

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Law Judge:
James A. Laurenson

In the Matter of)

PACIFIC GAS & ELECTRIC COMPANY)

(Stanislaus Nuclear Project,)
Unit No. 1))

ASLBP Dkt No. 76-334-07-AN

Docket No. P-654-A

November 8, 1982

ANSWER OF NRC STAFF TO COMMENTS OF THE
NORTHERN CALIFORNIA POWER AGENCY, ITS MEMBERS
AND THE CITIES OF ANAHEIM AND RIVERSIDE, CALIFORNIA
ON PROPOSED ORDER CONCERNING PRESERVATION OF DOCUMENTS

I. INTRODUCTION

Intervenors Northern California Power Agency (NCPA) and the Cities of Anaheim and Riverside, California (Cities), pursuant to the order of Administrative Law Judge Morton B. Margulies^{1/} have furnished their comments on the Proposed Order Concerning Preservation of Documents. This document was submitted to Judge Margulies by Intervenor State of California, Department of Water Resources (DWR), Applicant, Pacific Gas and Electric Company (PGE) and the NRC Staff (Staff) at the hearing and oral argument held in this matter on September 21, 1982. The Staff, also pursuant to the order of Judge Margulies,^{2/} hereby responds to the comments of NCPA-Cities.

1/ Tr. at 122.

2/ Tr. at 123.

DESIGNATED ORIGINAL
Certified By H. S. [Signature]

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II. BACKGROUND

On September 21, 1982 a hearing and oral argument was held to consider PGE's Motion to Withdraw its application for a construction permit in the captioned matter.^{3/} One of the principal issues that must be resolved in connection with PGE's Motion to withdraw is the disposition of the large number of documents^{4/} that have been exchanged or identified by the parties in the discovery phase of this proceeding. This issue arises in part because Intervenors NCPA-Cities believe that PGE fully intends to construct the Stanislaus nuclear unit at a later date^{5/} and will resubmit its application after the current uncertainty posed by California's nuclear "safeguard" laws^{6/} is clarified by the Supreme Court. Therefore, NCPA-Cities maintain, inter alia, that it is essential that the documents identified in the discovery process be preserved so that they will be available when PGE resubmits its application to construct Stanislaus.

In an effort to resolve the document preservation issue, DWR, PGE and the Staff, after considerable effort, submitted to Judge Margulies at the hearing a stipulation and proposed Order Concerning Preservation of Documents. The stipulation and proposed Order were received into the

^{3/} PGE filed the antitrust part of the application pursuant to 10 C.F.R. § 2.101(a)(5). However, PGE never filed the remaining parts of its application.

^{4/} It is estimated that over one million pages have been exchanged or identified by the parties.

^{5/} See, eg. Tr. 15-23 (NCPA), 29-31 (Cities).

^{6/} Warren - Alquist State Energy Resources Conservation and Development Act (Cal. Pub. Resources code, 25000. et seq.) See also, Cal. Pub. Resources code, §§ 25524.1, 25524.2 and 25524.3.

record at Tr. 121. Although NCPA-Cities were consulted during the drafting process, they declined to execute the stipulation and proposed Order and asked permission at the hearing to file written comments on the proposed Order.

III. DISCUSSION

NCPA-Cities' Comments are concerned with eight specific numbered paragraphs and can be placed in three principal categories.

1. The first five Comments involve definitions and terms. NCPA-Cities comments are that the terms used are vague (Sec. 1.2), ambiguous (Sec. 1.5), unclear (Sec. 1.6(b)), incapable of being understood (Sec. 1.8) and should be clarified (Sec. 2.3). Staff has reviewed the above Sections and simply does not agree with NCPA-Cities characterization of the terms. In addition, Staff notes that recent correspondence between NCPA and PGE indicates that these two parties are moving on their own towards a resolution of some of NCPA's concerns.^{7/} Finally, Staff points out that Section 3.1 of the proposed Order permits the parties to modify the obligations contained in the proposed Order at anytime by stipulation. Staff therefore suggests NCPA-Cities request such modifications through a proposed stipulation and perhaps the complained of terms can be explained or clarified to NCPA-Cities' satisfaction.

^{7/} See Letter, PGE to Spiegel & McDiarmid, counsel for NCPA, dated October 21, 1982 concerning modification of the proposed document preservation Order.

2. Next, NCPA-Cities contend that Sec. 2.4(c) should be deleted in its entirety and Sec. 2.5 should require each party to furnish a list of all documents withheld on claims of privilege. The Staff does not agree with NCPA-Cities' position and will discuss these two comments in turn. Sec. 2.4 concerns documents filed in the category of Private Files. It holds that all documents in this category should be retained except--"(c) documents generated after the date of this order, which would not, in the ordinary course of business, be sent to Central Files, need not be retained." (Proposed Order, Sec. 2.4(c), emphasis added). This section carries out the clear intent of the parties who stipulated to the proposed order. In their combined judgment private documents received after PGE's withdrawal from this proceeding and not eligible for filing in any of the designated Central Files are in fact private documents and would not be relevant to issues in this proceeding. Thus, the Staff disagrees that this section permits the destruction of relevant documents because relevant documents in the normal course of business will flow from private files to designated Central Files.

With regard to compiling lists of privileged documents, Staff notes that this issue was raised by NCPA-Cities in their Answer to PGE's Motion to Withdraw and discussed by the Staff in its Answer thereto.^{8/}

^{8/} Joint Response of Northern California Power Agency and The Cities of Anaheim and Riverside, California to Pacific Gas and Electric Company's Motion for Withdrawal, May 18, 1982 at p. 30.

NRC Staff Answer to Applicant's Motion to Withdraw and Terminate the Proceeding and Intervenors' Answers Thereto, May 28, 1982 at pp. 13-14.

The Staff opposed the request then and opposes it now. In view of the circumstances set forth by PGE in its Motion and at the September 21, 1982 hearing that the earliest possible date for any online nuclear facilities is not until the year 2000 or beyond,^{9/} Staff submits that additional discovery efforts in this proceeding now would be wasteful of Staff's limited time and resources. In essence, Staff believes that all further discovery and related matters should cease at this time. Therefore Staff is opposed to NCPA-Cities comment that each party should be required to submit a list of all documents withheld from discovery on the grounds of privilege.

3. In the last category, NCPA-Cities contend that sections 3.2, 3.3 and 3.4 which relate solely to the Stanislaus Nuclear Project should be broadened to include any other nuclear project which PGE intends to construct or in which PGE intends to acquire an ownership interest. Such a request is clearly not warranted since there is no basis or record in this proceeding upon which to predicate such an extra ordinary claim for relief. Furthermore, in the event PGE does elect to construct a nuclear facility in the future, then PGE, pursuant to Section 105 of the Atomic Energy Act, as amended, will have to undergo an antitrust review at that time.^{10/} Thus, Staff is opposed to NCPA-Cities' comment that Sections 3.2.3.3 and 3.4 be enlarged to include other PGE nuclear projects.

^{9/} PGE, Motion to Withdraw, May 3, 1982, at pp. 2-3.; Tr. 10.

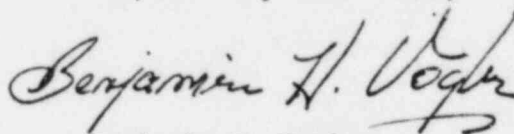
^{10/} Tr. 40-41, 65-66.

NCPA-Cities also propose in this Section that parties to this proceeding should be required to agree that documents produced in this proceeding should be useable in other proceedings and also, that photocopies of documents obtained in this proceeding should be admissible as originals in other proceedings. Staff simply notes that PGE has agreed to both of these proposals in the past and if NCPA-Cities demand that these requests be in writing then the procedure found Sec. 3.1 for modification of the proposed Order can easily be utilized.

IV. CONCLUSION

In view of the foregoing, the Staff cannot support any of NCPA-Cities' Comments on the proposed Order. Finally, the Staff restates its support for PGE's Motion to Withdraw from this proceeding.

Respectfully submitted,



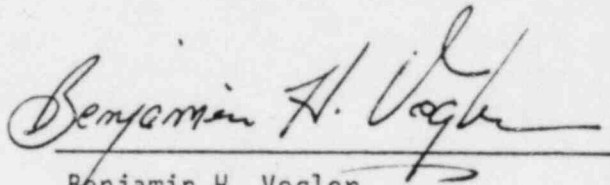
Benjamin H. Vogler
Deputy Antitrust Counsel

Dated at Bethesda, Maryland
this 8th day of November 1982

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

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

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

A handwritten signature in cursive script, reading "Benjamin H. Vogler". The signature is written in dark ink and is positioned above a horizontal line.

Benjamin H. Vogler
Deputy Antitrust Counsel