Decision No. 89615 OCT 31 1978

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Western LNG Terminal Associates, a general partnership, and of a Joint Application of Western LNG Terminal Associates, Pacific Gas and Electric Company and Pacific Lighting Service Company, California corporations, for a permit authorizing the construction and operation of an LNG terminal pursuant to Section 5550 et seq. of the Public Utilities Code.	Application No. 57626 (Filed October 14, 1977)
In the Matter of the Application of PACIFIC GAS and ELECTRIC COMPANY, AND PACIFIC LIGHTING SERVICE COMPANY, California corporations, for a Certificate that Public Convenience and Necessity require the construction, operation, and maintenance of a 34" Pipeline from the Point Conception area, Santa Barbara County, California to Gosford, Kern County, California, and related facilities.	Application No. 57792 (Filed January 9, 1978)
Investigation on the Commission's own motion into the matter of the adoption of regulations governing the safety and construction of a liquefied natural gas terminal in the State of California.	OII No. 1 (Filed October 18, 1977)
Investigation on the Commission's own motion into the impact of the decline in natural gas available to California from traditional sources and the need for and timing of deliveries from supplemental supply projects.	Case No. 10342 (Filed June 1, 1977; amended August 23, 1977)

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OPINION AND ORDER DENYING REHEARING AND MODIFYING DECISION NO. 89177

The Commission has received seven petitions for rehearing of Decision No. 89177, from the Fred H. Bixby Ranch Co., Hollister Ranch Owners' Association, Lee Mansdorf (Trustee for the Mansdorf Trust), Kelco Co., California Coastal Commission (CCC), Indian Center of Santa Barbara, Inc.,and the California Native American Heritage Commission.

In addition to its petition for rehearing, the Indian Center of Santa Barbara has petitioned for a stay of Decision No. 89177, specifically of Condition 36 relating to trenching activities, and has reasserted its earlier motion requesting preparation of an additional environmental impact report (EIR) on those same trenching activities. The Commission has considered the Indian Center's allegations and has found them to be without merit. Therefore, the petitions for rehearing and stay are denied, and the Commission's earlier denial of the motion requesting preparation of a further EIR is reaffirmed.

The Commission has reservations as to whether Petitioners Mansdorf and the California NAHC have standing to file petitions for rehearing; the record indicates that they did not correctly make an appearance, nor have they asserted the pecuniary interest in the utility required by Public Utilities Code Section 1731. However, despite this ambiguity, the Commission has considered the allegations in these two petitions and finds that no good cause for rehearing has been shown. The Commission likewise has examined each and every allegation in the remaining petitions for rehearing, and finds that these petitions as well have set forth no good cause for rehearing. However, the petitions have identified several areas of ambiguity within Decision No. 89177 which the Commission believes require clarification.

The first area of ambiguity concerns the Commission's findings that the three sites rejected by the Decision do not satisfy the remoteness criteria of the LNG Act. Apparently, petitioners

perceive these findings to be based on an "overbroad" interpretation of Sections 5568 and 5582, which by their terms do not include consideration of transient populations.

However, this interpretation reflects a misreading of the Decision and the statute, as well as a misunderstanding of the Commission's traditional responsibilities. The statute makes clear the legislative intent that protection of human life is of paramount importance. In view of current uncertainties related to safety of LNG, the Legislature has provided that the terminal to be sited under this statute must be located at a site "remote from human population in order to provide the maximum possible protection to the public against the possibility of accident." (Section 5552.) Clearly, remoteness in one sense means a location where the density of permanent population is minimal. (Sections 5568, 5582.) But in addition, in the present context, remoteness must also necessarily mean a location distant from any significant human use. Any other interpretation would make the Legislature's concerns meaningless. It follows from this that the close proximity of the three rejected sites to heavily used state parks and beaches and public highways simply means that these sites are not remote.

Moreover, no site can be approved that is inconsistent with public health, safety, and welfare (Section 5632). Under the parameters established by the LNG Act, the Commission finds it inconceivable that anyone could conclude that siting an LNG terminal within close proximity to the above mentioned parks and highways, shown by the record to be very heavily used, would be consistent with the public health, safety, and welfare. The Commission has always had the responsibility to consider the public interest. Far from circumscribing this responsibility, the LNG Act reaffirms it, while at the same time providing explicit direction as to the concerns the Commission must consider.

It is also important to bear in mind that failure to satisfy the remoteness criteria, whether based on Section 5552, Section 5632, or the Commission's broader responsibility to protect the public interest, was only one factor leading to the rejection of these three sites. While the Commission considered this factor

pursuant to legislative mandate, other problems with these sites were also determinative. Decision No. 89177 clearly and fully sets forth all of the bases on which Camp Pendleton and Rattlesnake and Deer Canyons were rejected.

The Commission wishes to reiterate its desire to work as closely as possible with the CCC during the remainder of the siting process. It is the Commission's intention to enforce as many of the goals and policies of the California Coastal Act as are feasible. The Legislature's intent that this occur is obvious. However, the Legislature also recognized that balancing the critical need for energy in California against protection of coastal resources would require certain tradeoffs to be made. This Commission's established expertise in energy matters undoubtedly contributed significantly to the Legislature's decision to give the decision-making authority to this Commission. As stated above, the Commission intends to carry out the Legislature's mandate to ensure coastal protection to the maximum extent consistent with the LNG Act.

A second area of ambiguity concerns the matter of an amended application, should further seismic information make it impossible to issue a final permit for Point Conception. The Commission stresses that the three sites it has rejected in Decision No. 89177 are not further candidates for review.

Thirdly, a question has been raised as to the nature of the permit to construct and operate a pipeline. Clearly, that permit is conditional upon the satisfaction of all terms and conditions necessary to receive final authorization for the terminal. Conditions 8, 27, and 29 set forth further requirements which must be satisfied before a final pipeline route can be approved; the Commission reiterates that no pipeline permit becomes effective until final authorization is received for the terminal.

In addition to the above, several other areas require clarification. It has come to the Commission's attention that Condition 32 is ambiguous as to who may present additional evidence on sea-state conditions. This Condition was not intended to preclude any party from presenting additional evidence, assuming such evidence meets the terms set forth in Condition 32.

The Commission further hereby finds it in the public interest to specifically include the California Native American Heritage Commission as one of the agencies named in Condition 12. This condition will be modified accordingly. It should be noted that the Commission staff already has been working closely with the Heritage Commission in formulating an archaeological resources protection plan pursuant to Condition 12.

The Commission further believes it appropriate to work with both the CCC and the Department of Fish and Game regarding protection of kelp. Condition 19 will be modified to this extent. However, the Commission also believes that if the Department's approval of a mitigation plan were mandatory, it would be contrary to the intent of the LNG Act which gives to the Commission exclusive regulation authority.

The attached Order adds one new finding and one new conclusion of law. Finding No. 88A, inadvertently omitted, specifies the components of the docking operational envelope for LNG tankers. Conclusion No. 21 clarifies the Commission's intent to fully comply with CEQA. This finding states that in the event new seismic evidence indicates the risk is more severe than anticipated in the EIR, the Commission will prepare an addendum to the EIR before issuing any final permit on Point Conception.

Lastly, several findings have been modified to more clearly reflect the state of the evidence on certain issues.

IT IS THEREFORE ORDERED THAT:

1. The Petition of the Indian Center of Santa Barbara for Stay of Decision No. 89177 is denied, and the Motion of the Indian Center requesting preparation of an additional environmental impact report is again denied.

2. Rehearing of Decision No. 89177 is denied.

IT IS FURTHER ORDERED that the following modifications shall be made to Decision No. 89177 and incorporated therein:

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(1) Delete the first paragraph of Condition 12, p. 258 and substitute:

Prior to construction Western Terminal shall contract for an independent survey of archaeological resources at the site and along the approved pipeline, access road, and power-line corridors. Wherever so indicated, the survey shall consist of subsurface testing. If archaeological resources have been, or are likely to be found at the site, construction shall not commence until the Commission, after consultation with the CCC, the State Historic Preservation Officer, and representatives of local Native American groups, including the California Native American Heritage Commission, has approved Western Terminal's plan for the protection of archaeological resources. Such plan shall include: [The remainder of this Condition is unchanged].

(2) In the last sentence on page 264 of Decision No. 89177.

(3) Delete Condition 19 and substitute:

To the extent feasible, Western Terminal shall avoid interference with kelp harvesting from Kelp Bed 32. If studies implemented under Conditions 3, 4, and 5 indicate that terminal construction or operation will decrease the amount of kelp that can be harvested under existing Department of Fish and Game leases, Western Terminal shall develop a program to minimize the decrease and to mitigate the loss suffered by the Bed 32 lessor or lessee. The Commission, after consultation with the CCC and the Department of Fish and Game, shall approve and enforce such a plan.

(4) Delete Finding No. 28 and substitute:

The preliminary design information submitted in the application and supplemented throughout the proceedings is sufficient for the environmental review process.

(5) Delete Finding No. 38 and substitute:

The concept of project financing is in the public interest.

(6) Delete Finding No. 40 and substitute:

Delay due to selection of a site other than the applied for site will lead to a significantly greater risk of loss of the gas supply contracts than will selection of Point Conception.

(7) Delete Finding No. 45 and substitute:

Several types of mitigation measures which would substantially reduce the air quality impact of the project have been identified by the Air Resources Board.

(8) Delete Finding No. 46 and substitute:

Further hearings are necessary to establish the extent to which air quality mitigation is necessary and to determine which of the measures identified by the Air Resources Board will be both feasible and effective.

(9) Delete Finding No. 49 and substitute:

Based on the evidence before us, there appears to be no feasible method for mitigating plankton entrainment.

(10) Delete Finding No. 71.

(11) Delete Finding No. 79 and substitute:

The evidence presented to date indicates that the probability of an accident involving ten or more casualties at the proposed site is approximately one chance in 100 million years at existing population levels.

(12) Delete Finding No. 80 and substitute:

The evidence presented to date indicates that the probability of an accident involving one or more casualties at the proposed site is one chance in 1 million years with the existing population level.

(13) Delete Finding No. 91 and substitute:

Analysis of the evidence submitted on sea-state conditions indicates that while annual weather related downtime at Point Conception may exceed 17% during some years, <u>average</u> annual weather related downtime will fall within the range of 0% to 17% during the life of the project; however, further on-site observations of sea-state conditions are appropriate and additional evidence on these conditions shall be required.

(14) Delete Finding No. 92 and substitute:

Analysis of the evidence submitted on sea-state conditions indicates that the projected level of weather related berth downtime is acceptable and will not seriously impair the project's ability to deliver the contract quantities; however, further on-site observations of sea-state conditions are appropriate and additional evidence on these conditions shall be required.

(15) Delete Finding No. 120 and substitute:

Impacts caused by the placement of an LNG terminal at Point Conception, most of which can and will be required to be partially or substantially mitigated, constitute acceptable tradeoffs necessitated by the LNG Act's requirement that the terminal be sited at a "remote" location.

(16) Delete Finding No. 121 and substitute:

When mitigation measures approved by the Commission are implemented, the construction and operation of the proposed facility will substantially lessen the burden on natural resources, aesthetics of the area in which the proposed facilities are to be located, air and water quality in the vicinity, parks, recreational, and scenic areas, wildlife and vegetation, historic sites, archaeological sites, and community values.

(17) Add new Finding No. 88A:

Western Terminal's marine operating criteria, which stipulate that berthing will not be permitted when visibility is less than one mile, when winds exceed twenty-five knots, or when wave heights exceed six feet, are reasonable and during initial operations shall constitute the docking operational envelope to the extent permitted by U.S. Coast Guard regulations.

(18) Add new Conclusion No. 21:

If evidence adduced at the hearings investigating seismic activity indicates the risk is more severe than anticipated in the EIR, the Commission shall prepare an addendum to the EIR before issuing any final permit for Point Conception.

(19) Delete Ordering Paragraph No. 15 and substitute:

15. Further hearings will be held in these proceedings to:

a. Establish the extent to which air quality mitigation measures are necessary and feasible.

b. Evaluate the environmental and economic impacts of the alternate access roads and select the appropriate route.

c. Evaluate the seawater alternative heretofore discussed and other potentially feasible systems which may be presented and select an appropriate system.

d. Determine the environmental and economic impacts of alternate electric transmission line routes proposed and select the most appropriate route.

(20) Delete Ordering Paragraph No. 18 and substitute:

18. In the event a final permit cannot be issued for construction and operation of an LNG terminal at Point Conception, Western Terminal is urged to submit

an amended application to this Commission and all appropriate federal agencies which shall include alternate sites other than those rejected by Decision No. 89177 which would provide for receipt of LNG in California at the earliest possible date.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 31st day of OCTOBER, 1978.

I would grant rehearing. I will file a written dissent

Robert Batinovich
President

Vernon L. Sturgeon

Leonard D. Grimes, Jr.

Claire T. Dedrick

Commissioners

Commissioner William Symons, Jr. Present but not participating.

COMMISSIONER CLAIRE T. DEDRICK, Dissenting:*

I would grant rehearing on the petitioned issues and a number of related issues. I would also grant standing to the NAHC.

By concurring in Decision No. 89177 on July 31, 1978, I made clear my grave and substantive concerns about the proposed project. It was and remains obvious that the information in the record is completely inadequate to provide a basis for decision on a multi-billion dollar project to be funded by the ratepayers and one which involves in addition a substantial irreversible commitment of public resources. By granting a conditional permit to Western LNG on July 31, the Commission acknowledged the inadequacy of the record but complied with the statutory deadline. I signed that order to comply with the deadline mandated by the LNG Act of 1977. This deadline, although arbitrary and unreasonable, was clearly binding.

But that statutory deadline is no longer a factor. This Commission has a higher responsibility, under both the LNG Act and the Constitution, to reopen the case and complete the evidence.

The LNG Act requires us to select a project which can be built in time to prevent gas supply curtailments and prohibits us from issuing a permit for construction at any site unless we find that to do so is consistent with the public health, safety, and welfare. The Constitution requires us to set just and reasonable rates. On evidence in the record, findings under neither mandate can be reasonably made nor can we fulfil our statutory and Constitutional obligations. Furthermore, there is insufficient evidence in the record for us to reasonably overturn California Coastal Commission priorities and to discard CCC Conditions.

In addition, the California Environmental Quality Act (CEQA) requires all public agencies to give serious consideration to significant environmental impacts, to investigate alternatives and mitigate irreversible damage. The evidence in the record is substantially lacking in these respects.

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* CCC means California Coastal Commission; NAHC means Native American Heritage Commission; LNG Act means Liquified Natural Gas Terminal Act of 1977; CEQA means California Environmental Quality Act; PUC or Commission means the California Public Utilities Commission.

The evidence is incomplete or lacking entirely on a number of substantive issues, all of which to a greater or lesser degree, affect the cost, timing, and environmental impact of a project at the Point Conception site. Equally important, the evidence on costs and timing for alternate sites is clearly incomplete. Yet findings are made and conclusions drawn on this incomplete evidence even in those cases where the order clearly states that the record is incomplete.

The stated reason for the determination of many of the findings on Point Conception was timing. All of the sites were ranked higher than Point Conception by the CCC and were rejected by this Commission primarily on this ground. But the record before us shows clear inconsistencies in the treatment of various sites. For example, one of the reasons for rejecting the first-ranked Camp Pendleton was a proposed CCC condition requiring an undersea tunnel which, it was concluded, would add 18 months to construction time. But at the Point Conception site a CCC condition baring a sea water condensation system was rejected when it was alleged this would slow down the project. This was done despite evidence that substantive irreversible damage would be done to the unique marine resource at Point Conception by the use of such a system and little evidence about damage would result at Pendleton without the undersea tunnel.

D. 89177 makes it clear that there is not enough information in the record on wind and wave conditions at Point Conception to determine the safety and reliability of the project. Further, a two-year study of such conditions is ordered before construction can begin. Yet, the timetable showing a 1983 operational date for Point Conception shows construction beginning in March, 1979 and completed in May, 1983 (Page 122). This is clearly a year before construction could start if the required study is actually performed. The same chart shows construction at the Camp Pendleton site beginning in February, 1981 and construction completed in October, 1984, if the tunnel is eliminated, a six month difference in completion dates. On this showing, no plant can meet the 1983 deadline, and Camp Pendleton would be only six months slower than Point Conception.

Many other examples of disparity of treatment favoring Point Conception over the higher ranked sites are documented in the record.

Furthermore, this completion date for Point Conception does not take into account the many uncertainties (sea conditions, weather conditions, and seismic conditions) which are clearly stated on the record

and which would obviously affect the timing of design and construction. These cannot be considered adequate grounds of rejecting the Coastal Commission's first choice, when the statute states:

> Sec. 5631 (b) "If the commission issues a permit, the commission shall issue a permit for construction and operation at the site designated as the highest ranked site pursuant to Section 5612. However, the commission may select a lower ranked site if it has determined with respect to each higher ranked site that it is not feasible to complete construction and commence operations of the terminal at such higher ranked site in sufficient time to prevent significant curtailment of high priority requirements ofr natural gas and that approval of the lower ranked site will significantly reduce such curtailment."

Other grounds for rejecting all these sites ranked above Point Conception by the CCC was failure of those sites to conform to the remoteness criteria of the Act.

Today's order states that the Legislature did not mean what is said in Sections 5552, 5568 and 5582 of the Act, which very clearly excludes transient populations, but rather meant that "the protection of human life is of paramount importance" (D. 89615 Page 2). This is simply not supportable. Had that really been the legislative intent, the statute would not have required the first site to be onshore, thus excluding obviously safe offshore sites. One might as well decide the Legislature really meant that "remote" means a lower density, even one that would exclude the few residents at Point Conception.

The truth is that SB 1081 was a hotly contested bill, and the statute, including the remoteness criterion, was a compromise. There is no choice but to interpret the stature literally, and the CCC did so in selecting sites. The PUC is choosing to second guess the law.

A third reason for rejecting Camp Pendleton is the assertion that the CCC has no jurisdiction over Federal holdings. This point is doubtful since the Federal Coastal Zone Management Act requires that plan for federal property conform to the plan of the authorized state coastal agency, the CCC. But the point is not material. The issue was to find a workable LNG site in California. Then presumably, the relevant state agencies and public utilities would pursue that site. One could not

reasonably assume that the federal government would be adamantly opposed to this use, since it has approved leases for San Onofre on Camp Pendleton.

The Coastal Commission found what appears to be a workable site, and the PUC has rejected it out of hand based on no better evidence than a simple exchange of letters with the Marine Corps contained in the CCC record.

Other failures of the record bear importantly on the question of timing and, therefore, on the Coastal Commission priorities. The question of reliability of the Point Conception site was mentioned earlier. There is strongly conflicting evidence on wind and wave and current conditions in the record, sufficiently strong for the staff to urge, and the PUC to require, a two-year wind and wave study. The design of the trestle and other ship-to-shore connections depends on the result of that study, as well as on actual, but as yet unknown, seismic conditions to be discussed below. There is evidence indicating that a breakwater might be required for reliable operation. All of these unknowns bear materially on questions of timing, cost, and in the case of potential need for a breakwater, feasibility of the project.

Yet the order makes findings based on this inadequate evidence, broadly stating that this project is reliable and will be timely. Based on the record, the exact opposite findings could be made with equal validity.

Another critical question remaining wide open in the record is that of the seismic conditions at the Point Conception site. The Commission admits that active earthquake faults exist on the site, that the extent of these faults is not determined and that these faults could disqualify the site. The California Division of Mines and Geology substantially challenged the conclusion that the Arroyo Central Fault is not causative. Yet finding #97 unequivocally states that it is non-causative, and the Commission uses this as a basis to deny rehearing to Petitioners Bixby and Hollister. The fact is that the record does not support this finding, and the evidence is admittedly incomplete.

Yet this very serious question of the suitability of Point Conception, the time it will take to develop evidence of the real conditions, and the time and cost to the ratepayers required to adapt the design to whatever conditions are actually there, were not taken into account in comparing this site to the three sites higher rated by the Coastal Commission, while the PUC rejected them as untimely.

Similarly, the order acknowledges the existence of three known causative faults surrounding Point Conception; established a maximum credible earthquake (MCE) of 7.5 on each and a bedrock ground acceleration of 0.7g. Yet the order takes into account neither the time required to design the terminal and trestle to such standards nor the cost to the ratepayers of the necessary changes.

The petitioners are correct. There is not sufficient evidence in the record to find that CCC's priorities should be overturned.

Having discarded the priorities of the Coastal Commission and glossed over the difficulties with Point Conception, the order then proceeds to discard the Coastal Commission conditions, virtually unheard.

The petitioners (CCC, Bixby and Hollister) contend that the PUC did not act in accordance with the LNG Act in altering the Coastal Commission's conditions. In this, they are correct.

Although the record of the Coastal Commission proceedings are incorporated in the record of the PUC, the evidence they contain was virtually completely ignored, and the Coastal Commission was never given the opportunity to produce that evidence. This evidence is nowhere mentioned in the order denying rehearing (D. 89615) and is given scant attention in D. 89177. Furthermore, in at least one instance (Condition 26) the CCC proposed requirement for no greater than 50-foot protrusion of the storage tanks, was rejected because "the record herein does not support such a requirement since the 50-foot case has not been aired at the Commission hearings" (Page 264, D. 89177). This is clear evidence that the PUC treated these evidentiary matters capriciously and with prejudice in the decision.

On many points, D. 89177 contains evidence which could be construed to support Coastal Commission conditions rejected by the PUC. Condition 28, relating to kelp bed 32 (protested by Petitioner Kelco as well as the Coastal Commission), Condition 23 prohibiting the use of a sea-water cooling system and Condition 14 relating to geologic hazards, all rejected by the PUC, are examples. All of these and others are rejected by findings made on inadequate evidence or on evidence which supports an opposite finding.

Although the majority in today's decision argues as a reason for denial of rehearing that the PUC intends to work as closely as possible with the Coastal Commission, and it is the PUC's intent "to enforce as many of the goals and policies of the California Coastal Act as are feasible" (Page 3, D. 89615), the fact is that in all conditions and findings relating to environmental or cultural problems the PUC has used ambiguous wording which can render compliance with these conditions perfunctory. All of these use the modifying phrase "mitigation to the extent feasible".

The meaning of this phrase is not defined. The basis for the use of this phrase, rather than clearer, more directive language, is set forth on pages 248-249 of D. 89177 and is justified by a discussion of vaguely defined fears of unidentified investors. There is no evidence in the record exposing these unidentified fears, to support the use of this undefined phrase. The conditions, to be meaningful, must be unambiguously stated. Otherwise, it makes a mockery of CEQA.

All of the Coastal Commission's proposed conditions which include a review procedure by CCC of those aspects for which CCC is responsible under the California Coastal Act were rejected by the PUC on the grounds that the LNG Act gives PUC sole permitting authority. This is a myopically narrow reading of the Act. The LNG Act clearly recognizes the inability of the PUC to make valid land use and natural resource decisions. This was clearly recognized by the Legislature, since it gave those considerations exclusively and explicitly to the CCC. Had the Legislature wanted the PUC to make such decisions the act would not have mandated the expensive and time-consuming CCC process. Furthermore, such review in its area of expertise by the CCC cannot be construed as a "permit", therefore the conflict could exist with the "sole permitting" conditions.

Petitioner Kelco protests the PUC modification of CCC Condition 28, eliminating a committee composed of PUC, CCC and the Department of Fish and Game. The PUC rejects this on the grounds that the LNG Act makes the PUC the sole permitting authority. This is spurious. Such fundamental scientific conditions, put forth in a multi-disciplinary setting constitute a reasonable and realistic solution to a complex economic, biological and institutional problem. It is a method of arriving at a workable condition, but cannot be construed as a "permit."

The majority has rejected Petitioner Indian Center of Santa Barbara's contention that no EIR has been prepared on trenching at the site on the

grounds that the project EIR is adequate to the case. But the facts are that at the time the faulting, which made the trenching necessary, was discovered (May 4, 1978) the Draft EIR was in circulation and although it is true that the Final EIR contains a limited discussion of the impact of trenching, that EIR was filed July 28, 1978, several weeks after the trenching was done and only three days before the PUC's decision on July 31, 1978.

In today's decision, the PUC majority ordered a variety of modifications to the findings and conditions of D. 89177, including an amendment to Condition 12, which gives the Indian Center some relief. But it does not justify and adequately deal with the Indian Center's basic wrong and that of the Native American Heritage Commission, that the project and its attendant ground-disturbing activities violates the sanctity of their religion and religious site. This important constitutional right of the Indians is given only the most cursory treatment in both decisions of the PUC. If the religious rights of these people cannot be treated in this proceeding, where can they get redress?

The Native American Heritage Commission is denied standing by today's decision on the grounds they did not enter the case in a timely fashion. This is true, but there are extenuating circumstances.

The NAHC was established by statute with an effective date of January 1, 1977. During most of the course of this case, the NAHC was coming into being, hiring staff and setting up procedures. It is not surprising that they were unable to enter the case sooner. The PUC, instead of sticking to the letter of its own procedures, should look to the act of the Legislature which recognizes the need for an orderly process for Native Americans to enter their case in government and established the NAHC for that purpose. The PUC is not an isolated body which has the right to stand aside from the rest of society and render its judgments on the strict letter of law or of its procedures without tempering those judgments by a responsibility for the fabric of society itself. The NAHC should be given standing.

The PUC's constitutional responsibility to set just and reasonable rates has clearly not been met by D. 89177. Nor have its responsibilities under the LNG Act and CEQA.

The permit has been granted on an incomplete and inadequate record; findings have been adopted which, to the Commission's certain and even stated knowledge, are based on inadequate evidence; the evidentiary gaps

have been dealt with by devising a patchwork system of further hearings and studies. On this basis, petitions for rehearing are denied.

The PUC admits the inadequacy of the findings by granting a conditional permit and, in the order denying rehearing, making 20 modifications to the original order. Many of these are the addition of the phrase "on the evidence before us", thus clearly indicating that the Commission knows the evidence to be inadequate. In denying rehearing, the Commission guarantees that the record will remain inadequate.

It would be well for the Commission to consider Justice Mosk's recent dissenting opinion, where he states for himself and two other justices:

> ". . . past experience has taught us the strength and persistence of the tendency of the commission to make inadequate findings in the name of expediency."

If the Supreme Court has such great concern for the form of the PUC findings and conclusions, how much more serious must their concern be for the evidentiary basis of those findings and conclusions?

Claire T. Dedrick

/s/ CLAIRE T. DEDRICK, Commissioner

San Francisco, California
November 2, 1978