf Creek, which stated:

> 'in the case at bar, the Attorney General recommended that no hearing would be necessary provided the Commission inserted specified conditions in the Wolf Creek license. The suggested conditions were ones which the Attorney General believed adequate to assure small utilities in the applicants' service area access to power produced by that nuclear facility. See pp. 562-563 above. The applicants have agreed to those conditions; consequently, no hearing is needed insofar as the Attorney General is concerned if they are included among the terms of the license.
>
> 'The second situation which may necessitate a formal antitrust proceeding -- and one with which we are concerned here -- it described i the Joint Committee Report which accompanied the enactment of Section 105(c) in 1970. [See n. 10, supra.] In the case where the Attorney General does not recommend a hearing 'but antitrust issues are raised by another in a manner according with the Commission's rules or regulations, the Commission would [then] be obliged to give such consideration thereto as may be required by the Administrative Procedure Act and the Commission's rules or regulations.'

[Joint Committee Report, p. 30.] (Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 565-566 (1975)).

We have here given consideration to the antitrust issues properly 'raised by another, 'the Intervenors,' and have

concluded that such issues be resolved in an evidentiary hearing. 1/

NCPA and Southern Cities believe this Board correctly interpreted the effects which PG&E's negotiated commitments with the Department of Justice have on this proceeding. The law is clear that once antitrust allegations have been raised by intervenors who are not parties to those negotiated commitments, and those issues are not disposed of simply by the existence of the commitments, and it is this Board's obligation to go forward with evidentiary hearing to resolve those issues. We note that many of the allegations made are on their face not resolved by the commitments. Southern Cities wishes also to emphasize that those negotiated commitments do not resolve any of the problems and issues raised by Southern Cities in these proceedings.

PG&E also argues based on its own statements, without any substantiation, that a number of matters have been mooted by subsequent events. (PG&E Initial Brief, p. 18). This reply brief is not the appropriate place to raise arguments as to the correctness of factual matters. However, it is only necessary to state that NCPA and Southern Cities disagree with PG&E's contentions that the matters it discusses, namely long-term contracts, geothermal and the Seven-party agreement have been mooted by subsequent events.

1/ Order Denying Motion of Pacific Gas and Electric Company (Applicant) for Summary Disposition, July 8, 1977, pp. 8-9.

Particularly with respect to the Seven-Party Agreement, it is worth noting that while the signatories to the agreement have moved to terminate the agreement, there has been no order by the Federal Energy Regulatory Commission approving that termination. Therefore, there can be no assurance as PG&E contends that this issue will be mooted at the time the license related to the Stanislaus project is issued. Indeed, the basic problem is not the Seven-Party Agreement alone, but as has developed, the skein of contractual restrictions, of which the Seven-Party Agreement is only the most obvious; which effectively precludes intervenors from any dealings with the Pacific Northwest. PG&E reads its commitments as permitting it to continue to exclude NCPA and Southern Cities from access to the Northwest. PG&E's arguments concerning the Attorney General's advice have in effect been answered by the prior pleadings of NCPA, Southern Cities and DWR. The advice of the Attorney General has not been ignored, as PG&E suggests would be the result if a hearing continues in this proceeding. Rather, the Intervenors have seriously studied the commitments negotiated by the Attorney General and found that those commitments do not resolve their problems. Furthermore, as noted above, the Board has recognized that the issues raised by intervenors require an evidentiary hearing.

PG&E also addresses the question of whether the ongoing FERC proceedings will have any effect on reducing efforts in the Stanislaus case. PG&E argues that the results

of the proceedings at the FERC (in FERC Docket No. E-7777) would have "very significant effect" in the Stanislaus case. It suggests that the Board consider suspending discovery related to those contracts 1/ until after the conclusion of the FERC hearing. PG&E states that that hearing is now currently scheduled for March 20, 1979.

PG&E's position that this Board should wait on the pending proceedings before the FERC raises substantial questions as to conflict between PG&E's position in this proceeding as to the FERC's jurisdiction over the issues before in Docket No. E-7777 (Phase II) and its position before the FERC. PG&E has argued before the FERC that the FERC's jurisdiction with regard to antitrust matters is limited to considering the anticompetitive effects of the specific contracts which are the subject matter of Docket No. E-7777. Furthermore, PG&E argues that of other matters related to those contracts as well as matters related to intent are not the proper subject matter for consideration by the FERC. If that is PG&E's position, then there is absolutely no reason why this Board should feel any need to wait for the pending FERC proceedings. Under PG&E's interpretation of the FERC's

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1/ PG&E-SMUD Agreement, the California Power Pool, and CVP-2948-A Contract, as well as potentially matters relating to the Pacific Northwest Intertie.

the FERC's authority, that authority is so limited that it would be of no value to this Board in considerations of the issues before it. The only effect of waiting for an FERC decision would be to further delay these proceedings. 1/

B. Response to Prehearing Brief of DWR

NCPA and Southern Cities generally agree with the positions taken by DWR in its prehearing brief. NCPA and Southern Cities are in accord with and would support DWR's proposal for bifurcating the hearings in this proceeding in a manner which would provide that there would be preparation and trial of remedial issues prior to the trial of the liability issues. NCPA and Southern Cities would however suggest that should intervenors prevail in the remedy phase of the hearing, and PG&E seek to have Phase II of those hearings -- the liability hearings -- then PG&E should be required to bear the costs of such proceeding for intervenors in the event that intervenors prevail in that phase of the proceeding, as this would essentially be analogous to a request for admission of liability.

1/ It should be noted that by Motion dated December 13, 1978, PG&E requested an extension of 60 to 120 days from the current schedule to file reply testimony in Docket No. E-7777 (Phase II) with other procedural dates, including the hearing date, being accordingly extended. Thus, should PG&E's motion be granted the hearings in Docket No. E-7777 (Phase II) would not commence until at least May 20, 1979.

Under such a proposal, PG&E's determination to proceed with the liability proceeding after this Board would have found that the relief sought by intervenors is warranted would require serious thought by PG&E as to whether it truly did have a meritorious case on the question of liability. This qualification is necessary, for the bifurcated procedure suggested will be a more expensive form of hearing if continued for both phases. This is not to suggest that PG&E would enter into such a proceeding spuriously, but it only insure that this Board and the parties would only be required to prepare for and go to trial on matters which there was serious contention and for which the moving party believe there was serious merit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Peter K. Matt certifies that he has this day served the foregoing document upon the following parties in accordance with the requirements of Section 2.701 of the Commission's Rules of Practice.

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Executed at Washington, D.C., this 26th day of December, 1978.

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