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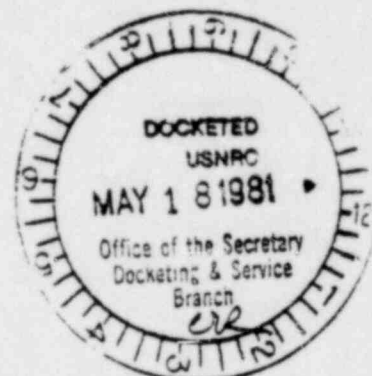
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May 14, 1981



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

Re: Pacific Gas and Electric Company (Stanislaus
 Nuclear Project, Unit No. 1) U.S. Nuclear
 Regulatory Commission Docket No. P-564A

Dear Chairman Miller and Members of the Board:

Counsel for the Cities of Anaheim and Riverside has advised us of his conversation with Chairman Miller this morning regarding the depositions the cities have noticed of Messrs. Shackelford and Mielke in connection with the Joint Motion of Pacific Gas and Electric Company and the NRC Staff to Suspend Discovery and Motion Activity ("Joint Motion"). Mr. Nichols informs us that you have now expressed doubts about the need for further discovery in connection with the Joint Motion.

Intervenors (and, we suspect, the other parties) are now utterly at a loss to understand what is expected of them in connection with the additional briefing ordered by the Atomic Safety and Licensing Board. Following the conference with counsel on May 5, we were so uncertain of the status of matters that we, in fact, tried to contact the other parties to request that the conference be reconvened on May 6 to seek further clarification of the very questions now being asked the board. Because we were unable to locate counsel for one party, that effort was abandoned. Now, with the parties having confirmed that they came away from the May 5 session with widely divergent views on a number of matters, the parties are plainly in need of further direction from the board.

We understand that Pacific Gas and Electric Company has moved for a protective order concerning the Shackelford and Mielke depositions. The Department of Water Resources asks that the board, in ruling on that motion and any other matters that may come before it in connection with the Joint Motion, take the opportunity to clarify for the parties what the board

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expects of them. We set forth here the most important questions on which the parties seem not to agree.

(1) Is the evidentiary record adequate to rule on the Joint Motion?

The parties are thoroughly confused about why the board felt itself unable to rule on the Joint Motion at the May 5 conference. The matter certainly had been fully briefed, indeed more so than was authorized by the rules. We had therefore come to conclude that the board's reluctance to rule was attributable to its perception that there was an inadequate evidentiary record. (See, e.g., Tr., pp. 2893-94.) Intervenors' present efforts at discovery were addressed specifically to the board's objections to the state of the evidentiary record.

Some of the board's concern was over the absence in this docket's record of the actual source documents from which DWR had quoted the prior testimony of PG&E officials. (See Tr., p. 2900.) DWR is presently having those materials duplicated, and they will be filed and served in the next few days. However, the comments of the board members at the hearing suggested that more was expected of the parties. We had assumed more to require additional interrogatory answers and sworn testimony. If the board now feels that such discovery is not appropriate, we are at a loss to know how the record can be improved for the board to rule on the Joint Motion.

One question particularly requiring clarification is: May the parties rely on the prior testimony of Mr. Shackelford and Mr. Mielke? No party disputes the accuracy of the district court testimony quoted by DWR in its March 11, 1981, Answer of Department of Water Resources to Joint Motion of Pacific Gas and Electric Company and the NRC Staff to Suspend Discovery and Motion Activity ("DWR Answer"). That fact is proven by PG&E's failure to dispute the allegations and by the declaration of Mr. Shackelford (Exh. A to DWR Answer) reaffirming the prior testimony. Yet the board seems to have found that declaration inadequate (see Tr., pp. 2897-98, 2948), to be calling for an interrogation of the declarant on the "basis" of his statements about the present construction schedule (Tr., pp. 2900-2901), and to be requiring the sworn testimony of Mr. Mielke to ratify his prior statements (Tr., p. 2898). Indeed, one of the parties was chided for not having already taken the depositions of Mr. Shackelford and Mr. Mielke. (Tr., pp. 2949-50.)

In further pursuit of the evidentiary record the board appeared to feel was missing, DWR has propounded its Sixth Set of Interrogatories to Pacific Gas and Electric Company, seeking information concerning the present whereabouts and health of witnesses and to establish the continued presence of personnel at PG&E adequate to meet its discovery obligation. These interrogatories were prompted not by any belief that there are serious doubts about their subject matter; we think it clear, for example, that people who were high-level utility officials in the early 1960's have advanced to an age where their continued availability as witnesses is a concern. Rather, these interrogatories were prompted by the board's expressed dissatisfaction with the representations of counsel concerning any of the matters on which the Joint Motion is based. (See Tr., pp. 2893-94.)

If there really are deficiencies in the evidentiary record, they cannot, of course, be cured by further briefing. If the materials cited by the parties in support of and opposition to the Joint Motion do not constitute an adequate evidentiary foundation, we see no alternative to the board directing that further discovery on the Joint Motion proceed. However, none of the parties had sought the opportunity -- or felt the need -- to present further evidence in support of its position. In short, each party had been prepared to have the matter decided on the basis of the papers already filed.

In the view of intervenors, the absence of evidentiary support for the Joint Motion reflects no slovenliness of counsel, but rather the fact that there are precious few facts to be summoned in support of the Joint Motion. We think the board can assume with confidence that, had PG&E thought it could have produced evidence to dilute or contradict the prior testimony of its officers, quoted in the DWR Answer, PG&E would have done so. Since PG&E and the staff are the moving parties to the Joint Motion, we have urged the board to rule on the motion as we feel it must: that the absence of supporting facts in the record means the moving parties have failed to meet their burden of proof and their motion must fail.

(2) The status of discovery pending resolution of the Joint Motion.

The parties came away from the May 5 conference with differing views also on the obligations of PG&E to continue document production pending a ruling on the Joint Motion. DWR, noting the board's displeasure with the termination of production and the absence of any motion or order staying

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PG&E's obligation to continue document production, assumed that PG&E was obliged to resume production. PG&E is of the view that no order compelling it to resume production has been entered.

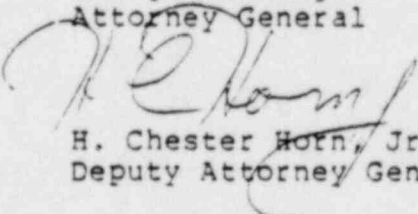
In DWR's Answer, we had asked the board for an order directing PG&E immediately to resume the processing of documents for production. (Id., p. 22.) We once again repeat that request. It is undisputed that, at least since our March 6 letter to PG&E, PG&E has had sufficient information to resume the processing of documents in compliance with this board's January 18, 1978, order. It is likewise undisputed that PG&E has refused to do so, notwithstanding its failure to seek and obtain a stay order from the board. Meanwhile, the other parties have continued to meet their discovery obligations. DWR continues to process documents being produced from its files and continues to make them available to PG&E. (Interestingly PG&E does have sufficient manpower to pick up the documents DWR is producing.)

The only reason PG&E is not now producing documents is that it has arrogated to itself the power unilaterally to terminate production without authorization. We remain distressed that this affront to the dignity of the commission's rules and orders continues. We ask the board immediately to direct PG&E to resume production.

We appreciate the board's consideration of these matters.

Very truly yours,

George Deukmejian
Attorney General



H. Chester Horn, Jr.
Deputy Attorney General

HCH:gg

cc: Service List
(Express Mail to the board, Messrs. Armstrong, Goldberg,
Davidson & Matt; first class mail to all others)