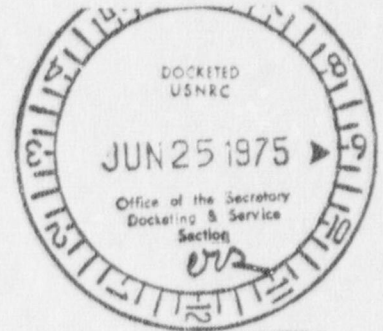


6-24-75

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY)
)
(Diablo Canyon Site)
Units 1 and 2))

Docket Nos. 50-275 OL
50-323 OL

ORDER RELATIVE TO EVIDENTIARY HEARING
SAN LUIS OBISPO MOTHERS FOR PEACE MOTION
PERTAINING TO STORAGE OF NUCLEAR FUEL ASSEMBLIES

On April 10, 1975, the San Luis Obispo Mothers for Peace filed a motion requesting the Board to issue an order denying PGandE the right to acquire, deliver, receive, possess, use, transfer, or store nuclear fuel assemblies within the County of San Luis Obispo until a valid operating license has been issued and has become effective for the Diablo Canyon plant. On April 17, 1975, PGandE responded by referencing its compliance with 10 CFR Part 70 and further stated that Intervenor must comply with 10 CFR §2.758 to challenge those regulations. The document stated that the fuel assemblies are not radioactive in the normal sense. PGandE stated that the schedule calls for the first shipment in the middle of June and that it would incur considerable expense if it had to establish alternate storage outside San Luis Obispo County.

B/63

The NRC Staff requested and was granted a time extension. On May 5, 1975, the Staff addressed the jurisdiction of the Board and the merits of the motion. It concluded that the Board did have jurisdiction but that motion should be denied since it did not meet the Point Beach and Virginia Petroleum Jobbers Criteria. The Staff attached a copy of the Part 70 application (which was later updated by PGandE) and a copy of the Notice of Hearing for the Operating License.

On May 16, 1975, the Board issued a notice for a prehearing on May 28, 1975, to discuss this matter and other matters. The Board also requested briefs from PGandE and Staff and allowed an amended motion to be filed by the Mothers for Peace. The documents were received as well as a brief from California. The Staff stated it had nothing further to add to its prior brief. PGandE stated that while it believes the Board lacks jurisdiction, it recognizes that the Commission could confer such jurisdiction and therefore suggested that the matter be put to one side and the Board consider the motion on its merits. California concurred with the Staff's position that the Board could extend its jurisdiction to encompass the motion and that in so doing unnecessary delay would be avoided. The Mothers for Peace stated that they believed the Board has or could assume jurisdiction.

The Board has determined that it will assume jurisdiction on the motion to stay under its responsibility for consideration of health and safety matters with the Notice of Hearing and to avoid unnecessary delay in this proceeding. It is assumed by the Board that the Staff will take no further action in processing the Part 70 license until the Board Action is completed. The Board has also determined that the motion, although not stated in terse legal form following the criteria of Point Beach, it does, when considered in toto, meet that criteria by broad interpretation.

In the prehearing conference on May 28, 1975, the Staff announced that the application for the nuclear fuel was incomplete. In a conference call on June 4, 1975, the Staff said it had received the requested additional information and the Board set June 19th and 20th for the hearing. However, in a subsequent conference call the Staff stated that it still needed additional information and that a letter would be sent as soon as possible to PGandE requesting the information. The letter was released on June 17, 1975. The Board and all parties were serviced by PGandE with a letter dated June 20, 1975, addressed to Mr. L. C. Rouse which stated that there was a possibility of temporary storage of the nuclear fuel until October 1, 1975.

In the last conference call, the NRC Staff was requested to initiate a conference call when it had completed its review of the additional material so that this matter could be set for hearing. A separate Order will be issued stating the time and place.

The Mothers for Peace, as the movant, have the burden of proof in this matter. The Board will expect all parties to be prepared to present evidence on the following and other relevant matters which may surface during the hearing:

1. The forces to which the fuel storage building could be subjected to as the result of the occurrence of a hypothetical earthquake appropriate for this site;
2. The probability and significance of the formation of a critical mass as a result of the application of this force (including the presence of water due to possible pipe breakage);
3. The probability and significance of a critical mass being formed by an act of sabotage; and
4. Alternatives to the storage of the fuel at the site.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Elizabeth S. Bowers
Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland
this 24th day of June 1975.