UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NOTICE OF MOTION TO QUASH SUBPOENA DUCES TECUM; MEMORANDUM OF LAW IN SUPPORT THEREOF; AFFIDAVIT IN SUPPORT THEREOF

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(Stanislaus Nuclear Project, Unit No. 1)	)	

TO THE CHAIRMAN, ATOMIC SAFETY AND LICENSING BOARD OR, IF HE IS UNAVAILABLE, TO THE COMMISSION:

SOUTHERN CALIFORNIA EDISON COMPANY ("Edison"), not a party to this proceeding, hereby specially appears and moves under the Rules of Practice of the Nuclear Regulatory Commission §2.720(f), to quash the Subpoena Duces Tecum directed to Edison on the grounds that it is unreasonable, oppressive and without proper foundation and on the grounds that it seeks the production of documents which are not relevant to any issue in this proceeding. In the alternative and in the event the said Subpoena is

not quashed in its entirety, Edison moves for an order requiring the State of California Department of Water Resources, the Licensing Board and/or the Commission to reimburse Edison, in advance, for all costs of production of documents requested.

Edison hereby designates its attorneys listed below as those to whom service of papers in connection with this motion should be made.

Dated: December 28, 1978.

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EDISON COMPANY

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By _____
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MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM

Edison, specially appearing, respectfully submits the following Memorandum of Points and Authorities in Support of its Motion to Quash.

I

INTRODUCTION

This Motion to Quash is in response to the service of a Subpoena Duces Tecum, dated August 28, 1978 upon Edison (the "Subpoena"). While the Subpoena is signed by the Chairman of the Atomic Safety and Licensing Board, as will be discussed more fully below, the Subpoena was issued upon the perfunctory request of an Intervenor in this proceeding, the California Department of Water Resources ("DWR"). This Subpoena purportedly arises out of an antitrust review preliminary to the licensing of the Stanislaus Nuclear Project, Unit No. 1, of the Pacific Gas and Electric Company ("PGandE"). Edison, the target of the Subpoena, is not a party to the licensing request or to this antitrust review. This Motion is brought to quash the Subpoena or, in the alternative, to obtain an order for reimbursement for the cost to Edison of complying.

The Subpoena Duces Tecum at issue demands ten different categories of documents. See Exhibit 1. The

categories include, if taken literally, all documents having to do with the relationship between Edison and anyone else in the nation with whom Edison has had contact. There is no time limit associated with the demand; by its literal terms the Subpoena requests all documents which fit any of the ten categories, regardless of their age.

It is impossible to judge from the categories listed which demand would prove to be the most expansive. For purposes of illustration, attention is drawn to category number "(8)":

> "All documents in your possession, custody, or control relating to interconnection or integration of the Southern California Edison system with the system of other electric utilities."

By its terms, request number (8) includes all documents, contracts, memoranda, correspondence, invoices, notes or the like which somehow may be thought of as "relating to" Edison's "interconnection" with any other system, from the founding of Edison (prior to 1900) to the present. Using a variety of plausible meanings for the phrase "relating to" would make virtually every piece of paper at Edison within this production demand.

Moreover, whatever pieces of paper within Edison's system might escape characterization as having

some relation to an "interconnection" would appear to be covered by one of the other expansive requests for documents "relating to":

(1) the California Power Pool

(2) the Pacific Intertie

(3) DWR

(4) actual or "considered" bulk power transactions with the Northwest

(5) the "development" and "use" of nuclear power plants

(6) PGandE

(7) reserves or reliability of Edison's system

(8) integration of Edison with any other system

(9) the benefits or detriments to any utility of "actual, possible, or lack of participation in bulk power services" from anyone or

(10) the possible loss or gain of bulk power service customer (presumably of Edison).

Edison is a large electric utility with system loads not much below those of PGandE. As such, Edison has over the years generated and accumulated vast numbers of documents "relating to" its activities. Whether the Subpoena at issue calls for the production of all of the more

than 100 million pages of documents which Edison has (see Exhibit 3) or requires Edison to look through all of these documents to cull-out those millions which fit into one of DWR's categories, the Subpoena is patently excessive and oppressive.

In 1977 and 1978, in a proceeding before the Federal Energy Regulatory Commission (in which Edison was a party), Edison was required to produce over 100,000 pages of documents thought to be relevant by another party. The cost of compliance was between one and a half and two dollars per page of document produced. This included the cost of searching, discovering and photo-copying and does not include the cost to Edison of the disruption of its operations, which is an inevitable concomitant of such a project. See Exhibit 3.

Edison brings this Motion to Quash because it believes that the expansively drawn and improperly issued Subpoena Duces Tecum at issue is far too sweeping in its scope and imposes a burden upon Edison, which is not even a party to this action, that is far too costly and unreasonable to comport with even minimal statutory and constitutional requirements.

As a bystander to the dispute between the Commission, the Intervenors and PGandE, Edison moves to quash the Subpoena first because the Subpoena was improperly

issued. The statutory power to issue administrative subpoenas is a powerful one; it should not be abused as a means of obtaining for a private party what that party could not obtain on its own. In this case the Subpoena Duces Tecum requests documents which are sought, not by the Nuclear Regulatory Commission or the Licensing Board, but solely by an Intervenor in this case, the DWR. The basis upon which this Subpoena was issued was the statement of DWR that it wanted the issuance; there was no showing (or even an attempt at one) that the documents requested were reasonably necessary for or even relevant to this proceeding.

Second, the scope of the Subpoena and any required compliance with its ambiguous, confusing and overly broad terms, violate the fundamental principles of reasonableness which the Courts have found applicable to such document requests. In analogous cases, the Courts have struck down subpoenas of this nature both on grounds of irrelevancy and burdensomeness and the same result is required now.

Third, if the Subpoena encompassed only relevant material, and it does not, the effort demanded of nonparty Edison to comply would be too burdensome, expensive and onerous to be proper. It is fundamentally unreasonable, a violation of elemental due process and an improper taking of property to impose upon a non-party such extraordinary

costs. Courts in a number of recent cases have struck down or modified administrative subpoenas deemed "too burdensome" to satisfy the requirements of fairness to the parties. When the target of the subpoena is not even a party to the dispute, such considerations are even more compelling.

Fourth, Edison argues in the alternative, that when the burden sought to be imposed upon Edison is as onerous as it is in the present case, if production is required, Edison cannot be required to bear that burden. The costs of complying with such administrative subpoenas must be borne by the government agency (or the party) making the request. Experience has shown the actual cost of producing documents in a situation such as the present one is between one and a half and two dollars per page of document produced. In the event that Edison's Motion to Quash is not granted in its entirety, Edison moves, in the alternative, for an order requiring the Licensing Board, the Commission and/or DWR to compensate Edison in advance for its costs of discovery and production.

II

THE SUBPOENA DUCES TECUM MUST BE QUASHED BECAUSE IT WAS IMPROPERLY ISSUED UNDER THE ENABLING STATUTE.

A. Subpoenas Of The Nuclear Regulatory Commission Or Its Licensing Board May Only Be Issued For The Commission And Only For Purposes Of The Proper Exercise Of Its Statutory Authority.

The power to issue an administrative subpoena is a statutory power, and is limited by the authority granted under the statute. The Subpoena issued in this proceeding was issued for the benefit and at the request of a third party intervenor, DWR, and not for purposes authorized by the statute; therefore it is invalid and must be quashed.

The provision of the Atomic Energy Act of 1954, 42 U.S.C. § 2201(c), cited by DWR as granting to the Commission the right to subpoena evidence, clearly limits the Commission to issuing subpoenas for its own purposes, and not for the purpose of an outside party. The Act authorizes the Commission to:

> "[M]ake such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or

enforcement of this chapter, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place."

[Emphasis added]

42 U.S.C. § 2201(c)

Thus the sole authority under which the Commission (or its subordinate Licensing Board) may issue subpoenas is statutorily restricted by the requirement that such subpoenas can only be issued for purposes of assisting the Commission in its duties and then only in connection with proceedings or hearings before the Commission. There is no statutory authority for issuing a subpoena to obtain information to be used, not by the Commission in pursuit of its duties, but by a third party Intervenor. There is no authority for issuing subpoenas for pre-heaing discovery. Without explicit Congressional authority having been given, an agency does not have the authority to compel such pre-hearing discovery of a non-party. See e.g. Federal Maritime Commission v. Anglo-Canadian Shipping Co. (9th Cir. 1964), 335 F.2d 255.

B. The Subpoena Was Improperly Issued Since The Application On Which It Was Issued Made No Showing Whatsoever Of Its Propriety.

The Subpoena served upon Edison is dated August 28, 1978 and apparently was issued based on the Application of the DWR dated August 24, 1978. See Exhibit 2. By th me Edison's counsel had an opportunity to read this Application and contact counsel for DWR, the Subpoena had already been issued.

The Application of DWR, i.e. the basis and alleged justification for the issuance of this vast command for the production of documents, is four pages in length. In those four pages, DWR recites the ten categories of documents it wants (Exhibit 2, pages 1-4), recites the date, time and place for production (Exhibit 2, page 4) and says that Edison has been provided a "courtesy copy" of the Application. DWR then "requests that the attached subpoena duces tecum issue." DWR does not state or show:

(1) That the documents sought are relevant or material to proceedings in this matter; or

(2) That the Subpoena is reasonable and not oppressive; or

(3) That DWR has need for any of the documents sought in connection with this proceeding; or

(4) That Edison is the only or even the best source for the production of the documents sought; or

(5) That DWR does not already have or have access to the documents sought.

DWR's Application says nothing more than that DWR wants the Subpoena issued. The resulting Subpoena, therefore, is without any foundation whatsoever. Compare: Great Lakes Airlines, Inc. v. Civil Aeronautics Board (9th Cir. 1961), 291 F.2d 354, 359-360.

Court decisions in analogous situations clearly hold that it is the burden of the party seeking the subpoena to make an affirmative showing of a specific kind before a subpoena duces tecum can be enforced. Thus for example in United States v. McCarthy (3d. Cir. 1975), 514 F.2d 368, the Court held that the government must show three factual elements:

> "(1) [T]hat the investigation has a legitimate purpose and that the inquiry may be relevant to that purpose, (2) that the information sought is not already within the government's possession and (3) that the government has followed the procedural steps required by the . . . Code."
>
> United States v. McCarthy, supra, 514 F.2d at 373

Even more recently, the United States Court of Appeals for the Tenth Circuit, citing the Supreme Court in United States v. Powell (1964), 379 U.S. 48, stated that "the investigative powers of [the IRS] are not without limitation." United States v. Coopers & Lybra , (10th Cir. 1977), 550 F.2d 615, 619. The Court went on to say that although the government need not establish "probable cause" for enforcement of a subpoena, as it would in a criminal investigation,

> "[I]t must establish that the investigation is pursuant to and relevant to a legitimate purpose; that the information is not already available; that a determination has been made by the secretary or his delegate that further examination is necessary; and that the other administrative steps required by the Code have been followed."
>
> United States v. Coopers & Lybrand, supra, 550 F.2d at 619

The power of an administrative agency to issue subpoenas is a potent one; the Courts have therefore carefully delineated that power. These decisions have barred the occasional attempts by administrative agencies to abuse broad subpoenas for ulterior purposes. See, e.g. United States v. Friedman (W.D.Pa. 1975), 388 F.Supp. 963, aff'd in part, rev'd in part (3d Cir. 1976), 532 F.2d 928.

In the present case, the Subpoena was issued for documents, not for the Licensing Board (or the Commission) for analysis prior to the licensing of nuclear power production by PGandE, but solely for the benefit of DWR. On the record it is clear that the purpose for which this Subpoena was issued was not within the statutory powers of the Commission, it was issued without any proper foundation and it should not be enforced.

III

THE SUBPOENA DUCES TECUM ISSUED BY THE BOARD ASKS FOR MATERIAL WHICH IS IRRELEVANT AND THEREFORE MUST BE QUASHED.

A. Administrative Subpoenas Which Ask For Irrelevant Materials Cannot Be Enforced.

The general rule is that an administrative subpoena duces tecum which demands material for, but irrelevant to, an investigation by an administrative agency must be quashed. The rule is based on fundamental constitutional principles protecting against the unwarranted intrusion by government agencies. It is a principle embodied, at least to some extent, in the Rules of this Commission. The Commission rules provide that subpoenas to non-parties may only be issued for the production of "evidence" (not just "documents") (10 C.F.R. §2.720(a)). The presiding officer may require a more specific "showing

of general relevance" before issuance (10 C.F.R. §2.720(a)). On motions such as this, a subpoena may be quashed if it calls for material "not relevant." (10 C.F.R. §2.720(f)).

Federal court decisions have reiterated the principle that administrative subpoenas must be quashed if they seek irrelevent materials. The principle is applied even more vigorously when the target of the administrative subpoena is not a party to the investigation. A brief survey of the decisions in the Circuit Courts establishes the rule that so-called "third party subpoenas" will be quashed if the material they seek is irrelevant to the main investigation or if the Subpoena is so broad that much (even though not all) of the material is irrelevant.

Thus for example the United States Court of Appeals for the Tenth Circuit in United States v. Coopers & Lybrand (10th Cir. 1976), 550 F.2d 615, affirmed an order to quash an IRS administrative subpoena on grounds of irrelevance. The subpoena duces tecum had demanded documents held by an accounting firm relating to its audit plan, in order to investigate a taxpayer corporation. The district court placed on the government the burden of showing "some justifiable expectation that the information sought is relevant to the purpose of the inquiry." United States v. Coopers & Lybrand (D. Colo. 1975), 413 F.Supp. 942, 952.

The United States Court of Appeals for the Fourth Circuit in United States v. Theodore (4th Cir. 1973), 479 F.2d 749, again dealing with an IRS administrative subpoena served on a non-party, quashed an attempt to obtain an accounting firm's records on grounds that it was "too broad," and had demanded irrelevant documents. The court stated:

> "The IRS is not to be given unrestricted license to rummage through the office files of an accountant in the hope of perchance finding information."
>
> United States v. Theodore, supra, 479 F.2d at 754

The reference by the Fourth Circuit to the general limitation on government power, which restrains a government agency from "rummaging of the files" of its citizens, is a prohibition which has been recognized for over ninety years as of constitutional basis. Boyd v. United States (1885), 116 U.S. 616, 630; see also Mapp v. Ohio (1961), 367 U.S. 643.

Similarly, the United States Court of Appeals for the Fifth Circuit, in an early case which is frequently cited, similarly struck down a third party subpoena on grounds of irrelevance. In First National Bank of Mobile v. United States (5th Cir. 1957), 160 F.2d 532, the IRS sought all records of all accounts of the non-party bank.

The court sharply rejected such a request, holding that an administrative subpoena would not be enforced:

> "unless such records and evidence are relevant to, and bear upon, the matter being investigated."
>
> First National Bank of Mobile v. United States, supra, 160 F.2d at 533

See also United States v. Malnik (5th Cir. 1974), 489 F.2d 682, 686 n. 4 ("Enforcement of an unclear and overly broad summons would violate the Fourth Amendment's proscription of unreasonable searches and seizures"). In Cook v. United States (D. Ore. 1946), 69 F.Supp. 445, the District Court refused to enforce an administrative subpoena when, as here, the subpoena was "indefinite as to time."

The United States Court of Appeals for the Third Circuit has struck down provisions of an administrative subpoena seeking bank records of a non-party because the documents requested were "too indefinite," a ground closely related to the limitation of "irrelevance." The court in United States v. Dauphine Trust Co. (3d Cir. 1967), 385 F.2d 129, 131, held: "The government is not entitled to go on a fishing expedition through appellant's records."

As the Second Circuit stated in United States v. Harrington (2d Cir. 1968), 388 F.2d 520:

"[J]udicial protection against the sweeping or irrelevant order is particularly appropriate in matters where the demand for records is directed not to the taxpayer but to a third-party who may have had some dealing with the person under investigation."

United States v. Harrington, supra,
388 F.2d at 523

Finally, as recently stated by the United States Supreme Court:

"It is now well settled that, when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome."

See v. City of Seattle (1967),
387 U.S. 541, 544

In the few reported cases where a subpoena had been sought not by the agency itself but by a party to an administrative proceeding, the Courts have stressed the need to take a critical approach to such subpoenas. In MacRae v. Riddle (S.D.Cal. 1964), 234 F.Supp. 105, for instance, the Court upheld a decision by the tax court to quash a subpoena "upon the objection made by the party

served that the subpoena reaches documents which are not necessary or appropriate items of discovery." MacRae v. Riddle, supra, 234 F.Supp. at 106. See also: Norton v. Riddle (S.D.Cal 1964), 234 F.Supp. 107, 108.

As applied to an investigation of a public utility under the 1970 amendments to the Atomic Energy Act of 1954, 42 U.S.C. § 2135 (as amended), which require the Commission to determine whether the applicant's activities under a license would "create or maintain a situation inconsistent with the antitrust laws," the standard of relevance is whether the information requested is relevant to the relationship between the nuclear facility being considered for licensing and the applicant's competitive practices.

The Commission has recognized this focus. As the Licensing Board stated in Alabama Power Company, Farley Nuclear Unit Nos. 1 and 2 (1977), 5 N.R.C. 804, 843, if the activities relating to the nuclear facility have no "substantial" connection to any competitive practices, there can be no "situation inconsistent with the antitrust laws" and therefore an investigation into those activities would not be relevant. It is this standard of relevance which must be applied in the present matter.

B. The Subpoena In The Present Case Does Not Seek Only Documents Which Are Relevant To The Subject Of The Commission's Inquiry--The Competitive Practices Of PGandE--And Therefore Must Be Quashed.

There is no "substantial" connection between the vast bulk of the documents demanded by the Subpoena and the real issue in this litigation, the competitive practices of PGandE affected by a license of the Stanislaus facility. The vast majority of the documents included in the Subpoena (to the extent they could be identified from the vague categories) would deal with Edison activities, not activities of PGandE. Category (7), for instance, seeks all documents "relating to" Edison's reserves and system reliability.

Even when PGandE is mentioned in the Subpoena categories it is in a context so expansive as to sweep in vast numbers of paper, relevant or not. Category (6) asks for all documents "relating to" PGandE, excluding only those documents filed with the State or Federal Regulatory Agencies. Thus if PGandE had wanted to hire a secretary or lineman who had previously worked for Edison, and had written Edison about that person's skills, such letter and any letter response would be covered by category (6) and

production required. Category (6) would call for production of all address or phone number index cards for PGandE personnel used by any Edison personnel.

Examples of wholly irrelevant material covered by each of the ten categories could be as easily listed. Of the documents which could conceivably be relevant, the bulk will undoubtedly have already been made available to DWR by PGandE.* What is evident beyond dispute is that the present Subpoena is so broad as to include vast amounts of irrelevant material and the Subpoena amounts to no more than a "fishing license" by which DWR seeks to "rummage through" Edison's files. It is patently not "sufficiently limited in scope, relevant in purpose, [or] specific in directive" to pass muster under any applicable standard.

IV

THE SUBPOENA MUST BE QUASHED BECAUSE COMPLIANCE WITH ITS EXPANSIVE TERMS WOULD BE UNCONSTITUTIONALLY BURDENSOME.

A. An Administrative Subpoena Which Imposes Too Great A Burden On A Third Party Must Be Quashed.

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* Edison understands that PGandE is producing more than one million pages of documents to DWR in this proceeding.

Under the Fourth and Fifth Amendments, a government agency may not impose, through subpoena, a burden of compliance which is unreasonable or which is only tenuously connected with the proper scope of the investigation. See, e.g., See v. City of Seattle, supra. It is apparent that the tests of irrelevance and burdensomeness are interconnected. The less relevant the documents requested, the more unreasonable is any burden resulting from compliance. These considerations are to be most closely scrutinized when non-parties are involved.

The constitutional principle noted above was first established in Hale v. Henkel (1906), 201 U.S. 61. The proscription of burdensomeness enunciated there is particularly applicable to the facts in this case. In Hale v. Henkel, the United States Supreme Court stated:

> "[A]n order for the production of books and papers may constitute an unreasonable search and seizure within the 4th Amendment. . . . Applying the test of reasonableness to the present case, we think the subpoena duces tecum is far too sweeping in its terms to be regarded as reasonable. It does not require the production of a single contract, or of contracts with a particular corporation, or a limited number of documents, but all understandings, contracts, or correspondence

between the MacAndrews & Forbes Company, and no less than six different companies, as well as all reports made and accounts rendered by such companies from the date of the organization of the MacAndrews & Forbes Company, as well as all letters received by that company since its organization from more than a dozen different states in the Union.

"If the writ had required the production of all the books, papers, and documents found in the office of the MacAndrews & Forbes Company, it would scarcely be more universal in its operation or more completely put a stop to the business of that company. Indeed, it is difficult to say how its business could be carried on after it had been denuded of this mass of material, which is not shown to be necessary in the prosecution of this case, and is clearly in violation of the general principle of law with regard to the particularity required in the description of documents necessary to a search warrant or subpoena. Doubtless many, if not all of these documents may ultimately be required, but some necessity should be

shown, either from an examination of the witnesses orally, or from the known transactions of these companies with the other companies implicated, or some evidence of their materiality produced, to justify an order for the production of such a mass of papers."

Hale v. Henkel, supra, 201 U.S. at 76

The Fourth and Fifth Amendments demand that a subpoena be sufficiently specific and limited in scope to prevent compliance from being unreasonably burdensome and oppressive:

"The gist of the protection is the requirement, expressed in terms, that the disclosure sought shall not be unreasonable . . . [T]he requirement of reasonableness . . . comes down to a specification of the documents to be produced adequate but not excessive for the purposes of the relevant inquiry."

Oklahoma Press Publishing Company v. Walling (1945), 327 U.S. 186, 208

Congress has not granted administrative agencies the power to enforce their own subpoenas; the legitimacy of agency exercise of the subpoena power is dependent on

judicial supervision of that power. See, e.g., United States v. Morton Salt Co. (1949), 338 U.S. 632, 641.

The federal courts have frequently exercised their supervisory power to limit or modify enforcement of burdensome requests of administrative agencies. As the court stated in FCC v. Cohn (S.D.N.Y. 1957), 154 F.Supp. 899:

> "Subpoenas of an administrative agency, though validly issued, need not be enforced precisely according to their terms or without modification. Whenever it is made to appear that a subpoena is so broadly drawn as to be oppressive or unreasonable, it is the duty of the court to prevent abuse of its process and to place such limitations upon the subpoena as is just and right under all circumstances."
>
> FCC v. Cohn, supra, 154 F.Supp. at 911-912

In Adams v. FTC (8th Cir. 1961), 296 F.2d 861, the United States Court of Appeals for the Eighth Circuit ruled that the subpoena in question was generally enforceable but limited some of its specifications to matters within a five year period. In so ruling, the court affirmed the limit on burdensome demands:

"Initially the administrative agency must exercise its discretion in determining what information it will require in making the investigation, but when the jurisdiction of the court is invoked in an enforcement proceeding, it must be judicially determined whether the agency abused its discretion; in other words, the court must determine whether the subpoena power has been confined to the rudimentary principles of justice."

Adams v. FTC, supra, 296 F.2d at 866

See also, e.g., Goodyear Tire & Rubber v. NLRB (6th Cir. 1950), 122 F.2d 450; Hunt Foods and Industries v. FTC (9th Cir. 1961), 286 F.2d 803.

B. The Subpoena Issued Must Be Quashed Because Its Demands Are Unconstitutionally Burdensome.

In this case, many millions of documents would be required to be produced and hundreds of man-hours required if Edison must comply with the administrative subpoena as it now stands. See Exhibit 3.

The scope of the Subpoena here is greatly broader than that considered in Application of Harry Alexander (S.D.N.Y. 1949), 8 F.R.D. 559, 560, where the Court, in quashing the subpoena, stated in part:

"'It is sworn to and not contradicted that one of the thirty-five applicants has 9,600

> active contracts and accounts for maintenance alone and that just in its maintenance business it experiences a turnover of 1,000 contracts and accounts per year. The records of this department alone, exclusive of correspondence would require a minimum of fifteen cabinets of four drawers each.' This is an inconsiderable part of the intended product of the Government's dragnet. The subpoenas express a studied attempt to include what is incorporated in the imaginative concept of every shred of paper in a contractor's office and to avoid the possible exclusion of anything there."

In absolute terms, the production demanded by the Subpoena poses an extraordinary burden. There is no time limit placed on the date of documents required and therefore, in the words of the Supreme Court in Hale v. Henkel, supra, 201 U.S. 61, 76, all documents "from the date of organization" of Edison literally are required. Since many of the documents involved will be working documents, "it is difficult to say how [Edison's] business could be carried on" if Edison is required to produce all of the documents literally covered by the Subpoena. (Id, 201 U.S. 61, 77.)

As the Licensing Board is aware, some efforts were made in discussions between Edison and DWR to work out an accommodation on this production request. That effort failed. Of note here is that even after making changes in the scope of document catagories (which DWR apparently thought were significant narrowings), DWR acknowledged that it would take Edison more than one and one-half person-years of time and more than a year to collect documents for production. See Exhibit 4. The facts clearly demonstrate that the commission, the Licensing Board and DWR can get along in this proceeding without imposing such enormous burdens on non-party Edison and that the burden of complying with the Subpoena cannot constitutionally be imposed upon Edison.

V

IF THE SUBPOENA IS NOT QUASHED, THE SUBSTANTIAL COST OF PRODUCING THE DOCUMENTS REQUESTED UNDER THE SUBPOENA MUST BE ADVANCED TO EDISON.

In the event the Subpoena is not quashed in its entirety, Edison submits that it must be granted compensation for all of the costs that it would incur in complying with the Subpoena. The burden of complying with the Licensing Board's (or DWR's) demand for documents is certain to be extraordinarily high. See Exhibit 3. As already noted, the Courts have regularly held that such a

burden should not be borne by a non-party. Instead, the government agency which issues the administrative subpoena in its name becomes liable for the costs involved. In the event that the Subpoena or any part of it is enforced, the Licensing Board, the Commission or DWR must be required to advance to Edison its step by step costs of document production.

Although there are no cases yet decided considering the issue of reimbursement for compliance with a subpoena duces tecum issued by the Nuclear Regulatory Commission, of which Edison is aware, federal courts which have analyzed the issue in the context of administrative subpoenas issued by other administrative agencies have regularly required compensation to non-parties. These cases hold that when the cost of producing documents pursuant to such a demand constitutes an "extraordinary cost" of doing business to a non-party, that cost is reimbursable by the issuing agency. The issue, as analyzed in United States v. Farmers & Merchants Bank (C.D.Cal. 1975), 397 F.Supp. 418, 419 is:

> "What financial burden is reasonable to require a third party to bear in producing its records for the purpose of aiding the government in investigating someone else?"

The answer found in the Farmers & Merchants Bank case, as the answer in the present litigation, is:

"[I]t would be unreasonable to expect a [non]party such as respondent to bear anything other than nominal cost in complying with the government summons.

* * *

"That situation is quite different from our case [i.e. costs incurred in regulatory compliance by banks] even though the government would label the cost of complying with a summons as a 'cost of doing business.' This 'cost' is not predictably part of the banking business, does not fall upon all equally, and was not specifically evaluated by the legislature and imposed by it upon all those who do a banking business. Although the statute demands compliance with legitimate summonses, it is silent on the issue of reimbursement. Given that silence, and the dictates of the Due Process Clause, this court feels that it would be unreasonable to expect a party such as respondent to bear anything other than nominal costs in complying with a government summons. The duties of a citizen to this government, see United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), do not

run so far as absorbing a $2500 expense in aid of a government investigation of a third party."

United States v. Farmers & Merchants Bank, supra, 397 F.Supp. at 419, 420-421

Perhaps in an effort to maintain consistency, some courts have analogized the reimbursement requirement to the same requirement for subpoenas issued under Federal Rule of Civil Procedure Rule 45(b). Rule 45(b) provides that in response to a motion to quash a subpoena duces tecum in an ordinary civil action, a court may condition denial of the motion upon payment "of the reasonable costs of producing the books, papers, documents, or tangible things." Thus the United States Court of Appeals for the Third Circuit has stated:

"Even if not literally applicable, Rule 45(b), Fed.R.Civ.P., serves as significant precedent . . . disclosing a broad congressional judgment with respect to fairness in subpoena enforcement proceedings. Using Rule 45(b) as a convenient analogy, the court can modify the [subpoena] if it is unreasonable or oppressive in scope, and it can condition a denial of enforcement . . . on the reimbursement by the government

of the reasonable cost of producing the books, papers or records requested." [Footnote omitted]

United States v. Friedman (3d Cir. 1976), 532 F.2d 928, 937

Although the Third Circuit in the Friedman case did not require reimbursement to the non-party bank for its costs in complying with an IRS summons, it held that the district court on a case by case basis:

"[M]ust make an individualized determination that the cost involved in complying with the summons in question exceeds that which the respondent may reasonably be expected to bear as a cost of doing business."

United States v. Friedman, supra, 532 F.2d at 937

Finally, in SEC v. Arthur Young & Co. (D.C. Cir. 1978), CCH Fed. Sec.L.Rptr. ¶ 96,502 at 93,947, the court premised its finding in favor of reimbursement on the fact that the target of an SEC document subpoena, an accounting firm, was not the primary subject of the investigation and remanded the case:

"to afford appellant [accounting firm] the opportunity to show that the actual aggregate expense of compliance with the Commission's subpoena will be unreasonable

and to seek prepayment or reimbursement accordingly."

In the most recent ruling in SEC v. Arthur Young & Co., the Court of Appeals for the District of Columbia Circuit ordered reimbursement to be on a step-by-step basis, concurrently with document production, to insure that a non-party possessing subpoenaed material will not for any inordinate period be out of pocket more than a reasonable amount. SEC v. Arthur Young & Co. (D.C. Cir. 1978), BNA Sec.Reg.L.Rptr. (September 27, 1978), No. 471 at A-23.

When a non-party to a dispute between the government and another is the target of an administrative subpoena, Courts readily find that the expense of complying is an "extraordinary cost of doing business" and therefore order the government to reimburse the target of the demand. This will be done even when, in absolute terms, the cost may not be overwhelming. For example, in United States v. Farmers & Merchants Bank, supra, 387 F.Supp. at 421, Judge Ferguson ordered the government to reimburse a bank for its cost of complying with a subpoena. The cost involved was $2,545.28, a relatively insignificant sum when compared to the costs that Edison would incur to comply with the Subpoena here. In United States v. Davey (2d Cir. 1970), 426 F.2d 842, cert. den. (1971), 400 U.S. 868, the United States Court of Appeals for the Second Circuit required the government to pay "its reasonable

share of the costs of retrieval" of even smaller amounts to a non-party credit data firm which was the target of an administrative subpoena.

While some courts have refused to award costs to parties to an investigation, when non-parties are the target of the subpoena and when the costs of complying with that subpoena are so extraordinary, reimbursement is required.

One further argument in favor of reimbursement which has been noted by the Courts is worth mention here. The argument has been made that reimbursement of costs will create an incentive for the requesting party to evaluate its document request in terms of cost-effectiveness. If the requesting party does not require with the same priority all of the documents it would subpoena, then by compelling the payment of costs, the requesting party will have an incentive to pare down its requests to those documents it really needs. This incentive principle was recognized, at least indirectly, in the order of the appellate court in SEC v. Arthur Young & Co., supra, CCH Fed.Sec.L.Rep. ¶ 96,502 at 93,945. The incentive was directly advocated by Judge Teitelbaum in United States v. Friedman, supra, 388 F.Supp. 963, 970:

> "I feel that the best means to insure compliance with each of the three elements set forth above [aimed at reducing the scope

of a third-party subpoena] is to obligate the IRS to pay the bank the actual costs of searching their records. * * * The only means available for maintaining both a minimum of cost and the confidentiality which such records deserve in the normal instance is to obligate the IRS to pay to the bank the actual cost of searching for such records that they wish to have.

"My reasoning is obvious. Faced with the obligation to pay the cost of such a search, the IRS will impose upon itself those limitations which will insure that the records sought do exist and are in possession of the third parties upon whom the summonses are issued, that the records do have a bearing on the taxpayer's income tax liability, and that the IRS has exhausted all other and less costly alternatives to obtain the same documents.

"If the IRS follows these self-imposed limitations we can be assured that in the future that the summonses will not be overly broad and will be confined to only relevant material."

If Edison is to produce documents under the Subpoena, it must be reimbursed, in advance, for all of its costs of production.

VI

CONCLUSION

For all the reasons set forth above, non-party SOUTHERN CALIFORNIA EDISON COMPANY asks that the Subpoena Duces Tecum issued in the name of the Atomic Safety and Licensing Board directed to Edison be quashed in its entirety or, if not so quashed, that provision be assured to advance Edison all of its costs of compliance.

DATED: December 28, 1978.

DAVID N. BARRY, III
THOMAS E. TABER
2244 Walnut Grove Avenue
Rosemead, California 91770

IRWIN F. WOODLAND
ARTHUR L. SHERWOOD
ROBERT A. RIZZI
GIBSON, DUNN & CRUTCHER
515 South Flower Street
Los Angeles, California 90071

By _____
Arthur L. Sherwood

Attorneys for SOUTHERN
CALIFORNIA EDISON COMPANY

COPY

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket No. P-564-A
PACIFIC GAS AND ELECTRIC COMPANY	)	SUBPOENA DUCES TECUM
(Stanislaus Nuclear Project, Unit No. 1)	)	

TO THE CUSTODIAN OF RECORDS OF SOUTHERN CALIFORNIA EDISON COMPANY:

YOU ARE HEREBY COMMANDED to appear before a duly qualified notary public at 10:00 a.m. on October 4, 1978, 1978, at Room 500, 3580 Wilshire Boulevard, Los Angeles, California, then and there to testify.

YOU ARE HEREBY FURTHER COMMANDED to bring with you and produce at said time and place the following:

(1) All documents in your possession, custody, or control relating to the California Power Pool;

(2) All documents in your possession, custody, or control relating to the Pacific Northwest-Pacific Southwest Intertie, excluding routine operating documents;

(3) All documents in your possession, custody, or control relating to the Department of Water Resources, the California State Water Project, or any contract to which Southern California Edison

and the Department of Water Resources are parties;

(4) All documents in your possession, custody, or control relating to actual, attempted, planned, or considered bulk power services transactions between electric utilities in the Pacific Northwest and electric utilities in California, including but not limited to all documents relating to the Seven Party Agreement;

(5) All documents in your possession, custody, or control relating to the development and use of nuclear power plant projects generally, or to the Stanislaus, San Joaquin, Sundesert, or Diablo Canyon projects in particular (excluding documents that relate solely to health, safety, environmental matters (but not excluding need for power), reactor design, and reactor construction), including but not limited to all documents relating to participation of Southern California Edison or any other electric utility in said projects, configuration and use of the transmission systems of said projects, or contemplated use of power from nuclear power plants;

(6) All documents in your possession, custody, or control relating to Pacific Gas and Electric Company, excluding copies of any documents on file with the Federal Energy Regulatory Commission, its predecessor commission, or the California Public Utilities Commission;

(7) All documents in your possession, custody, or control relating to reserve requirements or reliability of the Southern California Edison system;

(8) All documents in your possession, custody, or control relating to interconnection or integration of the Southern California Edison system with the system of other electric utilities;

(9) All documents in your possession, custody, or control relating to the benefits or detriments to Southern California Edison, Pacific Gas and Electric Company, or any other electric utility of actual, possible, or lack of participation in bulk power services transactions with others; and

(10) All documents in your possession, custody, or control relating to the possible loss or gain of bulk power services customers.

For purposes of the subpoena, "document" means anything that would be a "writing," "recording," or "photograph" under the Federal Rules of Evidence. And "bulk power services" means generation; bulk power transmission (50 kv and above transmission, and subtransmission necessary for interconnections of the bulk power transmission system with other electric utilities); bulk power transmission services (meaning wheeling, provision of transmission capacity, and sale or other provision of interests in transmission facilities); coordinated planning

and development; interconnections; coordination of reserves; coordinated operation, including coordinated maintenance, emergency capacity or energy exchanges, and generation or transmission dispatch; economy interchange; other nonretail power transactions between or among electric utilities.

IN LIEU OF ATTENDANCE at the time and place indicated above, you may make other arrangements with counsel for the State of California Department of Water Resources (who can be reached at (213) 736-2064), upon whose application this subpoena duces tecum has issued.

YOU ARE HEREBY ADVISED that disobediance of this subpoena duces tecum may subject you to the remedies provided by law.

YOU ARE HEREBY FURTHER ADVISED that section 2.720(f) of the Rules of Practice of the Nuclear Regulatory Commission (10 C.F.R. § 2.720(f)) provides as follows:

> "On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavail[illegible], the Commission may (1) quash or modify the subpoena if it is

unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms."

DATED: August 28, 1978.

BY THE ATOMIC SAFETY
AND LICENSING BOARD

Marshall E. Miller

Marshall E. Miller
Chairman

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket No. P-564-A
PACIFIC GAS AND ELECTRIC COMPANY	)	APPLICATION FOR ISSUANCE OF SUBPOENA FOR PRODUCTION OF EVIDENCE
(Stanislaus Nuclear Project, Unit No. 1)	)	

The State of California Department of Water Resources, pursuant to 42 U.S.C. section 2201(c) and 10 C.F.R. section 2.720, hereby applies to the Atomic Safety and Licensing Board for issuance of a subpoena duces tecum, directed to the Custodian of Records, Southern California Edison Company, 2244 Walnut Avenue, Rosemead, California 91770, requiring the production of the following evidence:

(1) All documents in his or her possession, custody, or control relating to the California Power Pool;

(2) All documents in his or her possession, custody, or control relating to the Pacific Northwest-Pacific Southwest Intertie, excluding routine operating documents;

(3) All documents in his or her possession, custody, or control relating to the Department of Water Resources, the California State Water Project, or any contract to which Southern California Edison and the Department of Water Resources are parties;

(4) All documents in his or her possession, custody, or control relating to actual, attempted, planned, or considered bulk power services transactions between electric utilities in the Pacific Northwest and electric utilities in California, including but not limited to all documents relating to the Seven Party Agreement;

(5) All documents in his or her possession, custody, or control relating to the development and use of nuclear power plant projects generally, or to the Stanislaus, San Joaquin, Sundesert, or Diablo Canyon projects in particular (excluding documents that relate solely to health, safety, environmental matters (but not excluding need for power), reactor design, and reactor construction), including but not limited to all documents relating to participation of Southern California Edison or any other electric utility in said projects, configuration and use of the transmission systems of said projects, or contemplated use of power from nuclear power plants;

(6) All documents in his or her possession, custody, or control relating to Pacific Gas and Electric Company, excluding copies of any documents on file with the Federal Energy Regulatory Commission, its predecessor commission, or the California Public Utilities Commission;

(7) All documents in his or her possession, custody, or control relating to reserve requirements or reliability of the Southern California Edison system;

(8) All documents in his or her possession, custody, or control relating to interconnection or integration of the Southern California Edison system with the system of other electric utilities;

(9) All documents in his or her possession, custody, or control relating to the benefits or detriments to Southern California Edison, Pacific Gas and Electric Company, or any other electric utility of actual, possible, or lack of participation in bulk power services transactions with others; and

(10) All documents in his or her possession, custody, or control relating to the possible loss or gain of bulk power services customers.

For purposes of the subpoena, "document" means anything that would be a "writing," "recording," or "photograph" under the Federal Rules of Evidence. And "bulk power services" means generation; bulk power transmission (50 kv and above transmission, and subtransmission necessary for interconnections of the bulk power transmission system with other electric utilities); bulk power transmission services (meaning wheeling, provision of transmission capacity, and sale or other provision

of interests in transmission facilities); coordinated planning and development; interconnections; coordination of reserves; coordinated operation, including coordinated maintenance, emergency capacity or energy exchanges, and generation or transmission dispatch; economy interchange; other nonretail power transactions between or among electric utilities.

DWR requests that the subpoena direct attendance and production on the thirtieth day after its issuance at 10:00 a.m. at the Office of the Attorney General, room 500, 3580 Wilshire Blvd., Los Angeles, California, or at such other time and place as may be agreed to by counsel for DWR.

In addition to normal service on other parties in this case, DWR has provided a courtesy copy of this filing to counsel for Southern California Edison Company.

DWR respectfully requests that the attached subpoena duces tecum issue.

DATED: This 24th day of August, 1978.

EVELLE J. YOUNGER, Attorney General
of the State of California
WARREN J. ABBOTT,
R. H. CONNETT,
Assistant Attorneys General
H. CHESTER HORN, JR.,
MICHAEL J. STRUMWASSER,
Deputy Attorneys General

By _____
MICHAEL J. STRUMWASSER
Deputy Attorney General

Attorneys for State of California
Department of Water Resources

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	Docket No. P-564-A
PACIFIC GAS AND ELECTRIC COMPANY	)	SUBPOENA DUCES TECUM
(Stanislaus Nuclear Project, Unit No. 1)	)	

TO THE CUSTODIAN OF RECORDS OF SOUTHERN CALIFORNIA EDISON COMPANY:

YOU ARE HEREBY COMMANDED to appear before a duly qualified notary public at 10:00 a.m. on _____, 1978, at Room 500, 3580 Wilshire Boulevard, Los Angeles, California, then and there to testify.

YOU ARE HEREBY FURTHER COMMANDED to bring with you and produce at said time and place the following:

(1) All documents in your possession, custody, or control relating to the California Power Pool;

(2) All documents in your possession, custody, or control relating to the Pacific Northwest-Pacific Southwest Intertie, excluding routine operating documents;

(3) All documents in your possession, custody, or control relating to the Department of Water Resources, the California State Water Project, or any contract to which Southern California Edison

and the Department of Water Resources are parties;

(4) All documents in your possession, custody, or control relating to actual, attempted, planned, or considered bulk power services transactions between electric utilities in the Pacific Northwest and electric utilities in California, including but not limited to all documents relating to the Seven Party Agreement;

(5) All documents in your possession, custody, or control relating to the development and use of nuclear power plant projects generally, or to the Stanislaus, San Joaquin, Sundesert, or Diablo Canyon projects in particular (excluding documents that relate solely to health, safety, environmental matters (but not excluding need for power), reactor design, and reactor construction), including but not limited to all documents relating to participation of Southern California Edison or any other electric utility in said projects, configuration and use of the transmission systems of said projects, or contemplated use of power from nuclear power plants;

(6) All documents in your possession, custody, or control relating to Pacific Gas and Electric Company, excluding copies of any documents on file with the Federal Energy Regulatory Commission, its predecessor commission, or the California Public Utilities Commission;

(7) All documents in your possession, custody, or control relating to reserve requirements or reliability of the Southern California Edison system;

(8) All documents in your possession, custody, or control relating to interconnection or integration of the Southern California Edison system with the system of other electric utilities;

(9) All documents in your possession, custody, or control relating to the benefits or detriments to Southern California Edison, Pacific Gas and Electric Company, or any other electric utility of actual, possible, or lack of participation in bulk power services transactions with others; and

(10) All documents in your possession, custody, or control relating to the possible loss or gain of bulk power services customers.

For purposes of the subpoena, "document" means anything that would be a "writing," "recording," or "photograph" under the Federal Rules of Evidence. And "bulk power services" means generation; bulk power transmission (50 kv and above transmission, and subtransmission necessary for interconnections of the bulk power transmission system with other electric utilities); bulk power transmission services (meaning wheeling, provision of transmission capacity, and sale or other provision of interests in transmission facilities); coordinated planning

and development; interconnections; coordination of reserves; coordinated operation, including coordinated maintenance, emergency capacity or energy exchanges, and generation or transmission dispatch; economy interchange; other nonretail power transactions between or among electric utilities.

IN LIEU OF ATTENDANCE at the time and place indicated above, you may make other arrangements with counsel for the State of California Department of Water Resources (who can be reached at (213) 736-2064), upon whose application this subpoena duces tecum has issued.

YOU ARE HEREBY ADVISED that disobediance of this subpoena duces tecum may subject you to the remedies provided by law.

YOU ARE HEREBY FURTHER ADVISED that section 2.720(f) of the Rules of Practice of the Nuclear Regulatory Commission (10 C.F.R. § 2.720(f)) provides as follows:

> "On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is

unreasonable or requires evidence not relevant to any matter in issue, or 2) condition denial of the motion on just and reasonable terms."

DATED: _____.

BY THE ATOMIC SAFETY
AND LICENSING BOARD

_____
Marshall E. Miller
Chairman

CERTIFICATE OF SERVICE

I hereby certify that copies of the Application for Issuance of Subpoena for Production of Evidence and Subpoena Duces Tecum and this certificate were served upon each of the following by deposit in the United States mail, first class postage prepaid, this 24th day of August 1978.

Honorable Marshall E. Miller, Esq.
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Honorable Elizabeth S. Bowers, Esq.
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Washington, D.C. 20555

Honorable Edward Luton, Esq.
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Washington, D.C. 20037

MICHAEL J. STRUMWASSER
Deputy Attorney General

AFFIDAVIT OF LOWELL JOHN DOSCH IN SUPPORT OF MOTION TO QUASH

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

LOWELL JOHN DOSCH, being first duly sworn, deposes and states as follows:

1. I am an attorney at law with the Southern California Edison Company ("Edison"). I have been an attorney on a full-time basis with Edison since July 18, 1977. In addition, I was employed as an attorney part-time by Edison from August 1972 through January 1974 and for a three-month period from September 7, 1971 through December 20, 1971, as a legal researcher. My current duties include the handling of discovery documentation for Edison in certain administrative and court proceedings, including Dockets E-7796 and E-7777 (Phase II) presently pending before the Federal Energy Regulatory Commission (the "FERC Proceedings").

2. In connection with a document discovery request directed to Edison in the FERC Proceedings, I have become thoroughly familiar with the document population existing at Edison. By way of a brief summary, each of the approximately 50 Departments and Divisions at Edison maintains its own files and each of Edison's executive officers (and many of its other personnel) maintain their own files. There is not in existence a standardized or centralized filing system. Documents which are directed to personnel between Departments may appear in any number of Department's files. Some documents are occasionally transferred to storage facilities away

from the General Office in Rosemead. Other documents may be found in the files of one or more than 80 outlying Edison facilities (i.e., power plant sites, regional or district offices, rented space, etc.). In order to respond to virtually any comprehensive document request, each and every location within the entire Edison system must be investigated to determine whether or not relevant documents are present. I would estimate that within the Edison system there are more than 100 million pages of documentation contained in thousands of files, storage boxes, microfilm, etc. Additionally, Edison has in excess of 13,000 employees, who have their individual working files which contain an unknown quantity of documentation.

3. Upon reviewing the Subpoena Duces Tecum in Docket No. P-564-A before the Atomic Safety and Licensing Board and the Nuclear Regulatory Commission dated August 28, 1978 (the "Subpoena"), it is evident that severe problems and burdens would exist in any compliance with that Subpoena, including the following:

(a) There is no date or dates given for the various requests, therefore, the documents requested would, in theory, go back as early as the date of the origination of the earliest component of Edison, i.e., prior to 1900. Any such search would require investigation into files which would be so time-consuming and so expensive as to become a burden involving hundreds of man years of work.

(b) The various requests are broad-based in that they refer to all documents which relate to broad subject matters. Again, each of the ten categories of the Subpoena would require extensive searches of massive files in may locations and which would require hundreds of man years of time. In order to comply with these requests, it would be necessary to look at each file and each piece of paper in each file of all Edison's Departments, Divisions and offices. The physical review of each piece of paper represents a task of enormous magnitude.

(c) Several of the Subpoena categories seek any and all documents relating to a specific entity or project. For example, category (3) seeks all documents relating to the Department of Water Resources, category (5) seeks all documents relating to nuclear power plants generally and category (6) seeks all documents relating to PG&E. There is no criteria to segregate relevant from irrelevant documentation. Thus, such extensive requests would call for the production of documentation of a magnitude that is so extensive that in order to comply, again, hundreds of man years would be required.

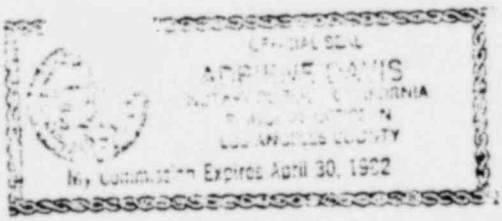
(d) The search for and production of documents entails great invonvenience to Edison operating personnel and Edison operations. Any wide scale search or production, such as that contemplated by the Subpoena, would cause very substantial interference with the duties and activities of each person from whom files are taken or used and would result in the loss of working files of Edison during any such search and production.

4. In the FERC Proceedings in excess of 100,000 pages of documents were produced by Edison. This process caused great disruption in many Edison operations. In terms of the cost to Edison of search and production, the total was between one and a half to two dollars per page produced and this cost does not account for the cost or loss to Edison (and its rate payers) of the disruption incurred. If production were required under the Subpoena here, I would estimate that the cost per page would be about the same as was incurred in the FERC Proceeding and that Edison would have millions of documents "relating to" one or more of the Subpoena categories.

LOWELL JOHN DOSCH

SUBSCRIBED AND SWORN to
before me this 28TH day
of December 1978.

Adriene Davis
Notary Public



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October 31, 1978

Arthur L. Sherwood, Esq.
Gibson, Dunn & Crutcher
515 S. Flower Street
Los Angeles, CA 90071

Re: Pacific Gas and Electric Co.
(Stanislaus Nuclear Project, Unit No. 1)
U. S. Nuclear Regulatory Commission
Docket No. P-564-A

Dear Art:

This letter is intended to summarize our discussions on October 27 regarding the subpoena duces tecum directed to Southern California Edison.

It appears that the avenues of possible compromise explored at our earlier meeting have been determined by Edison not to be likely to lead to an agreement. However, we have discussed one new proposal, which your client is considering.

Under that proposal, Edison would agree to provide a specified number of person-hours of document searcher's time to respond to the subpoena, with DWR free to designate in some manner the files to be searched. Provision of the agreed-upon resources within a period also to be agreed upon would satisfy Edison's obligations under the subpoena, even if files containing responsive documents could not be searched. We indicated that, based on assumptions we have made and which would have to be verified, we estimate that about 200,000 pages would have to be produced (plus documents already produced by Edison in other proceedings) within the next 12 months or so. We estimate that a single paralegal can produce about 10,000 pages per month, and if Edison adopts an administrative system that permits that rate of

production approximately 1.7 person-years would be required. (In our conversations we discussed a range of 1 1/4 to 2 person-years.) The actual numbers would have to be negotiated after DWR has been provided with information sufficient to evaluate the volume and distribution of documents in Edison's files and the administrative procedures to be utilized in production.

Although we left the matter unresolved in our discussion, it would be clear if an agreement of this kind is reached the agreement by DWR reflected in our September 12, 1978, letter to you, narrowing the scope of the subpoena would no longer be operative. Instead, DWR would bear the risk of the wrong files being searched and would be free to direct that searching be done in any files within your corporation.

We hope that your client will look favorably upon this proposal. We are confident that it will be less expensive to Edison to enter such an agreement than it would be to pursue the rather unpromising route of seeking to avoid having to comply with the subpoena issued by the Atomic Safety and Licensing Board.

Thank you for your continued assistance in this matter. Chet Horn and I look forward to seeing you on November 8.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

MICHAEL J. STRUMWASSER
Deputy Attorney General

MJS:cao

CERTIFICATE OF SERVICE

I hereby certify that copies of the NOTICE OF MOTION TO QUASH SUBPOENA DUCES TECUM; MEMORANDUM OF LAW IN SUPPORT THEREOF; AFFIDAVIT IN SUPPORT THEREOF and this certificate were served upon each of the following by deposit in the United States mail, first class postage prepaid, this 29th day of December 1978.

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Chairman
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U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Honorable Elizabeth S. Bowers
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U.S. Nuclear Regulatory Commission
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Honorable Edward Luton
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