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

SUBJECT: Discusses Northern California Power Agency (NCPA) current petition for enforcement of license conditions re transmission of svc from NCPA Geysers project.NRC should not intervene in parties contract.

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THE
OFFICE OF THE
ATTORNEY GENERAL
STATE OF NEW YORK
ALBANY
JANUARY 10, 1901
TO THE
COMMISSIONER OF THE
LAND OFFICE
ALBANY
SIR:
I have the honor to acknowledge the receipt of your letter of the 2nd inst. in relation to the application of the State of New York for a lease of the land in the town of
Saratoga
County, New York, and in reply to inform you that the same has been referred to the proper authorities for their consideration.

Very respectfully,
J. B. ALLEN
Attorney General

PACIFIC GAS AND ELECTRIC COMPANY

PG&E +

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JACK F. FALLIN, JR.
ATTORNEY AT LAW

July 12, 1985

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

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

Dear Mr. Denton:

The attorneys for NCPA have now written yet another letter. It remains for the rest of us to see if that letter marks any real progress.

In our letter of May 8, 1985, we pointed out that NCPA's old 1981 Petition complained of a supposed inability to obtain transmission service from NCPA's Geysers project and sought modification of the Stanislaus Commitments. NCPA's latest correspondence doesn't deny the execution, filing and FERC acceptance in 1983 of a 30-year Interconnection Agreement governing transmission from the Geysers project. On May 29, 1985, you notified the parties hereto that NCPA's Commitment modification requests were dismissed.

NCPA's current complaint adds up to a straight-forward request that the Commission interject itself into a contract dispute concerning the City of Healdsburg's nonpayment, in 1982, of amounts due under its wholesale power contract with PGandE -- an agreement that terminated about a year later.

The Commitments provide for the execution of either full or partial requirements power contracts for periods to be specified in the contracts themselves. See License Condition F(6); PGandE letter of May 8, 1985 at 3. The City of Healdsburg was offered the wholesale contract in question in late 1980; after securing certain changes, Healdsburg accepted the contract by unanimous vote of the Healdsburg City Council on May 4, 1981. Healdsburg voiced no complaint about that contract to this Commission or to any other body. The executed contract, in turn, was duly filed with the Federal Energy Regulatory Commission, and

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accepted as just and reasonable. Again, no objection was made.

NCPA can't quarrel with the facts of acceptance, execution and filing. At one point it did imply that full requirements contracts somehow violate the Commitments per se, but apparently abandoned that argument after PGandE cited the Commitment language with NCPA's expurgations resupplied. (PGandE ltr. 9/26/84 at 2-3; PGandE ltr. 5/8/85 at 3).

What we are left with is what we started with. Healdsburg breached its contract through failure to pay for power delivered. PGandE sued. And NCPA's attorneys have been asked to find a way out.

The Commitments are designed to promote agreements, not to disrupt them. Most of NCPA's recent letter is devoted to an exposition of how it thinks the Healdsburg contract should be read. While PGandE vigorously disputes those views, the question for this Commission is not whose position will ultimately prevail, but whether the NRC must involve itself in this contract dispute. PGandE submits that the answer to that question should be a polite, but firm, "No."

If Healdsburg had problems with the contract offered by PGandE, it could have objected. It did not. If Healdsburg had complaints that the contract offered was not consistent with the Commitments, it could have applied to this Commission. It did not. Healdsburg chose instead to accept the agreement and had been receiving benefits under the agreement for a year before the nonpayment incident. None of the above facts are disputed.

If NCPA is right and the contract should be interpreted its way, Healdsburg will get away with its nonpayment and there will be no reason for NCPA to complain of anything.¹ If NCPA is wrong and Healdsburg was a party

¹NCPA argues it has no contract liability because Healdsburg complied and PGandE breached (NCPA ltr. of 9/14/84 at 7, 8); because words mean what NCPA says they mean, a la Mr. Dumpty, (See NCPA Demurrer argument 10/12/84 PGandE ltr. of 5/8/85 at 3, 4); because whatever the contract's words may say, Healdsburg "thought" they meant something else (NCPA ltr. of 6/14/85 at 5) or (running
(Footnote Continued)

to a bona fide contract whose terms required the payment in question, then payment will be made under judgment by the court, FERC, or perhaps both. In neither eventuality will this Commission's licensing authority be implicated in any way.

Try as it might NCPA cannot avoid the fact that the wholesale power contract provided for by license condition F(6) was duly offered, duly accepted, and duly filed with the relevant regulatory authority in accordance with condition F(7)d. With those steps accomplished the arrangement passed into the hands of the conventional legal authorities charged with the enforcement of contracts in general and wholesale power contracts in particular. Indeed, license conditions F(7)d and F(9)a, which NCPA has chosen to "press" in its efforts to involve the NRC (NRC ltr. 5/29/85 at p. 2), confirm that the license conditions were not intended to deny those legal authorities their usual enforcement powers.

NCPA would have the NRC become a universal forum for its members' efforts to avoid obligations accepted under wholesale contracts with PGandE (or presumably, with any other utility having similar license conditions). That's neither good law nor good sense. NCPA's continuing references to suspending or revoking the Diablo Nuclear Power Plant license make it quite clear that an attempt is being made to use such threats to compel PGandE's acquiescence in Healdsburg's contract violation. That's an abuse of the administrative process.

If NCPA's "enforcement" request that the NRC relieve Healdsburg of its contract debt is dismissed -- does anything remain?

NCPA speaks of PGandE's contract with the Western Area Power Administration (WAPA) NCPA ltr. 6/14/85, p.5. The WAPA contract, including the provisions objected to by NCPA, was accepted and filed by the Federal Power Commission well before the Commitments were established. The Justice Department negotiated the Commitments with full awareness of the WAPA contract and those Commitments contain no requirement that the WAPA contract be undone or redone in any way. Diablo License Condition F passim. Years after the contract was signed, NCPA objected to the WAPA contract

(Footnote Continued)
rather counter to all the above) because Healdsburg was "forced" to accept. (NCPA ltr. 6/14/85 at 5).

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at FERC, complaining that it did not provide or require PGandE to provide services that NCPA demanded. Whatever may be decided at FERC, the WAPA contract forms no ground of action here. The agreement is, after all, with WAPA -- not with NCPA. WAPA is no party here.

NCPA suggests that it has differences of opinion with PGandE concerning the filing protocol to be followed under its Interconnection Agreement with PGandE. NCPA ltr. 6/14/85 at 6.² The Interconnection Agreement is signed and the courts exist to enforce it. If NCPA believes its interpretations are correct, it should seek to confirm and enforce its agreements -- not to circumvent them through threats of interference with the orderly licensing of nuclear generating facilities.

Finally, NCPA talks about pending discussions between NCPA, Turlock and PGandE. NCPA ltr. 6/14/85 at 6. No facts are alleged -- just characterizations. This Commission is under no obligation to render advisory opinions with respect to "matters still under discussion" with respect to which NCPA professes to be "hopeful."

It is important that you follow up on your letter of May 29th and now draw this matter to a close. To follow NCPA's requests would be to launch this Commission on a continually expanding program of forum shopping, contract disruption, and litigation with respect to every power contract that NCPA would like to breach, bend or avoid. Once a contract has been duly accepted, executed and filed -- its interpretation and performance should be left to the parties, the agencies charged with approving the contract, and the courts. That is precisely the course of conduct that the Commitments were designed to accommodate and approve.

²"NCPA believes no such filing is necessary under the Interconnection Agreement" Id. pg. 6, fn. 9.

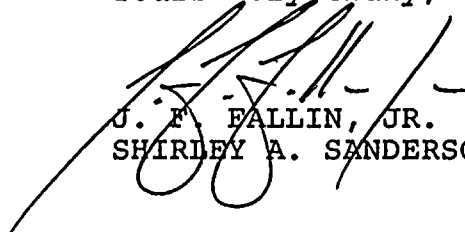
Mr. Harold R. Denton

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PGandE submits that with the Interconnection Agreement an accomplished fact and with NCPA's modification requests dismissed, NCPA's remaining complaint about the parties' relative rights under the former Healdsburg wholesale contract should be dismissed -- without prejudice to any remedy NCPA may wish to pursue before the courts or the Federal Energy Regulatory Commission.

Yours very truly,



J. F. FALLIN, JR.
SHIRLEY A. SANDERSON

JFF/SAS:lsd

cc: Robert C. McDiarmid, Esq.
Benjamin H. Vogler, Esq.
Michael J. Strumwasser,
Deputy Attorney General

