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ORIGINAL

Decision No. 80242

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE PEOPLE'S LOBBY,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY and SAN DIEGO GAS and ELECTRIC COMPANY,

Defendants.

Case No. 9291
(Filed November 9, 1971)

Mervyn L. Hecht and Roger Jon Diamond, Attorneys at Law, by Roger Jon Diamond, and Edwin A. Koupal, Jr., for plaintiffs.
Gordon Pearce and Frederick I. Fox, Attorneys at Law, by Frederick I. Fox, for San Diego Gas & Electric Company; and Rollin E. Woodbury, Robert J. Cahall, David N. Barry, III, and Charles R. Kocher, Attorneys at Law, by Charles R. Kocher, for Southern California Edison Company, defendants.
Frederick W. Bray, for California Public Interest Law Center,* interested party.

ORDER DISMISSING COMPLAINT

In the above-entitled complaint, filed by The People's Lobby described in the pleading as an association of California citizens, it is stated that the complainants are concerned with the safe operations of the defendants' San Onofre nuclear power plant and the ecological effects of said operation.

* Actually, this party has no standing in this matter as its representative made no attempt to comply with the Commission's Rules of Practice and Procedure (Intervention - Rule 53). The Chairman of the Commission, who was presiding officer at the hearing, permitted its representative to appear informally.

In the body of the complaint, it is alleged that defendants' San Onofre nuclear plant has basic flaws in the design of the emergency core cooling system demonstrated by recent tests conducted by the National Reactor Testing Station at Idaho Falls, Idaho; continued operation of this plant constitutes a threat of extreme harm to life and property within the State of California; that this threat is greatly magnified by the location of the defendants' plant because this area is subject to frequent earthquakes of minimal or severe consequences; that this greatly increases the likelihood that the primary cooling system could be ruptured and that the remaining emergency system would be inadequate to cool the reactor core; that continued operation of the defendants' San Onofre facility is therefore of particular and grave danger to the public health, safety and welfare; and such conduct manifests an intent by defendants to disregard the safety of the inhabitants of California.

The complainants requested that a public hearing be held for the purpose of presenting evidence in support of these allegations and called on defendants' to reply to said allegations; that, pending a public hearing and resolution of the question of whether or not defendants' San Onofre nuclear power generating plant may be operated as presently engineered and still be consistent with public safety, health and welfare, complainants request that the Commission issue an order that defendants' cease and desist operation of said nuclear generating facility.

The complaint was served on the defendants' who were ordered to satisfy or answer the complaint.

On December 15, 1971, the defendant, Southern California Edison, hereinafter SoCal, filed an answer to the complaint. In said answer, SoCal alleged that the Commission lacks jurisdiction of the subject matter of the complaint herein for the reason that the Atomic Energy Act of 1954, as amended, vests exclusive regulatory authority concerning such matters in the United States Atomic Energy Commission.

On December 17, 1971, the defendant, San Diego Gas & Electric Company, hereinafter San Diego, filed an answer to the complaint. In addition and on the same date, San Diego filed a motion to dismiss the complaint on the ground that, pursuant to the Atomic Energy Act the subject matter of the complaint herein is within the exclusive jurisdiction of the United States Atomic Energy Commission under the doctrine of federal preemption.

The Commission requested that the defendants file points and authorities in support of their claimed lack of jurisdiction by the Commission and that the plaintiffs file their opposition thereto. On January 26, 1972, a public Pre-Hearing Conference was held before Chairman Vukasin and Examiner Rogers, limited to the motions to dismiss the complaint and to selection of future hearing dates, if the Commission determined it had jurisdiction to proceed. We have determined that a portion of the complaint should be forthwith dismissed for the reason that the Commission has heretofore held that the operation of the San Onofre nuclear power plant is a proper use of the area, is not hazardous to the public health, welfare, convenience, and safety because of potential earthquake damage or thermal pollution.

Matters Within the Commission's Jurisdiction

Prior to granting the certificate of public convenience and necessity to construct and operate the San Onofre plant (Decision No. 67180, dated May 6, 1964, in Application No. 45231) the Commission held five days of hearing with prior notice to all possibly interested parties.

Subsequently, by Decision No. 78410 dated March 9, 1971 in Application No. 52045, the Commission thoroughly explored the case of proper usage of the area, the hazards to the public health, welfare, convenience, and safety because of potential earthquake damage or thermal pollution. In the body of the opinion the Commission states:

> "The meteorological conditions are typical of the general Southern California coastal climate. The predominant atmospheric stability condition at the site is Pasquill's category E, that is, slightly stable, with an associated average wind velocity of 3.3 meters per second.
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> "The results of extensive geologic and seismic investigations, conducted both in connection with the development of Unit 1 and in connection with the planning for Units 2 and 3, reveal that there are no indications of subsidence in the site area, that the soils in the site area are suitable foundations soils and are not subject to liquefacation during an earthquake, and that there are no active onshore or offshore faults located in the vicinity of the site. The Geological Survey, however, has not completed its review of this matter as it relates to Units 2 and 3. ...
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> "Safety
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> "Rigidly conceived and enforced safety standards have been designed in from the inception of nuclear power plants, and proposed nuclear power plants are subject to a long series of safety reviews by the utility, the equipment suppliers and the United States Atomic Energy Commission. On this record applicants presented considerable testimony as to the design features and steps which will be taken to assure that there will be no undue hazard to the public.

"For proposed San Onofre Units 2 and 3 each reactor and reactor coolant system will be housed in a reinforced concrete containment structure which is the shape of a vertical right cylinder with a shallow dome roof and a flat foundation slab. The approximate dimensions are 130 feet inside diameter, 185 feet inside height, 4 feet wall thickness, and 3-1/2 feet dome thickness. The containment structure will be lined with steel to provide a high degree of leak tightness. All penetrations will be pressure resistant, leaktight, welded assemblies designed, fabricated, and tested in accordance with applicable sections of ASME Nuclear Vessel Code, Section III, for Class B vessels. Anchorages of all penetrations are designed to resist all forces and moments caused by postulated pipe rupture, thermal and seismic loads. An equipment hatch and two personnel locks are provided. The two personnel locks are double door, interlocked, welded assemblies.

"The containment will be tested during construction and prior to operation. During operation a continuing surveillance program will be carried out. The containment is designed for all credible conditions of loading, including normal loads, loss of coolant accident loads, test loads, and loads due to adverse environmental conditions such as earthquake and wind loads.

"Each reactor has an inherent safety feature in that its over-all power coefficient is negative. This means that the response of the reactor core containing the nuclear fuel, uranium dioxide slightly enriched, to an increase in reactor thermal power is a decrease in reactivity. Every component of each reactor and reactor cooling system is planned, designed and fabricated with safety first in mind.

"In the event of incipient malfunction while in operation, visual and audible enunciators in the control room alert the operator to take corrective action. As a further response, if necessary, a completely automatic reactor trip system will shut the reactor down and thereby protect the reactor core and the reactor coolant system pressure boundary from any excursion or any accidental release into containment.

"To cope with accident situations, there are several special safety systems designated as engineered safety features. These systems are designed to protect plant personnel and the public from accidental release of radioactive fission products. They function to localize, control, mitigate and terminate loss of coolant accidents and to limit off-site exposure levels to those prescribed in 10 CFR Part 100. The first is the safety injection system which is designed to prevent fuel and cladding damage that would interfere with core cooling, and to limit zirconium-water reaction. The second is the containment spray system which is designed to maintain containment pressure and temperature below design conditions, and to remove airborne contaminants from the containment atmosphere. The third is the containment emergency atmosphere cooling system which is also designed to maintain containment pressure and temperature below design conditions. All are designed for any size break in the reactor coolant system, up to and including a double ended rupture of the largest reactor coolant pipe. The engineered safety features systems will be engineered and fabricated to detailed specification and a stringent quality control program will ascertain compliance with specification. They will be designed to operate in the environment to which they might be exposed in an accident situation and will be provided with integral testing systems.

"Fuel handling and storage facilities are designed for safe handling, storage, and shipment of fuel assemblies. New assemblies are delivered to the site in AEC approved containers and are stored dry in a storage vault. Room is provided for storage of two-thirds of a core. Spent fuel is handled under water and is stored under water in the spent fuel pool. Storage is provided in the spent fuel pool for 1-2/3 cores. When it has been sufficiently cooled, spent fuel is shipped offsite in licensed containers for reprocessing. After processing, radioactive fission product wastes are disposed of by the fuel processor in accordance with AEC regulations.

"The radioactive waste management systems are designed to provide controlled handling and disposal of liquid, gaseous and solid wastes generated during operation of the plant, and to minimize or preclude discharges to the environment of radioactive liquids, gases, or solids of plant origin. The waste management systems are designed to remove radioactivity from process streams as completely as possible and at the earliest feasible point in the stream. Liquid wastes will normally be processed and held for reuse. Optional capabilities will exist for controlled discharge to the circulating water outfall or for shipment offsite by an AEC licensed contractor. Radioactive gaseous wastes will be collected and compressed into storage tanks for decay and sampling prior to controlled release through absolute filters to the plant vent. The plant vent is continuously monitored to verify that all releases are well within applicable regulatory limits. Solid radioactive wastes will be packaged in ICC and AEC approved containers for shipment offsite for disposal by AEC licensed contractors.

"From January 1968 through August 1970, radioactive emissions from San Onofre Unit 1 were 7 percent of permissible regulatory limits for liquid gross beta gamma activity, 0.2 percent of permissible regulatory limits for tritium, and .063 percent of permissible regulatory limits for gaseous gross beta gamma activity. Liquid and tritium emissions from Units 2 and 3 are expected to be less than liquid and tritium releases have been for Unit 1. Gaseous releases from San Onofre Units 2 and 3 may be greater than they have been from Unit 1, but, even if they are proportionally greater, they will still be less than .5 percent of permissible regulatory limits. A radiation surveillance program has been conducted in accordance with regulations of the California Department of Public Health prior to and during operation of Unit 1. The surveillance program has indicated that operation of San Onofre Unit 1 has not had a detectable radiological effect upon the environment. A radiological monitoring program for San Onofre Units 2 and 3 was approved by the California Department of Public Health on September 28, 1970. ...

"Environmental Protection

"The proposed construction and operation of San Onofre Units 2 and 3 would be conducted in a manner to minimize their impact on the environment. Specifically, site conditions and preparation, aesthetic and recreational conditions, radiological and chemical effects, and thermal effects are all considered in plant design. Based on environmental monitoring programs conducted over a period of some seven years for Unit 1, no unusual demographic, meteorological, geological or seismological features have been identified which could make unacceptable the operation of Units 2 and 3 from the standpoint of impact on the environment. A significant potential for interaction with the environment is the plant's location on the Pacific Ocean and use of the ocean water for condenser cooling.

"An extensive and continuing oceanographic monitoring program has been conducted offshore from the San Onofre site since 1963. The results of the biological monitoring program have demonstrated the lack of any significent adverse effects on the marine environment due to thermal addition from Unit 1. A decrease in benthic algae in the immediate vicinity of the outfall, believed due to increased turbidity, has been observed. At the same time, a marked increase in fish population has been observed. Based on predicted thermal influence of proposed Units 2 and 3, it is not anticipated that their operation would have any material effects upon the marine environment.

"The discharges of heated condenser cooling water into the Pacific Ocean are to be kept within limits set by the State of California and the California Regional Water Quality Control Board, San Diego Region. The liquid and gaseous radioactive effluents from the plant must be kept, as a condition of the operating license, as low as practicable and in any case, within the limits of 10 CFR Part 20. There should be no long-term radiological or thermal effects on the environment because the environmental monitoring programs will provide a basis for detecting and evaluating any impact, which might lead to long-term effects, such that timely corrective action can be taken if required.

"The aesthetic design criteria for the plant is to make the completed facility compatible with the surrounding coastal environment. All structures, means of access, and equipment will be designed and located with the objective of making the physical appearance of the facility pleasing and unobtrusive. Landscaping will be installed in all appropriate areas of the plant site. The existing switchyard will be removed and a new switchyard will be stepped down so as to remove all lower equipment from the view of passing motorists.

"The San Onofre site was considered in accordance with the provisions of the National Historic Preservation Act, which requires federal licensing agencies to take into account the effect of a proposed undertaking on any site significant in American history, architecture, archaeology or culture. The nearest historic site is some eight miles distant from San Onofre.

"Multipurpose use with the public of the site and adjacent properties will be made wherever feasible, as approved by the Atomic Energy Commission, where necessary plant security and safety would not be impaired. Moreover, the San Onofre beaches have not been impaired by San Onofre Unit 1 and, except during construction, will not be impaired by San Onofre Units 2 and 3. Sand from the site excavation will be disposed of by use for beach replenishment purposes. Applicants believe that construction of Units 2 and 3 will improve rather than impair any beneficial uses of the beaches. The combined effects of warmer water and the presence of the outfall structures is expected to result in increased numbers and types of fish in the area."

In the decision the Commission found, among other things, as follows:

"4. There is no evidence in the record concerning safety within our jurisdiction which would cause us to reject proposed San Onofre Units 2 and 3 as being unsafe.

"5. a. Based on environmental monitoring programs conducted over a period of some seven years for San Onofre Unit 1, no unusual demographic, meteorological, geological or seismological features have been identified which could make unacceptable the operation of proposed San Onofre Units 2 and 3 from the standpoint of impact on the environment.

b. Proposed San Onofre Units 2 and 3 will not create irreconcilable conflicts with the environment, including aesthetics, provided the two nuclear steam generating units, switchyard and attendant facilities are designed in an aesthetically pleasing manner.

c. Environmental monitoring programs will be used to confirm that the applicants are complying with all of the state and federal regulations, and appropriate corrective action will be taken if proposed San Onofre Units 2 and 3 are judged to be adversely affecting the environment.

"6. The certification of the San Onofre Units 2 and 3 project, as conditioned hereinafter, will not produce an unreasonable burden on natural resources, aesthetics of the area in which the proposed facilities are to be located, public health and safety, air and water quality in the vicinity, or parks, recreational and scenic areas, or historic sites and buildings or archaeological sites. Collaterally, from the standpoint of reliable and economic electric service in the areas served by applicants, such certification is necessary to promote the safety, health, comfort and convenience of the public."

We find that proper usage, hazards to public health, welfare, convenience, and safety because of potential earthquake damage or thermal pollution have been thoroughly explored in prior hearings and the matters decided contrary to complainants contentions.

Relative to the complainants' contentions that this Commission has jurisdiction to rule on hazards from potential radioactive contamination, we have heretofore held that we have no jurisdiction relative thereto (Consumers Arise Now vs. The Pacific Gas and Electric Company, et al, Decision No. 78765, dated June 2, 1971 in Case No. 9204). Therein we held:

> "To the extent that the complaint alleges hazards from potential radioactive contamination it raises issues which are within the purview of the Atomic Energy Commission, pursuant to the Atomic Energy Act of 1954 (42 USC 2011, et seq.), and not this Commission."

The California Supreme Court has, at least by dicta, held that this Commission does not have authority to inquire into radioactive hazards. Northern California Association to Preserve Bodega Head and Harbor, Inc., Petitioner, v. Public Utilities Commission, Respondent; Pacific Gas & Electric Company, Real Party in Interest (61 Cal 2d 126), at page 133 of said decision, the court states:

> "Subdivision (k) of section 2021 reads: 'Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.'
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> "In view of subdivision (k) of section 2021, respondent commission unquestionably has authority to inquire into safety questions apart from radiation hazards. Accordingly, since the location of an atomic reactor at or near an active earthquake fault zone involves safety considerations in addition to radiation hazards, it is clear that the federal government has not preempted the field, at least with respect to the phase of protecting the public from hazards other than radiation hazards, and that the states' powers in determining the locations of atomic reactors are not limited to matters of zoning or similar local interests other than safety."

The Commission finds that:

1. On May 5, 1964, by Decision No. 67180 in Application No. 45231, after five days of properly noticed public hearings, this Commission granted the Southern California Edison Company and San Diego Gas & Electric Company an interim certificate of public convenience and necessity to construct and operate the San Onofre Nuclear Generating Station relative to which the complainants herein have raised the objections hereinbefore referred to.

During this hearing, the Commission received evidence relative to safety and proper siting and found that "...There is no evidence concerning safety in this record which would cause us to reject the proposed project as being unsafe. ..." and that "...The proposed plan will not create irreconcilable conflicts with aesthetics and ecology." Thereafter, by Decision No. 74182 dated May 28, 1968, the interim authority was made permanent.

2. On March 9, 1971, the Commission issued Decision No. 78410, the pertinent portions of which are quoted in the body of this opinion.

3. Proper usage, hazards to public health, welfare, convenience, and safety because of potential earthquake damage or thermal pollution by or resulting from the construction of all units of the San Onofre Nuclear Generating Station have been thoroughly explored in the hereinbefore referred to applications.

4. The continued operation of the San Onofre plant does not constitute a threat of extreme harm to life or property in the State of California.

5. The Federal Government has the exclusive authority under the doctrine of pre-emption to regulate plant safety which involves radiation hazards.

We conclude that the complaint should be dismissed.

THEREFORE, IT IS ORDERED that the complaint is dismissed.

This decision shall be served by registered mail on each of the appearing parties. The effective date of this order as to each party shall be twenty days after the date of service thereon.

Dated at Los Angeles, California, this 18th day of JULY, 1972.

Vernon L. Sturgeon
President

Commissioners