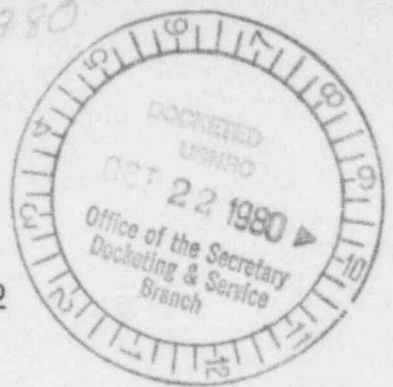


October 17, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-133
)	License No. DPR-7
(Humboldt Bay Power Plant, Unit No. 3))	
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INTERVENORS' ANSWER IN OPPOSITION
TO LICENSEE'S [FOURTH] MOTION
TO HOLD PROCEEDINGS IN ABEYANCE

Intervenors Thomas K. Collins, Dr. Elmont Honea, Frederick P. Cranston, Wesley Chesbro, Demetrios L. Mitsanas, the Six Rivers Branch of Friends of the Earth, and the Sierra Club hereby oppose PG&E's Motion to Hold Proceedings in Abeyance (hereafter, "Motion"), dated October 6, 1980 and received October 7, 1980.

PG&E's Motion is the fourth in a series of such motions filed in this proceeding over the last four years, each requesting more time within which to demonstrate that the Humboldt Bay Power Plant, Unit No. 3 ("the plant") is geologically and seismically safe.^{1/}

Intervenors vigorously opposed the last such motion, filed in September, 1979, in which PG&E asked for another year, and stated their reasons in detail in Intervenors' Memorandum in

^{1/} The Commission originally ordered PG&E to make such a showing "by the end of 1976." Order for Modification of License, Paragraph E(3) (May 21, 1976).

Support of Answer in Opposition to Licensee's Motion to Hold Proceedings in Abeyance, filed on October 19, 1979. That memorandum is equally applicable to PG&E's fourth and current motion, and is hereby incorporated in full by reference. In essence, Intervenors pointed out that "PG&E has had ample time in which to demonstrate that the Humboldt Bay Plant is seismically safe. The fact that they have not been able to do so after more than three years of investigation strongly suggests that such a demonstration simply is not possible, and that the real motive behind their present motion is simply to delay for as long as possible the inevitable permanent closure of the plant." Intervenors' Memorandum, pp. 3-4.^{2/}

The NRC Staff itself has expressed concern about PG&E's continuing refusal to face the issue in this case of whether the plant should be shut down permanently and decommissioned.

^{2/} On October 6, 1980, PG&E did submit a "summary Report" by Woodward-Clyde Consultants entitled "Evaluation of the Potential for Resolving the Geologic & Seismic Issues at the Humboldt Bay Power Plant Unit No. 3". PG&E asserts that this report of its Consultants satisfies the Board's Order of June 17, 1980. The Report quite clearly, however, does not constitute the demonstration of the Plant's seismic safety required by the Commission's May 21, 1976 Order for Modification of License. It does not conclude that the plant is safe. On the contrary, it documents that the Little Salmon, Bay Entrance, and Buhne Point faults, all in the immediate vicinity of the plant, are each capable of substantial movement. The Report concludes, in the words of PG&E's counsel, only that "the technical issues relating to geology and seismology seem capable of being resolved, but that additional studies would be required to complete their resolution." (emphasis supplied). Letter from Richard F. Locke to Robert M. Lazo dated October 6, 1980.

On December 26, 1979, the Staff responded to PG&E's third motion by recommending that the Commission grant PG&E the additional time. The Staff's recommendation was, however, accompanied by the following cautionary note:

"At the same time, the Staff believes that a continuence until October 1, 1980 provides Applicant with a generous period of time within which to proceed with the presentation of its direct case. The Staff would not be receptive to any further motions of this kind and believes it reasonable to expect the Applicant either to proceed with its application by October 1, 1980, and the prehearing process resumed, or to withdraw its application."

NRC Staff Responce to Applicant's [Third] Motion to Hold Proceedings in Abeyance (December 26, 1979), p. 4.

The Staff, moreover, had earlier pointed out that the public interest "is normally served best by as prompt a decision one way or the other as possible consistent with the litigant's opportunity to be heard [citations omitted]." NRC Staff Request for Extension of Time In Which to Answer Applicant's Motion to Hold Proceedings in Abeyance (November 1, 1979), p. 3. The Staff went on to state:

"In this regard, the Appeal Board has observed:

'If [a particular] plant is safe and environmentally sound, then there is every reason to have the facility approved promptly. If, on the other hand, the plant fails to pass muster, the public interest will be served if this fact is known sooner rather than later. For, in that event, there will be a need either to initiate corrective action to bring the

facility into compliance (if possible)
or to develop some alternative solution.
2 NRC at 684-85.'

"The foregoing principles commend a timely resumption of hearing activity in this proceeding."

Ibid.

The additional year requested by PG&E in its third motion has now come and gone, and once again PG&E requests more time, this time ostensibly to enable it to "conduct a careful analysis and evaluation of these costs [of additional equipment and operating personnel necessary to return the plant to service] before determining whether it is economic to return the plant to operation."^{3/}

PG&E offers no explanation as to why it has not long ago done such an analysis. In fact, it was ordered to do precisely such an analysis by the California Public Utilities Commission (PUC) in December, 1979, in proceedings on applications by PG&E for authority to increase its state-wide rates and charges for electric and gas service. California PUC Decision No. 91107 on Applications No. 58545 and 58546 (December 19, 1979).

In that Decision, the California PUC ruled, among other things, that PG&E could no longer include the Humboldt Bay Plant

^{3/} It is clear also that PG&E is still not prepared to demonstrate the safety of the plant, claiming yet again that "additional studies would be required" to complete the resolution of the geological and seismological issues. Letter from Richard F. Locke, attorney for PG&E, to Robert M. Lazo, dated October 6, 1980. See footnote 2 above.

in its rate base. It also expressed serious doubt whether the plant would ever again be in operation, and ordered PG&E to conduct a study of the "future commercial potential" of the plant:

"PG&E's showing in this proceeding, with regard to Humboldt, was far short of convincing. The testimony and cross-examination not only failed to support PG&E's conclusion that the facility would be back "on stream" during the 1980-81 period, but also raised serious doubt as to whether it will ever resume commercial operation. Humboldt has now been shut down for three years, and continues to be plagued by a variety of problems. During this period, PG&E rates have been set upon the assumption that Humboldt was temporarily out of service, but continued to be "used and useful" for utility operation. In view of the great uncertainty that is now apparent with respect to when, and in fact if ever, Humboldt will resume operation, it is no longer appropriate for PG&E's ratepayers to shoulder this economic burden. We are, by this decision, excluding Humboldt from PG&E's rate base.

"Until the future of the plant is clarified, PG&E shall record all capital costs associated with the facility in a memorandum account as recommended by the staff. We caution, however, that any additional capital expenditures on Humboldt will be viewed by this Commission critically, and will be made entirely at the company's risk.

"In the interests of public safety, we will allow PG&E to recover on-site maintenance and operating expenses for the present time. We are, however, ordering PG&E to conduct a thorough review of the future commercial potential of the plant and to submit to the Commission, within 6 months' time, a report demonstrating why the Commission should not disallow all expenses which could have been avoided through earlier decommissioning."

The California PUC then ordered that

"PG&E shall conduct a thorough review of the future commercial potential of its Humboldt Nuclear Power Plant and thereafter submit to the Commission, within 6 months after the effective date of this order, a report demonstrating why the Commission should not disallow all expenses which could have been avoided through earlier decommissioning."

Id., p. 218.

True to form, PG&E did not submit the required report by June, 1980, and instead requested more time within which to comply. In Decision No. 92293 (October 8, 1980), the California PUC allowed PG&E until December 31, 1980 within which to file its report.

In conclusion, Intervenors respectfully urge the Commission not to allow PG&E to continue to abuse the processes of the Commission. Intervenors suggest, as did the California PUC, that it appears more evident than ever that PG&E is simply unable to make the showing of seismic safety that this Commission demanded more than four years ago. And, as the NRC Staff suggested a year ago, it is in the public interest at some point in time for the issue to be resolved one way or another. Intervenors respectfully submit that that time has arrived. PG&E's Motion should be denied.

Dated: October 17, 1980

Respectfully submitted,

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_____)

CERTIFICATE OF SERVICE

The foregoing document, Intervenors' Answer in Opposition to Licensee's Motion to Hold Proceedings in Abeyance, has been served today on the following by deposit in the United States mail, properly stamped and addressed:

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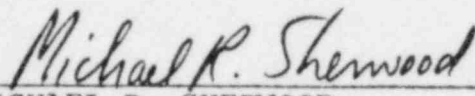
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