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**To:** <hearingdocket@nrc.gov>  
**Date:** 5/12/06 3:55PM  
**Subject:** Attached Comments, Docket Nos. 50-275 and 50-323

<<NCPA Letter Filing.pdf>> NCPA Comments in above dockets.

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May 12, 2006

Chief, Rules and Directives Branch  
Division of Administrative Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Via e-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
Office of the Secretary  
U.S. Nuclear Regulatory Commission

Re: Docket Nos. 50-275 and 50-323

Dear Sir:

The Northern California Power Agency ("NCPA") files these comments on the proposed amendments to the licenses filed by licensee Pacific Gas & Electric in these dockets on January 19, 2006, pursuant to the Notice of Consideration of Issuance of Amendments to Facility Operating Licenses ... placed by this Commission in the Federal Register of April 14, 2006, at pages 19551 *et seq.*

The proposed amendments would remove the antitrust license conditions which are a part of the licenses in these dockets and were established pursuant to an agreement of April 30, 1976, between the current licensee and the Assistant Attorney General, Antitrust Division, United States Department of Justice, the necessity for which was in turn determined based upon the results of an investigation by the Antitrust Division into concerns raised by NCPA and some others. NCPA has been held to be a third party beneficiary to that agreement, capable of enforcing the agreement to the license conditions in district court. *United States v. Pacific Gas and Elec. Co.*, 714 F. Supp. 1039 (N.D. Cal. 1989), *appeals dismissed per stipulation*, No. 91-16011 (9th Cir. Mar. 20, 1992).

Nonetheless, this will advise the Commission that licensee and NCPA have reached an agreement by which NCPA will not contest the grant of the relief sought by licensee. A copy of

Chief, Rules and Directives Branch

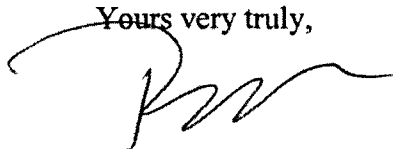
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the agreement (not yet formally executed, but which both parties have authorized be represented to this Commission as agreed upon), is enclosed.

Notwithstanding the agreement, we request that we be placed upon the service list for this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read 'R. McDiarmid', with a large, sweeping flourish extending to the right.

Robert C. McDiarmid  
Counsel for the  
NORTHERN CALIFORNIA POWER AGENCY

Enclosure: Settlement Agreement in unsigned form

cc: David Repka, counsel for licensee

Doc#: 196460

## SETTLEMENT AGREEMENT

This settlement agreement is made as of this \_\_\_ day of May, 2006, by and between Pacific Gas and Electric Company ("PG&E") and the Northern California Power Agency ("NCPA"), jointly the Parties.

### Recitals

WHEREAS, PG&E is the licensee of Facility Operating License Nos. DPR-80 and DPR-82 ("Licenses") for Units 1 and 2 of the Diablo Canyon Power Plant ("DCPP"); and

WHEREAS, the Licenses are subject to and now each contain Appendix C (the Antitrust Conditions); and

WHEREAS, PG&E has filed with the NRC in Docket Nos. 50-275 and 50-323 (the "NRC Proceedings") to remove the Antitrust Conditions from the Licenses; and

WHEREAS, the Antitrust Conditions arise out of the Stanislaus Commitments, which derived from the NRC licensing proceeding for the proposed, but never completed, Stanislaus Nuclear Plant, and which were included in the Licenses by virtue of PG&E's commitment in 1976 to the Department of Justice; and

WHEREAS, NCPA is and has been held to be a third party beneficiary of the Stanislaus Commitments, and has previously sought to enforce them in its capacity as a third party beneficiary; and

WHEREAS, PG&E and NCPA in November 1991 entered into a settlement ("1991 Settlement Agreement") in which PG&E agreed to abide by the Stanislaus Commitments through January 1, 2050, notwithstanding whether these commitments continue to be included in the DCPP Licenses; and

WHEREAS, PG&E has represented to the NRC in the NRC Proceedings that PG&E will continue to meet its obligations with respect to the Stanislaus Commitments pursuant to the 1991 Settlement Agreement; and

WHEREAS, PG&E and NCPA desire to settle and resolve any disputes concerning the NRC Proceedings and to avoid the further expense, burden and inconvenience of litigation,

NOW THEREFORE, in reliance on the foregoing recitals, and in consideration of the mutual promises, covenants and obligations herein, the Parties hereby agree as follows:

**Terms**

1. PG&E, on behalf of itself, its successors and assigns, agrees that the 1991 Settlement Agreement is an enforceable contract and that NCPA may between now and January 1, 2050 enforce the rights accorded to a Neighboring Entity under the Stanislaus Commitments, attached hereto at Exhibit 1, and the 1991 Settlement Agreement, attached hereto as Exhibit 2.
2. This Settlement Agreement does not in any way interpret, expand or otherwise modify the terms of the Stanislaus Commitments or the 1991 Settlement Agreement or any subsequent interpretation of either of those documents by the Federal Energy Regulatory Commission ("FERC").
3. NCPA agrees not to oppose or attempt to condition in any way PG&E's request in the NRC Proceedings to remove the Antitrust Conditions from the Licenses.

4. The 1991 Settlement Agreement and this Settlement Agreement may be enforced at the FERC, to the extent it may have jurisdiction over this matter, or in any court of competent jurisdiction.
5. The undersigned represent that they have the requisite authority to act on behalf of, and bind PG&E and NCPA, respectively, to the terms of this Settlement Agreement.

**PACIFIC GAS AND ELECTRIC COMPANY**

By: \_\_\_\_\_  
Name: **Roger J. Peters**  
Title: **Senior Vice President and Chief Counsel**  
  
Date: \_\_\_\_\_

**NORTHERN CALIFORNIA POWER AGENCY**

By: \_\_\_\_\_  
Name: **James H. Pope**  
Title: **General Manager**  
  
Date: \_\_\_\_\_