

Decision No. 92444 NOV 18 1980**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PACIFIC GAS AND ELECTRIC)
COMPANY for a Certificate of)
Public Convenience and Necessity)
to 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 REHEARING
OF DECISION NO. 92058

Petitions for rehearing of Decision No. 92058, issued July 29, 1980, have been filed by the Center for Law in the Public Interest (CLIPPI),^{1/} a group of nine purported shareholders of Pacific Gas and Electric Company (Shareholders), and Cut Utility Rates Today (CURT).^{2/} The Pacific Gas and Electric Company (PG&E) has filed a response in opposition to these petitions. We have

^{1/} CLIPPI represents itself, as well as 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.

^{2/} CURT also filed two amendments to its petition for rehearing.

thoroughly reviewed all of the allegations raised in the petitions, and the responses thereto. As discussed more fully below, we are of the opinion that these allegations do not present sufficient grounds for granting rehearing. Therefore, the petitions will be denied.

Background

On April 10, 1980, CLIPI filed a Petition to Set Aside Submission and Reopen Proceedings for the Taking of New Evidence With Respect to Decisions Nos. 73278 and 75471. Those decisions had granted certificates of public convenience and necessity to PG&E to construct, operate, and maintain units 1 and 2 of the Diablo Canyon Nuclear Power Plant. The certificates were made conditional solely on PG&E's obtaining final operating authority from the federal Nuclear Regulatory Commission (NRC).

The Petition to Set Aside requested reopening of the Diablo proceedings for the purpose of taking new evidence in several areas: need for power, reliability, cost/economics, comparative benefits of alternatives, financing and environmental impacts. The Commission, in Decision No. 92058, denied CLIPI's request.

Decision No. 92058 articulated the burden of persuasion which CLIPI was required to meet in the instant case to justify reopening under Public Utilities Code Section 1708. Briefly stated, the burden is one of persuasively indicating facts which would create in the Commission a strong expectation that a different decision would be made.

In the Commission's judgment, CLIPI had failed to meet this burden. CLIPI had offered only theoretical conjectures pointing to a possible conclusion that Diablo could not be operated economically, that it would not substantially improve service reliability, and that conversion was a feasible alternative. The Commission was not convinced, based on these conjectures, that further development of the issues raised would lead to a different conclusion.

In response to Decision No. 92058, CLIPI filed a petition for rehearing. Similiar petitions were also filed by the Shareholders and by CURT. PG&E filed a response in opposition to the petitions.

Discussion

CURT has no standing to file a petition for rehearing under Section 1731, being neither a party to the proceedings, nor a stockholder, bondholder, or other party pecuniarily interested in PG&E within the meaning of that statutory provision. CURT's petition for rehearing is therefore dismissed.

We have considered the other two petitions on their merits. Both petitions request essentially the same relief, i.e., reopening the proceedings and conducting a study on the need for Diablo, and on the comparative costs of operating it as a nuclear plant versus converting or abandoning it in favor of one or a combination of several alternatives.

In response to the Commission's conclusion in Decision No. 92058 that CLIPI's original petition was not supported with enough solid data, both parties have provided certain additional information or the references thereto. The Shareholders attach an economic analysis of conversion to natural gas prepared by the Diablo Conversion Project.^{3/} CLIPI has referenced a recent study prepared by the Natural Resources Defense Council^{4/} (NRDC) also cited in its reply to PG&E's response to its original petition to reopen, a recent California Energy Commission (CEC) study of the

^{3/} The Diablo Conversion Project is "a community-based public interest group conducting research and analyzing alternatives to nuclear power at the Diablo Canyon Plant in San Luis Obispo County. Members of the DCP represent a wide variety of professional backgrounds, including biology, mathematics, geology, architecture, American history, and social ecology." Shareholders' Petition for Rehearing of D.92058, p. 2, fn 3.

^{4/} King, L. "Moving California Toward a Renewable Energy Future," Natural Resources Defense Council, San Francisco, 1980.

feasibility of conservation for PG&E's nonresidential customers,^{5/} and a list of projects CLIPI contends PG&E could pursue in lieu of Diablo.^{6/} In the course of its petition, CLIPI also cites additional sources in support of its arguments concerning economics, reliability, and need.

After careful consideration of the new information provided by Petitioners, we remain of the opinion that reopening the proceeding is not appropriate. As we explained in Decision No. 92058, the burden on Petitioners is one of persuading us 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." (Decision No. 92058, mimeo, p. 17.)

Petitioners raise issues which, as illustrated by the sources cited, are matters not only of great controversy, but also of complex and varied solution. CLIPI itself states in its petition for rehearing, concerning the long-term need for Diablo, that this

^{5/} "Nonresidential Energy Efficiency in California: Achieving a 20 Percent Improvement by 1985," March, 1980.

^{6/} See Appendix A to CLIPI's petition for rehearing, which is taken from CEC witness David Marcus' testimony in the Allen-Warner proceedings before this Commission (A.59308).

"question does not have one simple answer." (CLIFI Petition for Rehearing, p. 38.) In our opinion, this is the case for all of the questions raised by Petitioners. Few of the cost or reliability issues are simply resolved; in fact, those costs that Petitioners are most concerned with are the most speculative and pose the largest problem in terms of any expectation that a study would produce definitive answers. In view of the high probability that regardless of how such a study is conceptualized and executed, it would result in a substantial range of uncertainty, we cannot conclude that it would be in the public interest to grant Petitioners' request.

Neither CLIFI nor the Shareholders appear to understand the limits of this Commission's own capabilities. The proceedings at issue were, for all intents and purposes, concluded over ten years ago. Without a more significant possibility of an assured change in result, we simply are not justified at this time in deflecting our limited staff resources from our other priorities established by statute and by our own policies.

It must be remembered that this case is not at the stage of an original proceeding. No party was denied the right to participate fully in the original application proceedings. However, at this point in time and given the facts of this case, we are of the opinion that it is only equitable that we require a strong showing of what one court has termed an "epochal" change in circumstances.^{7/} While circumstances have of course changed since 1967 and 1969, we are not convinced that the changes which we are aware of and which have been pointed out to us warrant reopening the proceedings, devoting further resources to the requested study, and setting aside the certificates pursuant to which the facilities have been constructed.

^{7/} Fruehauf Corporation v. Federal Trade Commission (2d Cir. 1979) 603 F.2d 345, 356.

IT IS HEREBY ORDERED that the petitions for rehearing of
Decision No. 92058 are hereby denied.

The effective date of this order is the date hereof.

Dated NOV 18 1980, at San Francisco, California.

John E. Guy
President

Vernon L. Sturgeon

Richard B. Howell

Clair J. DeLish

Samuel J. Smith
Commissioner