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 DENTON, H.R. Office of Nuclear Reactor Regulation, Director

SUBJECT: Informs that issues raised in Northern California Power Agency 1981 petition re transmission from geothermal power plant & filings & mod of Stanislaus resolved. Proceeding should be terminated.

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1. The purpose of this document is to provide a comprehensive overview of the current status of the project and to identify the key areas that require attention.

2. The project has made significant progress since the last meeting, with several key milestones being achieved. However, there are still several areas that require attention.

3. The primary focus of the next meeting will be to discuss the progress made in the areas of research and development, and to identify the key areas that require attention. It is expected that the meeting will be held on the 15th of the month.

4. The following table provides a summary of the current status of the project, and identifies the key areas that require attention.

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Area	Current Status	Key Areas for Attention	Next Meeting Focus
Research & Development	Progress made in several key areas	Identify key areas for attention	Discuss progress in research and development
Marketing & Sales	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Finance & Administration	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Legal & Compliance	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Human Resources	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Operations & Logistics	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Information Technology	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Customer Support	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Public Relations	Identify key areas for attention	Identify key areas for attention	Identify key areas for attention
Overall Project Status	Progress made in several key areas	Identify key areas for attention	Discuss progress in research and development

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May 8, 1985

VIA EXPRESS MAIL

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

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

Dear Mr. Denton:

50-323 AS

NCPA's pleading "Clarification of Northern California Power Agency and Its Members As to Status of Petition for Institution of a Proceeding to Enforce and Modify License Conditions" ("Clarification") effectively demonstrates that nothing is left to be resolved under NCPA's 1981 Petition, which raised two basic issues: (1) transmission from NCPA's Geysers geothermal power plant and filings related thereto and (2) modification of the Stanislaus Commitments ("Commitments").

The transmission issue became moot in 1982 shortly following the November 30 meeting with you and your staff in Bethesda, when the parties agreed that PG&E would purchase NCPA's geothermal power until the final terms of an interconnection agreement were negotiated or arbitrated. The parties subsequently agreed on terms and the 30-year interconnection agreement was accepted for filing by FERC on August 16, 1983, thus finally resolving the transmission issue and making it moot.

The remaining issue was NCPA's contention that the NRC should modify the Stanislaus Commitments. PG&E pointed out that there was no statutory support for such modification and by September 1984, NCPA appeared to have abandoned its quest for modification. The Clarification (which "constitutes a full statement of the grievances which NCPA now seeks to press." p. 2, lines 14 and 15) now makes it clear that NCPA has dropped its claim that the Commitments be modified. (Clarification, p. 5, line 3)

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Therefore, both of the issues raised in the 1981 Petition have been resolved and this proceeding should be terminated.

However, in an attempt to keep this proceeding in perpetual pendency, NCPA now seeks to have the NRC far exceed any regulatory responsibilities it may have with respect to the Commitments and function instead as a civil court. It wants the NRC to force PGandE to dismiss its civil lawsuits against several NCPA members for breach of wholesale power purchase contracts (p. 9, line 6).

While we do not wish to repeat our August 10, and September 26 discussions of the Healdsburg litigation, it bears emphasizing that contrary to NCPA's assertion, the availability of transmission, pursuant to the Commitments or otherwise, is completely irrelevant and has no bearing on the issues raised¹ in PGandE's complaint. Healdsburg has admitted as much.

Since there are no relevant transmission issues, the only possible way for NCPA to support its accusation that PGandE's breach of contract actions rest upon

¹Healdsburg's Motion to Dismiss filed with the United States District Court characterizes the complaint as follows: "The issue between the parties is simple; was Healdsburg required to purchase 'all of the electric capacity and energy required by the City from PGandE? ...the only question which appears relevant to this matter is whether Healdsburg was required to purchase all of its electric energy from PGandE." (p. 2, lines 3-17, lines 20-23, emphasis added) The motion was filed on February 28, 1984, but was never heard because the federal court found that the action had been improvidently removed by Healdsburg and ordered it remanded to the California Superior Court.

At the October 12, 1984 hearing of Healdsburg's demurrer in Sonoma County Superior Court, Mr. McDiarmid, representing Healdsburg and distinguishing the case from one concerning transmission said, "There has for years been an argument over what is referred to as wheeling or transmission of power from third-party sources. We had originally thought that this case might turn on that but as it's been phrased by PGandE, we do not understand that they are raising that at this point." (Transcript, p. 23, lines 14-24, emphasis added)



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violations of the Stanislaus Commitments is to argue that the Commitments do not authorize full requirements contracts. NCPA's September 14, 1984 letter made that very argument, misquoting the Commitments to avoid using the word "full." However, the plain words of the Commitments, correctly quoted, makes such an interpretation absurd and impossible:

"Upon request, Applicant shall offer to sell firm, full or partial requirements power for a specified period . . . under a contract with reasonable terms and conditions including provisions which permit Applicant to recover its Costs." (PGandE's September 26 letter, pp. 2-3) (emphasis added)

NCPA's "Clarification" now modifies the untenable argument that the Commitments prohibit full requirements contracts by claiming instead that the Commitments authorize full requirements contracts only up until the moment that one party to the contract demands a change. The Clarification restates Mr. McDiarmid's argument at the October 12 hearing on demurrer:

"We think what the Healdsburg contract says is full requirements until and unless Healdsburg requests PGandE to provide something else, in which case PGandE is obligated to provide it under reasonable terms and conditions." (emphasis added)

If the change is refused for any reason, in NCPA's view, the Commitments have been violated. Under contract law such an interpretation is irrational; it would make any full requirements contract illusory even though they are expressly authorized by the Commitments. Such an agreement is not even a true contract, since it is subject to the whim of one party. Moreover, NCPA's interpretation directly contradicts the language of the Commitments quoted above which authorizes full requirements contracts for a specified



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period. Only Humpty Dumpty's way with words² can yield the interpretation that NCPA seeks.

The Commitments don't require illusory full requirements contracts, nor do they volunteer the NRC's services to resolve every squabble that may arise once a full requirements contract has been reached. In recognizing the category "full requirements contract" the Commitments specifically accepted the notion that PGandE could fulfill its obligations by entering into agreements that offered substantial security for both sides in return for exclusive arrangements across a given time period. NCPA's attempt to nullify the language of the Commitments permitting such contracts should be rejected by the Commission.

NCPA's modified theory that full requirements contracts are sanctioned by the Commitments only until the purchaser demands amendment is a new theory, one which conveniently arose in response to PGandE's civil damage lawsuits.

NCPA and Healdsburg were free to complain about the nature of the Healdsburg contract but they made no complaint that the contract was a violation of the Stanislaus Commitments either prior to or at the time when it was presented to FERC for filing in 1981.³ The executed contract, signed without complaint to either FERC or the NRC, fulfilled and made specific the principles of

²"But 'glory' doesn't mean 'a nice knockdown argument,'" Alice objected.

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean -- neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

-- Through the Looking Glass
Lewis Carroll

Cf., Tennessee Valley Authority v. Hill, 437 U.S. 153, 173; 57 L.Ed.2d 117, 98 S.Ct. 2279 (1978)

³"Mr. McDiarmid: Well, Your Honor, you asked -- you asked Ms. Sanderson whether or not Healdsburg had objected when the contract in question was filed. No, we didn't." (Transcript of Hearing on Remand Motion, p. 13, lines 2-4, emphasis added)



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Commitments and changed the parties' relationship to a contractual one. Since the contract itself fits one of the categories defined in the Commitments, the NRC's obligation to play an active role ceased. Any subsequent dispute about the services described in the contract during its term are governed by the contract itself, not the Commitments, and are subject to resolution by the courts in the same manner as any other contract dispute.

NCPA's current effort to get the NRC to resolve a contract dispute between Healdsburg and PGandE must be seen for what it is -- a calculated effort to avoid adjudication of Healdsburg's contract liability by trying to shift the case from forum to forum. Significantly, Mr. McDiarmid⁴ has said that the federal court could determine liability; that FERC can determine contract liability;⁵ and now that NRC also can determine contract liability.⁶ Counsel's strategy is clear; he believes any court or agency can determine these contract liability issues so long as it does not have the authority to render a plaintiff's verdict for PGandE against Healdsburg.

⁴"We are not saying that this court does not have the authority to determine whether under the rate schedule Healdsburg owes money to PGandE." (p. 16, lines 15-18)

⁵"We note at the outset that PGandE has the right to seek from FERC the relief which it requests from this court. The Commission has the authority to construe filed rate schedules, and to require their enforcement." (Healdsburg Demurrer, p. 15, lines 1-4)

⁶"It is now appropriate for this Commission to interpret the license to make clear, once and for all, the obligations under the NRC license. It is also timely for this Commission to act, since the court issue which has been referred to the FERC is the question of the obligation of PGandE under the license conditions, a matter with which this Commission can most effectively deal." (Clarification, p. 11, lines 15-21) The Sonoma County court only referred matters raised by the complaint and demurrer; it ultimately rejected Healdsburg's inaccurate and prejudicial formulation of questions under the Commitments. PGandE has appealed and petitioned for review of the court's erroneous referral and stay orders.



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Mr. Harold R. [redacted]nton
May 8, 1985
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This Commission should dismiss the 1981 Petition as moot and should reject NCPA's efforts to extend and prolong it by involving the Commission in civil litigation of contract issues now before the courts.

Sincerely,

Shirley A. Sanderson

JACK F. FALLIN, JR.
SHIRLEY A. SANDERSON

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cc: Robert C. McDiarmid, Esq.
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