

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'82 MAR 17 P2:16

COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Victor Gilinsky  
Peter A. Bradford  
John F. Ahearne  
Thomas M. Roberts

SERVED MAR 17 1982

In the Matter of  
PACIFIC GAS AND ELECTRIC COMPANY  
(Stanislaus Nuclear Project, Unit 1)  
Antitrust

Docket No. P-564-A

ORDER  
(CLI-82-5)

On September 18, 1981 Pacific Gas and Electric Company (PG&E) filed with the Commission a Notice of Prematurity and Advice of Withdrawal, seeking through this pleading to advise the Commission that it will no longer participate in this proceeding. PG&E maintains that it has filed no part of an application for a construction permit, that the antitrust information it has submitted is only "pre-application" information and that therefore there are no formal requirements governing its withdrawal.

PG&E is incorrect in its assertion that it can unilaterally withdraw from this proceeding. The antitrust information required by 10 CFR 50.33a is a part of the application for a construction permit. As stated in 10 CFR 2.101(a)(5), the application for a construction permit may be submitted in three parts, one of which "shall include any information required by §50.33a." Moreover, to regard the information

submitted here as something other than the formal filing of an application would defeat the whole purpose of the rule providing for early filing. The purpose of the rule was to enable utilities to obtain formal, binding resolution of antitrust issues prior to the need to begin construction. If there is no application there can be no formal proceeding and no binding adjudication. See Section 105(c) of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2135(c).

Withdrawal of this application is controlled by 10 CFR 2.107(a), which provides as follows:

The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

The Commission will therefore treat this motion as a request for permission to withdraw. Since the notice of hearing has been issued in this case, the matter lies within the jurisdiction of the Licensing Board under the rule.

In this regard, the Commission notes that PG&E has already requested the Licensing Board to suspend discovery but that this request was denied. Since that time, however, the Ninth Circuit Court of Appeals has upheld the California statutory provisions that stood as an obstacle to the project. The Appeal Board has also issued two opinions -- Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC \_\_\_\_ (1981) and Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC \_\_\_\_ (1981) -- dealing with treatment of requests to withdraw. In addition, it is


unclear from the Licensing Board's decisions whether it considered the possibility of imposing terms and conditions on PG&E's withdrawal, such as requiring PG&E to compile and preserve the current status of discovery.

The Licensing Board, which is closely involved in this proceeding, is in the best position to initially evaluate the effect of these considerations on the request to withdraw.

In light of these considerations, the Commission hereby refers this matter to the Licensing Board for consideration and decision.

It is so ORDERED.

For the Commission\*

  
 SAMUEL J. CHILK  
 Secretary of the Commission



Dated at Washington, DC,  
 this 17<sup>th</sup> day of MARCH, 1982.

\*Commissioner Ahearne was not present; had he been present, he would have approved the order.