

ORIGINAL

Decision No. 86192

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Commission's
issuing a General Order to protect
the public from nuclear hazards
through public education concerning
emergency evacuation plans.

Case No. 9956
(Filed August 8, 1975)

Roger F. Telschow and Leland T. Jones, for Northern
California Public Interest Research Group, Inc.;
California Citizen Action Group, Inc.; California
Public Interest Research Group, Inc.; People's
Lobby, Inc.; and San Diego Energy Coalition;
petitioners.
Malcolm H. Furbush, Richard A. Clarke, and David J.
Williamson, Attorneys at Law, for Pacific Gas
and Electric Company; Charles R. Kocher,
Rollin E. Woodbury, Robert J. Cahall, and
David N. Barry, III, Attorneys at Law, for
Southern California Edison Company; and
Gordon Pearce, Vice-President and General Counsel,
for San Diego Gas & Electric Company; respondents.
David S. Kaplan, Attorney at Law, for Sacramento
Municipal Utility District, interested party.
Robert T. Baer, Attorney at Law, for the Commission
staff.

OPINION AND ORDER
DENYING PETITION ON
JURISDICTIONAL GROUNDS

O P I N I O N

Statement of Facts

The facts are not in dispute. In California there are three
nuclear power plants presently operational, two nearing completion, and

four others in planning and/or initial stages of construction.^{1/} Expressing concern over "how can people successfully evacuate if they do not know what the evacuation plan is", and noting that they are not concerned here in the larger debate over nuclear safety, the Northern California Public Interest Research Group, Inc., California Citizen Action Group, Inc., California Public Interest Research Group, Inc., People's Lobby, Inc., and San Diego Energy Coalition (NorCal PIRG) petitioned the Commission for issuance of a general order to require each electrical utility within this State, once each year, to include with every customer's periodic billing statement instructions explaining what emergency steps, including public evacuation, the customer should take in case of a nuclear incident at a facility owned or operated by a utility in this State.

The utilities operating, planning, or constructing the above mentioned plants, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Sacramento Municipal Utility District (the utilities), asked by the Commission Secretary to comment, in essence all questioned whether the Commission could assert jurisdiction over a matter which assertedly is an "integral part" of an area of responsibility allocated by the Legislature to another state agency.

^{1/} Nuclear Power Plants in California; operational, under construction, and planned:

<u>Operational Date</u>	<u>Name</u>	<u>Location</u>
1963	Humboldt Bay	Humboldt County
1967	San Onofre	San Diego County
1974	Rancho Seco	Sacramento County
1976	Diablo No. 1	San Luis Obispo County
1976	Diablo No. 2	San Luis Obispo County
1980	San Onofre Nos. 2 & 3	San Diego County
1985	Vidal Nos. 1 & 2	San Bernardino County

The assigned Examiner, noting the legislative grant coordinating responsibility for emergency service functions, including evacuation plans, at the statewide level to the Office of Emergency Services under the California Emergency Services Act of 1970, and the seeming inconsistency with the provisions of that act for the Commission to inject itself and assert jurisdiction, directed the parties and the staff of the Commission to file briefs, and points and authorities, on the pivotal jurisdictional issue. The parties complied.

Discussion

Created by authority of the Constitution in 1911, the Railroad Commission and its present day successor, the Public Utilities Commission, were designed from inception to protect the people of this State from the consequences of destructive competition and monopoly in the public service industries. (Pac. Tel. & Tel. Co. v Eshelman (1913) 166 C 640, 658.) Since then, the Commission historically has been the state agency charged with regulation of privately owned public utilities. As material here, some of the Commission's powers are derived by direct grant from the Constitution (Article XII, Sections 3 and 6);^{2/} and others are conferred by the Legislature (Article XII, Section 5), which has been given plenary power to confer additional authority and jurisdiction (so long as such conferral is cognate and germane to the regulation of utilities) upon the Commission.

^{2/} Petitioner cited Article XII, Sections 22 and 23 of the California Constitution as the source of the Commission's regulatory authority. These sections were repealed on November 5, 1974, and replaced by the sections noted in the opinion.

Over the years the Legislature has used its plenary power to confer broad supervisory and regulatory authority upon the Commission. For example - and as material here - the Commission has authority to require that every public utility "...furnish and maintain such adequate, efficient, just, and reasonable service...as... necessary to promote the safety...of its patron, employees, and the public";^{3/} "...may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction";^{4/} and may require "... every public utility to...operate its...plant...in such manner as to promote and safeguard the health and safety of its employees, ... customers, and the public, ...and require the performance of any other act which the health or safety of its employees, ...customers, or the public may demand."^{5/} It is now well-established that the Constitution and the Legislature have established a comprehensive scheme for the general supervision and regulation of the public utilities in this State by this Commission. That scheme embraces broad general power to regulate the relationship of a utility to the consumer in service and rate matters, as well as specific power to regulate the manner in which the utility provides service - the latter in order to safeguard the ability of the utility to serve safely, efficiently, and economically. Despite these broad grants of authority, however, the Commission must always view them against other relevant legislative enactments, and may, after doing so, sometimes either share its jurisdiction with other agencies - as in the air pollution field, and as in some aspects of the health and safety fields - or, as here, refrain from attempting to exercise jurisdiction at all, where to do so would be improper.

^{3/} California Public Utilities Code, Section 451.

^{4/} California Public Utilities Code, Section 701.

^{5/} California Public Utilities Code, Section 768.

In this regard, and under the circumstances involved in this matter, we cannot avoid cognizance of the provisions of the California Emergency Services Act passed by the Legislature in 1970.^{6/} That Act, stating as the policy of this State that "...all emergency service functions of this State be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government, including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur", places responsibility for this coordination in the Governor's office (Gov. Code, Section 8569); creates the Office of Emergency Services (Gov. Code, Section 8565); mandates preparation of emergency plans (Gov. Code, Section 8569); and authorizes the Governor, in accordance with provisions of the State Emergency Plan, to institute training programs and public information programs (Gov. Code, Section 8570).

^{6/} The federal government has not entirely preempted the nuclear regulation field and a state role in emergency response planning is contemplated. (See Guide and Checklist for the Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities, WASH 1293 (USAEC 1974).) The State of California has moved to meet its role in the field by enactment of the California Emergency Services Act of 1970.

Since its creation under the California Emergency Services Act of 1970, the Office of Emergency Services, in conjunction with the Department of Health, has prepared a State of California Nuclear Power Plant Emergency Response Plan.^{7/} Under the provisions of this plan specifically addressed to the nuclear power plants in the State, the Office of Emergency Services has authority to "prepare and coordinate public information releases with local and federal governments", tailoring such releases to the specific contingencies (radiological and meteorological conditions included) as would prevail at the time such an emergency might arise. In further recognition of the fact that circumstances vary at each area where nuclear plants are located, the plan further provides that local primary response agencies^{8/} have responsibility to "provide for preparation and dissemination of appropriate instructions to the general public." (Emphasis added.)

^{7/} Under Gov. Code, Section 8560(b), a State Emergency Plan, as approved by the Governor, was decreed. This plan contemplated preparation of additional specific "emergency plans". The Office of Emergency Services is responsible for planning at the state level assisted by the Department of Health, and is responsible for overall coordination, review, and approval of all plans by other state agencies and local jurisdictions. This State of California Nuclear Power Plant Emergency Response Plan, dated July 1975, and prepared by the Radiological Sections of the Office of Emergency Services and the Department of Health, delineates responsibilities and tasks of each participating federal, state, and local agency.

^{8/} Gov. Code, Sections 8610, 8612, and 8581 provide specifically for creation of local disaster councils, subject to accreditation by the California Emergency Council or the Governor when the Council is not meeting. These Councils are empowered to designate local primary response agencies. Under the State master plan for nuclear power plant disasters these local primary response agencies are "...responsible for all emergency information related directly to action required of the public."

Accredited local primary response agencies for the operational or shortly to be presently operational nuclear power plants are: San Onofre plant - San Diego and Orange Counties; Rancho Seco plant - Sacramento County; Humboldt Bay plant - Humboldt County; and Diablo Canyon - San Luis Obispo County. It must be noted that this Commission has no jurisdiction over these political entities or their subdivisions and agents, and thus we could not require them to prepare or furnish such extracts from their detailed and lengthy local response plans as might be suitable or appropriate for dissemination through the utilities to their customers in the manner requested by NorCal PIRG.

Furthermore, we are not unmindful of the fact that, as to the utilities involved here, we lack jurisdiction entirely over one of them operating the second largest nuclear power plant, namely, the Sacramento Municipal Utility District (SMUD).^{9/} Thus, even absent considerations arising out of the California Emergency Services Act of 1970, this Commission could not fashion a complete order to the nuclear power plant industry.

We next consider the possible ramifications to possible exercise of our jurisdiction inherent from existence of the California Emergency Services Act of 1970. Under well-established principles of statutory interpretation, specific provisions relating to a particular

^{9/} The California Public Utilities Commission has no jurisdiction over municipally owned utilities unless expressly provided by statute. (Los Angeles Metropolitan Transit Authority v PUC (1963) 57 C 2d 655, 661.) SMUD is operated under the Municipal Utility District Act, Sections 11501, et seq., and is not subject to Commission regulation.

subject, such as those found here in the California Emergency Services Act of 1970 pertaining to "preparation and dissemination of appropriate instructions to the general public" in the field of disasters and emergencies at nuclear plants, will govern in respect to that subject, as against any general provision for that subject such as might logically be inferred from a liberal reading of Public Utilities Code Sections 451, 701, and 768 - although the latter, standing alone, would have been broad enough to include the subject to which the more particular provisions relate. (County of Placer v Aetna Cas. etc. Co. (1958) 50 C 2d 182, 189.) This Commission must assume that in enacting such a statute as the California Emergency Services Act of 1970, the Legislature was aware of existing related delegation of supervisory and regulatory authority to this Commission, and intended to maintain a consistent body of statutes. (American Friends Service Committee v Procunier (1973) 33 C 3d 252, 260.) There is no evidence whatsoever that the Legislature contemplated a patchwork structure in this critical and highly technical area, or that overlapping or duplicated responsibilities were envisioned.^{10/} Rather the evidence is that the Legislature intended to centralize responsibility in the Governor's office (Gov. Code, Section 8550) and work through local disaster councils created by counties, cities and counties, and cities (Gov. Code, Sections 8600, 8605, and 8610). Certainly this Commission has an obligation to construe these statutes with a view to promoting rather than to interfering with their general purpose. (Redevelopment Agency v Malaki (1963) 216 CA 2d 480, 487.)

^{10/} Indeed, the policy statement of the California Emergency Services Act of 1970, supra, indicates "...all emergency functions of this State..." are to be coordinated through the Office of Emergency Services. (Emphasis added.) The only direct mention of the California Public Utilities Commission in the State's Nuclear Power Plant Emergency Response Plan is that in event of a required evacuation the Commission "arranges for provision of emergency transportation from commercial or private sources."

Furthermore, relating to the fact of our previously stated lack of jurisdiction over the political entities involved and SMUD, it has been stated that any question of the jurisdiction of a particular tribunal to act in any given situation has, as its primary theoretical basis of solution, the power of that particular tribunal to enforce any judgment or order it may render. (In re De Baun's Will (1937) 293 NYS 836, 838.) Process subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else jurisdiction would be incomplete and entirely inadequate to the purpose for which it was conferred. (U.S. v Williams (1930) 43 F 2d 184.) Accordingly, it is proper for a tribunal to decline to exercise jurisdiction, intended to be complete, where it has no power to enforce its determination. (La. State v N. American Land, etc. Co., (1902) 31 So 172.)

For these reasons we conclude that, where as here, the Legislature has enacted a comprehensive statutory scheme in a highly technical area, providing for the preparation and adoption of emergency disaster programs, including evacuation; has enacted specific lines of authority to coordinate and disseminate public information; and has lodged this responsibility in the Governor and another state agency; it is clear that it would be an act in excess of our jurisdiction for this Commission to inject itself into that area.

In conclusion, we would also briefly treat NorCal PIRG's contentions that current planning efforts are wholly inadequate; that NorCal PIRG's goal is to ensure effective distribution of existing plans to the public; and that refusal by this Commission to assume jurisdiction serves to deny access to a forum. The adequacy and content of current emergency plans in this field are not within our competency - as petitioners' readily admit. Although NorCal PIRG's zeal is commendable, we express no opinion as to either the adequacy of the existing planning or the desirability of any distribution of plans or information at this time - such a determination and such a decision are clearly discretionary matters resting with the Governor,

the Office of Emergency Services, and accredited local primary response agencies. This Commission has no statutory authority, and seeks none, to second guess the duly constituted authorities in this sensitive, technical, and critical area. If those authorities deem it necessary, or convenient, or desirable, to extract and prepare instructions to be tailored for public instruction from the master plans, to the extent possible in advance of knowledge of the specific radiological and meteorological contingencies, they have the specifically vested authority to order a distribution, as well as access to the funds which would be required to pay for such a preparation and distribution. Lastly, it is not the business of this Commission to provide a back door forum merely because the duly constituted authorities have, within the legitimate exercise of their discretion, not chosen to act as petitioners would prefer.

Findings

1. By constitutional grant and legislative enactment, over the years the California Public Utilities Commission has been granted broad supervisory and regulatory authority over privately owned public utilities - the limitation on these grants being that they must be cognate and germane to the regulation of these utilities.

2. The California Emergency Services Act of 1970 provides a comprehensive scheme for development, coordination, and implementation of emergency service functions, including public information programs, with responsibility vested in the Governor and Office of Emergency Services. The Act provides for a state master plan and local disaster councils with power to authorize local emergency organizations (local primary response agencies).

3. The Office of Emergency Services, in conjunction with the Department of Health, has drawn up the state master plan for the nuclear power plant area, entitled "State of California Nuclear Power Plant Emergency Response Plan".

4. The "State of California Nuclear Power Plant Emergency Response Plan" delineates responsibilities and tasks of participating federal, state, and local agencies. The plan contemplates and provides for annexation to it, after approval by the Office of Emergency Services, of local emergency response plans worked up by the local primary response agencies.

5. Under this state master plan local primary response agencies are designated as being responsible "for all emergency information related directly to action required of the public".

6. The California Public Utilities Commission has no jurisdiction over local primary response agencies or their components, and other governmental jurisdictions (i.e., California Highway Patrol, etc.).

7. The Sacramento Municipal Utilities District (SMUD) is not subject to Commission jurisdiction.

8. Public information should be highly coordinated, readily intelligible to the general public, and technically accurate, evidencing the combined effort of many resources and disciplines and reflective of any radiological and meteorological situations prevailing.

Conclusions

1. The Governor, the Office of Emergency Services, and accredited local primary response agencies have been vested under the California Emergency Services Act of 1970 with primary and specific responsibility to coordinate, develop, and disseminate public information to the extent deemed desirable with regard to nuclear power plant disaster response plans.

2. It would be an act in excess of our jurisdiction for this Commission to inject itself into this sensitive and highly technical area.

3. NorCal PIRG's petition for issuance of a general order should be denied.

O R D E R

IT IS ORDERED that Northern California Public Interest Research Group, Inc.'s petition for issuance of a general order is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of AUGUST, 1976.

I believe that we should consider the issue of emergency warnings by utilities in a more general context not limited to nuclear power. For that reason I abstain.

Leonard Ross Commissioner

[Signature]
President
William J. Synovae Jr.
Vernon L. Stenger

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.