

2/13/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PACIFIC GAS AND ELECTRIC) NRC Docket No. P-564A
COMPANY)
)
(Stanislaus Nuclear Project,)
Unit No. 1))

JOINT MOTION BY
PACIFIC GAS AND ELECTRIC COMPANY
AND THE NRC STAFF TO SUSPEND
DISCOVERY AND MOTION ACTIVITY



BACKGROUND

This proceeding was initiated in October, 1976, by the filing of three petitions to intervene in response to Pacific Gas and Electric Company ("PGandE")'s submission in July, 1975, of antitrust information in connection with the proposed Stanislaus nuclear power plant. The petitions, filed on behalf of the Northern California Power Agency ("NCPA"), the State of California Department of Water Resources ("DWR"), and the Cities of Anaheim and Riverside, California ("Cities"), were granted and an antitrust hearing was ordered by the Licensing Board. Since then, the parties have been engaged in massive discovery effort requiring a

substantial amount of time, manpower, and effort by all parties. */

PGandE POSITION

In 1974 the State of California passed the Warren-Alquist Act which regulates the siting of power plants and with the 1975 amendments, sets specific conditions on approval of future nuclear power plants in the State of California. This legislation has made it impracticable for PGandE to proceed with construction of the Stanislaus facility because of the potential for conflicting decisions between California regulatory agencies and the NRC and the outright prohibition of any new nuclear power plants absent affirmative findings

*/ At this point in PGandE's document production effort, production has been completed with respect to a number of the Company's departments and PGandE has been awaiting word from Intervenor and Staff as to which department records are to be produced next. Depositions of city officials in the Cities of Alameda, Lompoc and Lodi have been noticed, scheduled and should be completed shortly. Intervenor Northern California Power Agency (NCPA) has completed outstanding document discovery requests directed to it with the exception of certain items still in dispute between NCPA and PGandE. Movant PGandE, in keeping with the spirit of this motion, will not press for any resolution of those disputes prior to entry of the order requested herein. Certain documents previously selected remain to be delivered by Intervenor Department of Water Resources (DWR), but it is anticipated that that mechanical function can also be completed shortly. There are a great many documents with respect to which privilege claims have been asserted by PGandE, DWR and NCPA. While the parties have been negotiating with respect to a resolution of these privilege claims, there are no formal steps currently in motion to resolve those claims.

on a number of specific matters, including the existence of a "demonstrated technology" for waste disposal.

On October 2, 1978, PGandE filed suit in the Federal District Court challenging the constitutionality of the Warren-Alquist Act. On April 23, 1980 the District Court ruled that the California laws mentioned above (some 16 provisions in all) were pre-empted by the Atomic Energy Act pursuant to the Supremacy Clause of the U.S. Constitution and hence unenforceable. Pacific Gas and Electric Company, et al. v. California Energy Commission, et al. (E.D.Cal. 1980) No. 5-78-527MLR. The defendants, however, have appealed that decision and the matter is currently before the United States Court of Appeals for the Ninth Circuit. It is uncertain when that Court will render its decision and the strong possibility that the decision will be reviewed by the United States Supreme Court could mean that PGandE will not be able to proceed in this matter for a number of years. Because of the above legal impediment, PGandE's plans for the plant have been unable to progress even so far as filing its application for a construction permit.

NRC STAFF POSITION

The NRC Staff's expenditures in money, time and effort in connection with preparations for this antitrust hearing have been substantial. Other parties have incurred similar expenses. The costs of these efforts are borne by

ratepayers and taxpayers. Considering the current status of this application, as described by PGandE, it is difficult to justify the continuing expenditure of money, time and effort on this proceeding. Nevertheless, such expenditures will continue unless a positive step is taken to arrest them. The NRC Staff believes that the prudent course of action to follow under the present circumstances is to suspend all further preparatory activity as proposed in this motion until such time as there are more positive indications that the application will be pursued to completion.

To assure that the interests of the parties are not prejudiced if this motion is granted, the NRC Staff believes that the Licensing Board should direct all parties to preserve the documents collected to date during their discovery. Such a directive will assure that when discovery is resumed in this proceeding, all parties may resume their discovery and preparatory activity at the exact point where discovery was suspended.

PGandE and the NRC Staff therefore respectfully request the Board to grant this joint motion.

MOTION

Based on the foregoing circumstances and the joint perception of PGandE and NRC Staff that suspending the effort and manpower currently invested in this proceeding would best serve the public interest, PGandE and NRC Staff hereby move

the Board to order that:

1. All discovery and motion ^{*/} activity in this proceeding be suspended following completion of:
 - a) Currently noticed depositions,
 - b) Delivery of documents previously selected from DWR and currently in process of delivery,
 - c) An adjustment of any amounts outstanding between the various parties and Staff for copying fees.
2. All protective orders presently in effect remain in full force and effect throughout the period of suspension. All parties are to preserve all copies of documents previously produced by others and all past preservation orders are to continue in effect. Said preservation conditions may be modified at any time by stipulation of all parties, or may be modified by order of the Licensing Board if, after opportunity for hearing, such modification appears justified under the circumstances presented.

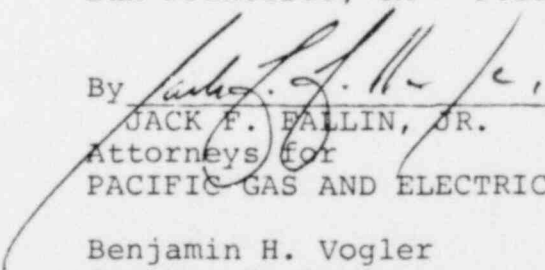
^{*/} With the exception of potential motions to revise the various preservation orders as described in 2 below.

3. Upon final disposition of PGandE v. CEC,
(E.D.Cal. 1980) No. 5-78-527MLR, PGandE will
present to the Board and parties a statement
of its specific intention with respect to the
scheduling and construction of the Stanislaus
Nuclear Project, so as to provide a basis for
a decision by the Board relative to resumption
of this case and reinstatement of any further
required discovery.

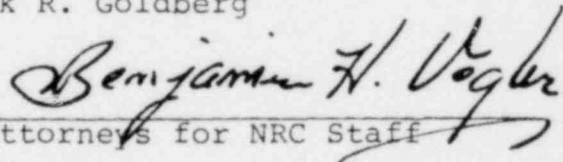
PGandE will keep the Board and parties informed of
all significant developments in the PGandE v. CEC litigation
and of any change in plans for the Stanislaus Nuclear Project.

McCutchen, Doyle, Brown & Enersen
Morris M. Doyle
William H. Armstrong
Donn P. Pickett
Three Embarcadero Center
San Francisco, CA 94111

Pacific Gas and Electric Company
Malcolm H. Furbush
Jack F. Fallin, Jr.
Richard L. Meiss
P. O. Box 7442
77 Beale Street
San Francisco, CA 94106

By 
JACK F. FALLIN, JR.
Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Benjamin H. Vogler
Stephen H. Lewis
Jack R. Goldberg

By 
Attorneys for NRC Staff

Dated at Bethesda, Maryland
this 13th day of February, 1981.

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-564A

CERTIFICATE OF SERVICE

I hereby certify that copies of JOINT MOTION BY PACIFIC GAS AND ELECTRIC COMPANY AND THE NRC STAFF TO SUSPEND DISCOVERY AND MOTION ACTIVITY 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 13th day of February, 1981.

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

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

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

George Spiegel, Esq.
Robert C. McDiarmid, Esq.
Daniel I. Davidson, Esq.
Sandra J. Strelbel, Esq.
Peter K. Matt, Esq.
Bonnie S. Blair, Esq.
Thomas C. Trauger, Esq.
Stephen C. Nichols, Esq.
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

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

Donald A. Kaplan, Esq.
P. O. Box 14141
Washington, D. C. 20044

George Deukmejian
Attorney General of California
Michael J. Strumwasser
Deputy Attorney General of
California
3580 Wilshire Boulevard, Suite 600
Los Angeles, California 90010

Jerome Saltzman, Chief
Utility Finance Branch
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555 *

Philip A. Crane, Jr., Esq.
Glen West, Esq.
Richard L. Meiss, Esq.
Pacific Gas & Electric Company
P.O. Box 7442
San Francisco, California 94106

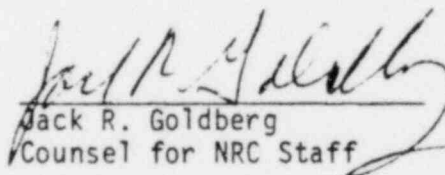
H. Chester Horn, Jr.
Deputy Attorney General
Office of the Attorney General
3580 Wilshire Blvd., Suite 800
Los Angeles, California 90010

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

John Michael Adragna, Esq.
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

Morris M. Doyle, Esq.
William H. Armstrong, Esq.
Terry J. Houlihan, Esq.
Meredith J. Watts, Esq.
Jane E. Cosgriff, Esq.
McCutchen, Doyle, Brown & Ebersen
Three Embarcadero Center, 28th Floor
San Francisco, California 94111

Clarice Turney
3900 Main Street
Riverside, California 92521


Jack R. Goldberg
Counsel for NRC Staff