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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
Pacific Gas and Electric Company)	NRC Docket No. P-564-A
(Stanislaus Nuclear Project,)	
Unit No. 1))	
)	

PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION TO COMPEL COMPLIANCE WITH DOCUMENT
PRODUCTION ORDER DATED JUNE 15, 1978

Pacific Gas and Electric Company (hereinafter "PGandE") hereby moves to compel production of documents by the Northern California Power Agency (hereinafter "NCPA") pursuant to the terms of the Board's Order dated June 15, 1978, as more specifically set forth below.

The underlying document request was served by PGandE on April 28, 1978 and requested certain documents from NCPA and its members. On May 30, 1978, NCPA served a motion for protective order, asking the Board to deny the request insofar as it related to files of NCPA's members. On June 15, 1978, the Board denied the motion, saying "The files of its [NCPA's] members are also subject to reasonable search and document production requests."

At its May prehearing conference, the Board heard arguments regarding the differing positions of the parties and requested the parties to attempt to resolve their differences.

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At the time of the prehearing conference, the primary dispute was the extent to which PGandE personnel would be involved in the inspection of or selection from files located in the NCPA member organizations. Unfortunately, while other secondary disputes have been resolved, this primary dispute has not.

It is PGandE's position that its personnel should be used to "green dot" file folders in all central files, excepting central files located in any city attorney's office or the office of NCPA's general counsel. The basis for this position is found in the Stipulation Concerning Production of Documents entered April 25, 1978, a copy of which is attached hereto for convenience. At page 6, the Stipulation provides:

"It is understood that although the particulars of the above-described procedure apply only to PG&E, comparable procedures which are substantively similar will be agreed to for the production of documents from the files of the NCPA, its member cities, (if they become subject to a discovery order by the Board), the Cities of Anaheim and Riverside, and the Department of Water Resources of the State of California. However, before the procedures for the production of documents by intervenors are finalized, PG&E reserves the right to a preliminary inspection of these parties' filing arrangements to determine to what extent the above outlined procedures are adaptable thereto."*

The above-described procedure was that PGandE would produce, for what has come to be described as "green dotting," all documents from the central files of specified departments. The details of this procedure are set forth in section II of the

* Mutually acceptable arrangements have been reached with the Cities of Anaheim and Riverside and the Department of Water Resources.

Stipulation at pages 1-3. PGandE believes that NCPA should be required to comply with the provisions of the Stipulation, which were clearly within the contemplation of the Board when it entered its Order on June 15, 1978. At that time, all parties professed agreement with the Stipulation as a means of defining procedures for production, and the Board was aware of that stipulation. Now NCPA refuses even to permit the "preliminary inspection" which is expressly and specifically provided at page 6.

NCPA has advanced two reasons for its present refusal to comply with the Stipulation. First, it has concluded that the intervenors' use of the green dotting procedure led to the production of large numbers of irrelevant documents. PGandE has said for a long time that intervenors misused the green dotting procedure; PGandE is also confident that it will not make that sort of mistake. The risk, in any event, is presumably smaller and will not have any impact on the progress of discovery in the case because the copy work can either be contracted to a copy service or performed by employees of the various NCPA members who are not directly involved in the litigation.

Second, NCPA believes that the "green dotting process" may be disruptive and may lead to numerous motions. NCPA's concern for disruption is based upon its view of the events which transpired when a different, more extensive sort of procedure was used to inspect documents at NCPA's executive offices. PGandE disagrees with NCPA's version of that episode, which was

not a green dotting procedure anyway. The Stipulation reflects the parties' earlier conclusion that, for departmental central files, a green dotting procedure was the best. Any document production involves some disruption; whatever disruption is involved in green dotting has already been suffered by PGandE, and the benefits of that procedure have been enjoyed by NCPA (and the other parties). NCPA has no equitable basis on which to assert that the procedures to which it previously agreed should be changed unilaterally now that it is NCPA's turn to produce.

PGandE cannot understand NCPA's fear that the use of the green dotting procedure will lead to numerous motions. If PGandE is permitted to examine the file rooms and make the selection, there would appear to be little for PGandE to complain about. If, on the other hand, PGandE is denied any inspection, it will certainly have questions as to whether the mode of selection employed by the various cities was appropriate and sufficiently comprehensive. It is noteworthy that the only motions made by intervenors with respect to their green dotting process related to how Mr. Cleary's legal research assistant group was organized and how they were performing the functions which they were doing outside the observation of intervenors. PGandE believes that the use of the green dotting procedure will eliminate or at least minimize complaints and disputes about the process.

The document production now in question involves production from a dozen different entities. Before commencing

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document discovery against PGandE, intervenors and Staff spent a substantial amount of time ascertaining PGandE's filing system and how it worked. The procedures used have evolved as both sides have acquired additional knowledge during production. The same reasons which compelled intervenors and Staff to examine PGandE's filing system before commencing production now compel PGandE to want to examine NCPA's members' filing systems before commencing production. The same concerns which compelled intervenors to refuse to accept a unilateral selection by PGandE of documents responsive to the request now compel PGandE to refuse to accept NCPA's members' unilateral selection of documents.

This is especially true where the litigation has apparently been handled for NCPA by its Washington counsel, and its Washington counsel has conceded severe staffing problems, and the local city attorneys and other local personnel have no apparent involvement in the litigation. The selection which could be anticipated would either be rushed or made in relative ignorance of the issues in the case. It is essential to PGandE's ability to conduct its discovery that it be permitted to employ substantially the same procedures which intervenors and Staff were permitted to use.

PGandE specifically requests that NCPA permit PGandE's representatives to conduct a preliminary inspection of each of

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NCPA's members filing arrangements,* and then permit PGandE's representatives to "green dot" file folders located in the central files of relevant departments other than law departments. In response to the first set of interrogatories to NCPA, the Cities of Lompoc, Santa Clara, Ukiah, Alameda, Roseville, Healdsburg and the Plumas-Sierra Rural Electric Cooperative all indicated they had central files. The City of Palo Alto indicated it had departmental central files. The Cities of Biggs, Gridley, Lodi and Redding denied that they had central files, although it appeared that all files in those four cities were under the control of one official, typically the city clerk, and thus those four cities' files are probably central files as that term is used in the Stipulation.

PGandE requests that the first preliminary inspection be conducted on or about August 15 (a time frame which counsel for NCPA suggested) at any member designated by NCPA, that that member's files then be "green dotted," and after completion of the green dotting in that member's files, the next preliminary

* The preliminary inspection would permit an assessment of whether certain files could be excluded categorically. This procedure was accomplished in the PGandE production by the use of various file organization materials which were furnished to intervenors in advance of their entering into the Stipulation, and the same function should be served by the preliminary inspection.

inspection be conducted, and so on. This would enable all parties to benefit from whatever experience they gain as they proceed through each of the members of NCPA.

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