

Decision No. 67248

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
PACIFIC GAS AND ELECTRIC COMPANY for  
a certificate of public convenience  
and necessity to construct, install,  
operate and maintain Unit No. 1, a  
nuclear power unit, at its Bodega  
Bay Atomic Park.

Application No. 43808

(Electric)

ORDER DENYING PETITION  
TO RESCIND CERTIFICATE ORDER

The Northern California Association to Preserve Bodega Head and Harbor, Inc. having filed a petition requesting that this Commission rescind the interim certificate authorizing construction of Pacific Gas and Electric Company's Bodega Bay Nuclear Power Plant, and the Commission having considered said petition and each and every allegation therein, and being of the opinion that said petition fails to disclose any substantial indication that the testimony petitioner now offers to produce would be sufficient to justify reopening the proceedings or reconsideration thereof or that such proffered testimony would have a reasonable tendency to cause the Commission to modify in any way its decision concerning which rescission is sought by petitioner, and being, therefore, of the opinion that no good cause for granting said request has been made to appear,

IT IS ORDERED that said petition is hereby denied.

Dated at San Francisco, California, this 21st day of  
May, 1964.

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President

*John E. ...*  
*Charles ...*

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*Harold T. ...*

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*Fredrick B. ...*

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Commissioners

BENNETT, William M., Commissioner, Dissenting Opinion:

I would reopen these proceedings upon the initiative of the Commission to meet our responsibility to the people and environs affected by the proposed nuclear plant.

The petition to rescind the certificate order filed by the protestants herein and the answer of the Pacific Gas and Electric Company (P.G. & E.) are both the expected, narrow approach which legal documents sometimes fasten on a great public controversy. The reply of P.G. & E. dredges up all of the minutiae to defeat a complete scrutiny of its proposal which technicalities might better be left to ancient common law proceedings. There is a great body of public opinion which for sound reasons opposes this plant and whose doubts have never been satisfied by the P.G. & E. under oath in any proceeding before this or any other regulatory body.

As I pointed out in my original dissenting opinion, the P.G. & E. has never presented to this Commission for examination and testing the very experts whose judgments it is relying upon. Not a single one of those experts was ever a witness and of course was never subjected to the challenges of cross-examination. One can only speculate as to the cause of the reluctance upon the part of P.G. & E. to throw its complete case before the public.

That crucial exhibit dominated Exhibit No. 48 was filed long after the proceedings were closed. It is, itself, contradictory to the opinions ventured as to safety, and no party to the proceeding was ever given opportunity to test it.

By contrast, with the testimony and evidence which was omitted in the proceedings before this Commission, the P.G. & E. has

been quick to issue pronouncements to the press as to the safety of the plant and to meet all objections upon the battleground of news media. I suspect that this contest in which the overwhelming forces of the public relations department of a public utility are more than adequate, is at most times one-sided, and perhaps explains the willingness to decide this matter at press conferences rather than to make a complete exposure of all features of the project on the record where it counts.

In my judgment, this Commission is compelled to reopen the Bodega proceedings. The reason is quite simple--the fact of the Alaska earthquakes! It has been said that the opponents of the Bodega plant are seizing upon the Alaska quakes to exploit their case in opposition to Bodega, and logically it would follow that such opponents may have caused the Alaska quakes for this purpose! There is an overriding and compelling common sense which gives pause to one contemplating the location of a nuclear plant upon an active fault line, and this is particularly so in view of the harsh fact of the Alaska quakes. One is not an alarmist in taking the Alaska experience into account; indeed, P.G.& E. itself had some concern as to the lessons to be learned from the earthquakes in Alaska as evidenced by its dispatching experts to Alaska to examine the relevancy of conditions there to Bodega. In my opinion, these experts should come before this Commission; and the P.G.& E. on its own, rather than resting in the havens which technical legal minds can create, should be asking this Commission to receive the testimony of such experts. Their opinions in the press are one-sided and untested and show clearly that the events in Alaska may have a real relevancy to the grants of authority already made. I am also quite concerned that some of P.G.& E.'s experts may now have changed positions.

Apprehension over the possibility of widespread public injury has always been a legitimate concern in these proceedings. Indeed, P.G.& E., itself, used this argument to resist the proposition that unsightly overhead transmission lines should be placed underground; as the Commission stated in its original decision herein (Interim Opinion, Decision No. 64537, Application No. 43808, November 8, 1962): "Applicant objected to the proposal for underground construction upon the bases that, first, the additional cost would not be justified, and second, that the underground construction would be unreliable and hazardous as it would directly cross the San Andreas fault and, in the event of an earthquake, the underground conduits, undoubtedly, would be ruptured, releasing 120,000 gallons of inflammable insulating oil, and complete restoration of the circuits would take three or four weeks. On the other hand, applicant's witness testified that an overhead line would probably not be affected by an earthquake, but even if it were, it could be restored to service within a matter of hours." (Underlining supplied.)

P.G.& E. is entitled to be greatly concerned that in its opinion underground conduits "undoubtedly, would be ruptured." The public of Northern California is likewise entitled to its opinion that the containment unit housing the fissionable material might also rupture and, if so, that the consequences therefrom would be greater than the damage ensuing from the release of inflammable insulating oil. It is difficult to reconcile the probability, if not inevitability, of damage to underground lines, as advocated by P.G.& E., on the one hand, with its contrary position on the other hand that earthquakes are highly unlikely to be the cause of damage to the plant itself. Have we reached the age of controlled earthquakes? This strikes me as being more of the self-serving attitude

which P.G. & E. so readily adopts against all arguments, opinions, and reports which fail to coincide with its self-assumed attitude of infallibility.

Despite mounting concern upon the part of the public, we have now advanced from the proposition that earthquakes may be the cause of only slight concern to the proposition that fault lines are now ideal locations for nuclear plants. This is being spoon-fed to the public against all the warnings of reason, logic, experience and common sense.

If P.G. & E.'s press reports be accurate, the damage estimates in Alaska and the concern of state government there were entirely misplaced. Apparently, P.G. & E.'s Alaskan emissaries evidently found little or no damage of consequence. These opinions will furnish great consolation to the people of Alaska.

In my opinion this Commission never faced up squarely to the issue of safety. To begin with, the showing of safety by P.G. & E. was most deficient. Then, when the issue of safety was presented, the majority went off upon the erroneous notion that safety was no concern of ours, from which I conclude that this negative attitude prevented proper consideration of the safety features of this plant, since apparently the record and exhibits were being read as though safety were none of our concern. And importantly there is no finding by this Commission upon "safety" of the plant!

I point out that the concurring opinion rendered in connection with the Order Denying Reopening, issued on July 9, 1963 founded its judgment upon the basis that 'commission personnel especially trained in the nuclear field, experts produced by the applicant, and other disinterested experts have all testified before the commission in support of the plant at Bodega Bay.' In short,

the fact of the matter is that no member of the staff of this Commission ever testified in these proceedings, and no expert witness of P.G.& E. ever testified. I repeat again, the only evidence furnished to this Commission was rank, unsupported hearsay which in normal administrative proceedings would not be sufficient as the basis for findings. And yet in a matter of such importance and consequence as this, the Commission has seen fit to grant authority to build a nuclear plant with all of the great doubt as to its safety and with all of its harmful consequences upon the beauty of Bodega Bay, with no more than unsupported, second-rate testimony. The question is legitimately asked as to why P.G.& E. failed in the past and continues to fail to produce before this Commission, its seismologists, its soil experts, and all the others who apparently are available to the press, to other governing bodied--to all but the Commission having the sole state responsibility upon this matter!

In Northern Cal. Assn. to Preserve Bodega Head & Harbor, Inc. v. Public Util. Com., et al., 61 A.C. 103, the Supreme Court told us that we have the authority, and therefore the duty it seems to me, to inquire into safety questions. This would certainly include consideration of the earthquake risk at Bodega. As said, so much was not presented to this Commission! The record was reviewed upon the belief by a majority of this Commission that safety was not our concern; and so much additional evidence, statements and opinions have come forth from all parties (and particularly from P.G.& E.), that I consider it our duty to reopen these proceedings to determine whether the certificate was properly granted in the first instance and, additionally, whether subsequent events have had some impact upon our original grant.

I am also concerned at what appears to be a change, seemingly drastic but perhaps not so, by P.G.& E. in Amendment


No. 7, filed before the United States Atomic Energy Commission, in the matter of P.G.& E., Docket No. 50-205. The original building plan submitted to this Commission contemplated that the reactor structure should be on solid rock; whereas, a new design submitted in that amendment to the Atomic Energy Commission, contemplates construction upon a layer of granular material such as sand. Why this change in design? What does it mean? Who were the experts whose subsequent opinions apparently changed the judgment of P.G.& E.'s original experts and the original expert opinion to construct upon solid rock? Is it possible that there is a growing awareness by P.G.& E. that it has a risky proposition upon its hands and is trying to improve it?

In the battle of press releases, one press report apparently states that Dr. Quaide, one of P.G.& E.'s original experts, has been replaced by another expert. Dr. Quade allegedly stated:

"There is a chance that the fault could break beneath the plant's site in case of an earthquake. I think the probability is low. .... But it is necessary to face the moral issue. 'If there is even a slight chance of danger, should we go ahead and build the plant?'"

This is but one of the multiplicity of doubts and questions which arise. All of which could easily be satisfied--or at least the effort should be made to do so--upon proceedings reopened (either by this Commission or by request of P.G.& E.) to present new and relevant material to us.

In conclusion then, upon the motion of this Commission in view of the changed circumstances and events subsequent to the original granting of authority, I would reopen this case.

  
WILLIAM M. BENNETT, Commissioner

May 21, 1964