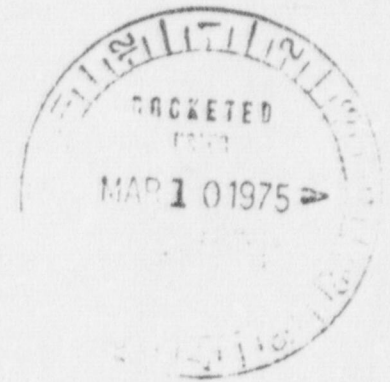


3/71 -

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of  
PACIFIC GAS AND ELECTRIC COMPANY  
(Diablo Canyon Nuclear Power Plant,  
Units Nos. 1 and 2)

Docket Nos. 50-275 O.L.  
50-323 O.L.

STAFF'S RESPONSE TO MOTION OF  
SAN LUIS OBISPO MOTHERS FOR PEACE  
RELATIVE TO A PG&E/NRC SEISMICITY  
MEETING OF FEBRUARY 7, 1975

A. INTRODUCTION

On February 3, 1975, Elizabeth E. Apfelberg acting on behalf of the San Luis Obispo Mothers for Peace (Petitioners) filed a motion requesting that a February 7, 1975 meeting between Pacific Gas & Electric (Applicant) and the Nuclear Regulatory Commission (Staff) be postponed until such time as the meeting could be held in San Luis Obispo. The purpose of the meeting was to discuss the geology and seismology of the Diablo Canyon site, a matter which is in controversy.

The meeting was held on February 7 and notwithstanding allegations to the contrary in the motion, the Petitioners were represented by Mr. Bob Augustine.

In a conference call February 10, 1975, the Chairman of the Atomic Safety and Licensing Board (Board) stated that the meeting had been held and the motion was to that extent moot but requested that Applicant and Staff provide the Board with a position paper regarding future

H  
4  
6/71

meetings of the same or similar nature. This response is, therefore, directed to the broad questions raised by the motion rather than to specific application of that motion to this case.

B. REGULATORY PROCESS AND AUTHORITY OF THE BOARD

The procedures set out in the Commission's regulations at 10 CFR Parts 2 and 51, established by the Commission pursuant to the National Environmental Policy Act of 1969 (NEPA), the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act, clearly envision establishment of a regulatory process with a separation of functions and procedural responsibility between the Regulatory Staff and the Licensing Boards. Wisconsin Electric Power Company and Wisconsin-Michigan Power Company (Point Beach Nuclear Plant, Unit 2), LBP-72-32, 5 AEC 162, 173-174, 196-202 (December 8, 1972).

A number of decisions have affirmed the independent review role of both the Atomic Safety and Licensing Boards and the Atomic Safety and Licensing Appeal Boards vis-a-vis the Regulatory Staff under NEPA. Boston Edison Company (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 357-358 (December 4, 1972); Arkansas Power & Light Company (Arkansas Nuclear One, Unit 2), LBP-72-30, 5 AEC 144, 155-157 (December 1, 1972). The Calvert Cliffs case, Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), also discussed the independent role of the Atomic Safety and Licensing Board vis-a-vis the Staff.

The independent nature of the Staff's role is also reflected in the day-to-day execution of its licensing and regulatory program. One of its responsibilities is to conduct a thorough review of all aspects of the facility to assure that it conforms to the Commission's safety standards and that its environmental impacts are properly assessed and are not unwarranted. Another is to assure that actual construction and operation activities conform to license or permit requirements and regulatory standards of the Commission. These responsibilities must be carried out by the Staff, independently and without regard to:

whether a hearing is held in an operating license case;

whether a construction permit proceeding is contested by a third party; or

whether in a contested case, the particular question is in controversy in the proceeding.

In the hearing process the Staff assessment serves to assist the Licensing Board in the exercise of its independent adjudicatory function. See Commission's Memorandum and Order, July 16, 1974, in the Matter of Consolidated Edison Company of New York (Indian Point Nuclear Generating Station, Unit 3), Docket 50-286, CLI-74-28, RA1-74-7-7 at 8 and the cases cited.

These separate roles are vital to the proper performance of the Commission's regulatory process and the Staff's independent role should not properly be subject to Licensing Board direction except in the unusual event of a denial of a clear legal right,<sup>1/</sup> such as a discovery

---

<sup>1/</sup> And, the Licensing Board may properly regulate the conduct of the Staff as it does all parties, with respect to hearings before the Board. 10 CFR 2.718.



right accorded by the Commission's rules. This however, is not the situation with respect to the present request.

C. OPPORTUNITY TO BE INFORMED AND PARTICIPATE

The only conceivable legal right which might be affected in this case is the public's right to participate meaningfully in proceedings before the Commission. That right is manifestly protected under existing administrative procedures and practices.

1. Staff Meetings with Applicant

Since the Petitioners appear to be concerned about the nature of information exchanged at such routine business meetings, some clarification concerning these meetings may be useful at this point.

The meetings are informal in the sense that they are not conducted as a part of the adjudicatory presentation of evidence before an Atomic Safety and Licensing Board nor as part of a discovery demand under 10 CFR §2.740-2.742. The meetings are held as a part of the Staff's responsibility to assess an application for a license or permit, to assure that the proposed facility conforms to the Commission's safety standards, and to assure that the environmental impacts of the facility are properly considered and are warranted when balanced against the benefits to be derived from the facility.

The meetings are held to obtain a greater understanding of complex information submitted in the Preliminary Safety Analysis Report (PSAR) or Environmental Report (ER), or to provide to an Applicant a greater understanding of the specific nature of information sought by the Staff in the questions asked of Applicant in the course of the Staff review.<sup>2/</sup> It is usually the practice to notify all parties of these meetings. As indicated in their motion, the Petitioners received notice of the February 7, 1975 meeting. They were afforded the opportunity to participate, and in fact did participate.

If information is presented at such meetings, in addition to that contained in the PSAR or the Environmental Report, it is subsequently reflected in the PSAR or ER amendments or supplements (or in other forms of written submissions) before it is used by the Staff in its Environmental Statements or its Safety Evaluation Report.<sup>3/</sup> Since information discussed at such meetings is accepted only tentatively subject to confirmation by written submission, the Staff does not consider detailed summaries to be necessary, although the Staff strives for summaries which fairly reflect what went on at the meeting. The subsequent written submissions which are sent to the public document

---

<sup>2/</sup> These questions are submitted to the Applicant in writing and copies of the questions, and responses thereto are regularly sent to the local public document room.

<sup>3/</sup> If written information is presented at the meeting, it is sent to the public document rooms after the meeting, often as an attachment to the minutes. References to standard scientific texts or to legal requirements may also be made in the course of discussions. These of course, are verified by the Staff before any use would be made of these references and appropriate reference would be cited in the Staff SER, DES or FES if used.

rooms contain the information used and relied upon in the assessment of the facility. Consequently, any interested person will have access to information exchanged at such meetings even without considering the available formal discovery procedures under the Commission's Rules of Practice (10 CFR §2.740-2.742).

## 2. Staff Meetings with Interested Persons

In order to adequately complete its review the Staff meets not only with Applicant but also meets with other parties to the proceeding and with persons who are not parties to the proceeding, including other Federal, state or local agencies, who may have comments to contribute to the Staff's safety or environmental review or who may be able to provide useful information concerning Federal, state or local requirements or information concerning local conditions. In the present case, the Staff has met with a number of interested persons including several local agencies, a number of the Petitioners, and a number of agencies of the State of California, to discuss various aspects of the proposed facility. The Staff intends to meet with all parties at a mutually convenient time and place to solicit their views and comments on the proposed action and to obtain such information or references to information that may have a bearing on facility safety and the decision to issue an operating license.

In the discharge of its responsibilities, the Staff affords all parties an opportunity to present relevant safety information,



to express any concerns about facility safety and to have their environmental concerns considered pursuant to the Commission rules in 10 CFR §51.23.

Furthermore, the propriety and necessity of "ex parte" communications and meetings between the Staff, Applicants, and interested persons has never been in question. Indeed, 10 CFR §2.102(a) provides that during regulatory review "[t]he regulatory staff may request any one party to the proceeding to confer with the staff informally." The only restriction on "ex parte" communications found in the Commission's regulations applies to communications with quasi-judicial officials (or advisors) with respect to adjudications which may be before that official. 10 CFR §2.719, 10 CFR §2.730, 10 CFR Part 2, App. A, VII. See also 5 USC §554.

### 3. Discovery

To the extent that any discoverable items were involved in such meetings, parties have under the Commission's rules a full scope of discovery rights available to obtain relevant information. Accordingly, parties' rights to information which are assured by the Commission's discovery and public information rules remain in full force and effect.

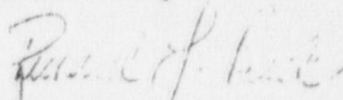
The Commission has taken a number of steps recently to promote the exchange and availability of information. To expedite interchange of information, the Commission has encouraged making information

available to interested persons even before the discovery process commences and has provided for the routine availability of a wide range of AEC documents (37 F.R. 15127). This wide range of routinely available information supplements, rather than substitutes for the access to discoverable information which is assured to all parties by the Commission's discovery rules. In addition, the Commission has also recently amended its rules to facilitate the discovery process as it applies to the Staff (40 F.R. 2973).

D. CONCLUSION

In view of the foregoing, it would be inappropriate for the Board to regulate the conduct of Staff's independent review process, including the scheduling of meetings.

Respectfully submitted,



Richard L. Black  
Counsel for NPC Staff

Dated at Bethesda, Maryland  
this 7th day of March, 1975.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275 O.L.
	)	50-323 O.L.
(Diablo Canyon Nuclear Power Plant,	)	
Units Nos. 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF'S RESPONSE TO MOTION OF SAN LUIS OBISPO MOTHERS FOR PEACE RELATIVE TO A PG&E/NRC SEISMICITY MEETING OF FEBRUARY 7, 1975," dated March 7, 1975, in the above captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 7th day of March 1975:

Elizabeth S. Bowers, Esq.  
Atomic Safety and Licensing  
Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Mr. Glenn O. Bright  
Atomic Safety and Licensing  
Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Dr. William E. Martin  
Senior Ecologist  
Battelle Memorial Institute  
Columbus, Ohio 43201

Philip A. Crane, Jr., Esq.  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, California 94106

Mr. John Forster  
985 Palm Street  
San Luis Obispo, California 93401

Andrew J. Skaff, Esq.  
California Public Utilities Commission  
5246 State Building  
350 McAllister Street  
San Francisco, California 94102

Ms. Elizabeth E. Apfelberg  
1415 Cazaero  
San Luis Obispo, California 93401

Mr. Frederick Eissler  
Scenic Shoreline Preservation  
Conference, Inc.  
4623 More Mesa Drive  
Santa Barbara, California 93105

Mrs. Sandra A. Silver  
1315 Cecelia Court  
San Luis Obispo, California 93402

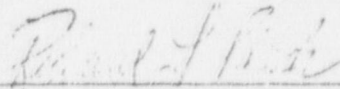
Mr. Gordon Silver  
1315 Cecelia Court  
San Luis Obispo, California 93402

Mr. William P. Cornwell  
P. O. Box 453  
Morro Bay, California 93442

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

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

Docketing and Service Section  
Office of the Secretary of the  
Commission  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555



---

Richard L. Black  
Counsel for NRC Staff