

2-9-73

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the Matter of )  
PACIFIC GAS AND ELECTRIC COMPANY ) Docket No. 50-323  
Diablo Canyon Site - Unit 2 )  
\_\_\_\_\_ )

ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY  
TO PETITION FOR LEAVE TO INTERVENE FILED BY  
SCENIC SHORELINE PRESERVATION CONFERENCE, INC.

I

The petition for leave to intervene filed by Scenic Shoreline Preservation Conference, Inc. (Conference) dated January 22, 1973 and received by Pacific Gas and Electric Company (PGandE) February 5, 1973 is defective because it does not comply with 10 CFR 2.714.

1. The petition was not filed under oath or affirmation as required by 10 CFR 2.714(a).

2. The affidavit supporting the petition does not as required by 10 CFR 2.714(a) identify

" . . . the specific aspect or aspects of the subject matter of the proceeding as to which [Conference] wishes to intervene. . . ."

nor does it set forth

" . . . with particularity both the facts pertaining to [Conference's] interest and the basis for [Conference's] contentions with regard to each aspect on which [Conference] desires to intervene."

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3. The statement of Conference's alleged interest in the proceeding is vague and speculative. For example, Mr. Eissler's affidavit (p. 2) alleges that

"Members of the corporation have used, and wish to continue the uninterrupted and safe use of the beach and park adjoining the proposed facility."

It is not clear what beach is referred to, since there is none adjoining the facility, but the park is presumably the Montana de Oro State Park, which is located some six miles to the north of the proposed facility. In any event the affidavit does not indicate how the alleged interest of Conference in the continued and safe use

". . . of the beach and park adjoining the proposed facility."

can be affected by the results of this proceeding, which is called pursuant to Section B of Appendix D to 10 CFR 50 and deals with environmental considerations. All the affidavit alleges is a wish to continue to use some unnamed beach or park and there is no showing how the environmental impact of the facility can or will affect that use.

4. Similarly, a mere expression of concern of a possible adverse economic impact appears to be a tenuous basis upon which to sustain an intervention at an environmental hearing. In fact, by way of summation in the third paragraph on page 2 of his affidavit Mr. Eissler alleges that

" . . . the corporation [Conference] and its membership have neither more nor less interest than that of any individual householder similarly situated in the vicinity, or of a user of the public beaches, or of any other individual user of electrical energy provided by a public utility in the State of California." (emphasis added)

In short, there is no showing how the interest "of any . . . individual user of electrical energy" in California would be affected by this proceeding.

## II

As provided in Section B.3 of Appendix D to 10 CFR 50 and the notice of hearing this proceeding has been called to consider the NEPA environmental issues as defined in Section A.11 of Appendix D to 10 CFR 50. Should Conference's petition be granted those portions of it dealing with matters beyond the scope of this proceeding as defined in Appendix D to 10 CFR 50 and the notice of hearing should be stricken from the petition.

PGandE submits that at least the following "contentions" of Conference are outside the scope of this proceeding and thus should be stricken:

1. Contention b., which in essence requests

" . . . a new look at Diablo [seismic] design standards . . . "

An additional ground for objecting to this contention is that in connection with the prior hearing on the Diablo facility held in accordance with Section E.2 of Appendix D to 10 CFR 50 the Commission in a memorandum and order dated April 21, 1972 specifically denied



a similar request by Conference to include seismic design in that hearing. The pertinent portion of the Commission's memorandum and order, which applies equally here, is as follows:

"As respects petitioner's seismic design contention, this is the very same allegation which petitioner advanced during the construction permit hearings for Unit 2. The seismic design for Unit 2 was found to be adequate by the Atomic Safety and Licensing Board. That decision was reviewed and upheld by the Atomic Safety and Licensing Appeal Board -- once upon exceptions taken by the petitioner and again upon a petition for reconsideration largely involving the same material presented by the instant request. In these circumstances, we see no warrant in considering the question of the adequacy of the seismic design for still another time. While the seismic design contention was earlier raised in connection with Unit 2, the Licensing Board, of course, independently reviewed the seismic design for Unit 1 -- which is located at the same site and utilizes the same criteria -- and found the design to be adequate."

For these reasons the so-called affidavit of Stanley H. Mendes appended to the petition likewise should be stricken.

2. Contention g., which deals with the emergency core cooling system. In addition to being beyond the scope of this hearing this contention has been held not properly an issue in any individual licensing case since it is the subject of an AEC rule-making proceeding. See, for example, the decision of the Atomic Safety and Licensing Board In the Matter of Consumers Power Company Midland Plant, Units 1 and 2, Docket Nos. 50-329, 50-330, December 14, 1972, 2 Atomic Energy Law Reports 17,801-6.

3. Contention h., which deals with an ECCS failure,

maximum credible accident, and evacuation plan, except to the extent it may contain allegations falling within the proposed annex to Appendix D.

4. Contention i., to the extent it challenges the validity of AEC standards. In the Matter of Baltimore Gas and Electric Company Calvert Cliffs Nuclear Power Plant, Dockets 50-317, 50-318, Commission memorandum dated August 8, 1969, 2 Atomic Energy Law Reports 17,701-4.

5. Contention j., which deals with radiation levels, is not only beyond the scope of this proceeding but it seeks to challenge AEC regulations and thus falls within the AEC memorandum cited in paragraph 4 above.

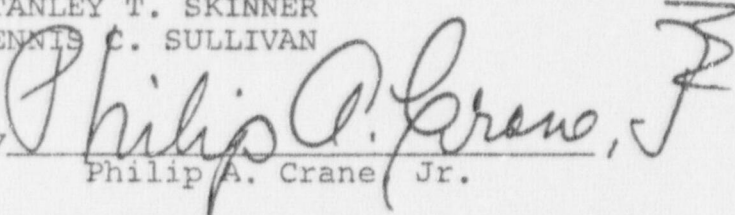
6. Contention k., which deals with sabotage. In the Matter of Florida Power & Light Company Turkey Point Nuclear Generating Units Nos. 3 and 4, Docket Nos. 50-250, 50-251, AEC Memorandum and Order dated February 20, 1967, 3 Atomic Energy Commission Reports 173.

7. Contention l., which deals with underground design.

Respectfully submitted,

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Dated: February 9, 1973

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