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UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

REPLY OF AEC REGULATORY STAFF TO MOTION OF  
SAN LUIS OBISPO MOTHERS FOR PEACE FOR  
IMPOSITION OF A STOP WORK ORDER

On October 14, 1974, the San Luis Obispo Mothers for Peace (Petitioner) filed a motion pursuant to the provisions of 10 CFR §2.730 for the imposition of a stop work order to halt construction by Pacific Gas and Electric Company (P.G. and E.) on Diablo Canyon Units 1 and 2. The Petitioner alleges that the "most overriding and dominating basis supporting the motion is the disorderly and precarious treatment, on the part of P.G. and E., of the effects of a deficiently explored and poorly understood seismic environment. ." (Motion, pg.1) Particularly, the Petitioner asserts that P.G. and E. failed to adequately assess the 90-mile Hosgri Fault Zone (formerly called the Hoskins-Griffiths Fault), and the effects of the 1971 San Fernando earthquake on Class I structures at the Diablo Canyon site.

It is the opinion of the Staff that the Petitioner has failed to show the requisite good cause for staying construction which the Appeal Board set forth in the Point Beach<sup>1/</sup> decision, that is:

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<sup>1/</sup>Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit 2), ALAB-58, Wash-1218 447 at 450, 451 (June 20, 1972). See also, Virginia Petroleum Jobbers Assoc. v Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958).

1. Has the Petitioner made a strong showing that it is likely to prevail on the merits of its appeal?

2. Has the Petitioner shown that without such relief, it will be irreparably injured?

3. Would the issuance of a stay substantially harm other parties interested in the proceeding?

4. Where lies the public interest?

The Petitioner has not addressed any of these four points. Instead, Petitioner merely alludes in a general way to the facts in this case as Petitioner sees them. With no more than this general statement of position, Petitioner then requests the Board to exercise its authority to stop construction. This approach is patently deficient in light of the criteria established in the Point Beach decision and the Board should deny Petitioner's request outright. Even though Petitioner has not addressed those criteria reached in the Point Beach decision, the Staff recognizes that the Board could, on its own motion, raise the question of why a stay of construction should not be issued in this proceeding in light of the issues raised by Petitioner. For this reason, the Staff offers the following analysis of the instant case in relation to the Point Beach decision.

The Petitioner cannot make a strong showing that it is likely to prevail on its appeal. Essentially, the same issues relating to seismic environment were raised by the Scenic Shoreline Preservation Inc. (Scenic) on December 3, 1973 in its petition to suspend construction. In the process of answering that petition, Staff presented an affidavit by Richard B. McMullen and Carl Stepp that the Hoskins Griffith (Hosgri) features had been assessed and any earthquake activity associated with that feature "would not produce accelerations at the site that are greater than those produced by the safe shutdown earthquake to which the facilities are designed". (See Staff reply of January 14, 1974, Appendix 2.) Therefore, the seismic activities related to the Hosgri fault have been assessed by the Staff and found to be within the parameters of the seismic design features of these facilities. Since the Petitioner has not presented any information in its motion which would challenge the validity of that position, it is unlikely that Petitioner would prevail on the merits of its appeal. Although the effects of the 1971 San Fernando earthquake on Class I structures at the



Diablo Canyon site were not considered in conjunction with the earlier proceedings by Scenic, the Petitioner has failed to even allege that the Diablo Canyon facilities are not designed to withstand seismic conditions similar to that earthquake. Therefore, Petitioner has not only failed to make a showing, strong or otherwise, that it is likely to prevail on the merits of its appeal, Petitioner has totally failed to make an allegation to which merits might attach.

The most liberal interpretation of Petitioner's pleading would suggest that construction should be stayed in this instance because the public health and safety might be endangered because of seismic problems. If, indeed, this is the case, Petitioner has wholly failed to provide a technical or factual basis for its position. In short, Petitioner cannot be said to be likely to prevail on the merits of its appeal because it has failed to provide substantial information as a basis for the merits for its case.

Neither has Petitioner shown that without such relief it will be irreparably injured. The reason Petitioner has not shown irreparable injury is that it cannot do so. In association with the earlier petition to suspend by Scenic, the Regulatory Staff in its reply of January 14, 1974, took the position that:

(1) Scenic Shoreline would have an opportunity to raise geological, seismic, and seismic design issues in the operating license evidentiary hearing;

(2) Any potential earthquake activity resulting from the newly discovered evidence can be accounted for in the seismic design to which the facilities are being constructed and, accordingly, would pose no increased hazard to the public health and safety; and

(3) Continued construction of Units 1 and 2 would pose no hazard to the health and safety of the public.

The Board generally accepted the Staff's position and concluded that continued construction poses no risk to the health and safety of the public in its Order dated April 3, 1974 by stating:

- "1. Continued construction of the plant poses no risk to the health and safety of the public, regardless of any geological problems which might exist. Operation of the plant is, of course, quite a different matter. The Board thus feels that consideration of seismic issues is properly carried out in the operating license procedure.
2. Argument that the incremental cost of continued construction could have an effect upon the eventual granting of an operating license is, from a health and safety standpoint, invalid. Economic factors cannot be considered in any matter which involves a risk to the public health and safety.
3. Continued construction will neither conceal nor render inaccessible any of the geological features of the site not already affected."

The Staff takes the position that its arguments raised in the Scenic proceeding are valid and applicable to the instant case. The Staff also suggests that the reasoning of the Board in its April 3, 1974 Order is equally apposite. In the circumstances it is clear that the Petitioner could not have shown irreparably by reason of continued construction even if it had sought to do so.

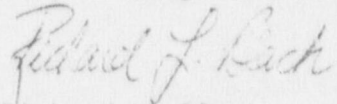
The question of whether the issuance of a stay would substantially harm the other parties' interest in the proceeding is a matter best answered by P.G. & E. The Staff, therefore, declines comment on this point.

Finally, Staff turns its attention to the question of where lies the public interest. The public interest with respect to regulation of construction and operation of nuclear power plants is broad. Certainly of prime importance is the health and safety of the public. The Staff agrees with the position stated by the Board in its April 3, 1974 Order that, "Continued construction of the plant poses no risk to the health and safety of the public regardless of any geological problems which might exist." The matter of seismic issues will be considered at the operating license proceeding. The health and safety of the public is protected through that proceeding. Making a plant available to provide needed electric power and energy to the public within an established time frame is also a public interest consideration. Delaying construction by issuance of a stay may seriously interfere with this public interest consideration. The public interest would, therefore, be served by not issuing a stay of construction.



For the foregoing reasons, the Staff respectfully urges the Board to deny the stay of construction at this juncture. A stay will not necessarily expedite the resolution of these matters, nor will it further the public interest or the Petitioner's cause.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard L. Black".

Richard L. Black  
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland  
this 29th day of October, 1974.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "REPLY OF AEC REGULATORY STAFF TO MOTION OF SAN LUIS OBISPO MOTHERS FOR PEACE FOR IMPOSITION OF A STOP WORK ORDER", dated October 29, 1974, in the above-captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 29th day of October, 1974:

Elizabeth S. Bowers, Esq.  
Atomic Safety and Licensing  
Board Panel  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Mr. Glenn O. Bright  
Atomic Safety and Licensing  
Board Panel  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

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

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

Lonnie Valentine  
John J. Forster  
c/o Lonnie Valentine  
4580 San Jacinto  
Atascadero, California



Atomic Safety and Licensing  
Appeal Board  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Atomic Safety and Licensing  
Board Panel  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Docketing and Service Section  
Office of the Secretary of the  
Commission  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

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



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Richard L. Black  
Counsel For AEC Regulatory Staff