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50-323 Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Ga 05000323
AUTH.NAME AUTHOR AFFILIATION
FALLIN,J.F. Pacific Gas & Electric Co.
SANDERSON,S.A. Pacific Gas & Electric Co.
RECIP.NAME RECIPIENT AFFILIATION
DENTON,H.R. Office of Nuclear Reactor Regulation, Director

SUBJECT: Responds to RC McDiarmid petition for emforcement of license conditions to continue moribund enforcement proceeding & interpose.Commission in pending contract litigation w/City of Healdsburg,CA.NRC involvement unnecessary.

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August 10, 1984

Harold R. Denton, Director
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Response to "Petition for Enforcement of License Conditions", 323
NRC Docket Nos. 50-275, 50-~~276~~

Dear Mr. Denton:

Pacific Gas and Electric Company (PGandE) received, a week after its nominal mailing date, a letter addressed to Harold R. Denton, signed by Robert C. McDiarmid, and styled "Petition for Enforcement". That letter carries a split personality. In its first, rather tentative, personality, it poses as a continuation of a long moribund "enforcement proceeding" resolved nearly two years ago. The second personality presents "fresh" assertions seeking to interpose the Nuclear Regulatory Commission in pending contract litigation between PGandE and one of its wholesale customers -- the City of Healdsburg. The attempt to resurrect the old proceeding should be rejected summarily; the "new" claims deserve hardly more attention.

On December 4, 1981, NCPA wrote another letter. That one referred to both the "Stanislaus" Project (Docket No. P-564-A) proceeding (now long since dismissed) and the Diablo Canyon Project. In general, it completely failed to comprehend the critical difference between the two cases.

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The Stanislaus Project, had it gone forward, would have been evaluated under the "antitrust" review conditions of Section 105(c) of the Atomic Energy Act, 42 USC 2135(c). Accordingly, the "Stanislaus Commitments", as "antitrust" conditions, were generally at issue in the Stanislaus proceeding and the bulk of the extensive litigation in that case involved assertions by NCPA and others that the Commitments should be modified and expanded under the Commission's § 105(c) authority.

However, the Diablo Canyon Project applications were filed and permits were issued, not under Section 105(c), but under Section 104(b) of an earlier version of the Atomic Energy Act. The only Commission functions with respect to "antitrust" relative to Section 104(b) licenses were (1) the review of license conditions where a licensee has been found by a court to have violated the antitrust laws (§ 105(a)), or (2) the reporting to the Attorney General of "antitrust" information it might acquire (§ 105(b)). The license applications for Diablo's two units were filed in 1967 and 1968 and the construction permits were issued April 23, 1968 and December 9, 1970.

In 1970 the Atomic Energy Act was amended to provide, among other things, for a limited application to Section 104(b) licensees of provisions for the employment of "antitrust" considerations in conditioning the grant of a license. Section 105(c)(6), 42 U.S.C. § 2135(c). However, the provision relating this new conditioning authority to Section 104(b) facilities allowed such treatment for facilities like Diablo only where an intervention raising such issues had been filed prior to December 19, 1970. Section 105(c)(6). No such petition was ever filed with respect to the Diablo Canyon Project.

The Stanislaus Commitments came into the Diablo license, not by operation of law, but by agreement. PGandE and the Justice Department originally agreed that the conditions could enter the Diablo license if no Stanislaus construction permit was issued by July 1, 1978. When that time arrived, with the Commission's consent, the Commitments were entered as amendments to the Diablo license. Since PGandE specifically did not agree to any extension of the Commitments beyond their existing terms, the Commission's "antitrust" conditioning authority outside the Commitments was only that which it had under the Atomic Energy Act before license amendment -- none. The Commission's Federal Register Notice announcing the amendment (F.Reg. Vol. 43, No. 247, December 22, 1978) specifically recorded the fact that the Diablo Project "is not subject to an antitrust

review under Section 105(c) of the Atomic Energy Act, as amended." The Commission has full authority under the Diablo licenses to enforce PGandE's compliance with the Commitments as agreed license conditions, but it has no authority to expand those conditions.

NCPA's old 1981 letter, while styled as a petition to "Enforce and Modify", was in actuality nothing more than a plea for the Commission to modify the Commitments -- a remedy not available in the Diablo proceeding.

In November of 1982, the Chief of Enforcement, at the instance of NCPA, called a meeting in an effort to resolve pending differences between PGandE and NCPA.

In Bethesda, before the Director, Office of Nuclear Reactor Regulation, the matter was presented and thoroughly discussed between Staff, NCPA and PGandE. In keeping with NCPA's presentation of requests to modify rather than enforce, and in keeping with Staff's own awareness of the facts -- NCPA was informed that (aside from wording questions about the then-current interconnection draft) there was only one issue, related to the parties' delay in coming to final agreement, potentially sufficient to warrant a formal response from PGandE.

At the Director's request, the parties specifically considered settling their differences by reaching some way to close out their negotiations for an interconnection agreement. It was the failure to reach an agreement satisfactory to both sides that formed the foundation for NCPA's complaints and provided a "practical" ground for the notion of filing non-agreements. After intensive discussions, the parties, before the Director, specifically and finally agreed to resolve their differences by jointly moving forward, with arbitration if necessary, to close the Interconnection Agreement. It was agreed that the Commission would retain its consideration of NCPA's complaints pending completion and execution of an interconnection agreement.

On July 29, 1983, PGandE and NCPA executed the Interconnection Agreement. On August 16, 1983, it was filed with the FERC. At that point, by force of the November 1982 agreement, the old complaint "proceeding" expired. NCPA's current "old" complaints[1] seem based on the hope that the

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[1] NCPA letter at 4, 5, 6, 7.

Director and Staff will have forgotten the events of November 1982. The fact is that the interconnection agreement has been executed and is in effect today. There has been no "failure of the Commission" to act with respect to NCPA's former complaints (NCPA letter at 3). The old proceeding has not moved -- because it had nowhere to go. The complaint, including its one potential enforcement issue, was absorbed into and resolved by the consummated Interconnection Agreement.

NCPA's efforts to resuscitate claims about the California Power Pool (CPP), is neither more nor less than a reiteration of its old request that the Commitments be modified to require retroactive alteration of pre-existing agreements between PGandE and third parties. The Commitments certainly do not contain any such provision, despite the obvious fact that such agreements, specifically including the CPP agreement, were before both the Department of Justice and PGandE when the Commitments were signed.

There is only one point at which the Commitments touch on prior arrangements with third parties. In Section V (Condition F(5)) it is provided that:

> "Should Applicant have on file, or hereafter file, with the Federal Power Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, limited-term capacity and energy or economy energy, Applicant shall, in a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity, when such forms of capacity and energy are available, recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions..."

That's it for third-party agreements. The only "enforcement" issue is whether PGandE has offered "like or similar" arrangements "recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions..." The Commitments could hardly be clearer in their choice <u>not</u> to interfere with PGandE's other "agreements or rate schedules" and <u>instead</u> to call for "like or similar" arrangements.

NCPA cites its November 15, 1982 letter in its current letter. NCPA letter p. 1. In that 1982 letter, NCPA itself acknowledged the plain limits on "enforcement" as related to the CPP or any other existing agreement:

> "NCPA has noted to PGandE that PGandE is a party to a number of interconnection and pooling arrangements with others and that NCPA believes it is obligated to provide similar service to NCPA. November 15, 1982 letter, Attachment p. 8."

NCPA hasn't argued that the Interconnection Agreement fails to provide it with "similar" services to those PGandE provides to others under other arrangements including the CPP agreement. In fact, NCPA actually seems to argue that the Interconnection Agreement is more favorable (i.e., "resolve[s] most disputes") than the CPP (with its criticized "restrictions"). We are thus back where we began in 1981. NCPA has again requested modification of the Commitments to compel alterations in the CPP agreement -- not enforcement of the Commitments as they stand.

It is also disturbing that although the parties have been operating under the Interconnection Agreement for nearly a year, NCPA continues to complain that it is the product of "blackmail" (NCPA letter, pp. 7 & 8) and suggests that NCPA will repudiate any portions of the contract that it does not like. The contract was the product of nearly 10 years of intense negotiations and compromise.[2] Neither party got everything it wanted. There was agreement and that agreement was embodied in the contract. NCPA made a specific election, signing its Interconnection Agreement knowing that by doing so it was fulfilling the November 1982 agreement and closing out the enforcement request then pending before the Commission. Now, having gotten the contract, NCPA wants to undo its election with the apparent hope that the NRC will somehow rewrite the contract in NCPA's favor. That is precisely the sort of controversy that NCPA, and specifically Mr. Grimshaw, agreed to do away with upon execution of an agreement.

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[2] It has now specifically been found that PGandE did not "stall" those negotiations. PGandE Project 2735, 24 FERC ¶ 63,001, p. 65, 009.

With the old references out of the way, we can now look at the newer elements in NCPA's latest letter.

NCPA now charges that the refusal of six NCPA cities to pay PGandE for wholesale power supplied to them between May and September 1982 and the resulting state court lawsuits PGandE has filed for breach of contract somehow constitute "evidence" that PGandE believes that the Stanislaus Commitments do not obligate it to do anything. That is nonsense.

PGandE's state court action against Healdsburg simply seeks damages for breach of Healdsburg's full requirements wholesale contract with PGandE.[3] The Stanislaus Commitments are irrelevant to the breach of contract suit. The lawsuit is not based on the Commitments, but on the power contract which was filed as a rate schedule with the FERC. Under the filed-rate doctrine, Healdsburg was obligated to abide by it. Montana-Dakota Utilities v. Northwestern Public Service Co., 341 U.S. 246 (1951). The contract was terminable by Healdsburg on two years notice; it also provided for the parties to negotiate regarding the purchase of power from other sources by Healdsburg. Rejecting both alternatives, Healdsburg unilaterally declared that power it received was not PGandE power and withheld payment due PGandE, thereby breaching its contract. Assuming arguendo that Healdsburg, if it had no contract to buy from PGandE, could have requested transmission service under the Commitments for power purchased from another source, that fact is simply irrelevant in the contract litigation. The obvious flaw in NCPA's position is that the Commitments do not purport to abrogate or amend the Healdsburg or any other wholesale power contract. In fact, the Commitments preceded the Healdsburg contract by more than five years; the parties were well aware of the Commitments while the contract was being negotiated.

After the complaint was served on Healdsburg in November 1983, Healdsburg, represented by NCPA's counsel Spiegel and McDiarmid, began a multi-step attempt to evade the jurisdiction of the California state courts. First, it removed the case to the United States District Court for the Northern District of California by filing a petition

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[3]The Healdsburg contract was terminated when, by PGandE agreement, the FERC accepted the Interconnection Agreement for filing on August 16, 1983.

alleging federal jurisdiction. Second, although it had removed the case on the theory that the federal court had jurisdiction, it then moved to dismiss the case on the grounds that no federal cause of action was stated. PGandE moved to remand the case to state court on the grounds that the suit was a state court breach of contract suit, not a federal case. The Honorable William H. Orrick, United States District Judge, remanded the case to the state court noting that "It appears to me that this complaint states a single cause of action for breach of contract" and that "the PGandE has pleaded a state law contract." (Transcript of Proceedings of April 13, 1984, pp. 23-24, attached hereto as Exhibit A (Emphasis supplied).) With the case now back in the state court, Healdsburg has filed a demurrer urging the court to dismiss the case, this time on the ground that it fails to state a state law cause of action, and insisting that the court is obligated to refer the case to the FERC. Mr. McDiarmid's letter of August 1, 1984, urging that the NRC now interpose itself in this California state court breach of contract lawsuit is simply the latest attempt to avoid Healdsburg's day of reckoning for its contract violation.

The "most recent serious evidence that PGandE continues to violate its Diablo Canyon license conditions" (NCPA letter, p. 2) thus seems to be nothing more than Healdsburg's annoyance at being sued for its breach of contract. NCPA claims "in essence PGandE bases its claim on violations by it of its Diablo Canyon license conditions" (NCPA letter, p. 2, footnote 1). An elementary examination of PGandE's complaint (Attached as Exhibit B) demonstrates no PGandE claim that it can violate or has violated the Stanislaus Commitments. That's not surprising since, as we pointed out before, the Stanislaus Commitments have no bearing on the lawsuit. In fact, Healdsburg's own attorneys have specifically contradicted NCPA's latest assertions of interference with the Commitments, acknowledging that: "PGandE has recognized its obligations under the Diablo Canyon license conditions and, indeed, a procedure has evolved through which it has implemented its obligations" (Healdsburg's Motion to Dismiss, Attached to NCPA letter as Attachment II, p. 4).

Finally, NCPA charges that the Healdsburg lawsuit was intended by PGandE to "impose financial pressure" on Healdsburg. (NCPA letter, p. 6.) Damages are the remedy for breach of contract. PGandE is simply availing itself of the orderly legal path to compensation for Healdsburg's breach. NCPA's second charge -- that PGandE is suing Healdsburg to "demonstrate" that NCPA cannot rely on the

Stanislaus Commitments or their enforcement by the NRC (NCPA letter, p. 7) -- probably only denotes NCPA's apprehension that the California court will perceive the obvious irrelevancy of the Commitments to Healdsburg's breach of its wholesale contract.

PGandE submits that the Healdsburg litigation is precisely the right place to test the merits of NCPA's assertion that the Commitments are a defense to Healdsburg's breach. There is no sense whatever in this Commission involving itself in that dispute.

Very truly yours,

JACK F. FALLIN, JR.
SHIRLEY A. SANDERSON

JFF:vlr
Attachments

cc: Robert C. McDiarmid, Esquire
Benjamin H. Vogler, Esquire
Michael J. Strumwasser, Esquire

WE HAVE HERE, THERE IS NO SUCH COMMISSION ORDER. AND I THINK THAT IS WHAT DISTINGUISHES THE CLEVELAND CASE.

THE COURT: ALL RIGHT. THE MATTER IS SUBMITTED.

YOU CAN SIT DOWN NOW.

AND I'M GOING TO RULE. I'VE LISTENED CLOSELY TO THE ARGUMENT, AND I'VE READ THE BRIEFS CAREFULLY. AND I AM UNHAPPY TO THE EXTENT THAT THERE ISN'T WHAT WE WOULD CALL A HORSE CASE HERE, ONE INVOLVING THE FEDERAL POWER ACT. BUT THE NATURAL GAS ACT HAS BEEN INTERPRETED AS BEING IN PARI MATERIA WITH THE FEDERAL POWER ACT. AND FOR THE FOLLOWING REASONS I REMAND THE ACTION TO THE STATE COURT.

IT APPEARS TO ME THAT THIS COMPLAINT STATES A SINGLE CAUSE OF ACTION FOR A BREACH OF CONTRACT. THERE'S NO DIVERSITY, NOR DOES THE COMPLAINT RAISE, ON ITS FACE CERTAINLY, ANY FEDERAL QUESTION. AND IT'S FOR THOSE REASONS THAT I HOLD THIS COURT DOESN'T HAVE JURISDICTION.

NOW, THE CITY OF HEALDSBURG ASSERTS THAT THE JURISDICTION EXISTS ON THREE SEPARATE THEORIES. FIRST, THAT THE CONTRACT IS REGULATED AS A TARIFF UNDER THE FEDERAL POWER ACT; SECOND, THAT THE P G AND E ATTEMPTED TO DISGUISE ITS FEDERAL CLAIM BY ARTFULLY PLEADING IT AS A STATE LAW CLAIM; AND, THIRD, EVEN IF THE COMPLAINT STATES A CLAIM FOR BREACH OF CONTRACT, FEDERAL JURISDICTON LIES IF PLAINTIFF'S RIGHT TO RELIEF UNDER THE STATE LAW REQUIRES RESOLUTION OF SUBSTANTITAL QUESTIONS OF FEDERAL LAW.

EXHIBIT A

NONE OF THOSE ARGUMENTS ARE VALID SO FAR AS I CAN SEE.

IT IS TRUE AND OBVIOUS THAT THE CONTRACT BETWEEN THE CITY OF HEALDSBURG AND THE P G AND E MUST BE FILED WITH THE FEDERAL POWER COMMISSION.. BUT THAT HAS, AS NEAR AS I CAN SEE FROM THE CASES TO WHICH I'VE BEEN REFERRED, LITTLE OR NO APPLICATION TO THIS CASE.

THE MAIN REASON BEING THAT THE P G AND E'S CLAIM DOES NOT INVOLVE ANY CHARGES THAT THE RATES ARE UNJUST OR UNREASONABLE. THE P G AND E'S ACTION IS FOR THE ENFORCEMENT OF A SALES CONTRACT BY PAYMENT OF THE RATE SET FORTH IN THE CONTRACT. AND THERE'S NOTHING IN THE ACT THAT ESTABLISHES OR DENIES A FEDERAL CAUSE OF ACTION FOR THE BREACH OF A POWER SALE CONTRACT.

AS I EARLIER QUOTED JUSTICE FRANKFURTER FROM WHAT... MIGHT WELL BE A SEMINAL CASE IN THE AREA, HE SAID, AND I QUOTE IT: WE ARE NOT CALLED ON TO DECIDE THE EXTENT TO WHICH THE NGA REINFORCES OR ABROGATES THE PRIVATE CONTRACT RIGHTS HERE IN CONTROVERSY. THE FACT THAT CITIES SERVICE SUES IN CONTRACT OR QUASI CONTRACT, AND NOT THE ULTIMATE VALIDITY OF ITS ARGUMENTS, IS DECISIVE.

AND ALTHOUGH COUNSEL WARNS THE COURT TO BEWARE; AND HE'S READ ALL THE CASES DECIDED SINCE THEN -- AND I HAVEN'T HAD TIME TO DO THAT -- I THINK THAT THE PRINCIPLE IN THAT CASE IS QUITE OBVIOUS HERE. . BECAUSE THE P G AND E HAS PLEADED A STATE LAW CONTRACT.

THE COMPARISON WITH THE INTERSTATE COMMERCE ACT I DON'T THINK IS APROPOS. IN CONSTRUING THE NATURAL GAS ACT, THE SUPREME COURT HELD, WHEN IT WAS COMPARED TO THE INTERSTATE COMMERCE ACT, THAT: WE SHOULD BEAR IN MIND THAT IT EVINCES NO PURPOSE TO ABROGATE PRIVATE CONTRACT RATES AS SUCH. AND, TO THE CONTRARY, BY REQUIRING CONTRACTS TO BE FILED WITH THE COMMISSION, THE ACT EXPRESSLY RECOGNIZES THAT RATES TO PARTICULAR CUSTOMERS MAY BE SET BY INDIVIDUAL CONTRACTS. AND IN THIS RESPECT, THE ACT IS IN MARKED CONTRAST TO THE INTERSTATE COMMERCE ACT, WHICH IN EFFECT PRECLUDES PRIVATE RATE AGREEMENTS BY ITS REQUIREMENT THAT ALL RATES TO CUSTOMERS BE UNIFORM.

I DON'T THINK APPLYING THE ARTFUL PLEADING DEFENSE IS APROPOS HERE, ALTHOUGH COUNSEL FOR THE DEFENDANT DOES STATE THAT HE THINKS THE FEDERAL POWER COMMISSION HAS PREEMPTED THE FIELD. AS I SAY, THE CASES -- I'M NOT PERSUADED OF THAT. AND UNLESS THAT IS THE FACT, THE ARTFUL PLEADING ARGUMENT, OF COURSE, CAN'T BE -- ISN'T USED.

SO, IN SUMMARY, I CONCLUDE THAT THE CITY HAS NOT ESTABLISHED THAT THE COMPLAINT STATES A CLAIM THAT ARISES UNDER THE CONSTITUTION OR LAWS OF THE FEDERAL GOVERNMENT. AND THE... REMOVING DEFENDANT, OF COURSE, HAS THE BURDEN OF PROVING FEDERAL JURISDICTION -- WHICH I DON'T THINK IT HAS -- AND THE REASON THAT IT DOES HAVE IS BECAUSE FEDERAL COURTS ARE COURTS OF LIMITED JURISDICTION, AND BECAUSE OF PRINCIPLES OF FEDERAL-STATE COMITY.

SO I ORDER THE CASE REMANDED. I DENY THE PLAINTIFF'S MOTION FOR ATTORNEYS' FEES.

AND YOU PREPARE THE ORDER.

MS. SANDERSON: THANK YOU, YOUR HONOR.

MR. GARDINER: THANK YOU, YOUR HONOR.

(WHEREUPON THESE PROCEEDINGS WERE CONCLUDED.)

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Attorneys for Plaintiff
PACIFIC GAS AND ELECTRIC COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

PACIFIC GAS AND ELECTRIC COMPANY, Plaintiff, vs. CITY OF HEALDSBURG, a municipal corporation; and ROES 1-40, Red Companies 1-40, Defendants.	No. 127234 FIRST AMENDED VERIFIED COMPLAINT FOR BREACH OF CONTRACT

Plaintiff Pacific Gas and Electric Company (hereinafter "PGandE"), a corporation, alleges as follows:

FIRST CAUSE OF ACTION
(Breach Of Contract)

1. At all times mentioned herein PGandE was and now is a public utility corporation in good standing, duly organized and existing under and by virtue of the laws of

EXHIBIT B

the State of California, doing business in California, and whose principal place of business is the City and County of San Francisco.

2. At all times mentioned herein, the City of Healdsburg ("City") was and now is a municipal corporation situated in Sonoma County and organized and existing under and by virtue of the laws of the State of California.

3. Defendants Roes 1 through 40, and Red Companies 1 through 40, are sued herein under fictitious names, their true names and capacities being unknown to PGandE. When their true names and capacities are ascertained, PGandE will amend its complaint to include said true names and capacities.

4. At all times mentioned herein Roes 1-40 were individuals.

5. At all times mentioned herein defendants Red Companies 1-40 were municipal corporations or other governmental entities, partnerships, joint ventures or other business entities licensed to do and doing business in the State of California.

6. Plaintiff is informed and believes and on that ground alleges that Roes 1-40, and Red Companies 1-40 are responsible in some manner for the acts and events alleged in this complaint and for plaintiff's damages proximately caused by such acts and events.

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7. At all times mentioned herein all of the defendants were each the employees, servants, agents and joint venturers of the other defendants and acting within the scope of their employment, service, agency and joint venture and each is legally responsible for the acts and omissions of the others.

8. On or about May 5, 1981, plaintiff and the City entered into a written contract in which plaintiff agreed to sell and deliver to the City, and the City agreed to purchase and receive from plaintiff all of the electric capacity and energy required by the City for its own use and for resale to its customers. The contract was in full force and effect at all relevant times. The contract was amended in writing in ways not relevant to this complaint, and has now been terminated. The contract is attached to this complaint as exhibit A, and is expressly incorporated into this complaint by reference as though fully set forth.

9. The contract was duly accepted for filing by the Federal Energy Regulatory Commission ("FERC") before the events complained of by plaintiff occurred.

10. Pursuant to the contract, the City's electricity requirements were provided solely by PGandE.

11. Plaintiff delivered to defendant bills for electricity sold and delivered to defendant during May-September 1982.

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12. Defendant has breached the contract by refusing and failing to pay the major portion of each of said bills.

13. Plaintiff has fully performed all of its obligations under the contract.

14. As a proximate result of defendant's breach of contract, plaintiff has been damaged in a sum in excess of the jurisdiction of the superior court, plus interest thereon at the statutory rate. Plaintiff will amend this complaint to set forth any future, unascertained, or consequential damages as they are incurred.

15. On or about July 30, 1982, plaintiff filed a claim for money based on nonpayment of the May bill with the city clerk pursuant to provisions of the Government Code. A copy of the claim is attached as exhibit B, and incorporated by reference. The filing of this claim is not an admission by plaintiff that such claim was required to be filed, nor is it a waiver by plaintiff of any right it may have to have the issue adjudicated.

16. On or about November 1, 1982, plaintiff filed an amended claim for money based on nonpayment of the May-September bills with the city clerk pursuant to provisions of the Government Code. A copy of the claim is attached as exhibit C, and incorporated by reference. The filing of this claim is not an admission by plaintiff that such claim was required to be filed, nor is it a waiver by

plaintiff of any right it may have to have the issue adjudicated.

17. The City has failed to act on these claims within the period of 45 days after presentation, and they were thus deemed rejected, under the provisions of section 912.4 of the Government Code.

WHEREFORE, plaintiff prays judgment for:

1. damages for nonpayment of bills;
2. interest at the maximum rate permitted by law;
3. costs of suit; and
4. such other and further relief as the Court may deem proper.

Dated: November 28, 1983.

Respectfully submitted,

CHARLES T. VAN DEUSEN
HOWARD V. GOLUB
JOHN N. FRYE
SHIRLEY A. SANDERSON

By Shirley A. Sanderson
SHIRLEY A. SANDERSON
Attorneys for Plaintiff
PACIFIC GAS AND ELECTRIC COMPANY

VERIFICATION

I, the undersigned, say:

I am an officer, to wit, Vice President and Corporate Secretary of Pacific Gas and Electric Company, a corporation, and am authorized to make this verification for and on behalf of said corporation, and I make this verification for that reason; I have read the foregoing pleading and I am informed and believe the matters therein are true and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 28, 1983, at San Francisco, California.

JOHN F. TAYLOR