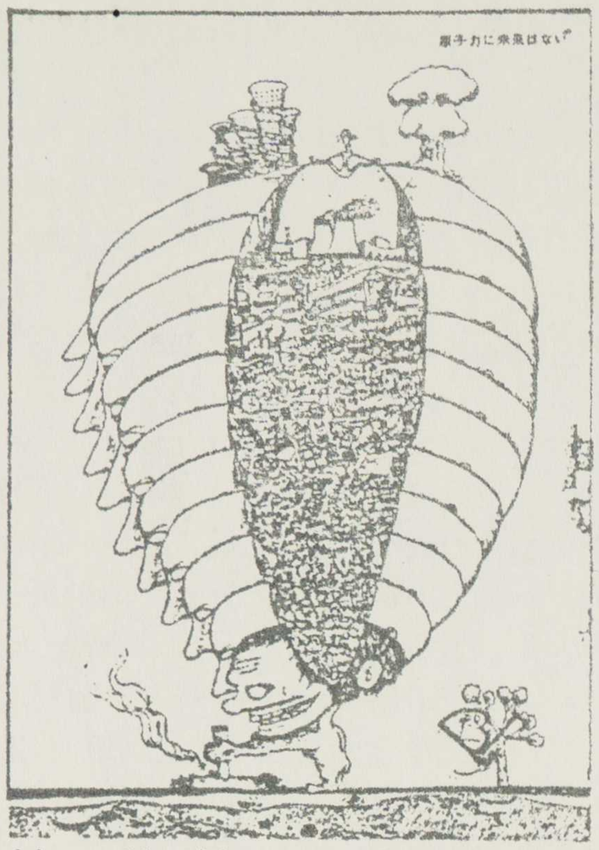


blocking the license until the minutes of the NRC meetings were looked at. The NRC refused to release the minutes of their meetings on the grounds that it would endanger national security. The D.C. Federal Court of Appeals caved in on the injunction on Halloween eve after a secret meeting with PG&E's lawyers.

This enraged a special person within the NRC who secretly released the minutes of the meetings. With the minutes public, intervenors attempted to file another injunction barring start-up of Diablo. The court agreed to rehear the case but refused to block start-up. In its final decision after over a year of waiting, which was written by Judge Bork, the court refused to "set national policy" by looking at the NRC minutes and then went on to cite the PG&E unadjudicated document (unstated of course) that there were no seismic dangers at Diablo. This decision was made the day before the Passover Eve accident at Chernobyl. Congressional hearings held later did indicate that the NRC had broken federal laws in licensing Diablo but nothing was ever done about this by Reagan's "Justice Department."

THE FINAL LEGAL BARRIER

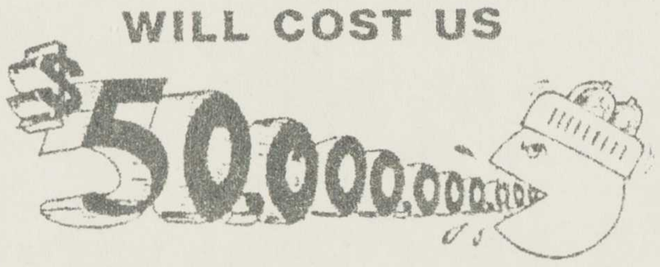
After getting the reactors on line, PG&E then had to prove that all of its $5.5 billion in costs were legitimate before the California Public Utilities Commission. However, the PUC at the time still had a lot of nasty anti-nuclear types leftover from the Brown era. In what was the largest legal battle in the PUC history, PG&E spent over $110 million during the 4 year struggle. The PUC, which by law is required to defend the public interest, spent nearly $6 million while reviewing nearly 100 million pages of documents. Their position after 2 years of digging chilled PG&E to the bone, claiming that the utility should be forced to eat all but $1.1 billion of the $5+ billion costs.

But PG&E had several secret weapons up its sleave. Republican control of appointments to the PUC Commission had by 1986 shifted the balance of power from democratic to republican control. This backfired slightly at one point when one of the PUC Commissioners quietly stepped down when it was discovered that he was doing work on the side for PG&E. The loss of Justice Rose Bird and allies in the state supreme court was even more devastating to legal challenges, as by law, appeals of PUC decisions could only be heard there.

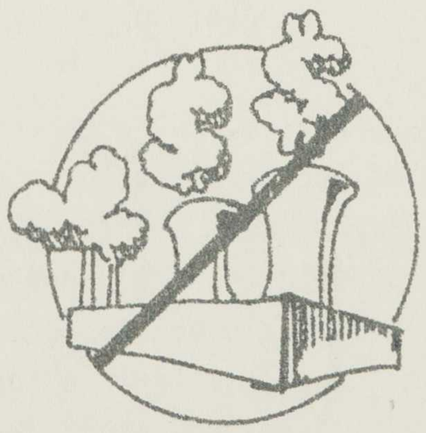
But the real war was quietly waged in the state legislature. PG&E was able to pass legislation that created a huge loophole in the PUC laws which would allow the soon-to-be republican controlled PUC to bypass traditional ratemaking for Diablo Canyon if necessary.

DIABLO CANYON

WILL COST US



UNLESS WE SAY NO!

On June 27, 1988, just as the final and most critical phase of the hearings was to have commenced, PG&E, the State Attorney General (who is running for governor) and the PUC announced that they had reached a settlement agreement. The secretly negotiated agreement would not require the adjudication of how much PG&E would have to pay for its horrendous constuction activities at Diablo. Instead, the settlement, axing 3 years of legal preparation, allowed PG&E the first free market contract in California regulatory history. This astounding turn-around was based solely on the law that PG&E had gotten passed earlier. It was later discovered that the head of the law firm that helped PG&E negotiate the secret settlement gave gave Attorney General John Van De Kamp a $60,000 donation for his governor's campaign. Other intervenors, who had been satisfied with the PUC staff's earlier principled stand, watched in horror as a new hearing process was rapidly pushed through the PUC, leading to acceptance of the agreement on December 19th, 1988 by the PUC Commission itself.

The settlement agreement was largely trumpeted by the major media as the best deal possible for the ratepayers. PG&E was allowed a fixed rate 30 year contract for all power produced at Diablo with rates to start at .078 per kilowatt hour produced, eventually going well over .22/KwHr during the life of the reactors. The proponents of the contract claimed that it would lead to a $2.2 billion disallowance during the life of the reactors if Diablo operated at the national average capacity factor for reactors. Yet the deal was set up to give PG&E a chance to recover all of its costs in the first 7 to 8 years of operation. Diablo has not been operating at the national average, which is 58% of rated capacity, but at 90% of its capacity. This means that PG&E took in nearly $870 million alone in the 1st 7 months of 1989. At the present rate of operation that PG&E says it will try to maintain, it would be very possible for them to recoup most of their investment costs in the next 7-8 years, the period when a reactor traditionally has its highest capcity factors. All legal appeals to the PUC's decision were rapidly knocked off by the republican controlled State Supreme Court, leaving the likelihood that we will see a replay of the Rancho Seco history, with PG&E pushing the reactors to get their money back.