

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

10/21/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
PACIFIC GAS AND ELECTRIC COMPANY  
(Humboldt Bay Power Plant,  
Unit No. 3)

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Docket No. 50-133

NRC STAFF RESPONSE TO MOTION TO  
HOLD PROCEEDINGS IN ABEYANCE

INTRODUCTION

On October 6, 1980, the Applicant filed a motion, pursuant to 10 C.F.R. § 2.711(c), to hold the captioned proceeding in abeyance until December 31, 1980 on the grounds that additional studies are required to resolve the technical issues relating to geology and seismology and that additional time is needed to assess the economic costs of returning the plant to operation. The motion is accompanied by a letter, dated October 6, 1980, to the Licensing Board Chairman enclosing a report prepared for the Applicant by Woodward-Clyde Consultants, entitled "Evaluation of the Potential for Resolving the Geologic and Seismic Issues at the Humboldt Bay Power Plant, Unit 3," dated October 1, 1980. The October 6 letter identifies the cost of complying with the Commission's requirements stemming from the Three Mile Island accident as among the economic factors it must assess. On the strength of the representations made in the present motion and the accompanying consultants' report, the Staff interposes no objection to the requested continuance until December 31, 1980.

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DISCUSSION

The present motion is the fourth motion for continuance to be filed in this proceeding.<sup>1/</sup> The Staff interposed no objection to the last motion to hold the proceeding in abeyance until October 1, 1980 while, at the same time, expressing the expectation that that would have been the last such request necessary.<sup>2/</sup> That has not proved to be the case.

According to the Applicant's letter of October 6, 1980, the October 1 report of its consultants concludes that the technical issues relating to geology and seismology seem capable of resolution but that additional studies would be required to do so. Separate and apart from this consideration, the Applicant states that the cost of otherwise returning the plant to operation could prove prohibitive. It asserts that it needs until December 31, 1980 to make such an assessment. Judging from this representation, even assuming a successful resolution of the geologic and seismic issues, it may not return the plant to operation. In a parallel matter, it has been brought to the attention of the Staff that the Applicant has been ordered by the California Public Utilities Commission (PUC) to conduct a thorough review of the future commercial potential of the Humboldt facility and to report its findings to that agency by December 31, 1980.<sup>3/</sup>

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1/ Earlier such motions were filed on March 24, 1978, January 26 and September 27, 1979.

2/ See NRC Staff response to Applicant's September 27, 1979 motion for continuance, dated December 26, 1979.

3/ See Intervenors' answer in opposition to the present motion, dated October 17, 1980.

The Staff expresses no opinion on whether the material geologic and seismic issues are capable of successful resolution as the October 1 report of the Applicant's consultants concludes. Nonetheless, it is reluctant to deny the Applicant the opportunity to perform the additional studies assertedly needed to achieve such resolution in light of tangible evidence they are striving to resolve these issues in a timely manner. At the same time, the Applicant's introduction of economic factors into the decisional process cannot be ignored. The Staff acknowledges that the Applicant is under order from the California PUC to report to it upon the economic viability of potential future plant operation. Given this development, and the protracted history of this proceeding generally, the Staff believes that the Board and parties are similarly entitled to an express commitment from the Applicant on the record by December 31, 1980 that, assuming a favorable resolution of the pertinent geologic and seismic issues, it intends to operate this plant again.<sup>4/</sup>

As a further consideration, pursuant to the Board's June 17, 1980 Order, the Intervenor's are required to file amended contentions by mid-December, 1980 on the basis of the Woodward-Clyde Consultants' report of October 1, 1980. Presumably, the Staff is expected to file a responsive statement of position on the admissibility of the contentions within some reasonable period of time.

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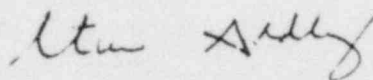
<sup>4/</sup> In its decision in North Coast, the Appeal Board concluded that, where a construction permit applicant has clearly abandoned any intention to build the subject facility, a licensing board may properly dismiss the application in question as moot. Puerto Rico Electric Power Co. (North Coast Nuclear Plant, Unit 1), ALAB-600, 11 NRC \_\_\_\_ (August 11, 1980).

Given the continued uncertainty surrounding the Applicant's plans to proceed to hearing on its application, the requirement to frame contentions for litigation imposes an unnecessary, and potentially fruitless, burden on all parties concerned. Therefore, the Staff recommends that the Board defer any obligation to formulate contentions until the Applicant has officially advised the Board of its litigative position in this matter.

CONCLUSION

In light of the above, the Staff interposes no objection to the Applicant's motion to hold the proceeding in abeyance until December 31, 1980.

Respectfully submitted,



Steven C. Goldberg  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 21st day of October, 1980



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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION TO HOLD PROCEEDINGS IN ABEYANCE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 21st day of October, 1980.

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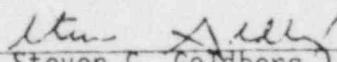
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