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Decision No. 92058 JUL 29 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of PACIFIC GAS AND ELECTRIC COMPANY for a Certificate of Public Convenience and Necessity to Own, Operate and Maintain Unit 1 of the Diablo Canyon Nuclear Power Plant in the County of San Luis Obispo.	Application No. 49051 (Filed December 23, 1966)
In the Matter of the Application of PACIFIC GAS AND ELECTRIC COMPANY for a Certificate of Public Convenience and Necessity to Own, Operate, and Maintain Unit 2 of the Diablo Canyon Nuclear Power Plant in The County of San Luis Obispo.	Application No. 50028 (Filed February 16, 1968)

ORDER DENYING PETITION TO SET ASIDE SUBMISSIONS AND REOPEN PROCEEDINGS FOR THE TAKING OF NEW EVIDENCE WITH RESPECT TO DECISIONS NOS. 73278 AND 75471

On April 10, 1980, a Petition to Set Aside Submission and Reopen Proceedings for the Taking of New Evidence was filed by the Center For Law in the Public Interest on behalf of itself and the Sierra Club, California League of Women Voters, San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandy Silver, Gordon Silver, John J. Forster, and Elizabeth Apfelberg. The Petition requests the Commission to reopen the proceedings which had led to the Commission's issuance of conditional certificates of public convenience and necessity to the Pacific Gas and Electric Company (PG&E) to construct, operate, and maintain Units 1 and 2 of the Diablo Canyon Nuclear Power Plant at Diablo Canyon, San Luis Obispo County. These certificates were granted in 1967 and 1969, respectively. See Decisions Nos. 73278, PG&E Co., 67 CPUC 639 (1967) and 75471, PG&E Co., 69 CPUC 372 (1969).

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The petition also requests that the Commission rescind or modify these certificates pending the taking of new evidence on and resolution of the issues raised by the Petition. PG&E, the Commission Staff (Staff), and the City of San Francisco have filed responses opposing the Petition, and the Petitioners have filed a reply to PG&E's response.

The Commission has thoroughly reviewed the Petition and the responses thereto. For reasons which will be discussed in detail below, we are of the opinion that the proceedings should not be reopened and that the Petition should be denied.

I. SUMMARY OF THE DECISION

Petitioners, representing various groups of concerned citizens, ask that this Commission set aside the certificates to construct, operate and maintain Diablo Canyon Units 1 and 2 which were granted to PG&E in 1967 and 1969. Those certificates contained only one condition--the authorization of construction and operation by the U.S. Atomic Energy Commission--now the Nuclear Regulatory Commission (NRC).

With respect to electric power plants, the Public Utilities Commission's primary responsibility is to assure the provision of adequate, reliable service at the lowest reasonable rates. Issues pertaining to radiological safety are not within the jurisdiction or expertise of this Commission. The federal government has pre-empted authority over such issues delegating exclusive responsibility to the NRC.

Seen only from an economic and service reliability perspective, operation of the Diablo Canyon units would appear to have substantial advantages: added generation capacity at a time when electric reserve margins in California are low; replacement of overworked oil- and gas-fired generating plants which depend on expensive and insecure supplies of imported fuel; and utilization of the massive investment already made in the Diablo facilities.

PG&E argues that at this stage, after construction is substantially complete and after expenditures in excess of $1.7 billion have been made in reliance on the certificates previously granted, this Commission has no power to reconsider. We are not persuaded that the Commission would be barred under all conceivable circumstances from withdrawing a certificate after construction has taken place; but to justify setting aside the certificates, Petitioners would have to make an extraordinarily compelling showing. They would have to demonstrate not only that circumstances have materially changed since the certificates were issued, but also that, as a result of the change: (1) despite the large investment already made, total costs of providing electric service will be higher if the plants are operated than if not, and (2) if higher costs are found, the added service reliability provided by the Diablo units is not worth that cost. Petitioners raise a number of issues about cost, but we find nothing in their Petition which indicates any substantial likelihood that these standards could be met. Nor are we aware of other facts that would lead to those conclusions. To the contrary, we believe that revocation of the Diablo certificates would be detrimental from a cost and reliability standpoint. Thus, we conclude that for us to set aside the certificates and reopen our proceedings would constitute legal error and would simply impose expense on the ratepayers and taxpayers to no useful end.

If there are grounds for precluding or delaying operation of the Diablo units, those grounds would, in our judgment, be based on concerns about radiological safety and health. We do not believe that the economic considerations under our purview should supersede the safety issues. To the contrary, if the plants present serious risk to public health and safety, they should not be operated. But those are issues exclusively within the authority of the federal NRC.

II. BACKGROUND

In the early 1960's, PG&E began planning for a nuclear generating plant along the south-central California coast. After consideration of several possible sites, attention focused on a 1121-acre site near Nipomo Dunes which had been zoned for heavy industrial use. PG&E purchased this acreage in 1963, but the Sierra Club and others interested in preserving Nipomo Dunes as a scientific and recreational area soon voiced opposition to the site. Subsequently, the Sierra Club, the State Resources Agency and numerous other governmental agencies cooperated with PG&E in reviewing other possible sites. By 1966, agreement was reached on Diablo Canyon as an alternative to the Nipomo site. See PG&E Co. (1967) 67 CPUC 639, 642-643.

As noted above, the Commission issued certificates of public convenience and necessity for the construction of Diablo Canyon Units 1 and 2 in 1967 and 1969. The decisions came after full notice and extensive public hearings at which both proponents and opponents of the project testified. In each proceeding, there was extensive consideration of issues related to site selection, transmission lines, load growth and projected resources, estimated costs for the power produced, nonradiological safety, and protection of the environment. PG&E Co. (1967) 67 CPUC 639; PG&E Co. (1969) 69 CPUC 372. Based on the best information then available, the Commission concluded the project would serve the public interest and authorized construction. The authority was issued:

> "...subject to the condition that the certificate is interim in form and may be made final by further order of the Commission on the establishment by evidence in the record that final authority has been obtained from the Atomic Energy Commission to construct and operate the nuclear energy plant."

Following the Commission's first decision, Scenic Shoreline Preservation Conference, Inc. (Scenic), a party to the original proceedings and a joint-petitioner herein, applied to the Commission for rehearing. This application was denied on February 14, 1968. The California Supreme Court denied Scenic's petition for a writ of review on May 15, 1968 (S.F. No. 22598). Although Scenic also unsuccessfully asked the Commission to set aside its decision granting the certificate for Diablo Canyon Unit 2, Scenic did not seek a writ of review from the California Supreme Court.

PG&E then applied to the Atomic Energy Commission (AEC, now the Nuclear Regulatory Commission (NRC)) for construction permits for the two units. These permits were issued on April 23, 1968, and December 9, 1970, respectively. Construction then commenced. Although costs were originally forecast at approximately $320 million, inflation, delays and structural modifications have now brought these costs to $1.7 billion. PG&E asserts in its response that Unit 1 is "virtually complete," and Unit 2 is "ninety-eight percent (98%) complete"; however, this assumes no new structural modifications will be required by the NRC.

While neither unit has been given final licensing approval by the NRC, that agency has issued several interim opinions on environmental and safety issues connected with operation of the Diablo Canyon reactors. See 8 AEC 277 (1974), 7 NRC 989 (1978) and 10 NRC 453 (1979), sub nom. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2). On September 27, 1979, the Atomic Safety and Licensing Appeals Board (ASLAB) issued a Partial Initial Decision (10 NRC 453), which considered, inter

alia, seismic issues connected with the Hosgri Fault located approximately three miles from the site. This decision was appealed, and on June 26, 1980, the ASLAB ordered reopening of hearings to reconsider seismic and related issues.

III. POSITIONS OF THE PARTIES

A. Petitioners

The Petitioners do not contend that the proceedings before the NRC have been deficient for failure to consider important environmental, safety, economic or other issues,[1/] nor do they argue that information was available at the time of the original proceedings before this Commission which we improperly failed to consider. Rather, Petitioners argue that we would not have granted PG&E authority to begin construction of Diablo Canyon Units 1 and 2 in 1967 and 1969 if information now available had been considered at that time. Petitioners further claim that even at this date, if new studies are conducted, such studies will show the economic desirability of abandoning the Diablo Canyon facilities or converting them to another fuel source.

We agree with the Staff's characterization of the issues set forth in the Petition. Petitioners maintain that all of these issues require further study. The first issue concerns what Petitioners term "costs unique to nuclear power." They point to costs associated with seismic safety and other regulatory requirements, waste disposal, decommissioning, increased fuel costs, and

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1/ The San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, John J. Forster, and Elizabeth Apfelberg are also participants before the NRC.

emergency preparedness, as well as the costs which could arise if an accident comparable to that at Three Mile Island occurred at Diablo Canyon. In brief, Petitioners assert that a comprehensive study of all costs associated with the nuclear fuel cycle will show that nuclear-generated electrical power is no longer cost-efficient.

The second issue raised by Petitioners concerns the short-term need for electricity in California. Petitioners point to predictions of the California Energy Commission (CEC) in arguing energy demand will slacken over the next decade. Petitioners claim that, if undertaken, studies will demonstrate mechanisms for reducing energy demand and substituting alternative or "soft" technologies for the power to be produced by Diablo Canyon.

Petitioners' third issue concerns the alleged change in "community values" and community support for the Diablo Canyon Project. Petitioners identify numerous prominent organizations and individuals who have called for a state-sponsored study on the feasibility of converting or abandoning the project, and urge the Commission to hold additional hearings in order that this issue may be further explored.

Finally, Petitioners contend that allegedly available conversion alternatives have not been examined. Petitioners urge the Commission to "promptly establish an expert task force" to report on conversion costs and means for financing. The Petition concedes that "a complete assessment will require substantial time and resources." Petitioners seek rescission or modification of our original decisions until this assessment is completed.

B. PG&E

PG&E's Answer and Motion to Dismiss asserts the instant petition is an unlawful last-minute effort to litigate before this Commission issues which petitioners have already had an opportunity to raise before the NRC. PG&E decries the petition as an irresponsible delaying tactic that should be summarily denied.

The first asserted basis for denial is that the petition is too late to fall within the ambit of Rule 84 of the Commission's Rules of Practice and Procedure, which governs petitions to set aside submissions and reopen hearings. PG&E argues that, despite their "interim" label, the decisions became final over ten years ago and cannot be appealed through this mechanism.

Secondly, PG&E asserts that the Commission has no authority under Public Utilities Code Section 1708 to reopen proceedings or to modify or rescind decisions granting certificates of public convenience and necessity under Section 1001. It is argued that this position is substantiated by certain federal cases, as well as the Public Utilities Code itself, which specifically provides for alteration of certificates granted under other provisions, but does not do so for Section 1001 certificates. PG&E contends this result is a practical necessity given the usually large investments made in Section 1001 projects.

PG&E asserts as a further ground for the Commission's lack of authority herein the doctrine of vested rights. It contends that a certificate to construct is analogous to a building permit and that when, as here, construction is nearly complete, it would be a denial of due process for the Commission to take any action to in any way alter the authority contained in the certificates.

Lastly, PG&E argues that even if the Commission does have the authority under Section 1708 to reopen the Diablo proceeding, the petition should be denied on the ground that it presents

no new facts or policy arguments which have not already been considered by the NRC or this Commission. PG&E then devotes the final ten pages of its 29-page response to refuting petitioners' claims of alleged new evidence in the areas of nuclear safety, costs of nuclear power, need for electricity, changed community values and conversion to an alternative energy source.

In brief, PG&E argues (1) that nuclear safety issues are solely within the jurisdiction of the federal government; (2) that the NRC and/or this Commission has fully considered or is presently reviewing all significant safety and environmental issues; (3) that issues of cost have not been properly represented in the sense that costs of all types of fuel have risen, and that furthermore, the Commission will be examining cost issues in a future proceeding to consider inclusion of costs of Diablo in PG&E's rate base; (4) that recent evidence presented by the Commission Staff and the CEC's most recent Biennial Report both support the continued need for Diablo; (5) that while local sentiment may have shifted since the late 1960's, this is not an accurate indication of statewide sentiment and should not be greatly relied upon when considering statewide interests; and (6) that conversion alternatives would be exceedingly costly to California's ratepayers, would present new environmental problems, would further delay Diablo, and have not been demonstrated to be feasible with such a large project as Diablo. PG&E further rebuts the idea of other "soft" technologies as a partial replacement for Diablo as being too far in the future to alleviate northern California's present electricity needs.

In their reply to PG&E, Petitioners first reject the claims that the issues they raised have already been considered, or that this Commission is preempted from considering them. Petitioners then assert PG&E's need argument is flawed because, among other reasons, it fails to recognize that the reopened NRC proceedings will preclude Diablo Canyon from operating commercially until at

least 1982. Moreover, it is argued that the need should be reevaluated both because of crucial updated information and because of the possibility that the NRC will never license Diablo Canyon at all.

Petitioners further contend PG&E has not demonstrated that operation of Diablo is related to consumption of foreign oil, and that neither state nor federal long-term oil displacement policy assumes the need for specific power plants. Petitioners assert PG&E has presented misleading information on the costs of abandoning or converting Diablo to indicate that Diablo remains the most reasonable alternative. Petitioners finally seek to refute PG&E's arguments that the Commission has no authority under Section 1708 to reopen Section 1001 certificate proceedings, and that PG&E has a vested right in Diablo. Petitioners conclude by again asserting changes in circumstances which, in their view, should compel the Commission to grant the Petition.

C. The Staff

The Staff opposes the relief requested by the Petition. The Staff first argues in some detail that there is neither a statutory nor a constitutional right to the reopening of Commission proceedings. While the Commission can exercise its discretion to reopen proceedings, the Staff contends that only in the most extraordinary circumstances should the Commission do so. It then points to the heavy burden on proponents to justify such action, discusses some of the policy reasons for imposing this burden, and concludes that in the context of decisions 11 and 13 years old and an investment approaching $2 billion, Petitioners have failed to demonstrate the extraordinary change in circumstances necessary to justify reopening of the proceedings.

The Staff then addresses Petitioners' four basic areas of concern: costs, need, community values, and conversion. In

brief, the Staff contends Petitioners have presented mere allegations without sufficient facts to indicate that significant new evidence is available in any of these areas.

Regarding costs, the Staff asserts that not only are some of the costs alleged to be "unique" to nuclear power not necessarily so, but further, costs for all generation alternatives have escalated due to increased regulatory requirements and increased costs of fuel. The Staff contends Petitioners have not presented any comparative cost information and therefore cannot make a convincing case that power produced by Diablo Canyon would be uneconomical.

The Staff next rebuts Petitioners' need argument by pointing to the Commission's decision in Order Instituting Investigation No. 43 (OII 43), wherein we expressed concern over PG&E's present summer reserve margins and service reliability. In response to Petitioners' call for development of alternative technologies to replace Diablo, the Staff points out that the Commission has for some time been aggressively pursuing conservation and load management programs, and that study of alternative technologies and conservation-oriented rate mechanisms is already well under way.

Concerning community values, the Staff acknowledges the importance of local sentiment concerning radiation hazards, but points out that because of both legal constraints and limited expertise, the NRC and not this Commission is the appropriate forum to consider these concerns.

Finally, the Staff asserts Petitioners have presented no facts indicating that a conversion study would be productive. The Staff then discusses several factors--e.g., the complexities of retrofitting steam turbines, air quality requirements, requirements of the federal Power Plant and Industrial Fuel Use Act, the likely need for new environmental analysis and new certification

by the CEC and this Commission, and financial ramifications for PG&E--which appear to the Staff to lead to the conclusion that conversion would not be feasible.

D. The City of San Francisco (City)

The City Attorney of the City of San Francisco, not a party in the original proceedings, filed a short opinion in the nature of an amicus curiae brief arguing that because of the detrimental effects any further delay would have on the ratepayers of San Francisco, the Commission should not disturb its original decisions but should leave matters of safety to the federal government.

On July 14, 1980, the Commission received a letter signed by seven members of the San Francisco Board of Supervisors disagreeing with the position taken by the City Attorney and stating that "The opinion filed...by [the] City Attorney...should be viewed as his opinion solely and not that of the citizens of San Francisco or of their elected representatives on the Board of Supervisors."

IV. DISCUSSION

A. Analysis of Procedural and Jurisdictional Issues

1. The Status of These Certificate Proceedings

By its previous decisions in these proceedings, this Commission has granted PG&E authority "to construct, operate and maintain" Diablo Units 1 and 2. The certificates granted to PG&E were interim in form, but the only condition to their being made final was the provision of evidence that the NRC has authorized construction and operation of the plant. When and if the NRC grants such authority, the action of this Commission in making PG&E certificates final would be merely a ministerial act.

This conclusion derives from the limited nature of our jurisdiction. This Commission's primary concern as a regulatory agency is to assure the provision of adequate, reliable service by public utilities at the lowest reasonable rates. A public utility is required to obtain our authority before beginning the construction of a plant which will be dedicated to serve its customers. The most basic reason for this "prior restraint" upon public utility investment decisions is that the cost of such investments will eventually be borne, in whole or in part, by the utility's ratepayers, most often through inclusion of the utility's capital expenditures in rate base or, in the case of a failed project, either through amortization at ratepayer expense or through the higher operating expenses of a utility weakened financially by having had to absorb the project costs.

By granting a certificate, this Commission confers the authority not only to construct, but also to operate and maintain an addition to a utility's generating plant. Once the investment has been made, plant construction completed and all permit requirements of other agencies met, the new facility becomes an integral element of the utility's total generating plant, under the day-to-day operational control of the utility. No further approval by this Commission is normally required, except perhaps, as in this case, a formal confirmation that other essential authorizations have been obtained.

It is from this perspective that we consider Petitioners' argument that, because of the interim nature of the certificates granted in these proceedings, we may rely upon Rule 84 of our Rules of Practice and Procedure to set aside submission and reopen these proceedings. Rule 84 allows a petition to set aside submission and reopen for new evidence to be filed "[a]fter conclusion of hearings, but before issuance of a decision." The decisions in these proceedings were issued in 1967 and 1969. Despite their "interim" label, the decisions were final grants of authority

subject to a condition subsequent, i.e., that PG&E establish "by evidence in the record that final authority has been obtained" from the federal government to construct and operate the plant. It was and remains our intent that the certificates previously granted are to become final upon PG&E's demonstration that it has satisfied this condition, which it may do by filing a letter with the Commission informing it of NRC authorization to operate.

2. The Commission's Authority Under Section 1708

Petitioners contend that we have authority under Section 1708 to reopen the Diablo proceedings. That Section states:

> "The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision."

The Petition appears to assert that this statute imposes a mandatory duty on us to reopen in this case; however, Petitioners in their Reply Brief argue only that this authority is discretionary.

We agree that Section 1708 gives us the authority to reopen past proceedings, including those which have resulted in the granting of a certificate under Section 1001. Both the language of the statute and the cases interpreting it make clear that this authority is discretionary. City of Los Angeles v. Public Utilities Comm. (1975) 15 Cal.3d 680, 706; Northern Cal. Assn. v. Public Utilities Comm. (1964) 61 Cal.2d 126, 134-136.

By its very nature, Section 1708 provides the possibility of an extraordinary remedy. Res judicata principles are among the most fundamental in our legal system, protecting parties from endless relitigation of the same issues. Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed. Our past decisions recognize that the

authority to reopen proceedings under Section 1708 must be exercised with great care and justified by extraordinary circumstances. See Golconda Utilities Co. (1968) 68 CPUC 296; Application of Southern Pacific (1969) 70 CPUC 150; Southern Pacific Transp. Co. (1973) 76 CPUC 2. Particularly where, as here, one or more parties have relied on decisions granting authority to construct a major generating facility, with substantial investments of time, money, and other resources in accordance with the terms therein, reopening can be justified only under the most compelling circumstances.

The burden of demonstrating that reopening is justified is substantial. The showing required in any given case will necessarily depend on an assessment of the financial and other costs to the parties and the ratepayers should authority be suspended and a case reopened, as well as an evaluation of the information submitted in support of the request.

In the instant case, PG&E has invested approximately $1.7 billion, including accrued interest. Construction of two energy facilities, each of which is capable of generating approximately 1,100 megawatts of electricity, is substantially completed. We do not agree with PG&E that these facts provide it with a vested right in the traditional sense of that doctrine. PG&E as a regulated public utility providing monopoly service is subject to the constraints of the Public Utilities Code and to this Commission's authority under that Code. It does not stand in the shoes of either a private property owner or a private corporation; thus, the cases cited in an attempt to bring itself within the doctrine are unpersuasive. However, despite our rejection of this claim, we have a responsibility to the ratepayers, who will ultimately bear substantial costs related to PG&E's investment

even if Diablo is abandoned or converted, absent a finding of imprudence on the part of PG&E.[2/]

In view of these factors, only a persuasive indication of significant new facts or a major change in material circumstances, which would create a strong expectation that we would make a different decision based on these facts or circumstances, would cause us to reopen the proceedings. While we could not expect Petitioners to make a complete case in their pleadings, they bear the burden of presenting sufficient information to indicate a substantial likelihood that further investigation would yield changed results.

While on the face of it, delay and further hearings are unlikely to reduce electric rates or improve service reliability, under very narrow circumstances it is conceivable that matters within our jurisdiction would justify setting aside certificates on which construction has been based. Those circumstances would have two elements--both extremely difficult to meet. First, it would have to be shown that total cost of electric service would be higher if the plants were operated than if they were not. To meet this test, in the case of Diablo, it would be necessary to show that the prospective costs alone for Diablo exceed the total costs of any alternative to it. This would likely require showing both that sources of electrical supply not yet in existence would have to produce power at lower costs than the future costs (princi-

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2/ Cf. Petitioners' Reply Brief, p. 20, n. 37. While the Petitioners focus on whether or not the Diablo plants should be operated at all, it should be noted that all questions of impacts on rates and possible disallowance of particular costs as imprudently incurred may be considered by the Commission when it holds hearings on PG&E's applications to include the plant costs in rate base (A.58911 and A.58912).

pally, operation and decommissioning) of Diablo, and that, even could that be shown, Diablo's prospective costs would exceed those of existing units which it could displace. Again, this is a difficult test to meet, since nuclear units are designed as capital intensive plants with relatively low operating costs in comparison, for example, to oil-fired plants.[3/]

If this first test were met, a second inquiry would have to be made into whether the increased costs were nonetheless justified by the enhanced service reliability which the plants would provide through increased baseload capacity. Enhanced electric reserve margins indisputably have economic and social value, varying with the adequacy of existing margins. In the face of presently low reserve margins, it would be difficult in the case of Diablo to show that the value of additional reliability was outweighed by increased costs arguably associated with it.

To summarize, Petitioners would have the burden of persuasion that there is a substantial likelihood of demonstrating: (1) that circumstances have materially changed since the certificates were issued; (2) that despite the large investment already made, total costs of providing electric service will be higher if the plants are operated than if not; and (3) that if higher costs are found, the added service reliability provided by the Diablo units is not worth that cost. Were we persuaded of the likelihood that such could be demonstrated, we would make a commitment of staff time and resources as necessary to support Petitioners' efforts to explore these issues in depth.

As we discuss more fully below, we conclude that Petitioners have not met their burden of persuasion. They have failed to provide the basis for a reasonable expectation that Diablo cannot be operated economically, that it would not substantially improve service reliability, or that conversion is a feasible alternative.

3/ Note, moreover, that the national policy of reducing dependence on imported oil might independently justify operation of the Diablo units even if higher costs were shown.

They have offered theoretical conjectures pointing in these directions, but this is insufficient to persuade us that further development of the issues raised would lead us to reverse our decisions and rescind our grant of authority.

3. NRC Jurisdiction

Careful scrutiny of the Petition and the Reply Brief makes clear that underlying Petitioners' arguments, although not made explicit, is a deep concern about radiation hazards. Whatever the merits of Petitioners' concerns in this area, they are solely within the purview of the NRC. Northern States Power Co. v. State of Minn. (8th Cir. 1971) 447 F.2d 1143, affd. 31 L.Ed.2d 576; Northern Cal. Assn. v. Public Utilities Comm. (1964) 61 Cal.2d 126.

The NRC, by law, has the power and the duty to examine these issues, and has consequently developed the requisite expertise. Simply because this Commission has not been given concurrent regulatory authority in the area of radiation safety, our Staff has not developed the necessary expertise, but rather, has concentrated on other areas within our jurisdiction. Were we now required to take this sort of question under submission, it would necessarily require development of new analytical capabilities. Not only would this consume valuable time, and duplicate the primary work of the NRC, it would also require such a large commitment of Commission resources that the Commission's ability, already heavily taxed, to perform its traditional energy-related responsibilities would be substantially weakened.

In our view, if there are grounds for precluding or delaying operation of the Diablo units, those grounds would be based on concerns about radiological safety and health. We expect the NRC to give these concerns their most thorough consideration.

B. Analysis of the Substantive Issues Raised

1. Costs

Petitioners assert that a current review of all "costs unique to nuclear power" would demonstrate that generation of electricity from Diablo would not be economic when compared with generation from alternative facilities. Petitioners include in this category costs of meeting regulatory requirements, nuclear waste disposal, plant decommissioning, increased fuel costs, emergency preparedness, and costs which could result from a possible nuclear accident.

We first note that it is indeed the case that federal regulatory requirements have added to Diablo's costs. Moreover, the presently ongoing federal proceedings may well result in additional requirements which will further add to those costs. However, these considerations alone do not demonstrate that Diablo will be uneconomic, particularly when no comparison has been made with other alternatives which could be built or implemented within the near term. Furthermore, as the Staff points out, costs related to waste disposal, fuel supply, capital outlay, and increased regulation are not unique to nuclear power, and hence increases in these areas have contributed to rising costs in all aspects of energy production.

Petitioners do not present any convincing data demonstrating the magnitude of the cost increases they allege nor do they present any comparative data suggesting that either construction or operation of an alternative baseload facility would be less expensive than Diablo. Nor have they attempted to deal with the economic consequences of the possibility of having to depend more heavily on oil and natural gas[4/] in the interim period before an alternative facility

4/ The CEC's 1979 Biennial Report estimates that for California utilities, oil prices will escalate faster than inflation, with an expected 1980-1985 real price increase for distillate oil of 3.1 to 11.3 percent annually, and for 0.5 percent sulfur residual fuel oil, of 4.0 to 13.7 percent annually. Natural gas price increases may well be comparable.

could be built, or with the national policy considerations related to such dependence.

In the Commission's view, comparative information which takes into account all of the above factors is crucial to Petitioners' case. Without such analysis to demonstrate at least a strong probability that future costs of electric generation from the Diablo facilities exceed the total costs of other alternatives, or at the very least persuasive indications that such a demonstration can be made, we have no reasonable basis on which to reopen the proceedings on the issue of costs.

2. Reliability of Service

Petitioners cite past excessive demand forecasts by PG&E as a basis for arguing that there is no need for the power Diablo will produce. The Staff points out that apart from the issue of the accuracy of PG&E's demand forecasting, this Commission has expressed clear concern in our recent decision in OII 43 regarding PG&E's summer reserve margins and service reliability. The evidence in that case indicated that these margins would fall below prudent reserve levels required to protect against unexpected outages. Power from a new baseload facility of the capacity of Diablo can significantly enhance reliability of service.

The California Energy Commission, the statutory authority in California for electrical forecasting, has projected that new capacity will be required in the next 20 years to keep pace with modest growth, to retire old, inefficient plants, and to further state and federal oil displacement policy. See, e.g., CEC 1979 Biennial Report, pp. 3, 31, 40-41, 48. In its judgment, at least some of this capacity, perhaps 50 percent or more, will have to be supplied by conventional sources through the year 2000. Id., p. 1. The CEC's preferred supply scenario, which minimizes reliance on large-scale conventional power plants, assumes that Diablo Canyon will be operating over the next 20 years. Id., pp. 3, 32, 34, 43, 51.

We agree wholeheartedly that nonconventional alternatives can play a significant role in reducing the State's reliance on traditional sources. The Staff has discussed at some length both this Commission's and the CEC's involvement in development and implementation of some of these alternatives. Studies of alternative energy sources such as those called for by Petitioners have already been done, and more are in progress. We reiterate our commitment to the rapid development of such alternatives as conservation, load management, cogeneration, geothermal, small power production, solar financing, and financing of conservation devices.

Nonetheless, replacement of traditional sources can only happen gradually, and the Diablo units could substantially enhance service reliability by increasing reserve margins from their present low levels. Petitioners have not presented any compelling data or policy arguments to convince us otherwise.

3. Community Values

Petitioners ask the Commission to reopen the proceedings to take evidence on the alleged change in community sentiment regarding Diablo Canyon. While we are aware of deep concern among the public regarding radiation hazards, this subject is exclusively within the authority of the NRC. Moreover, even assuming arguendo that the majority of the local community now opposes the project, this would not provide a legal basis upon which we could justify disregarding the $1.7 billion investment and depriving the state as a whole of the electricity Diablo will provide.

4. Conversion Study

As an alternative to abandoning Diablo in favor of "soft" technologies, Petitioners suggest that Diablo could be converted relatively easily to a fossil-fueled plant. Petitioners do not present any data supporting this suggestion, but rather, request the Commission to set aside the certificates and undertake a study of the feasibility of such conversion.

In opposing this request, Staff has presented a cogent argument that several factors militate against the feasibility of this alternative. While we do not take a position on the merits of the conversion argument, we do consider the Staff's discussion to be an important indicator of the obstacles such conversion would face.

Petitioners, on the other hand, have presented no information regarding any aspects of conversion, including those raised by the Staff, which would allow us to predict that we could or should make a different decision once the study was complete. Under those circumstances, suspending the proceedings until a study could be made would give a false signal to all concerned--the Petitioners, the utility, the ratepayers, and the financial community. We simply cannot in good conscience justify such action unless the facts presented to us indicate a genuine possibility of a change in result. We have not been given such facts.

Findings of Fact

1. This Commission granted certificates of public convenience and necessity to PG&E to construct Diablo Canyon Units 1 and 2 by Decision No. 73278, issued November 7, 1967, and Decision No. 75471, issued March 25, 1969, respectively.

2. The certificates granted PG&E to construct Diablo Canyon Units 1 and 2 were conditioned only upon the establishment in the record that PG&E has obtained approval from the appropriate federal nuclear regulatory body to construct and operate the facilities.

3. Our decisions granting these interim certificates left these proceedings open only for the ministerial purpose of the certificates being made final when the requisite federal authorizations were obtained.

4. Construction of Diablo Canyon Units 1 and 2 is substantially completed, subject to possible further requirements of the NRC.

5. Approximately $1.7 billion, including accrued interest, has been expended to date by PG&E for construction of Diablo Canyon Units 1 and 2, in reliance on the interim certificates granted by this Commission.

6. As we found in Decision No. 91751, issued May 6, 1980, in OII No. 43, electric reserve margins for PG&E and for the combined systems of California utilities as a whole are minimally adequate during summer months, and capacity shortages are expected to occur during the summer months of this and succeeding years.

7. State and federal policies favor reduced oil imports and reduction in the use of fuel oil and natural gas for the generation of electricity.

Conclusions of Law

1. Section 1708 of the Public Utilities Code confers discretionary authority upon the Commission to reopen proceedings for the taking of further evidence, but only under extraordinary circumstances.

2. The fact that PG&E has incurred substantial expense in reliance upon the interim certificates granted in Decisions Nos. 73278 and 75471 does not give it a vested right shielding it under all conceivable circumstances from withdrawal of those certificates.

3. The burden is on Petitioners to provide a persuasive indication of significant new facts or a major change in material circumstances, which would create a strong expectation that we would make a different decision based on those facts and circumstances, in order to justify reopening a substantially completed proceeding under Section 1708.

4. Petitioners have not met their burden of persuasion.

5. The petition to reopen these proceedings for the taking of new evidence should be denied.

O R D E R

IT IS ORDERED that the petition of the Center for Law in the Public Interest to set aside submissions and reopen these proceedings for the taking of new evidence relating to Decisions Nos. 73278 and 75471 is denied.

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

Dated JUL 29 1980, at San Francisco, California.

President

Commissioners