

ORIGINAL

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PACIFIC GAS & ELECTRIC COMPANY

Docket No. P-564A

(Stanislaus Nuclear Project,
Unit No. 1)

POOR ORIGINAL

Place - Bethesda, Maryland

Date - Wednesday, 16 May 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Commission Hearing Room,
Fifth Floor, East-West Towers,
4350 East-West Highway,
Bethesda, Maryland.

Wednesday, 16 May 1979

Conference of counsel in the above-entitled matter
was resumed, pursuant to recess, at 9:00 a.m.

BEFORE:

MARSHALL E. MILLER, Esq., Chairman,
Atomic Safety and Licensing Board.

EDWARD LUTON, Esq., Member.

SEYMOUR WENNER, Esq., Member.

APPEARANCES:

On behalf of the Applicant:

WILLIAM H. ARMSTRONG, Esq., McCutchen, Doyle, Brown
and Enersen, Three Embarcadero Center, 28th Floor,
San Francisco, California

JACK FALLIN, Esq. and RICHARD MEISS, Esq., Legal
Staff, Pacific Gas & Electric Company, 31st Floor,
77 Beale Street, San Francisco, California.

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1 On behalf of the Department of Water Resources:

2 MICHAEL J. STRUMWASSER, Esq., Deputy Attorney
3 General of California, 555 Capitol Mall,
Suite 550, Sacramento, California.

4 On behalf of the Cities of Anaheim and Rivers. 'e:

5 PETER MATT, Esq., Spiegel and McDiarmid,
6 2600 Virginia Avenue, N.W., Washington, D.C.

7 On behalf of Northern California Power Agency:

8 ROBERT McDIARMID, Esq., and DANIEL I. DAVIDSON, Esq.,
9 Spiegel and McDiarmid, 2600 Virginia Avenue, N.W.,
Washington, D.C.

10 On behalf of the Regulatory Staff:

11 JACK R. GOLDBERG, Esq. and DAVID J. EVANS, Esq.,
12 Office of Executive Legal Director,
United States Nuclear Regulatory Commission,
13 Washington, D.C.

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P R O C E E D I N G S

CHAIRMAN MILLER: Well, it's about three minutes after nine. Is anyone prepared to proceed in the absence of the gentleman you described?

MR. STRUMWASSER: Yes, sir.

CHAIRMAN MILLER: Are there any corrections to the transcript?

MR. ARMSTRONG: None spring immediately to mind.

CHAIRMAN MILLER: Staff, you were going to report to us this morning, weren't you, on your motion to compel discovery and portions thereof, following consultations with I guess Mr. Armstrong?

MR. GOLDBERG: That's exactly what Mr. Evans and Mr. Meiss are doing right now in the other room. They've been meeting in there this morning and hopefully they'll have something good to report.

CHAIRMAN MILLER: All right, fine.

MR. FALLIN: They should get good marks. They started right about eight o'clock.

CHAIRMAN MILLER: Well, we'll give them good marks for promptness. For punctuality and diligence we will give them good marks, and we will await the product of their efforts.

MR. STRUMWASSER: We're prepared to talk about the fourth set of interrogatories.

CHAIRMAN MILLER: All right. That I think was the

1 next subject of our report, wasn't it, the DWR motion for a
2 protective order regarding DWR's fourth set of interrogatories?
3 DWR's response to PG&E's motion, I guess it is.

4 MR. STRUMWASSER: Right.

5 We have two sets of interrogatories, one from PG&E
6 to all the Intervenor, and the other from DWR to PG&E.

7 The PG&E set of interrogatories to us and Part A of
8 our interrogatories back are pretty close to identical, and
9 that is that they go to the Statement of Issues and they say
10 what is your contention with respect to each of the Statement
11 of Issues that were specified by the Board pursuant to the
12 stipulation of the parties back in '77, and then follow up
13 with identify all the people who know about it, identify the
14 documents, and that stuff.

15 There are differences between the formulas we used
16 and the formulas that PG&E used, but principally it's a re-
17 question by each side that the other identify all of its
18 contentions and identify all of its documentary evidence and
19 witnesses that are in a position to support that or that are
20 relevant to the contention.

21 We have contended in our motion for a protective
22 order with respect to PG&E's answers that those are premature.
23 That is still our position. In fact, what is asked for there
24 is a summary of the case that is not unlike the kind of
25 summary we will be preparing toward the end of the case to

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1 avoid any possibility of surprise to either side.

2 We have no problem with giving the answers to those
3 interrogatories but we think under the present circumstances
4 it just is not productive to proceed with that.

5 Our Part B of those interrogatories is different,
6 though. Part B is what we would call more traditional dis-
7 covery. It is an effort to obtain facts and contentions where
8 the facts and contentions are seriously not known to the par-
9 ties and in particular, it differs from Part A in that unlike
10 Part A, we are not asking in Part B for each and every docu-
11 ment in support of your contention, and each and every person
12 who knows anything about it; that kind of thing.

13 So it is far less of a review of the entire case.
14 Rather, it is directed to specific topics and it asks specific
15 questions.

16 Probably the bulk of that Part B goes to the con-
17 tinuing dialogue that the Board is having with all the parties
18 on the commitments. There are questions about interpretation
19 and effect of the commitments; there are questions about the
20 current technical data and operating procedures for PG&E's
21 electrical system and expected operating characteristics and
22 technical information for the period of the Stanislaus license.
23 And then there's a block of questions at the end, 416 to 531,
24 that ask for sales data.

25 I should explain that block a little bit further.

eb4 1 As the Board is aware, we started out with an effort
2 by the Staff, a valient effort by the Staff, to obtain a
3 stipulation among the parties as to certain physical data:
4 how many circuit miles, how many installed megawatts, how many
5 kilowatt-hours of sales; things like that.

6 For reasons that we need not go into now, there
7 were problems with the proposed stipulation and problems with
8 everybody's entering them, and we had proposed instead that
9 we do this by discovery. In particular what we had in mind
10 was we were proceeding to collect exactly the same kind of
11 data on our own from a review of all the possible sources and
12 obtaining the best available data on these questions.

13 We had gone and are going to the FPC forms. We
14 have gone and are going to other sources that are available to
15 us, and we're trying to collect this information ourselves.

16 What we have done in the last 200 or so of these
17 interrogatories is we have asked PG&E what its best numbers
18 are for this, and the whole purpose of that was simply to
19 say if you've got these numbers, if you have them now, tell
20 us what you have and we'll compare them with our own. If you
21 don't have them, that's fine.

22 That's why, for example, we have asked PG&E what
23 they contend to be the number of circuit miles of transmission
24 that DWR owns, not because we don't know it but because we
25 want to know what they contend so that if they have a difference

eb5 1 with us we'll be able to explore that difference.

2 So Part B is not something which one would be doing
3 toward the end of discovery as a way to identify what the
4 other person's case is based on and to avoid surprise at trial.
5 Rather, Part B is more or less your traditional discovery:
6 what are you contending with respect to matters that we are
7 sincerely uncertain about their contentions on, and what is
8 the data you currently have.

079 9 We see no reason for a deferral of Part B, and good
10 reason to proceed with that because we would like to have that
11 information as soon as possible. This is information which
12 we are currently collecting in some cases; this is information
13 in some cases which our own technical people have asked for
14 in order to assist us with further preparation of our case in
15 chief.

16 And so for that reason, we would ask that we be
17 able to proceed with Part A, and that Part A of our interro-
18 gatories as well as the PG&E interrogatories to us be de-
19 ferred.

20 MR. ARMSTRONG: Mr. Chairman, I think the over-all
21 view that we take of this is fundamentally different from that
22 of DWR. We have to begin with the premise, which is very
23 important to us, and that is that to date in this litigation,
24 PG&E has been required by the document production ordered a
25 year and a half ago, to devote all of its available resources

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1 to producing documents.

2 Even that devotion of resources has not been suffi-
3 cient to comply with all of the parameters of that document
4 production. Specifically I'm referring to the list of privi-
5 leged documents and the other lists which were adverted to
6 briefly yesterday.

7 In an effort to focus and narrow the issues so that
8 we could have some hope of identifying specific areas for
9 focused attention, we served our contention interrogatories
10 last January.

11 I'd like to get back to those in a moment. But I
12 think that the effort which DWR has now mounted reflects their
13 ability to devote resources not to producing their own docu-
14 ments for our perusal, not to responding to any discovery
15 requests of ours, but simply to assimilating evidence both
16 from PG&E and as we learned yesterday, from other agencies
17 which apparently they have been to, either under the Freedom
18 of Information Act or informal arrangements outside the formal
19 parameters of discovery in this case to get documents from
20 other agencies.

21 But we don't know what all they're doing in those
22 departments.

23 Here we are asked to provide them with yet addi-
24 tional information. And note carefully the format.

25 Mr. Strumwasser indicates that his intent, at least

eb7
1 in the last couple of hundred interrogatories, was to see if
2 PG&E's data differs from DWR's data. Well, that may well be,
3 but note it does not enable PG&E to make that comparison; it
4 just requires PG&E to go come up with the numbers, and after
5 PG&E has done that, number one, it requires a tremendous amount
6 of diversion of resources and, number two, Mr. Strumwasser
7 and perhaps the other Intervenor with whom he shares his in-
8 formation will have the ability to make this comparison but
9 PG&E, the Applicant, will not have that capability.

10 I think it is that fundamental kind of problem,
11 that question that I would describe as one of fairness, which--

12 MR. WENNER: Would it remove your objection if he
13 put his numbers on the table in front of you?

14 MR. ARMSTRONG: I think, Mr. Wenner, that that
15 would certainly remove some of it, but it still does not re-
16 move the problem of -- the resource problem.

17 MR. WENNER: Did the same people go through the
18 documents as would be required to answer these questions?

19 MR. ARMSTRONG: The difficulty we're having at this
20 point is one of lawyer resources. As I indicated, the lawyer
21 shortage is what's causing the problem with the privileged
22 list. And in order to process these interrogatory answers,
23 we would obviously require the help of some non-lawyer per-
24 sonnel such as engineers and that sort of thing. But ulti-
25 mately the lawyers would have to become intimately involved

eb8

1 in the responding process.

2 MR. WENNER: Well, take the one particular item
3 you mentioned, sales at retail in a particular area. I take
4 it the purpose of his interrogatory is to find out whether
5 your number's check with his numbers. If he puts his numbers
6 on the table and says "Are your numbers the same," this isn't
7 a privileged number, is it?

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8 MR. ARMSTRONG: No.

9 MR. WENNER: How much lawyer time does this take?
10 It may take some accountant's time. It may take somebody in
11 the statistical department, although one would suspect that
12 you might have that number fairly available.

13 MR. FALLIN: It's a kind of a pragmatic question.

14 MR. WENNER: If you please, Counsel?

15 MR. ARMSTRONG: I think Mr. Fallin really is more
16 intimately aware of the structure of the company and of which
17 particular people would be required to come up with the infor-
18 mation. My answer to your question is the lawyer level would
19 be-- As a lawyer representing a client, I would want to know
20 how this information was developed and what significance it
21 has within the general context of the litigation. And where
22 I feel this all ties in is just this:

23 At this point we have been totally frustrated in
24 learning what the content of this litigation is. We do not
25 know with any specificity whatsoever the contentions of the

eb9

1 parties.

2 MR. WENNER: Well, that's a separate subject,
3 Counselor. You're saying you're not getting from him what
4 you'd like, and this particular issue is he wants something
5 from you. We can go on with this tit for tat business forever
6 but it won't get us anyplace.

7 If you have complaints about not getting something
8 from them, fine, we'll take that up. I'm sure the Chairman
9 will be interested in hearing about that.

10 But on this specific thing, won't it shorten, as
11 a practical matter, a great deal of research, even on your
12 part? If he says you have seven million dollars worth of sales
13 and you check it and it comes out even, that's the right
14 number, and you don't have to fight about that any more, won't
15 that shorten the hearing and won't that shorten your work,
16 too?

17 MR. ARMSTRONG: That approach I think would apply
18 perhaps to the questions, and there are only maybe half a
19 dozen in the series we are now taking as an example, maybe
20 half a dozen out of the 200 which--

21 MR. WENNER: Well, let's take those half dozen.

22 MR. ARMSTRONG: -- which apply to PG&E, the first
23 whatever it is, half a dozen, eight, something like that.

24 But it goes beyond that. To ask-- And this is
25 where I think we have a real sticking point on the fairness

eb10

1 question.

2 The next series of questions I guess -- I don't
3 know; DWR is in here someplace, and maybe that's fair, too,
4 to say All right, DWR comes forth and says these are the
5 numbers we have for our system, do you disagree?

6 But the next entity is NCPA. Nobody has asked
7 NCPA--

8 MR. WENNER: Well, let's take up NCPA next. This
9 is a particular problem, and it won't help our analysis to
10 say Well, something else will happen.

11 MR. FALLIN: Mr. Chairman, if I might--

12 MR. WENNER: Counselor, it has become a little
13 difficult with lawyers, batteries of lawyers. If your attorney
14 in chief at some point wishes to call upon you, he'll ask
15 the Chair and we'll consider that.

16 MR. FALLIN: As I suppose--

17 MR. WENNER: Counselor,--

18 MR. FALLIN: The problem is that we do not have--

19 MR. WENNER: Counselor, I'm not addressing the
20 question to you.

21 MR. FALLIN: I asked the Board for permission to
22 make a statement. I addressed the Chairman sir.

23 CHAIRMAN MILLER: I think the question is one we've
24 alluded to before and that is where you have multiple parties
25 and multiple counsel, we have indicated that certainly when

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1 we get to evidentiary hearing, one attorney will take one
2 witness, direct, cross, and all the rest, in the normal tradi-
3 tional style.

4 We have allowed a certain amount of informality
5 which we have recognized as such in the course of our con-
6 ferences and hearings. However, as Mr. Wenner points out, it
7 prolongs the discussion and it also has a somewhat disjointed
8 effect upon the Board and other parties if we're going to
9 have multiple counsel coming and going at will.

10 Now in order to have a rational result, we will
11 recognize, if that be the situation, Mr. Armstrong as lead
12 counsel at this session at any rate for PG&E. However, if in
13 the course of questions of a factual nature, he wishes to refer
14 to his associates, Mr. Fallin or others; upon indicating to
15 the Board that he wishes to do so, leave will probably be
16 granted.

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17 MR. ARMSTRONG: As I indicated a few moments ago,
18 I think Mr. Fallin is more familiar with the in-house arrange-
19 ments and he would -- you know, the burden on the company's
20 resources that would be required to answer the particular
21 questions. And I think Mr. Wenner's example related to the
22 residential sales figures.

23 And if the Board is interested in that information,
24 I would ask Mr. Fallin to indicate the burden on the company's
25 resources.

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1 CHAIRMAN MILLER: Do you wish to ask Mr. Fallin to
2 respond further on this point?

3 MR. ARMSTRONG: If the Board --

4 CHAIRMAN MILLER: If you wish it, we will grant you
5 leave.

6 MR. ARMSTRONG: I think he'd be better able than I
7 to respond to that.

8 CHAIRMAN MILLER: Leave it there insofar as we
9 haven't already covered the exceptions.

10 MR. FALLIN: Two items which I don't think have
11 been addressed before. First, the question deals with the
12 accumulation, compilation of data.

13 The basic philosophy of the discovery we've structured
14 in this case is that an enormously comprehensive system of
15 document production will be instituted and has been instituted
16 and is being processed.

17 Part of the equation when you set up that kind of a
18 discovery schedule is that information that can be extracted
19 from those documents should be extracted from those documents
20 by the person seeking production. That's the first point.

21 We have gone to what I think can fairly be characteri-
22 zed as fairly extraordinary lengths in terms of the scope and
23 comprehensiveness of production. The returns for all of us,
24 for the Board, for the person producing --

25 MR. WENNER: Counsel, would you stick to my question?

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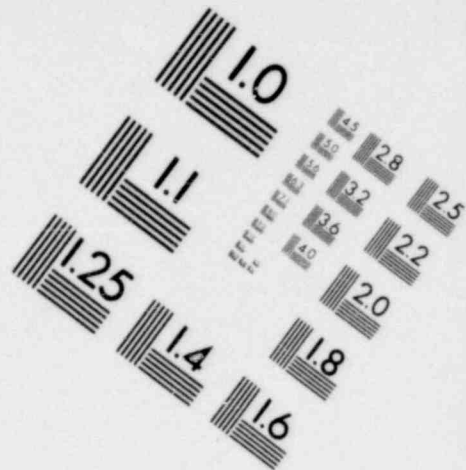
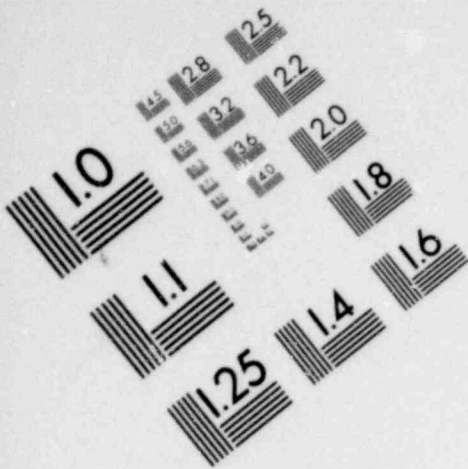
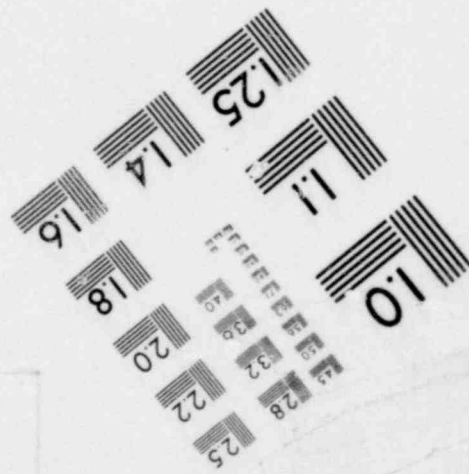
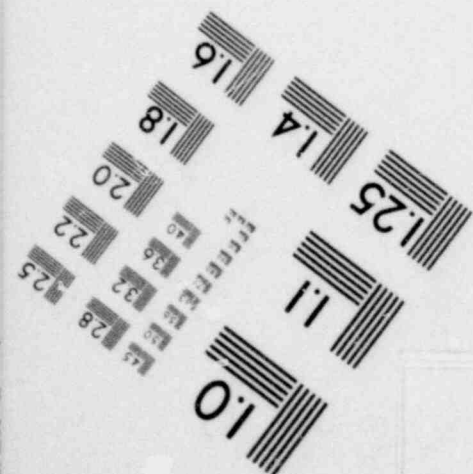
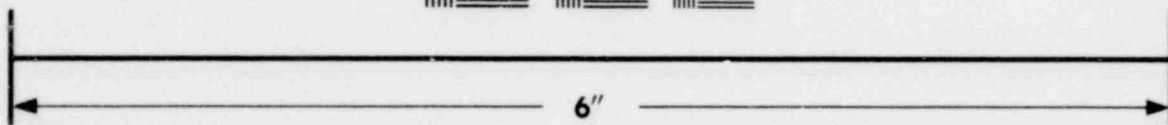
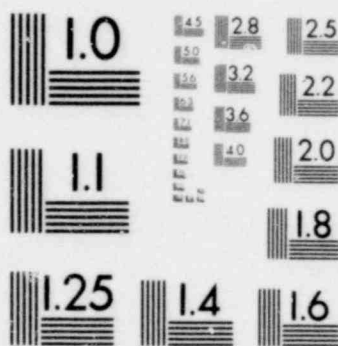
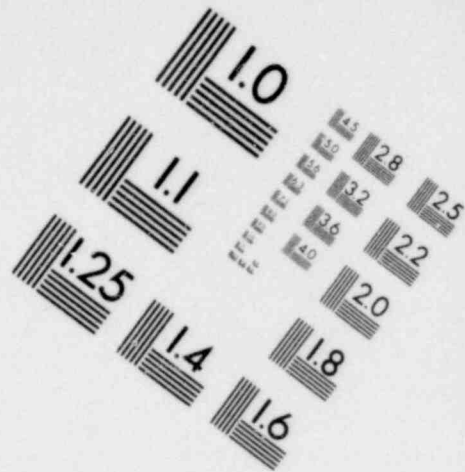
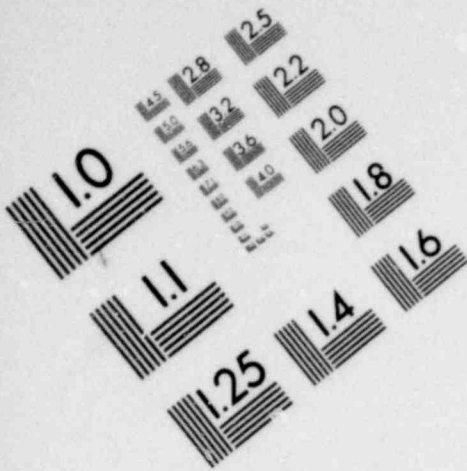
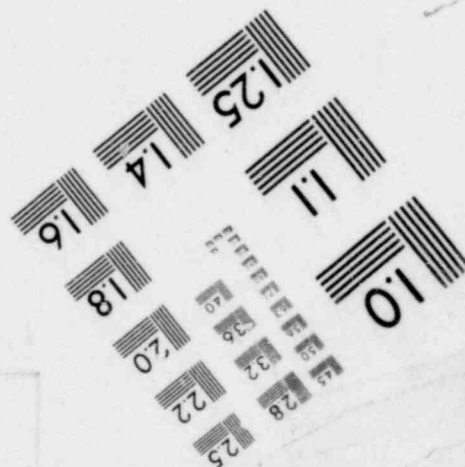
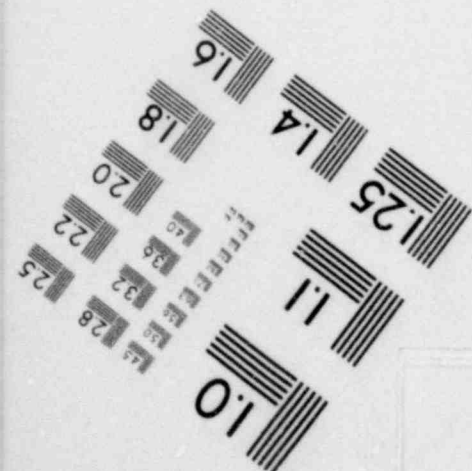
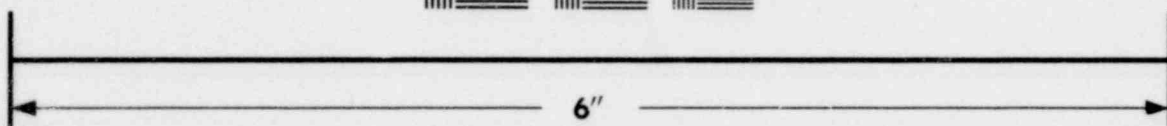
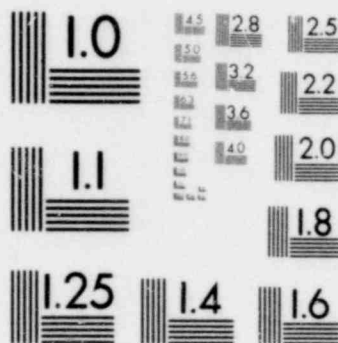


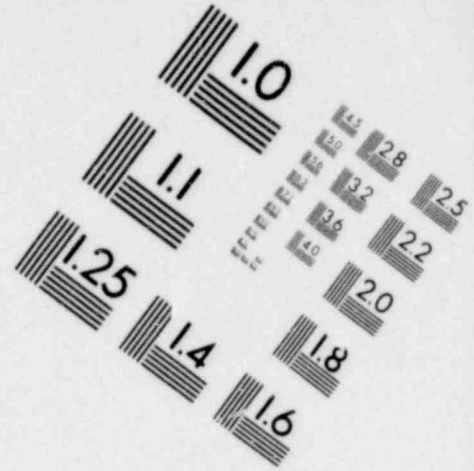
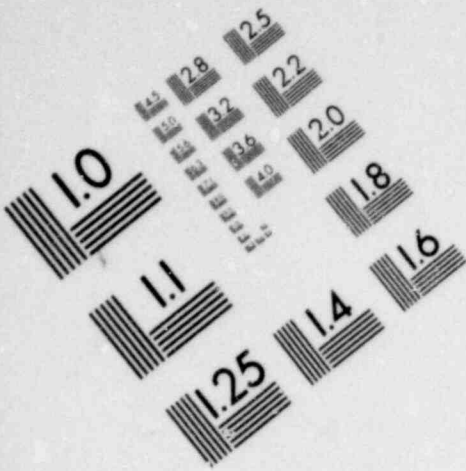
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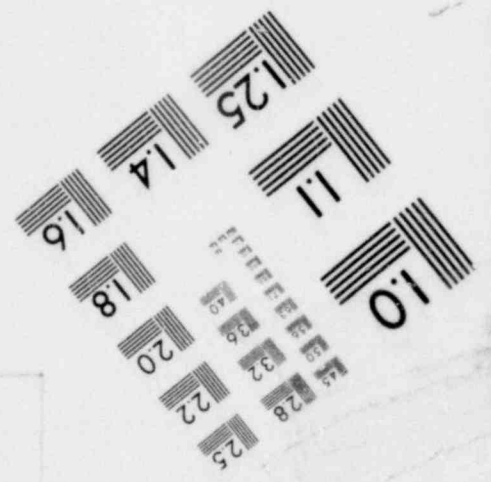
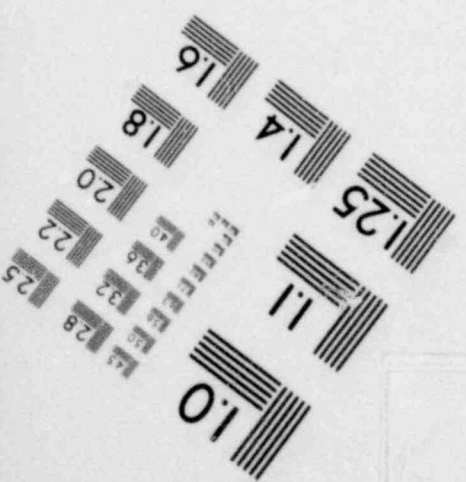
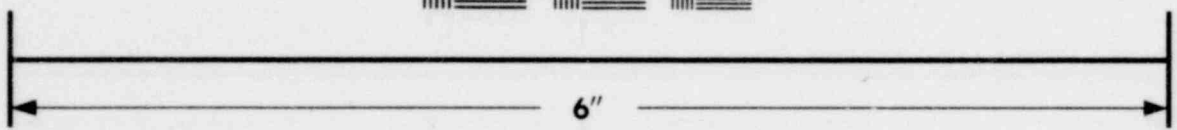
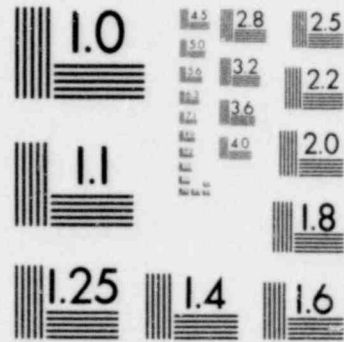


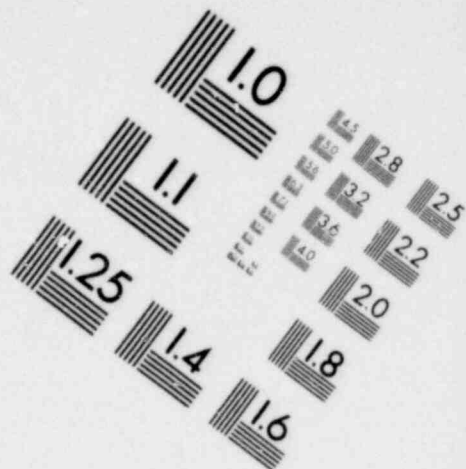
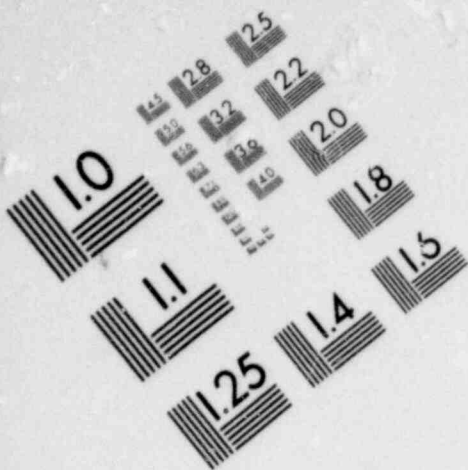
**IMAGE EVALUATION
TEST TARGET (MT-3)**



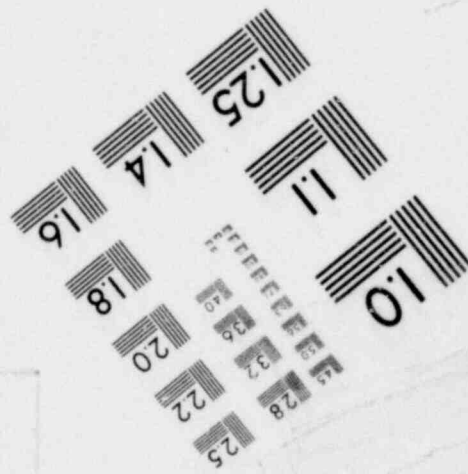
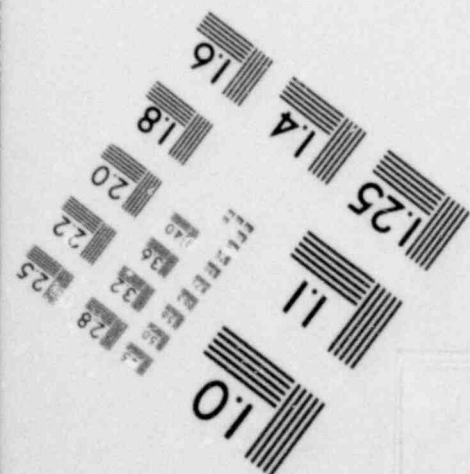
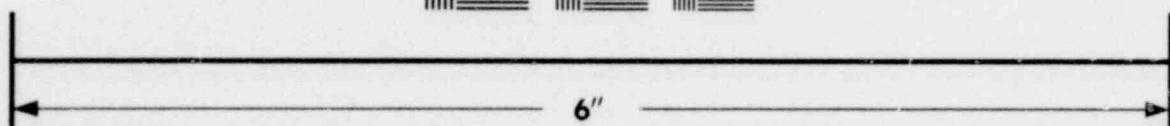
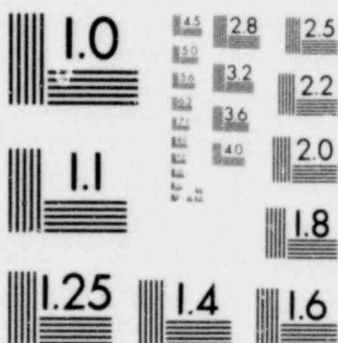


**IMAGE EVALUATION
TEST TARGET (MT-3)**





**IMAGE EVALUATION
TEST TARGET (MT-3)**



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1 MR. FALLIN: That's part of the answer. Part of
2 the answer is the resources that we are devoting to giving the
3 base data to the parties already accomplishes a large part of
4 the pragmatic question which you've asked, which is how do you
5 go about accumulating it.

6 MR. WENNER: That was not my question, Counselor.
7 I'll repeat it for you:

8 How does it interfere with your production if they
9 lay that data on the table -- which is not exactly what they
10 asked for but which I'm suggesting to you -- and say, Is this
11 the same data that you have.

12 MR. FALLIN: The specific -- as that kind of a
13 request comes in, it requires someone in the mainstream,
14 I'd say that would be myself or Mr. Meiss, probably a combina-
15 tion, because we have to make the first sort of assessment
16 which is who are the people who are involved who might be able
17 to come up with that kind of an answer. That, in most of these
18 cases, is not a simple equation to solve. On the other hand,
19 once you get to the first step, you can usually --

20 MR. WENNER: "Equation" is a rather difficult word.
21 You mean no one in the company knows the retail sales in a
22 certain area?

23 MR. FALLIN: Right.

24 MR. WENNER: That isn't an equation. I think you
25 are trying to introduce concepts that make the question more

1 difficult than it really is.

2 MR. FALLIN: The reason I used that word is that
3 I have not gone over -- you know, that's one part of it and
4 it may be all one person, it may be three or four people that
5 have to be coordinated. Then it requires meeting with them,
6 describing the problem and, unfortunately, it requires a good
7 deal of administration because these requests come out of the
8 ordinary course of these people's occupations.

9 And the experience we've had is that given the
10 problems that face these people in their workaday world, unless
11 these are monitored and administered on a fairly regular schedule,
12 the answers simply do not come back and they do not come back
13 in a manageable form.

14 Essentially, with this kind of interrogatory out-
15 standing, Mr. Meiss has to go out of the production schedule
16 for a significant time.

17 Now that's not to say it can't be done, it can be
18 done. What I'm really trying to point now to is the process
19 we've got, everything -- we're in a marketplace in this one,
20 when we expend things in one direction, we can't do it in the
21 other. And it's really a balancing from one standpoint of
22 using people.

23 CHAIRMAN MILLER: Anything further, Mr. Armstrong?

24 MR. ARMSTRONG: Well, I think the particular question
25 Mr. Wenner posed has been answered, I think, to the extent we

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1 can. I think it's clear that some of the quantity of diversion
2 is unknown. We're not trying to tell you that this would mean
3 a particular time frame diversion, but it would be a diversion.

4 I think from the company's point of view there is a
5 degree of frustration at having to commit the resources it
6 has to document production and then being told, Well, all right,
7 either now add additional resources to do this additional task
8 or divert, you know, sort of stop Plan A move to Plan B kind
9 of thing.

10 MR. WENNER: All these words are qualitative,
11 diversion, effort, administration. You know, I get the impression
12 from the way you describe it that PG&E is bound in rigor mortis,
13 that the slightest movement out of the ordinary bureaucratic
14 routine would terribly disturb this company. That's not my
15 impression of PG&E.

16 But of course there are things that are a little
17 untoward. At some point, you're going to have to do this.
18 The question is quantitative. It isn't these vague words.

19 How much actual time will it divert from ordinary
20 resources so that you have to hire some extra engineers because
21 he wants -- or some accountants to find out what these retail
22 sales are in an area, in a specified area, particularly when
23 somebody says well this is our judgment about it, just confirm
24 it. There may be some difficult questions there, I'm not
25 arguing with you about that, but there are some questions that

1 seem at first blush not to be too difficult.

2 MR. ARMSTRONG: I think it is only at first blush.

3 MR. WENNER: And your objections go this is a
4 gigantic task, we can't do it, we have to divert resources,
5 lawyers have to get busy in finding out whether the number
6 is 2,527,000 or something else. But we're a little sophisticated,
7 we know when something is hard, we have a pretty good idea, and
8 when something isn't.

9 But may I suggest to you, Counselor, that there are
10 difficult and burdensome queries that are being put to you.
11 And if you just say everything is difficult, you raise questions.

12 MR. ARMSTRONG: I think it is incorrect to even begin
13 to characterize this set of interrogatories as insignificant
14 in quantitative terms.

15 MR. WENNER: I'm just talking about this small bunch.

16 MR. ARMSTRONG: This is not a small bunch.

17 MR. WENNER: The small bunch is the particular ones
18 about please confirm our statistics.

19 MR. ARMSTRONG: I understand that.

20 MR. WENNER: We'll only get -- we'll make progress
21 if we talk about specifics instead of generalities.

22 MR. ARMSTRONG: We're talking about 200 interrogatories.

23 MR. WENNER: I'm not. I'm talking about a small
24 number which says please confirm our statistics.

25 MR. ARMSTRONG: Well I'm talking about the set which

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1 begins at 416 and goes to 631.

2 MR. WENNER: Can't we just talk about the please
3 just confirm our statistics?

4 MR. ARMSTRONG: That's what I'm talking about,
5 that's it if you recharacterize it. It is now asking for data
6 on however many entities are in this group. It is a couple
7 score, I believe, and it's asking for that data to be broken
8 down into 10 or 12 categories for every year from 1947 through
9 some point in the future to the extent we can estimate that
10 information.

11 MR. WENNER: Now you're getting specific. Again,
12 what I ask you is are the people who are going to do this the
13 same people who are making the document search?

14 MR. ARMSTRONG: The document search -- if you
15 include the lawyer involvement in it, the answer is yes.

16 MR. WENNER: Outside of the lawyers.

17 MR. ARMSTRONG: Outside of the lawyers, I can't
18 tell you that the paralegals will be involved in this particular
19 effort, but they probably will because some, at least, of the
20 information, the historical information will no doubt come
21 from documentary material and the paralegals would be asked
22 to find those documents and to at least extract the raw data
23 from it.

24 Now what I cannot tell you is how much of their time
25 would be required beyond saying it is not insignificant. I

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1 wouldn't be using it if it were insignificant.

2 I think the significance of it can only be measured
3 by the amount of data which is being requested. You know, as I
4 say, it asks for a lot of information and it is not handily
5 available. If it were, we wouldn't be making this argument.

6 CHAIRMAN MILLER: Well, we've spent about a half hour
7 on this. I hate to interrupt you, Mr. Armstrong, but I think
8 we understand the sweep of your situation so far. Now are
9 there matters you haven't yet addressed? I don't want to spend
10 all day, I'm sure you people want to catch an airplane tonight,
11 if we're going to be counting the hours of every paralegal --
12 it may be necessary and important to you and I don't denigrate
13 the effort, but on the other hand, we had better proceed, we've
14 got an awful lot of important work to do.

15 MR. ARMSTRONG: I agree, Mr. Chairman, and I was
16 trying merely to answer a specific question relating to the
17 last 200 or so interrogatories which called for the sales data,
18 sales and purchase data.

19 MR. WENNER: Could I ask you this, could you sit down
20 with Mr. Strumwasser and not talk about generalities, how much
21 data can you get now in response to his specific interrogatories
22 that don't require diversion of any substantial amount of
23 time?

24 I realize that you want to have your lawyers look
25 over certain types of data because it does relate to factual

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1 matters that can become crucial later on. But if these problems
2 are going to arise later, well, they're going to arise later
3 and we don't want to be sitting here next year and saying
4 Now we have to begin all over again with statistical data. I'm
5 not too happy, as the Chairman has told you and will tell you,
6 with the pace of the proceeding.

7 Now could you sit down with Mr. Strumwasser and get
8 the specific ones out, instead of the generalities that have
9 been knocked about in both of the motions?

10 MR. STRUMWASSER: Mr. Chairman?

11 CHAIRMAN MILLER: Yes?

12 MR. STRUMWASSER: Mr. Wenner, we have spoken at
13 some length about this last night and yesterday afternoon.
14 Interrogatories 416 through 631, the easiest way to answer those
15 is to put together a series of tables about sales data. My
16 suspicion is --

17 CHAIRMAN MILLER: Whose interrogatories?

18 MR. STRUMWASSER: My interrogatories.

19 CHAIRMAN MILLER: 416 through 631 which go into
20 statistical and factual data of various kinds, you have
21 discussed them with counsel for PG&E?

22 MR. STRUMWASSER: Yes, we've discussed it briefly.

23 CHAIRMAN MILLER: What conclusions have you reached?

24 MR. STRUMWASSER: Principally the ones that the Board
25 has heard today, that is, that PG&E feels it would divert too

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1 many of their resources. I would just like to emphasize a
2 couple of points about that.

3 That is, first of all, we are fully prepared to put
4 our information on the table. I had assumed when we propounded
5 these interrogatories that PG&E was compelled to answer them
6 and they would propound interrogatories back to us and we
7 would give them answers exactly in the form in which we had
8 collected them and were prepared to accept them. We were
9 even prepared informally to show them our numbers and ask if
10 they want to confirm or accept.

11 CHAIRMAN MILLER: Well that could cut across a certain
12 number, however many they be, where it's the comparison of
13 statistics for each of you and I don't know which one came
14 first, but nonetheless, there should be some effort and I think
15 some results obtained from matching data.

16 MR. STRUMWASSER: I would like to emphasize, though,
17 two things about that set of questions. First, we are asking
18 not that PG&E go out and do what we did, which is go to the
19 FPC, go to the State Energy Commission, go to these municipali-
20 ties and get their numbers, we're just asking them to give
21 us the best numbers they have and then seasonably to update
22 them. We're not assigning them a research project, we're just
23 asking them to tell us what they know.

24 Second, I cannot believe that these are not numbers
25 which they are going to go ahead and collect anyway. All these

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1 are are numbers which are going to go into a standard market
2 share study that anybody preparing for this kind of a case is
3 going to do. I haven't seen their testimony in FERC, I'd
4 be surprised if they haven't collected some of these numbers
5 anyway.

6 CHAIRMAN MILLER: This may be true, Mr. Strumwasser,
7 but nonetheless we are in our usual situation of doing three
8 or four or five different things at the same time and this,
9 then, impacts both upon you, upon PG&E and upon the Board,
10 so we're trying now to sort out the strands.

11 One strand is whatever anybody has done or will do,
12 may be expected to do and the like, right now, is it not possible
13 for experienced and sophisticated counsel to sit down and
14 check off a certain number of interrogatories mutually which
15 involve data, come up initially with your interim figures or
16 data--you don't have to do it formally in a request for
17 submission, but sit down and match up data, that would be
18 Step Number One which could be accomplished without any great
19 formality, diversion or anything else.

20 MR. STRUMWASSER: I must say I would have no problem
21 at all with that approach.

22 CHAIRMAN MILLER: Let me inquire of Mr. Armstrong,
23 will you be able to have someone handle that approach as Step
24 One, the matching up of data?

25 MR. ARMSTRONG: I think, you know, we can try. But it

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1 is simply a myth to suggest that -- you know, Mr. STRUMWASSER
2 states that everyone in the room seems to feel that PG&E has
3 done this already or is about to do it.

4 CHAIRMAN MILLER: Well you've filed reports, you
5 deal with the Federal Power Commission, there are all sorts of
6 statistical data with the use of these enormous data banks and
7 so forth -- we know sophisticated utilities and we include
8 PG&E, certainly, in that, which are handling data certainly of
9 a market nature--very frequently the thing is to do, instead
10 of making a big deal out of it, why can't we initially sit
11 down and look at certain kinds of data which, without any
12 speeches or rhetoric, could be compared.

13 If you've got differences, all right, they can be
14 presented to the Board if you can't iron them out among
15 yourselves. But initially it would certainly seem to the Board
16 that the way modern utilities handle their data and the use of
17 their computers, you could accomplish a good deal first.

18 MR. ARMSTRONG: The information, I suspect, is
19 reasonably available as to PG&E's own system. But that repre-
20 sents less than 10 percent of what would be left.

21 CHAIRMAN MILLER: All right. Well let's just take
22 one thing at a time.

23 You know, the old Chinese proverb -- I don't know
24 whether it was Mao Tse Tung or Confucius. says that longest
25 journey starts with one step. Let's take one step of data

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1 comparison between DWR and PG&E which relates to PG&E's own
2 statistics. The first step, can you do that?

3 MR. ARMSTRONG: Mr. Chairman, the message I'm trying
4 to convey is as counsel for PG&E I have been frustrated. We
5 should have this information. We do not have the resources to
6 accumulate it because all the company's resources which manage-
7 ment has authorized have been devoted to this document pro-
8 duction. It represents a staff far in excess of what the
9 combined staffs of our adversaries are, and yet it is all going
10 to producing documents.

11 CHAIRMAN MILLER: Your computer people?

12 MR. ARMSTRONG: The people that we have assigned
13 specifically to this effort.
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1 CHAIRMAN MILLER: Well, now wait. You're taking now
2 another journey. Let's just take journey one.

3 I am going to have you describe for the record this
4 personnel which are so inextricably tied up in document pro-
5 duction that you can't possibly process and match data of the
6 kind that you would be supplying to other agencies anyhow.

c3 7 Now I know what the testimony has been by Mr. Meiss and others,
8 and the kind of parallel is and what they're doing. We're real
9 familiar with that. We've got the record. We don't regard
10 them as being the ones who would be normally asked to supply
11 this data, this kind of data.

12 MR. ARMSTRONG: If the inquiry is can we agree that
13 the various entities, filings with the various commissions,
14 reflect the state of the world--

15 CHAIRMAN MILLER: That's not what I said.

16 MR. ARMSTRONG: -- then the answer is Fine.

17 CHAIRMAN MILLER: I said you're dealing with data
18 all the time of a very considerable nature, and by the use of
19 computers, so the Board would like to know why it would not
20 be possible to know the volume of sales, for example, or other
21 matters that are within the possession, as a matter of business
22 information, of PG&E. That's all I'm asking at the moment.

23 If you wish to discuss realities with us, do it.
24 If you wish to discuss fantasies, spare us.

25 Proceed.

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1 MR. ARMSTRONG: I can assure you I have not been
2 discussing fantasies but very real problems that I feel PG&E
3 has with respect to its preparation of the case.

4 CHAIRMAN MILLER: That we're prepared to discuss,
5 but that's another step. Get to step one now. You have not
6 answered yet.

7 MR. ARMSTRONG: Step one is do we have the capa-
8 bility to confirm certain data. The answer is Yes, if we
9 have the people to do that.

10 Now if we're talking about just what have we got
11 on the computer that fits these categories, can we say Yes,
12 here's the computer run and we will pick out numbers. That
13 obviously is a limited amount of effort. That we can do.

14 CHAIRMAN MILLER: That is market data of one kind or
15 another, without going into the complexities of it. I take it
16 your company would have access, in its normal business opera-
17 tions, to certain kinds of market data, statistics and infor-
18 mation, wouldn't it?

19 MR. ARMSTRONG: Certain kinds, yes.

20 CHAIRMAN MILLER: Could you not match up the infor-
21 mation which would then be, let us even say, initiated by
22 DWR as to this kind of information?

23 MR. ARMSTRONG: What I'm concerned about,
24 Mr. Chairman, is this: We have already, in earlier discussions,
25 informal discussions with Mr. Strumwasser, talked about certain

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1 of these things, and he has said essentially, "Look, I'd be
2 happy to get a negative answer, a 'We don't know' from PG&E
3 because that's going to prove my case, or some part of it."

4 CHAIRMAN MILLER: You're worrying more and more
5 about strategy and tactics and worrying less and less about
6 the simple production and matching of data, and I think we're
7 spending a lot of time over-all. That's one of the problems
8 in this discovery. That's why we're very unhappy with the pace
9 of discovery, and that's why we put you all on notice that
10 you're under a six-month call to terminate discovery and get
11 on as best you can with trial. Now that's true of all of you.

12 Now the more arguments of this kind you give, the
13 more we hear that now you're going to benefit them by letting
14 them filibuster and the like, we've heard all these things.
15 We'd like to cut through to reality now.

16 MR. ARMSTRONG: If the question is can we confirm
17 data which is provided to us by DWR, all I can answer at this
18 time is we will make the commitment to do that, and I don't
19 know how we will do it. We will have to--

20 CHAIRMAN MILLER: Well, it doesn't take a paralegal,
21 does it? Or it doesn't take a paralegal that's engaged in
22 document production? Surely you're not asking us to believe
23 it.

24 MR. STRUMWASSER: Mr. Chairman, I believe I under-
25 stand what the problem is here, and I think there may be a

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1 communication problem.

2 What I understand to be the problem here is that
3 there's a decision by PG&E that one of the three men who has
4 been sitting at this table must review each document that goes
5 out as an answer to an interrogatory, so the cost of thousands
6 and the cost of millions of paralegals and other millions
7 running around is not an issue here, nor the question of
8 whether the other thousands of employees can break out time.

9 The question is whether these few people, whom they
10 have decided are going to represent something of a bottleneck
11 in production and discovery, are going to have the time avail-
12 able. That, as I understand it, is the reason why they are
13 concerned about resources.

14 CHAIRMAN MILLER: I don't know whether that's a
15 problem or not. If the bottleneck theory has any validity,
16 we'd like to pursue it; if it doesn't, then let's skip that
17 one, too.

18 MR. ARMSTRONG: I think what we're talking about
19 now is historical data, and the questions initially call both
20 for historical data and estimates in the future.

21 CHAIRMAN MILLER: You find a problem, I take it,
22 with the latter then?

23 MR. ARMSTRONG: It's not something that is as
24 easily compared. I don't even know if the estimates exist.

25 CHAIRMAN MILLER: Is this correct, Mr. Strumwasser?

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1 Are you speaking of historical presently available data on
2 the one hand and projection herefrom on the other?

3 MR. STRUMWASSER: We're speaking about both. And
4 again, as to either group, if they've got it, if they've
5 already generated or collected the data, we'd like to have it.

6 If they don't have any projections for the Oroville-
7 Wyandoth irrigation district sales for 1982, tell us that, and
8 we're happy. We just want to make sure we're not working with
9 numbers that they don't agree with.

050 10 CHAIRMAN MILLER: Well, of course you can initiate,
11 whether formally as a request for admission or informally
12 by specifying data and saying, Do you agree, Do you not agree,
13 can we resolve it. That would seem to me, if initiated by
14 DWR on this particular matter, would help to move forward
15 the discovery process and would enable Counsel for PG&E to
16 address it in something other than catastrophic terms.

17 MR. STRUMWASSER: To the extent we have these data
18 we'd be happy-- We'll be glad to show them our tables with
19 blank numbers where we don't have numbers either and all we
20 want then is confirmation that they don't have any numbers
21 either that they've generated.

22 CHAIRMAN MILLER: All right. Let's take step one
23 then.

24 Is this some substantial portion of DWR's interro-
25 gatories 416 to 631?

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1 MR. STRUMWASSER: Half of them are historical and
2 half of them are projections, roughly.

3 CHAIRMAN MILLER: About half.

4 Are there other numbers beside these which involve
5 this kind of data?

6 MR. STRUMWASSER: I think that all of the market
7 share data are contained in 416 to 631.

8 CHAIRMAN MILLER: Then let us request DWR to ini-
9 tiate the kind of data that they have assembled, conclusions
10 of a statistical nature that they may arrive at, and take the
11 step of initiating and requesting either agreement or non-
12 agreement or indication that they don't know from their own
13 resources at this time as to those portions. That will be
14 about half of the 416 to 631 interrogatories.

15 Now as to those that call for projections, I think
16 you have indicated you're asking only whether or not they have
17 them at the time of the interrogatory.

18 MR. STRUMWASSER: That's right.

19 CHAIRMAN MILLER: If they have them, fine. Again
20 if you have information, come forward with it first. If they
21 can respond, fine. If they don't have it they may so indi-
22 cate and that will be a complete answer.

23 There's a continuing obligation on all of you to
24 update your information in the future, but we would regard
25 that as being a sufficient and adequate answer. We don't

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1 wish to increase the burdens that they are under, which are
2 substantial.

3 MR. STRUMWASSER: That's exactly what we're asking
4 for. We'll be happy to provide--

5 CHAIRMAN MILLER: Can we go then from 416 to 631
6 to any other category where usefully you could indicate
7 initially what it is in your information that is the basis for
8 your inquiry so that comparisons at least can be made, or is
9 this the only group in which this kind of approach is meaning-
10 ful?

11 MR. STRUMWASSER: That's the only group in which
12 we're looking for market shares data. The balance of Part B
13 of our interrogatories goes to essentially interpretation of
14 the commitments, the effects of the commitments, current
15 technical approaches and situations. I can go through a
16 quick review of them if you would like.

17 CHAIRMAN MILLER: This is commitment type of infor-
18 mation?

19 MR. STRUMWASSER: Yes.

20 CHAIRMAN MILLER: Let me hear from Mr. Armstrong
21 for a moment on that.

22 MR. STRUMWASSER: I'm omitting from Part B 287 and
23 288 which are misplaced. They should really be Part A ques-
24 tions. With the exception of those two which we are omitting
25 now, all the others do not come in the form of "State your

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1 contention," followed by "Give us every document you rely on."

2 CHAIRMAN MILLER: They do not have that charac-
3 teristic?

4 MR. STRUMWASSER: That's right.

5 CHAIRMAN MILLER: Very well.

6 Mr. Armstrong.

7 MR. ARMSTRONG: I think 298 through 394 by their
8 terms are contention-type interrogatories. They are contention-
9 type interrogatories with respect to the commitments, that's
10 true, but they are contention interrogatories. And the
11 rationale expressed yesterday by the Board that the contention
12 interrogatories we have asked, including contentions about
13 the commitments, are premature, then it seems to me these con-
14 tention interrogatories about the commitments are equally
15 premature.

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16 We'd like at some point to reopen that discussion
17 because of some things --

18 CHAIRMAN MILLER: We didn't regard it as closed.

19 MR. ARMSTRONG: All right. I regarded that as a
20 separate item, though, and I don't want to get down that road
21 at this time.

22 CHAIRMAN MILLER: It is your belief then that 298
23 to 394 are contention-type matters even though they are
24 addressed to contentions and you wish to handle that separately
25 when we address the matter of--

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1 MR. ARMSTRONG: I think I've transposed a number,
2 Mr. Chairman. I said 298 and I meant 289.

3 If you just look at 289, for example, it says:

4 "Enumerate each and every electric
5 utility that you contend is a neighboring entity
6 under the commitments."

7 And you know, all right, in a way you could--

8 CHAIRMAN MILLER: All right. Let's set aside for
9 the moment commitment-related matters.

10 MR. STRUMWASSER: That's virtually the entire
11 balance of Part B.

12 Now I would like to point out that we are not here
13 talking about contention interrogatories like PG&E's that
14 says, "As to Paragraph 7 of the commitments, do you contend
15 that it's inadequate. If you do, state every document you
16 rely on, and what do you want instead."

17 Let's get straight what we're talking about when
18 we're talking about contention interrogatories.

19 Mr. Armstrong speaks of a contention interrogatory
20 as "What do you contend are examples of monopolization," or
21 "What do you contend are all the documents that support it,
22 the full exposition of your evidentiary case."

23 CHAIRMAN MILLER: So this is not what you're asking?

24 MR. STRUMWASSER: That's not what I'm asking for at
25 all.

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1 As to those Mr. Armstrong knows very well what our
2 contentions are. He wants the exposition of the evidence to
3 support it. For example, he has asked us, do we contend
4 that PG&E has a policy of monopolized transmission. Well, he
5 knows what the answer is. In fact, I've offered to answer that
6 question if that's all he wants. But he knows very well what
7 it is. And he knows what the dozen or so contracts are which
8 are the principal basis of our case.

9 CHAIRMAN MILLER: Is it not sufficient for you to
10 believe that he already knows? That's not a necessary function.
11 After all these are answers under oath by the party responsi-
12 ble. They may be used as evidence.

13 MR. STRUMWASSER: But as I said, Mr. Chairman, we
14 have always said we were willing to answer the "Do you contend"
15 question. What we're suggesting is-- We have here pairs
16 of questions, odd and even questions. The odd questions are
17 all of the form of "Do you contend that PG&E does X," and then
18 the even question that follows it is "State every document,
19 every witness," and all that stuff.

20 We said in the beginning if there is any serious
21 question as to do we contend that we'll be happy to answer
22 the odd questions. Nobody has ever taken us up on that be-
23 cause everybody knows what the answer is: yes, yes, yes.
24 I don't think there's anything hiding the ball.

25 Compare that with 289 where we asked him to

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1 enumerate every electric utility that they contend is a neigh-
2 boring entity. We sincerely did not know who they contend
3 to be neighboring entities.

4 Take 290, who are their neighboring distribution
5 systems? We don't know the answer to that. We're not asking
6 them for every document; we're not asking them for an essay
7 about what it's about. We just want to know who they think
8 the people are who are the alleged beneficiaries of the com-
9 mitments.

10 CHAIRMAN MILLER: So far what you've described
11 would appear to be factual in nature, whether or not they are
12 cast in the form of contentions. The Board doesn't want to
13 take the time to go through each and every one, but surely
14 Counsel can determine, between and among themselves, which
15 relate to factual matters and which do not.

16 MR. STRUMWASSER: You have a mixed question of fact
17 and contention, if you like. For example, 295 asks them
18 is an integration agreement a form of interconnection agreement
19 for purposes of the commitments? The question arises because
20 PG&E has integration agreements and has entered those in the
21 past. The commitments nowhere refer to integration agreements.

22 We just do not know whether they interpret the
23 commitments to include within the class of interconnection
24 agreements integration agreements.

25 CHAIRMAN MILLER: That may be true, but now you're

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1 getting into another area which is a contention made by PG&E
2 Counsel, and in order to answer those it does require the
3 participation of Counsel, and knowledgeable Counsel who are
4 presently heavily committed as to time and resources with the
5 very massive production of document job that you have asked
6 them for.

7 Now at that point we must admit that we do look
8 sympathetically upon the position you are placing, unwittingly
9 or not, opposing Counsel in.

10 MR. ARMSTRONG: Mr. Chairman, if I might just say
11 a few things.

12 I think it is correct to say that the interroga-
13 tories which we are now examining in the DWR set may be
14 described fairly as mixed contention and fact questions such
15 as which entities do you contend are neighboring entities.
16 In some respects it's a fact question; in some respects it's
17 a legal conclusion.

18 Similarly, I think the large bulk--

19 CHAIRMAN MILLER: If you strip out the word
20 "contention" it's factual, isn't it?

21 MR. ARMSTRONG: Well, yes and no. I think that
22 question is more on the spectrum toward fact, but let me give
23 you the example of what I believe are the bulk of the remain-
24 ing questions. They run like this:

25 "Enumerate each and every electric utility, other

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1 than PG&E, to which you contend that DWR can sell power, from
2 which it can buy power, or with which it can exchange power
3 without agreement as to transmission."

4 CHAIRMAN MILLER: That kind of question,
5 Mr. Strumwasser, we definitely set aside, it does after all
6 require reflection, at least by Counsel who are working on
7 this, since we want to defer that kind of thing in order to
8 proceed with our main objective.

9 We would sustain the objection at this time on the
10 grounds that it's premature.

11 MR. ARMSTRONG: Let me make a suggestion because I
12 think we may find a different solution to this.

13 As I said in the beginning-- Well, you were told
14 in the beginning by Mr. Strumwasser, I believe-- Mr. Strumwasser
15 and we met for some time last evening, trying to work this
16 out on a basis of Well, pick a few questions in your set,
17 pick a few questions in our set, and maybe we'll do it that
18 way.

19 After reflection, we came out thinking this is
20 nonsense because of the kinds of problems we're getting into
21 here. You know, if you start down this road you're involving
22 PG&E at least in the problems which we've already adverted
23 to. The other side of it, however, is not forthcoming.

24 Now our basic problem, as I said, is quite
25 candidly a problem of fairness, as we see it; I'm not going

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1 to try to characterize it any differently.

2 CHAIRMAN MILLER: This is a separate issue, isn't
3 it?

4 MR. ARMSTRONG: Well, I'd like to talk about what
5 is the solution to this entire problem instead of cherry-
6 picking various interrogatories and saying these are okay and
7 these aren't.

8 The assertion is that contention interrogatories
9 in the pure sense are premature at this time. I suggest that
10 that is a position that needs to be re-examined and if the
11 decision is that they're not premature, then I think we can
12 get on with this throughout both sets of interrogatories.
13 Let me just speak to that for a couple of moments if I might.

14 We were discussing yesterday the various documents
15 which have been produced and the processing which has occurred.
16 I think at least it's clear that NCPA appears to be the most
17 advanced in the discovery evaluation of any of the parties
18 to this proceeding. At least that's an impression, based
19 upon their indication that they have in process all of the
20 rolls of microfilm which they have received. I'm sure they've
21 got more work to do and I'm sure they will want to massage
22 that, but they've at least got some kind of a handle on it.
23 They have already had the CID documents for a long time.

24 They are now on the eve of a hearing in the FERC
25 dockets which concern the intertie agreement, the Power Pool

eb15

1 agreement, Contract 2948A, and the SMUD contract, which are
2 four of the supposedly critical contracts in this proceeding
3 as well. They filed their initial testimony. Discovery
4 obviously is complete.

5 They are due to file testimony in another FERC
6 proceeding which is as comprehensive as this one is. That's
7 due to happen some time in July. Discovery I think in that
8 case is obviously substantially complete.

9 Now we have also been treated to NCPA Counsel tell-
10 ing us that every week he finds a very interesting document.
11 He showed us a couple yesterday and said he might bring some
12 more in for our amusement today. I think we have to be
13 critical, given that state of the record, of statements, at
14 least by NCPA, that they are not in a position, in any way
15 shape or form, to respond to contention interrogatories and
16 to outline the elements of their case as they now see it.

17 CHAIRMAN MILLER: We intend to get to NCPA and
18 DWR on the subject of priorities. I asked you if you were
19 not now getting into another subject here.

20 MR. ARMSTRONG: My suggestion, Mr. Chairman, is
21 this, that we could move this case ahead very expeditiously
22 if the parties were required to answer the interrogatories,
23 all the interrogatories that are outstanding at the present
24 time, with the understanding-- We all make this caveat every
25 time we say anything. Discovery is continuing and it is

eb16

1 typical of a case this major, you answer the interrogatories
2 and if you find something later, you file supplemental in-
3 terrogatories. There's no big problem with that.

4 And I feel very strong that the way we can best
5 move this case ahead at this point is to simply ask the par-
6 ties to set up a time schedule and-- We're not picky about
7 the parameters of that, but if the--

lc

8 (The Board conferring.)
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WRB/mp:l
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1 MR. ARMSTRONG: Mr. Chairman, I have only a couple
2 of more suggestions here. One is that obviously if a party
3 wants to say 'Yes we contend that PG&E is the biggest monopoly
4 in the history of mankind, but we don't yet have our discovery
5 to the point of being able to tell you which specific docu-
6 ments support that,' you know, we understand that we're
7 going to have to accept that as an answer. And if we have to
8 respond to some of these interrogatories I'm sure we're going
9 to have to use that observation ourselves in some respects.

10 But I think we would move the case ahead if we
11 had answers to these interrogatories.

12 One last point and then I will close this issue.
13 I want to remind the Board of the frustrations which we have
14 all suffered since last September at least in trying to focus
15 and identify issues. I think the focusing process is not
16 aided by deferring the process of responding to interrogatories
17 of the sort we're discussing.

18 One function these things will serve is to force
19 counsel to think about their case. And that alone is going
20 to be worth something.

21 Additionally, I told you earlier and I repeat:
22 the problem I've got vis-a-vis the client here, they see this
23 massive expenditure of effort, and you know, I get questions,
24 you know, what's happening, you know, what are we learning
25 from the other side, what are their contentions, what's this

2056 028

WRB/mpb2

1 case all about? And I have to continually say, "Hey, we
2 don't know, that's been deferred." You know, gee, they've
3 got hundreds of thousands of documents and all this time you
4 can't -- what are we doing this for?

5 It's a real problem, and I suggest it's the same
6 kind of problem the Board's had. You know, what's happening,
7 what's the result of this, and we're tantalized with these
8 smoking guns. But it's never put into the right pigeon holes
9 and categories, even preliminarily. Mr. Strumwasser last
10 night observed that he thought the statement of issues was
11 somewhat difficult to work with now that he's gotten into
12 the case more. Maybe it is. Maybe that needs to be amended.

13 MR. STRUMWASSER: I must object to this.

14 CHAIRMAN MILLER: Go ahead.

15 MR. ARMSTRONG: My point is that if there is a
16 view that counsel has that, gee, there's some difficulty with
17 the way things are structured now, this is a good way to
18 identify that. And in answering these interrogatories focus
19 of counsel will have to be addressed to that question too,
20 gee, is this issue stated the right way? If not, let's get
21 that out on the table and move this case ahead.

22 That's my idea about it. And as we said in our
23 written papers, we feel our interrogatories were filed first
24 and it's on that basis that we feel we're entitled to answers
25 at least on the contention side first. And we wouldn't get

2056 029

WRB/mpb3

1 into all these arguments if we just say 'All right, Intervenors,
2 take your best shot, answer the interrogatories that are
3 addressed to you; and then, PG&E, you have to do your part
4 and answer the interrogatories DWR has sent to you.' We just
5 wouldn't have all this discussion.

6 Everybody answer the interrogatories. And if the
7 answer right now is we don't know yet, that's the way it is.
8 So that's my pitch.

9 CHAIRMAN MILLER: Let's hear from parties we
10 haven't yet heard from on this question.

11 Mr. Davidson?

12 MR. DAVIDSON: Some slight confusion, Your Honor.
13 What is this question we're discussing?

14 CHAIRMAN MILLER: The question I think is in two
15 phases. First of all, we've been considering the voluminous
16 interrogatories addressed by DWR to PG&E, and vice versa, of
17 which type B at any rate under the DWR formulation is
18 essential facts and more factual in nature, with some
19 exceptions, whereas there are also a large number of
20 interrogatories from the other side which get to contention
21 type matters.

22 And the question before the Board is whether or
23 not any or all of these should be deemed premature at this
24 time, whether answers should be required of some or whether
25 answers should be required of all.

2056 030

WRB/mpb4

1 MR. DAVIDSON: I think --

2 CHAIRMAN MILLER: And you, I guess, are going to
3 be involved in it because there's been some position taken
4 that your client is farther along in terms of not only
5 receiving but analyzing documents in preparation presumably
6 for evidentiary hearings, whether in this or other evidentiary
7 proceedings, and that you have not, if I rightly recall, been
8 as forthcoming in the document production that PG&E at any
9 rate would expect of you.

10 So I take it you're probably involved at least to
11 that extent, as well as any observations you might want to
12 make with regard to the discovery situation.

13 MR. DAVIDSON: I would like to make a few observa-
14 tions.

15 I really didn't follow the last document. It was
16 that NCPA should know its contentions because its filed a
17 case and will be filing rebuttal. And that certainly is
18 generally true.

19 It seems to me equally clearly it's generally
20 true that our case and our rebuttal are our contentions. And
21 if PG&E is really seeking our contentions as opposed to
22 something at this stage is harassment, going through every
23 document to bear on something, our evidence is our contention.

24 We filed exhibits, witnesses, documents, and
25 there are our contentions, to the extent we have them.

WRB/mpb5

1 They're not perfect. By the time this case comes to trial
2 they'll be better. But obviously what we have is what we
3 file.

4 CHAIRMAN MILLER: Found here?

5 MR. DAVIDSON: No, at FERC. I mean, that was their
6 argument.

7 CHAIRMAN MILLER: What's its relationship to the
8 instant state of discovery?

9 MR. DAVIDSON: Well, the argument was that that
10 we're in a position --

11 CHAIRMAN MILLER: I don't mean the argument. What
12 I want to know is what have you done or can your client do in
13 this case to come forward with smashing discovery and the like
14 and it hasn't done?

15 MR. DAVIDSON: Are we discussing what we can do in
16 discovery?

17 CHAIRMAN MILLER: Yes, discovery.

18 MR. DAVIDSON: You mean answering interrogatories?

19 CHAIRMAN MILLER: Well, that's part of discovery.

20 MR. DAVIDSON: Your Honor, I think our state of
21 exhaustion was made clear yesterday when we sought to take
22 the deposition of Mr. Gerdes which we've been seeking for
23 some time, and acknowledged that for a period of months we
24 did not have the capability to do so.

25 We are flat out something like half my firm is

WRB/mpb6

1 working on PG&E litigation. These interrogatories to the
2 extent that they are not answered --

3 CHAIRMAN MILLER: Well, to what extent are they not
4 answered by you and your client?

5 MR. DAVIDSON: I can't give a percentage.

6 CHAIRMAN MILLER: Oh. Well, the Board doesn't
7 have the remotest idea. And you had interrogatories and
8 requests for documents addressed to you; have you responded
9 fully, partially, or not at all? What's the factual situa-
10 tion?

11 MR. DAVIDSON: The contention interrogatories from
12 PG&E were to all intervenors.

13 CHAIRMAN MILLER: That would include, then, the
14 positions taken by NCPA.

15 MR. DAVIDSON: Yes.

16 CHAIRMAN MILLER: I see. In that event, I know
17 then what the interrogatories are engendering.

18 Now have you made any responses?

19 MR. DAVIDSON: Well, no. I thought we were direct-
20 ed not to respond. Am I in error on that?

21 CHAIRMAN MILLER: I don't know about being directed
22 not to respond. I think we set the matter for hearing today,
23 didn't we?

24 MR. DAVIDSON: Oh, yes, that's what I mean. We
25 were not directed or under compulsion to answer them and

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WRB/mpb7

1 supply information.

2 Mr. Chairman, you will recall at the last confer-
3 ence, when these were served directly, the Board indicated at
4 that time that no answers would be required until some time
5 after this hearing. I don't think it was a direction not to
6 respond, I think it was permission not to respond.

7 CHAIRMAN MILLER: That I guess is what the state
8 of the record is. Yes, we knew that they were massive, we
9 knew that there were others that had not yet been filed but
10 would be filed, and that they got into matters that would be
11 meaningful, at least in part, as discovery was nearing
12 completion, or trial preparation actually beginning. I think
13 that was the state of it. Perhaps that's what you meant.

14 MR. DAVIDSON: That's our position, was discovery
15 is not nearing completion to the extent discovery in other
16 cases is nearing completion or has been completed, we're
17 filing our testimony, and that states our position in great
18 detail. And to make us fit this --

19 CHAIRMAN MILLER: In other words, then, in this
20 case you would, within a reasonable time, be able to answer
21 the interrogatories addressed to your client, at any rate,
22 by PG&E, the proposed contention type as well as statistics
23 or data types.

24 MR. DAVIDSON: After discovery is completed we can --

25 CHAIRMAN MILLER: No, I don't mean after discovery.

WRB/mpb8

I mean now.

MR. DAVIDSON: I could not begin to answer which of 500,000 documents bear on a specific question. In some cases --

CHAIRMAN MILLER: Well, you can answer for some, I presume. As you've indicated, you've prepared certain testimony in FERC and the like. You must then be able to answer interrogatories at this point.

MR. DAVIDSON: But when you prepare testimony, as you know, to take the three or four best documents at a point to try to drag out the next 50 is a task that is just horrendous. I mean, PG&E has just told us they can't answer the simplest market share question. We don't have PG&E's resources, we don't have computers. We have one team, we don't have the luxury of a separate team for this case and the FERC cases.

CHAIRMAN MILLER: Well, what PG&E told us is not controlling upon the Board nor upon everybody else. And every time we talk to anybody here about their own production we get a horrendous story. And we know that it's a massive matter, but on the other hand it isn't going to continue forever up in the air. And that's going to be true certainly of the factual data type. And the Board is now reviewing and it's hearing argument concerning at least positions presently on contention type matters.

2056 035

WRB/mpb9

1 We know it can be exhaustive.

2 MR. DAVIDSON: Our position is contention type
3 interrogatories are premature.

4 CHAIRMAN MILLER: I'm sorry?

5 MR. DAVIDSON: Our position is contention type
6 interrogatories are premature at this point.

7 CHAIRMAN MILLER: The Staff?

8 MR. GOLDBERG: I have a few things I would like
9 to say.

10 Since intervention in this case a couple of years
11 ago, the Staff has attempted to get from PG&E the type of
12 data which DWR seeks by its Interrogatories number 4, 16,
13 and 631. We tried to do this informally. It didn't work;
14 we were not given the information we asked for.

15 We resorted to a draft of a joint stipulation on
16 physical data in the hopes that we could get agreement on a
17 lot of the numbers that would be inevitably arising in this
18 case. We put forth our own numbers in the hopes that if
19 someone disagreed with them they would point that out to us
20 and perhaps we could reach agreement and save everyone a lot
21 of time and a lot of discovery for the documents that would
22 provide this information.

23 For a number of reasons that effort failed.

24 We then resorted to some interrogatories ourself
25 which were in part the subject of this hearing. PG&E has been

WRB/mpbl0

1 cooperative in giving us the information requested by those
2 interrogatories. But they're really just a very small set
3 of interrogatories which seek the data similar to the data
4 sought by DWR's interrogatories 416 to 631.

5 I think it's a worthwhile suggestion that Mr. Wenner
6 had to sit down professionally and look at this and exchange
7 information. But the history of the matter is that we've
8 attempted to do this, and it's failed, repeatedly failed.
9 And so we've had to resort to filing formal interrogatories
10 and seeking this information before the Board where we could
11 have specific rulings.

12 I think it's important to get this type of
13 information as early in the case as possible. We tried to
14 get it two years ago. It would be of tremendous assistance
15 to have this information as soon as possible so that we
16 could prepare our case more expeditiously and not have to
17 waste time with a lot of documents from which this data might
18 be extracted after a great deal of effort.

19 So I would just add to everything that's been said
20 that it's of fundamental importance to the Staff to get this
21 type of factual information, this type of data that goes into
22 the market share analysis as soon as possible. And I would
23 distinguish those types of interrogatories from the conten-
24 tion interrogatories, which we do believe certainly are
25 premature, even more so for the Staff than for any other

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party.

CHAIRMAN MILLER: Mr. Matt?

MR. MATT: I just want to add, we seem to be going into such different areas, but to complete the report on discovery, as it were, interrogatories, and on behalf of the Cities of Anaheim and Riverside, we've completed and produced all the documents requested by PG&E, and forwarded them to PG&E.

Not only that, we've already forwarded to them our privileged list. Therefore, while I listen to these tales of woe on the other side, under the same if not a heavier schedule, because of commitments and other proceedings with much more limited resources, we have been able to complete at a much earlier date than we had originally agreed to our production as requested by PG&E at least to this date.

And I believe the Board should take into its considerations the fact that that has occurred and we are still nowhere -- as I can get it, at a very low percentage of PG&E's ultimate production in this case.

CHAIRMAN MILLER: Now are you making a distinction between document production or data production on the one hand, and contention type, even at an interim stage, on the other?

MR. MATT: Yes, Your Honor. As Mr. Davidson said and as Mr. Armstrong stated, the contention interrogatories

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2 were served in January and it was agreed that there would be
3 no response to those at least until there was some considera-
4 tion, and action by the Board and the parties in this proceed-
5 ing.

6 I might also note that on behalf of Southern
7 Cities, we have also filed extensive testimony in FERC
8 proceedings in which PG&E is a party which fully state our
9 case and our contentions as best we can state them to this
10 date given what discovery we have had through that proceeding.

11 CHAIRMAN MILLER: So you could then file in this
12 proceeding at least a summary of your contentions and the
13 backup that you have today.

14 MR. MATT: I could file my testimony, which is
15 better.

16 CHAIRMAN MILLER: You would be able to do so, is
17 that correct?

18 MR. MATT: Yeah, PG&E already has my testimony.

19 CHAIRMAN MILLER: I'm not asking about testimony.
20 We could care less. We're talking about this proceeding and
21 what you're capable of doing.

22 If I understand you correctly, you have the
23 ability to file information of a discovery nature and docu-
24 ments and data production. In addition, you would, within
25 a reasonable time, be able to file and to respond to
interrogatories which go to contentions, as they are available

WRB/mpbl3

1 to you at this time?

2 MR. MATT: Right. Which would at this time I
3 would expect be no greater in detail than obviously we have
4 already prepared in that testimony. But, yes, I could take
5 that and translate that --

6 CHAIRMAN MILLER: I don't want to look at your
7 testimony, I don't want to hear about it. That's another
8 proceeding. We don't want to get into it.

9 But you know what it is. And so therefore you
10 can come to the bottom line, which is you on behalf of your
11 client are capable of responding now to contention type
12 interrogatories.

13 Why can't you say yes or no to that?

14 MR. MATT: Well, I can say -- obviously the answer
15 is yes, I can answer those to the extent we have the knowledge.
16 My fear in saying yes to you right now is a fear that going
17 into trial in a case beginning June 4th which will be extensive
18 is to state something saying I can do something in a week,
19 two weeks, or a month, which is going to take -- If I have
20 to take that testimony and translate it into a form that is
21 answerable because of PG&E's form of interrogatory answers
22 in this proceeding, that is weeks, months worth of work.

23 Now if I can just say Yes, I can give PG&E files in
24 this proceeding, and PG&E -- the testimony I've already filed,
25 and say 'That answers your interrogatories to this date,' I

2056 040

WRB/mpbl4

1 can possibly answer them today. I can do that instantly,
2 obviously. But what I'm afraid of misleading the Board on
3 is saying I can do something which really is months of work,
4 to distill testimony and put it back into form which answers
5 specific interrogatories. And that's--

6 CHAIRMAN MILLER: Everyone appears to want instant
7 answers of a massive nature from the other fellow, and each
8 one is too busy to give very much of his own at the present
9 time. That's about what's the summary --

10 MR. MATT: Mr. Chairman, if I note, I have
11 responded. I did give you that answer. I'm saying despite
12 the amount of work, we completed our discovery, which is an
13 extensive job in the Cities. And we're not talking about
14 ten documents or something, we're talking about over 150,000
15 documents that were produced for PG&E, as well as they've
16 already received, which we have not received from them, our
17 privileged claims.

18 So I'm not saying I'm too busy. I have done much
19 more than they have.

20 CHAIRMAN MILLER: I am excluding what you have
21 produced. And I recognize that you've produced a very
22 substantial amount of discovery.

23 What I'm asking about is the balance.

24 MR. MATT: There is no balance of discovery, except
25 these interrogatories which are still up in the air.

WRB/mpbl5

CHAIRMAN MILLER: Well, except for interrogatories.

That's all I've been hearing for two days, and they number in the hundreds.

We will take a recess, unless somebody wants to say something that he hasn't said.

MR. WENNER: I would like to ask one question of Mr. Armstrong.

If you were to answer their contention interrogatories now, would that divert time from three or four lawyers who are working on this proceeding?

MR. ARMSTRONG: Well, if we were to answer the interrogatories some time would be lost, and it would be the two lawyers who are involved in this proceeding. So we'd have to do it somehow.

The more I listen to this conversation and the Chairman's remarks, it's clear to me that we're going to have to come up either with an augmentation of Staff or something to accomodate whatever the requirement is.

So in answer to your question, yes, there would be some diversion. But it's clear to me that we're just going to have to do it, either through a diversion or an augmentation of Staff. And I think it's going to have to be the augmentation route in some fashion or other that I don't know at the moment.

But let me go on from that point and say this:

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WRB/mpb16

1 It seems to me that you're absolutely right,
2 Mr. Chairman, that everybody seems to want the answers from
3 the other fellow. There is also some sort of subliminal
4 tactical posturing here which I would put into two categories,
5 although there may be more. And I think it's helpful for the
6 Board to get a feel for this.

7 Mr. Goldberg adverted to the earlier efforts to
8 get the stipulation on technical data. One of the problems
9 involved in that was not so much getting the data as agree-
10 ing as to what time period was relevant.

11 I think it should be reasonably clear from the
12 interrogatories that DWR posed and other evidence, the
13 efforts of the Intervenors is to go as far back in time as
14 they can, and to get as broad a view screen as possible. So
15 they maximize their opportunities, as they see it, to prove
16 some sort of liability.

17 We feel our case is going to focus on as much
18 of the present situation as possible because, for one thing,
19 the existence of the commitments which haven't yet had a true
20 opportunity to take their hold in the real world. They've
21 been in existence for a little while, but, you know -- So
22 they have this time frame thing that is going back and forth
23 between the parties.

24 I think the other aspect has to do with how you
25 structure the data, what categories you use, and that sort of

WRB/wbl
1 thing, which goes on in every case.

2 Now my suggestion, again, on all this is, it is
3 quite clear that at least NCPA and PG&E are telling you that
4 because of their commitments in FERC they're strapped. I think
5 the answer to that has to be -- and, you know, the handwriting
6 is clear on the wall as far as I can see -- is we're at least
7 going to have to augment our resources: there's no other
8 solution to it.

9 I think the same thing is going to have to apply
10 on the other side of the fence. And to avoid the kinds of
11 arguments that we are having and the potential for skewing the
12 process, it seems to be the only way to go is just to say, Look,
13 everybody comply with their discovery commitments.

14 We're not asking for answers to these interrogatories
15 a week, in a week or thirty days. If they want to wait for
16 sixty, ninety days or whatever is right, that's fine. The
17 only thing I'm arguing is that, whatever time they get we feel
18 we're entitled to a comparable amount of time. And at least
19 as to the contention interrogatories we think the sequence
20 ought to be maintained. That's traditional.

21 The only other thing I would mention, that hasn't
22 been mentioned is that while Mr. Matt can justifiably claim
23 praise for his client's production of documents, his colleagues
24 at the NCPA still have a little difference with us about their
25 production of documents. And we'd like to at some point get

TRB/wb2

1 into that subject. Or, better yet, just get to the documents
2 and avoid the arguments.

3 I think we're entitled to the documents. It's just
4 a question of when we're going to see them.

5 So I think with those comments-- I really think
6 we're just going to have to commit the resources to answer
7 these interrogatories. But we feel pretty strongly about what
8 I term the fairness question, that we're equally entitled to
9 get some responses to our discovery. And it is no new thing
10 to litigation that a party be required to state his case
11 preliminarily. And all this thing about, Well which category
12 does it go in? Every set of interrogatory answers I've ever
13 seen they take the first opportunity and say, Here's our case.
14 And then for every other interrogatory they say, See Answer
15 No. 1.

16 There's nothing peculiar about this. And it's not
17 any great burden. Yes, it will require time. But, as I think
18 I said earlier, the parties are just going to have to devote
19 to this case the resources required to get the job done.

20 MR. STRUMWASSER: I'm sorry to hold off the recess,
21 and if the Board wants to take it now we can. But I feel impelled
22 to respond to what Mr. Armstrong said now and said before.

23 First of all I would like to object strongly to
24 Mr. Armstrong's reporting to this Board the sum and substance
25 of conversations that we had in the course of negotiating

WRB/wb3
1 attempted solutions at the direction of the Board. I think
2 that his continued use of that tactic is going to seriously
3 impede our progress in trying to reach voluntary agreements
4 on these matters.

5 But since he has raised this matter I would like to
6 comment on what I said about the Statement of Issues because
7 it is relevant here.

8 The Statement of Issues was a product of exactly
9 the kind of compromise that we have pursued elsewhere, and
10 that was, at least in the short run, successful; that is, we
11 all sat down and put together at a very early stage a State-
12 ment of Issues that was a shopping list. And the path toward
13 agreement was, if you had another issue you just threw it in
14 there. We didn't object. If we had another issue we threw
15 it in there and they didn't object. And it all came out.
16 And it's not a terrific statement of issues, frankly.
17 There's nothing that any of the parties who presented it to this
18 Board can be very proud of.

19 Our view was at the time that it at least gave us
20 the bounds of discovery. And it still does do that. It tells
21 us the subject matters to which discovery requests have to be
22 relevant. But it is not something that is well tailored to
23 categorizing your evidence. So independent of the question of
24 how far along you are in getting your evidence, how many of
25 the documents you have located, how many of the potential

WRB/wb4

1 exhibits you have already identified, how many of the witness'
2 testimony you already know about, independent of that question
3 there's a substantial task in matching that information to the
4 Statement of Issues which is the format that Mr. Armstrong
5 chose in propounding his interrogatories.

6 Our principal point is this, Mr. Chairman: Our
7 Part A and his set of interrogatories go to an exposition of
8 the evidentiary case that each party has. There's obviously a
9 need to do that. And if we want to do it through the Statement
10 of Issues as categories, that's fine: we can all live with
11 that.

12 But there is simply no need today for an exposition
13 of our trial case or theirs, and we aren't asking for it.

14 What there is a need for is answers to interroga-
15 tories that are going to be immediately used in the course of
16 preparation of our case and further discovery. And that is
17 the nature of the questions in Part B.

18 Part B, by the way, also is specifically tailored
19 to the questions that this Board has posed to all the parties
20 regarding the commitments. And as long as this Board is
21 desirous of continuing this discussion of commitments we feel
22 it's important that the questions about the commitments that
23 we have propounded in Part B be answered.

24 It should also be clear, Mr. Chairman, that DWR is
25 not in default in any of its discovery obligations. We have

WRB/wb5
1 answered all three sets of interrogatories, and we have indi-
2 cated our willingness to produce documents at PG&E's pleasure.
3 The only outstanding discovery request on which there is dis-
4 agreement between us is this fourth set of interrogatories.

5 I'm sorry that PG&E is experiencing corporate
6 petulantism at high levels, but frankly we think it's important
7 to recognize that it is they who are the applicant, it is
8 they who entered on the course of conduct that has necessitated
9 this hearing, and that for the most part there is no way to
10 avoid the fact that most of the evidence concerning the -- that's
11 going to be presented in this hearing is going to be evidence
12 about PG&E which PG&E has now.

13 If there is a question about who's in a better
14 position to respond, frankly we have now probably reviewed
15 something substantially less than 10 percent of the currently
16 existing documents. That's a rate we're unsatisfied with and
17 that I understand the Board is unsatisfied with. That's why
18 we have undertaken measures which had led to our hiring a
19 substantially increased staff, and that's why we feel the time
20 that's going to be spent in reviewing documents is going to be
21 valuable. And we would not like to have our resources diverted
22 from getting those people into document analysis.

23 It's important to recognize also that virtually all
24 the documents that we are using, nearly all the documents any-
25 body is using are documents that have come out of PG&E's files.

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WRB/wb6

1 They are documents that they have had far longer than any of us.
2 We have had some of them since beginning in 1977, most of them
3 not until 1978. So it's not unreasonable for us to be sub-
4 stantially behind PG&E in our analysis of these documents.

5 At the last prehearing conference, in discussions
6 with Mr. Cleary and the documents that were produced at that
7 time indicated that at least with respect to the CID documents
8 all those documents have already been indexed by PG&E. That's
9 not something that's true of us.

10 There is, naturally, an asymmetry of preparedness
11 to answer these interrogatories. But the principal point we
12 think has to be focused on is the fact that Part A of our
13 interrogatories and their interrogatories go to an exposition
14 of the evidentiary case for which there is simply no need at
15 the present time.

16 MR. ARMSTRONG: Mr. Chairman, I just want to correct
17 one statement Mr. Strumwasser made. He seems to suggest again
18 that we're further along than he is. He's got, I think he said,
19 10 percent of the current production in process. PG&E has not
20 got even 10 percent of the current production indexed or treated
21 with.

22 I said what I meant: we do not have any resources
23 in this case going to evaluating those documents. The fact
24 that they lay around in somebody's file for so many years is
25 not helpful to me at all.

RB/wb7

1 CHAIRMAN MILLER: Which documents are you talking
2 about PG&E evaluating?

3 MR. ARMSTRONG: The so-called green-dotted files
4 that are being produced at the present time.

5 MR. STRUMWASSER: Mr. Chairman, my statement is
6 based on the fact that one of the PG&E indoctrination documents
7 that was produced in connection with the Cleary deposition-- Am
8 I right in my recollection that Mr. Cleary's own testimony
9 was that all the CID and all the, what we call CID but was
10 really FERC production, which had numbered over 400,000 documents
11 had been indexed?

12 MR. ARMSTRONG: That's true. I'm talking only
13 about the green-dotted.

14 MR. STRUMWASSER: Well 400,000 itself is 40 percent
15 of the million or so documents that have been produced.

16 CHAIRMAN MILLER: All right. I think we understand.
17 We'll take a short recess.

2A fls

18 (Recess)
19
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21
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22 agbl C5 1 CHAIRMAN MILLER: To move forward on our conference
2 with counsel, the Board at this time is of the belief that
3 interrogatories by any party which are in the nature of factual
4 data should be responded to and responded to with reasonable
5 promptitude. We included there particularly the kinds of
6 factual information, agreements thereto and the like which the
7 Staff has for some long period of time attempted to get agree-
8 ment upon and which has not been the subject of agreement or
9 clear-cut commitments of record or otherwise.

10 We suggest, therefore, that the Staff revive and
11 resuscitate the factual information, data description of the
12 systems, statistics and the like. In fact, the Board feels
13 that the parties have not responded as they should have a long
14 time ago to those things which are normally the subject of
15 any kind of an anti-trust or other proceeding which involves
16 a public utility, especially an electric utility, either in
17 Commission cases or other administrative or even judicial
18 proceedings.

19 We think there's been entirely too much delay and
20 footdragging on that aspect and we say that to all of you.
21 We think the Staff's effort should be promptly addressed by
22 all counsel and that the results should be made of record
23 by commitments which are the subject of notification to the
24 Board. And in the event of controversy, let us know what the
25 controversy is, what the respective positions are and we'll

1 rule on the matters in controversy. We think that should be
2 done and be done immediately.

3 MR. DAVIDSON: I only inquire, sir, because of your
4 statements you're addressing to all counsel. I believe NCPA
5 has given the Board everything they requested.

6 CHAIRMAN MILLER: I don't know, I'm casting no stones,
7 I'm just making the record complete. If it doesn't affect you,
8 you don't have to duck, if it does, then duck.

9 MR. GOLDBERG: NCPA is correct, Mr. Davidson has --

10 CHAIRMAN MILLER: I don't want to get into it. I
11 don't want to have footnotes on footnotes to the extent commit-
12 ments are necessary in order to get the established and agreed
13 data such as that requested by the Staff but not limited thereto
14 and it may encompass some of the so-called data matters of
15 Part B of DWR. It may also encompass some of the interrogatories
16 propounded by PG&E or perhaps other parties, we don't know.

17 We think counsel can sit down and can determine those
18 matters which are factual in nature which do not require study
19 of tactics, the interposition of lawyers whether they be
20 paralegals or counsel of record or anything like that. These
21 data questions should be easily discernible by counsel on an
22 objective basis and they should be promptly responded to.

23 Now it's going to require somebody to go forward to
24 designate, to the extent that there are pending interrogatories,
25 whether DWR, PG&E or anyone else, we want counsel to get together

WRB/wbl

1 immediately and to agree upon those that are of the data type.

2 MR. STRUMWASSER: Mr. Chairman, I do not understand
3 the Board to be rescinding their earlier ruling about our in-
4 terrogatories 416 to 631. Am I correct that I will continue
5 to -- that I will still be presenting these data to Mr. Armstrong
6 and that they will be responded to on an agree-or-disagree
7 basis?

8 CHAIRMAN MILLER: Insofar as that can be done, yes.

9 In other words, since you have had served upon
10 you first interrogatories of PG&E, and while these are not the
11 same type nonetheless we do think that it would be helpful as
12 well as responding to the priority of service of interrogatories
13 for you to come forward and indicate what you consider to be
14 the date that you want responses to.

15 MR. STRUMWASSER: They haven't asked us for that
16 data.

17 CHAIRMAN MILLER: No; I said insofar as their
18 interrogatories were concerned they and you would have to
19 decide whether there were any which also ask for data. We
20 don't know.

21 MR. STRUMWASSER: I think it's fair to say all
22 their interrogatories are contention interrogatories. Some
23 of ours are and some of ours are not.

24 CHAIRMAN MILLER: This may well be. We're talking
25 now about the data.

wb2

1 First of all, the Staff's. We think they're pretty
2 well set forth. Then moving down, will those of your so-called
3 Type B that could be reasonably identified as data. And if
4 there are any others, I don't know. We haven't studied PG&E's
5 in that respect, we don't know whether you have any data type
6 interrogatories or not. If you do you're entitled to prompt
7 responses.

8 MR. ARMSTRONG: As I understand the Board's
9 decision, then, the data requests which now exist, or which
10 will exist, I think, obviously from our standpoint, if the
11 Board is desirous to move forward on the track of the Staff's
12 earlier notion of the stipulation on various data, it would be
13 appropriate to send interrogatories or other discovery requests
14 of some sort to the other intervenors and get their data, or
15 agreement as to DWR's data.

16 MR. STRUMWASSER: Can't we just work that out?

17 CHAIRMAN MILLER: Yes.

18 MR. ARMSTRONG: My point is, it's not just between
19 DWR and PG&E; that everybody is supposed to get into this.

20 CHAIRMAN MILLER: That's right. We don't know to
21 what extent other are or may be involved, and we don't want to
22 take the time to read them and sort through. So we're establish-
23 ing the principle which applies certainly to PG&E, DWR and the
24 Staff. It may or may not include others, and, to the extent
25 that it does, I think you understand what we're seeking to have

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1 done and to have done promptly. That's on the data type.

2 Now so far as the contention type matters, or mixed
3 fact and contention, to the extent that it would require a
4 not insubstantial amount of either time or effort on the part
5 of lawyers we are inclined to defer, not forever and not until
6 spring, but to defer until there is a bit more progress in
7 discovery and an opportunity for counsel to get seasonably to
8 contention matters, and to the legal and mixed questions of
9 law and fact.

10 So we are deferring, but only temporarily, the so-
11 called contention type, or oriented, interrogatory. There, again,
12 we expect counsel to confer among themselves, to agree wherever
13 reasonably possible on an objective basis, try for tactical
14 advantage, or whatever your client says, or any of those kind
15 of things. If you cannot agree, submit it in writing to the
16 Board and we will rule.

17 We want the positions of everybody, but we suggest
18 that should be the unusual situation. Because you're all
19 accomplished lawyers who have shown ability to handle yourselves
20 professionally.

21 MR. STRUMWASSER: We may be able to thrash it out
22 during the lunch today.

23 CHAIRMAN MILLER: To the extent you can, great.

24 Now we have not completed a matter which will
25 impinge upon our continued discussions this afternoon, that is

wb4 1 the status of discovery, the documents produced, not produced,
2 the types of categories, and so on. We have not heard from
3 PG&E because we have asked the other parties to go first on
4 that.

5 I believe you have done so, have you not, sub-
6 stantially? At any rate it's probable that we should hear
7 from PG&F as to what they've done, the number of people that
8 you have doing what, the number of documents produced and
9 types. Give us as full and complete a description as you can
10 and then we'll have some questions.

11 MR. ARMSTRONG: I think Mr. Meiss reported yester-
12 day as to the number of documents which have been processed
13 to date. The number, if my notes are correct, was that we
14 produced approximately 140,000 documents since the beginning
15 of this calendar year, and there were another 230,000 produced
16 last year, in addition to the CID documents. And this reflected,
17 140,000 documents which had been produced this year reflected
18 the net result of processing approximately 300,000 pages of
19 material.

20 If the Board would like more detail as to the
21 amount of staff and such that's involved in this at the present
22 time I would ask Mr. Meiss to address those.

23 CHAIRMAN MILLER: All right. We'd like to be brought
24 up to date. We had a description before of the green-dotted.
25 I think you were going to start on the executive files, and so

1 on. We'd like to know what categories have been either completed
2 or worked on in part. --an updating of the whole thing, I think.

3 MR. ARMSTRONG: We've completed production from
4 the executive offices. And, as I understand it, the team is
5 now in the offices of the Law Department.

6 After the conclusion of that process then I believe
7 they will return-- What was peculiar about the Law Department
8 and the current Executive Office files was that those files
9 had not been green-dotted by the intervenors and staff. Those
10 were the departments which PG&E reserved the right to screen
11 on its own. And so after that Law Department review is com-
12 pleted they'll be back into departments as sequenced by the
13 intervenors and staff, and which have been green-dotted.

14 CHAIRMAN MILLER: Which have been green-dotted?

15 MR. ARMSTRONG: That's correct.

16 The point that I'd like to make, just preliminarily
17 before I ask Mr. Meiss to give you some more detail, is that
18 based upon what we heard yesterday, that there was -- I think
19 Mr. Davidson said it was his estimate that he was finding at
20 least one document a week which was hot, or however he
21 described it, we're producing roughly at the rate of 25,000
22 pages a week. And if you work this out-- I realize there is
23 some overlap here. --to get one documents out of 25,000 is not
24 a very good result. And even if the number were ten documents
25 or twenty-five documents out of that number it's a low rate of

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1 net for a very large effort.

2 I'm convinced that if you think of 1 in 25,000,
3 that's the equivalent of 40 parts per million, and nobody
4 would mine gold if that was the only yield they could get out
5 of it.

6 So with that observation I will ask Mr. Meiss to
7 give you some more description.

8 CHAIRMAN MILLER: We understand your colorful
9 description, but I guess if you were talking about a drop of
10 cyanide it might come out a little differently. All these
11 things are relative.

12 MR. FALLIN: Not to mention rems.

13 CHAIRMAN MILLER: Don't mention that.

14 (Laughter)

15 Proceed.

16 MR. MEISS: Mr. Chairman, in this reporting period
17 since our last prehearing conference we had eighty-three working
18 days. We processed, as I indicated yesterday, approximately
19 332,000 pages.

20 CHAIRMAN MILLER: Slow down a little bit.
21 How many, again?

22 MR. MEISS: We processed approximately 332,000
23 pages. This completed the production from the retired Executive
24 files, which date roughly from 1960 to about 1971-72. And also
25 the central files of the Engineering Planning Department. And

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1 we have done the central files and all the personal offices
2 of the executives who reside on the thirty-second floor of the
3 headquarters building.

4 CHAIRMAN MILLER: You have completed?

5 MR. MEISS: That is completed.

6 We are currently in the Law Department central
7 file rooms. There are four of those. They will be completed
8 fairly shortly.

9 We estimate that, given the number of lawyers who
10 have had some activity that may be relevant, that we should
11 be able to complete the Law Department by about the end of
12 July.

13 In this same reporting period we experienced
14 equipment breakdown totalling twenty-eight days. So we've had
15 some difficulties. As you and I are sitting here we are having
16 a new Xerox machine being installed to help remedy that problem.

17 CHAIRMAN MILLER: Is that twenty-eight days of
18 equipment breakdown included within the eighty-three. or
19 exclusive?

20 MR. MEISS: It is included within.

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1 The Department of Water Resources, on behalf of the
2 Intervenors, copied, according to our tabulating their
3 numbers, 142,135 pages in this reporting period. We shipped
4 to the Staff approximately 100,000 pages.

5 CHAIRMAN MILLER: Wait a minute now. DWR copied
6 142,135 pages?

7 MR. MEISS: That's correct.

8 CHAIRMAN MILLER: And then you, PG&E, shipped to
9 the Staff how many?

10 MR. MEISS: Approximately 100,000 pages.

11 CHAIRMAN MILLER: Was that included within the
12 142, or is that exclusive, or overlap?

13 MR. MEISS: That's included. In many respects the
14 Staff is getting a duplicate copy of the material made avail-
15 able to the State.

16 CHAIRMAN MILLER: That's in part because of the non-
17 green dotting, I think the Staff has explained, so they're
18 getting a higher proportion than they did formerly?

19 MR. MEISS: That's correct.

20 As to staffing, at the present time there have been
21 no changes since the last reporting period, and there are 22
22 clerks and 16 legal assistants doing document production.

23 CHAIRMAN MILLER: The 16, are those the paralegals?

24 MR. MEISS: Yes, they are.

25 CHAIRMAN MILLER: How many lawyers then are engaged

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1 as part of this working group?

2 MR. MEISS: We have a pool of approximately seven
3 lawyers who are reviewing documents.

4 CHAIRMAN MILLER: Not continuously but among them-
5 selves?

6 MR. MEISS: On a part-time basis.

7 CHAIRMAN MILLER: Now can you tell us what remains
8 to be examined and processed and the like, insofar as you have
9 already indicated I'm sure the Law Department, and your inten-
10 tion of moving back after completion of the Law Department,
11 by approximately the end of July, to the departments which have
12 been green-dotted.

13 Somewhere we had a mention, too, of some warehouse
14 documents, so you might include those matters in your report.

15 MR. MEISS: Thus far we have done what amounts to
16 two departments completely, which would be considered the
17 executives' files, the retired and the active. That completes
18 two departments.

19 We are currently completing the Law Department and
20 we've done one-half of the Engineering Planning Department.

21 CHAIRMAN MILLER: One-half of the Engineering
22 Planning?

23 MR. MEISS: That's correct. We've done their Cen-
24 tral File Room alone. That was at the specific request of
25 the Intervenors, so that they would have an example of technical

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1 documents that would be subject to discovery so that they could
2 review them to examine the correctness of their instructions
3 to the document searchers.

4 What remains to be done is substantially all the
5 work. We have yet to do the Siting Department, which is one
6 of the larger components of the Planning and Research Depart-
7 ment, the personal offices in the Engineering Planning Depart-
8 ment, the Electric Operations Department, which includes the
9 following component parts:

10 Steam Generation, which is responsible for our
11 thermal units; Hydro Generation, which is responsible for our
12 hydroelectric operations; Power Control, which does the power
13 brokering for the system; the System Protection Department,
14 which is responsible for maintaining system stability.

15 We also have yet to do the Governmental Relations
16 Department, the three components of the Rates and Valuations
17 Department, which would include the Rate Department, whose name
18 is self-explanatory, the Valuation Department who values the
19 company's assets for rate-making and tax purposes, and the
20 Economics and Statistics Department.

21 We also have remaining to do the Civil Engineering
22 Department, the Electrical Engineering Department, the Mechani-
23 cal and Nuclear Engineering Department, the Engineering Quality
24 Control Department, the components of the Customer Operations
25 Department which would include our Commercial Department, our

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1 Engineering Conservation and Services Department.

2 We also have left the Public Relations Department
3 which includes subcomponents relating to public activities and
4 public affairs as well as advertising.

5 And finally we have the Financial Planning and
6 Analysis Department which is part of the Treasurer's office.

7 CHAIRMAN MILLER: Have those been green-dotted?

8 MR. MEISS: Yes.

9 CHAIRMAN MILLER: All of them?

10 MR. MEISS: Except for the personal offices.

11 CHAIRMAN MILLER: All except for the personal offices?

12 MR. MEISS: That's correct.

13 CHAIRMAN MILLER: Do you have any indication for us
14 of about how many are involved, say in the green-dotted which
15 is the bulk of the remaining departmental files?

16 MR. MEISS: We expect that we will end up producing,
17 by the time we're through with this, something in the neighbor-
18 hood of 1.7 million pages.

19 CHAIRMAN MILLER: Remaining, in addition to the
20 present?

21 MR. MEISS: That's correct. We have revised our
22 estimate, based on a comparison of the estimates we took from
23 the retired executive files. We made an estimate of approxi-
24 mately 190,000 pages to be produced, and we made an actual
25 production overrun of approximately 30 percent.

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1 CHAIRMAN MILLER: What caused that overrun? Does
2 that have something to do with the method of estimating?

3 MR. MEISS: Apparently so. We have underestimated
4 radically it appears.

5 We're going to validate the same statistics when the
6 results of the survey of the active executive files is com-
7 pleted, since we did do some estimating there as well. And
8 we'll run another comparison.

9 CHAIRMAN MILLER: Now on those files, the executives',
10 those were not green-dotted, were they?

11 MR. MEISS: That's correct. But we did make an
12 estimate of them when we were trying to determine how many
13 people would be required to comply with the discovery order.

14 CHAIRMAN MILLER: And that estimate then was based
15 on a given estimated quantity that would be examined in some
16 form or another by your crew?

17 MR. MEISS: That's correct.

18 CHAIRMAN MILLER: So to that extent it wouldn't
19 matter whether they were green-dotted or not.

20 MR. MEISS: That is also correct.

21 Also, we have not factored into this at all the
22 placement of the warehouse files that the Intervenor and the
23 Staff now wish to have produced. My estimate, based on the
24 375 boxes that the State has indicated they want to review
25 means that there's somewhere between 890 and one million pages

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1 that will require further review.

2 CHAIRMAN MILLER: By whom?

3 MR. MEISS: By the Intervenors.

4 CHAIRMAN MILLER: It won't require PG&E review, will
5 it?

6 MR. MEISS: It depends on the procedure that's
7 agreed to, Mr. Chairman.

8 CHAIRMAN MILLER: Is it possible to agree to a
9 procedure that wouldn't tie up your crew?

10 MR. ARMSTRONG: No. Those documents, if I might
11 intrude, those documents can be produced and the mechanics of
12 the procedure have not been agreed upon as yet. One problem
13 is just where they would be inserted into the numbering and
14 copying aspects of the process. That's up to the Intervenors
15 as far as we're concerned, and I don't think it's a terribly
16 critical question.

17 What is critical is that we feel, from the client's
18 point of view, these documents have to receive some kind of
19 attention from the lawyers, either before or co-terminus with
20 their production. Obviously we can't let documents out without
21 some sort of a review for privileged material and such.

22 CHAIRMAN MILLER: That review would only entail
23 those that were requested, I assume, by the Intervenors?

24 MR. ARMSTRONG: That's right.

25 CHAIRMAN MILLER: They would do the initial screening

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1 at any rate? Your people would not be tied up on that?

2 MR. ARMSTRONG: Well, what we are considering at
3 this time is whether the initial screening can be accomplished
4 by the Intervenor without our re-screening them in the sense
5 that, you know, how do you unring the bell. If they pre-screen
6 and uncover a privileged document--

7 CHAIRMAN MILLER: That may be true but on the other
8 hand, what percent of documents are really genuinely going to
9 sustain the scrutiny of privilege? Isn't that a rather small
10 proportion?

11 MR. ARMSTRONG: I think it will depend on which
12 files we're talking about. Some of the boxes which they have
13 designated in the warehouse are boxes which came originally
14 from the Law Department, so I would suspect that we'd have a
15 higher percentage of privileged documents there than we would
16 in some other areas.

17 CHAIRMAN MILLER: Well, you could go to those first.
18 Everybody talks about privilege but really, there aren't that
19 many privileged documents when you get right down to it.

20 MR. ARMSTRONG: That's true, but it's the problem
21 of finding-- You know you can't find the privileged document
22 in that mess without looking at all of them. That's the
23 problem.

24 MR. STRUMWASSER: Mr. Chairman, we had assumed that
25 the warehouse files, the 30 boxes or so, would be subject to

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1 a green-dotting procedure. And if that's the case, we screened
2 about 70 boxes in just a couple of days there. We would expect
3 that we could screen the 30 boxes or so -- excuse me, the 300
4 boxes in short order. It's probably the equivalent of one large
5 file room, which we easily did in a week last time. And it is
6 our expectation that a large number of those documents will not
7 be green-dotted.

8 MR. ARMSTRONG: The difference being the original
9 green-dotting process involved a review only of the file folder
10 title, and some rather amorphously described ruffling through
11 the file or something. But what has been proposed now is a
12 green-dotting on a page by page basis, and that's what is
13 creating the difficulty, I think, perhaps on both sides.

14 Maybe we didn't understand what the proposal is
15 but if it is going to be a page by page green-dotting, that
16 implies that the people doing the screening or the green-
17 dotting are going to look at every page. And if they're going
18 to look at every page, that's why we have the concern about
19 the privileged document which we didn't have in the initial
20 green-dotting process where they were just going to look at
21 the title of the file folder. And then we could look at the
22 contents of the folder as it was being produced and extract
23 at that time privileged documents.

24 So at this point the mechanics of it are unclear,
25 but those are the problems. In any event, there's a lot of

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1 documents at the warehouse, and I think for present purposes
2 that's about all we can really say. It's a lot of documents
3 and they are going to have to be dealt with. We have about
4 as many documents in the warehouse as we have already gone
5 through in one fashion or another.

6 CHAIRMAN MILLER: Mr. Davidson.

7 MR. DAVIDSON: I don't know if it will help
8 Mr. Fallin but he may or may not know that PG&E was given access
9 to the NCPA Executive Headquarters on the basis of looking
10 through every document, selecting the ones they want which were
11 then screened by us for privilege. And we exchanged stipula-
12 tions stating the documents couldn't be used for any purpose
13 unless they were turned over to you.

14 I just hold that up as a suggestion for a possible
15 way of going forward.

16 MR. ARMSTRONG: While it sounds on the surface a
17 very generous offer, that just reflects upon another problem.
18 We feel that Mr. Davidson and the other Intervenors have an
19 idea of where they think the critical documents are in PG&E.
20 We feel the critical documents in NCPA were not at the Head-
21 quarters.

22 But be that as it may we have what we feel, in any
23 event, is a different kind of a problem, and it is going to
24 interpose some burdens on lawyer time. We can't tell you right
25 now just what it will be because we don't know what the procedure

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1 is going to be.

2 CHAIRMAN MILLER: Are you in a position to tell us
3 what kind of documents have been requested and produced?

4 MR. ARMSTRONG: Perhaps Mr. Meiss can address that.
5 I cannot, except as I said before, one thing I do recall. We
6 went over this at one time and he told me there were some boxes
7 that came from the Law Department which impacted the privilege
8 question.

9 Can you identify them by category, the warehouse
10 documents, and what kinds of things have been requested?

11 MR. MEISS: What the Intervenors have requested is
12 based upon their review of a set of transmittal slips that we
13 sent them at their request which identifies, with varying
14 degrees of specificity, what's out there, so that we are using
15 the same information basis they are to determine what is out
16 there.

17 On each transmittal slip is clearly indicated the
18 originating department, that is, the department who is sending
19 the stuff out to storage, and the one that's responsible for
20 paying a share of the storage cost.

21 Based on a review of the labels, there's a substan-
22 tial number of boxes of documents from the Law Department that
23 have been selected for review. Those boxes will not be re-
24 viewed by the Intervenors but if they insist upon their being
25 reviewed for discovery documents, we will do that ourselves.

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1 They have also selected boxes of documents from the
2 executive files that were sent to storage in about 1966 or so,
3 so there are some further executive files.

4 There are some files from the operating departments,
5 primarily Power Control, that the Intervenors seem to be in-
6 terested in.

7 There's a couple of boxes from the Rate Department,
8 and then it gets mixed in varying departments throughout the
9 company. It's a cook's choice after that.

10 CHAIRMAN MILLER: About how many documents are you
11 producing per week?

12 MR. MEISS: We estimate that we are producing--
13 when all the equipment is working we're producing between four
14 and six thousand pages a day, which would come to about 25,000
15 or 30,000 pages a week.

16 CHAIRMAN MILLER: Four to six thousand a day?

17 MR. MEISS: That's correct.

18 MR. STRUMWASSER: I believe Mr. Meiss is referring
19 to processing rather than producing. That's input rather than
20 output.

21 CHAIRMAN MILLER: I was talking about being produced,
22 being in the production chain turnover or in process, available
23 to be turned over.

24 MR. MEISS: It would vary, Mr. Chairman.

25 MR. ARMSTRONG: What was the number? You had 83

1 working days. How many days did you have after you took out
2 the down time?

3 MR. MEISS: We had 55 working -- actual, total work-
4 ing days if you subtract the--

5 MR. STRUMWASSER: Wait a minute. You can't subtract
6 out the down time because the paralegals weren't down.

7 MR. MEISS: Mr. Chairman, we stand on some very thin
8 ice. As Mr. Strumwasser will recall, Mr. Cleary described
9 where the bottlenecks were in the system that results in making
10 documents available to the State. And the critical point is
11 and remains the machines, and we can develop backlogs of
12 documents.

13 Sure, the paralegals can still be reading them, but
14 if the machines are not available to process them, they are
15 not moving at all. They are sitting there.

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1 MR. STRUMWASSER: Then we're back to the question
2 which was raised last time, which was will a second Xerox
3 machine speed up discovery.

4 MR. FALLIN: The next question is at what rate do we
5 estimate we are going to hit when we get back on the green-
6 dotted ones?

7 MR. STRUMWASSER: That's important to note,
8 Mr. Chairman.

9 MR. ARMSTRONG: Doing a little rough arithmetic --
10 We can argue all day about what's the right number to divide
11 by, but if you divide by the number of actual working days,
12 excluding the down time, you come up with a figure that looks
13 like roughly 2400 pages produced per day, and if you use the
14 83 day total, it comes out to something like 1600 pages a day
15 produced.

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16 The reason that figure is so much lower than the
17 actual number processed is because in the active Executive and
18 Law Departments, the screening has been done by PG&E personnel.

19 When we get back into the files that have all been
20 green-dotted, the input will much more closely approximate the
21 output. And I think at that point we can anticipate that the
22 throughput of the system will be approximately four to six
23 thousand pages per day.

24 Now you can tinker around with this down time any
25 way you like, but I mean the numbers are the numbers. And we

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1 can all divide whatever we want.

2 CHAIRMAN MILLER: What has been done with reference
3 to the claims of privilege as to the documents?

4 MR. ARMSTRONG: I think on that subject, Mr. Chairman,
5 as we indicated yesterday, what has been done as to privilege
6 is that the paralegals make an initial review. Then the pool
7 of attorneys to which Mr. Meiss referred makes another rough
8 cut at it. Mr. Fallin and I have determined that that rough
9 cut has been too broad, and we've decided that the only way
10 we're going to get this thing down, the net privileged ex-
11 clusion down, is for a small number of attorneys who are
12 familiar with the case to get into it, because otherwise we
13 just have the net cast too wide.

14 For that purpose we made the commitment, and that
15 is Mr. Fallin and I and Mr. Meiss to act as the final screen
16 for this purpose. We haven't accomplished very much in that
17 final process. We've got boxes of these documents that have
18 gotten up, if you will, to our doorstep and the reason we haven't
19 been able to do anything on it is because of all these other
20 matters which we've been talking about now for a couple of days.

21 This is the point at which I think we need to make
22 some reevaluation, but it has been the kind of thing that has
23 created our wails about impacts on our time.

24 We can augment staff and theoretically that should,
25 you know, help the system along, but our practical experience

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1 is that when you take an attorney and tell him to exclude for
2 privilege when he is not as familiar with the case as the three
3 of us are, we end up excluding things that we would not ex-
4 clude. And I don't think that anybody would want the list to
5 be any longer than it needs to be. So that's the trade-off
6 which we have been wrestling with.

7 MR. FALLIN: Mr. Chairman, if I might, the problem
8 is not one, when you hear it described, of the quality of the
9 work of what we've described as rough-cut attorneys. Par-
10 tially, it's the feeling of having to have the authority or
11 responsibility to rule on a close question. And that's one
12 of the things we decided that we are really only in a position
13 to do. And that's where a lot of the cutting comes.

14 Another part of the description that I alluded to
15 yesterday is that we actually have three different kinds of
16 lists that are involved here. The first, and I think most
17 important one that should be worked on in sort of first priority
18 is the privileged list.

19 We then got-- Remember, part of the arrangement for
20 pulling just file folders without regard to relevance was that
21 the company retained the right that if it had an irrelevant
22 document which it considered sensitive for one reason or another,
23 it could withhold that unresponsive document because of its
24 sensitive nature.

25 Well, we also have to prepare a list of those,

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1 describing those irrelevant documents and ideally indicating
2 why we think they are irrelevant and why we take a position
3 they are sensitive without disclosing their contents. That's
4 the second one.

5 Thirdly,--

6 CHAIRMAN MILLER: In that sense it doesn't matter
7 whether they're sensitive or not, does it?

8 MR. FALLIN: If they're unresponsive, no.

9 CHAIRMAN MILLER: Why are we worrying about sensi-
10 tivity then?

11 MR. FALLIN: I think I can accurately describe it.
12 For the Intervenors it's an audit step. You know, we have to
13 discuss the extent to which the audit is necessary, has been
14 shown to be necessary. But that's what their notion is.

15 They say, "Well, PG&E, you may be pushing things
16 into the category of unresponsive because, you know, you don't
17 like them." And that's another reason why we have to deal with
18 those issues, because we do not want to get involved in that
19 at all.

20 In other words, that list as it exists right now
21 requires analysis of each one so that we can put it out and
22 then they can make their determination whether they think there
23 is any kind of a relationship to relevance that they want to
24 push on and go forward. At least that's the way it is set up
25 now.

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1 The third category -- and it begins to look like this
2 may be the most sweeping, but perhaps it can be more manageable:

3 Within the executive files, in fact I guess this is
4 within all personal files throughout the company which we
5 are reviewing, our people are going through and taking out res-
6 ponsive documents, there's an interrogatory outstanding which
7 says if you're in a certain Dewey Decimal number, we'll say
8 it is 3.325, and the file has 3.325 and with a name on it, if
9 you go through that file and find two documents that are res-
10 ponsive to the document request, the interrogatory requires
11 us to go back and describe all the documents in that file
12 that were not produced.

13 This applies to -- what? -- 30 Dewey Decimal cate-
14 gories perhaps? So that's yet another list that has to be
15 prepared, this time of documents that were in these file cate-
16 gories and were not produced as responsive.

17 Now we had to make some -- I think some management
18 decisions on this program which I think are right but which I
19 think you should be aware of. We began it with this sort of
20 undifferentiated mass. In fact, I think the green-dotted
21 files, the unresponsive sensitive materials come to us right
22 along with the responsive privileged. Right now it is not
23 differentiated.

24 Decision one I think is that our first priority
25 should be the privileged responsive documents. The second

1 priority should be the unresponsive sensitive. The third
2 should be the listing of all these things in the Dewey Decimal
3 files.

4 But that's the listing program, if you will, that
5 we're up against.

6 When I talk about myself being concerned about taking
7 lawyers out of the stream it is not just on the notion of or
8 the best way of arranging things, as I said before, it's a
9 market situation. When they're engaged on other things, they
10 are not there to do the list. When they are not engaged on
11 that they are there to do the lists. The pace of the listing
12 is going to depend on that, but it's going to go forward.

13 Specifically as Mr. Armstrong said, the privileged
14 list I think should be classified first, and that's what we
15 intend to do first.

16 MR. ARMSTRONG: Let me also indicate to the Board
17 what has to be done. We've done some of this.

18 We read a document, a privileged responsive type
19 document. We are required to give a description. Now ob-
20 viously the more clarity that one puts in the description,
21 the more likely that the other side will understand and perhaps
22 even accept the characterization of the document as privileged.

23 But it is sometimes difficult to read a two- or
24 three-page memo and synthesize its contents sufficiently to
25 indicate the reason for the privilege without divulging the

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1 information that you're trying to keep confidential.

2 In other words it is not just a process where you
3 pick the document up and make a snap judgment, stamp it or put
4 it in a separate file. There's a thought process involved and
5 it is time-consuming for that reason.

6 MR. FALLIN: One thing that I didn't mention and I
7 should. This is a discussion, but I think it is a totally
8 neutral subject. We discussed the possibility, on the Dewey
9 Decimal unresponsive numbers of simply culling, trying to
10 come up with categories that will save some time, for instance
11 saying 72 pages of duplicate SEC Form Such-and-such, or 99
12 pages of organization charts from umpty-ump to umpty-ump. That
13 can save some time, but the bulk of it remains.

14 MR. ARMSTRONG: The only suggestion that I have,
15 Mr. Chairman, is that given the volume of material which is
16 being produced, one has to question the utility of creating
17 a list describing documents which we have concluded are un-
18 responsive. There are only a couple of reasons one might want
19 that list.

20 One is if you didn't have confidence in the ability
21 of the other fellow to do that kind of characterization, and
22 the second is if you didn't trust his complete candor in that
23 choice.

24 And I think it is clear that in most document produc-
25 tion kinds of situations, the producing party is the one that

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1 at least initially is supposed to decide what is responsive and
2 what isn't. Given the magnitude of material that is being
3 produced and all the other factors that the Board is inti-
4 mately aware of, I question whether we can't make some head-
5 way here by just eliminating the need to produce lists of docu-
6 ments which have been determined to be unresponsive.

7 MR. STRUMWASSER: May I be heard on that?

8 CHAIRMAN MILLER: Well, how many documents are we
9 talking about that are in the three categories?

10 MR. ARMSTRONG: That's a good point. We've thrown
11 around some figures. The one figure the Board does not have
12 in front of it -- and I would ask Mr. Meiss because I've for-
13 gotten it, the estimate-- Well, let me back up.

14 You'll recall we have the central files which have
15 been green-dotted but in addition, there are the personal files.
16 Now what's the estimate of the documents in the personal files?
17 Did we come up with this?

18 MR. STRUMWASSER: I don't think that's responsive
19 to the question.

20 CHAIRMAN MILLER: My question is how many documents
21 approximately are to be processed from one of the three cate-
22 gories, claims of privilege, non-responsiveness or--

23 MR. ARMSTRONG: Of the ones produced to date?

24 CHAIRMAN MILLER: I just want to know how many there
25 are.

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1 MR. FALLIN: There is one quick measure of it. In
2 the executive offices-- Well, I don't know whether-- Is this
3 true? An awful lot of the executive office stuff is going to
4 come out of those Dewey Decimal numbers?

5 MR. MEISS: Yes.

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6 MR. FALLIN: The difference between the number in
7 and the number out gives you an approximation of the numbers
8 of documents that are going to have to hit those two cate-
9 gories of either privileged or described as being in the Dewey
10 Decimal numbers.

11 MR. STRUMWASSER: We're moving much too facilely
12 between the three categories. Let's talk for a minute just
13 about the second category, the unresponsive and sensitive as
14 PG&E has determined it.

15 CHAIRMAN MILLER: Let's talk first of all about those
16 where you're claiming privilege. Do you have them sorted out
17 in those three categories?

18 MR. FALLIN: No, I don't think so.

19 CHAIRMAN MILLER: What are your categories?

20 MR. FALLIN: Right now from the green-dotted files
21 we have-- I think it's a combination of the unresponsive/
22 sensitive and privileged.

23 CHAIRMAN MILLER: You have privileged but you've
24 got them mixed in with another group that you're calling
25 unresponsive/sensitive?

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1 MR. FALLIN: That's correct.

2 MR. ARMSTRONG: What we can do on this, I have
3 asked Mr. Meiss and he can make a phone call back and find
4 out. We've got these numbers in approximation. It is only a
5 rough approximation.

6 The total of the privileged and the irrelevant/
7 sensitive is something in the vicinity of 5 percent, the last
8 time I remember seeing a report on that.

9 CHAIRMAN MILLER: Five percent of what?

10 MR. ARMSTRONG: Five percent of the amount being
11 produced.

12 CHAIRMAN MILLER: Are you going to try and refine
13 that by a telephone call?

14 MR. ARMSTRONG: Yes.

15 CHAIRMAN MILLER: Okay.

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16 MR. ARMSTRONG: The other category of these documents
17 coming out of the files of the Dewey Decimal System, the number
18 is apparently large but it is hard at this moment to put a
19 number on it.

20 CHAIRMAN MILLER: What is this Dewey Decimal System?

21 MR. ARMSTRONG: It's a filing system akin to a
22 library type Dewey Decimal System. Each file, if it is done
23 according to the system, gets one of these Dewey Decimal numbers
24 and we have shared with the Intervenor and the Staff the
25 Dewey Decimal code, if you will, and they selected certain

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1 Dewey Decimal numbers that they think are sort of per se rele-
2 vant.

3 And the rule as it has been structured so far is if
4 we come across a file with a number on it, even though we may
5 go through the file and find only a few documents that we
6 believe to be responsive, we've got to tell them all the other
7 documents in that file which we concluded were not responsive.

8 CHAIRMAN MILLER: Well, this isn't then documents
9 withheld under claims of one type or another?

10 MR. ARMSTRONG: Well, they're withheld on the basis
11 that they're not responsive even though the Dewey Decimal num-
12 ber was, in the judgment of Intervenors or Staff, one that
13 as I say, has a sort of a per se relevance rule. But because
14 of the vagaries of how people file things and what-not, it
15 doesn't always come out that way.

16 MR. STRUMWASSER: Mr. Chairman, to put this into
17 perspective some, these three lists that are being prepared
18 are being prepared pursuant to the stipulation that also em-
19 bodied the green-dotting process and all the other stuff, and
20 I'm a little concerned that PG&E is now coming to the Board
21 and saying Well, this process that we agreed to we are really
22 not very comfortable with; we don't like it.

23 They bore the risk of not liking the procedure; we
24 bore the risk of missing some documents. And that was how
25 we struck the bargain that became the stipulation.

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1 Now this is the first I've heard about the diffi-
2 culties of managing these three lists, was here yesterday. I
3 made some suggestions to Counsel for PG&E on how we can lighten
4 the burden, and I think it's fair to say that those discussions
5 have thus far been inconclusive.

6 We're prepared to work with them further but I don't
7 think that there is anything ripe today for discussion by the
8 Board because we haven't had a chance to expore that with them
9 further, and in any event, these are the risks which they
10 voluntarily assumed.

11 MR. FALLIN: Mr. Chairman, I hope all we've done so
12 far is describe rather than -- and we tried to keep it neutral
13 in terms of describing the task. The only suggestion I would
14 have, however, is that life moves on. We have looked at this
15 situation; we have looked at what we are getting.

16 I would suggest it might be fruitful, in addition
17 to Mr. Davidson's commitment that he was going to indicate to
18 us the documents that he was coming up with from the current
19 responsive production, that we also ask, because, mind you, we
20 have been producing all unresponsive, not sensitive documents
21 from the green-dotted files, what the percentage of success or
22 of finding things that are valuable is in those unresponsive
23 documents.

24 There are some points in the process where we don't
25 get feedback, and perhaps we can't, but that's the kind of area

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1 we have to get into.

2 CHAIRMAN MILLER: Well, that's the documents re-
3 viewed by PG&E that you believe are unresponsive but were
4 produced nonetheless because of not being sensitive?

5 MR. FALLIN: I have to say, as I think we've said
6 in the previous meetings, that when the process first got
7 underway, that is, our production of green-dotted files, we did
8 find some situations where either the paralegals were marking
9 things unresponsive which we felt was -- that is, the attorneys
10 for PG&E felt was wrong, that is, that they weren't putting
11 enough things in the responsive category.

12 There are a couple of categories where we had dis-
13 agreements as to whether they were responsive or not, which we
14 resolved. And those resolutions were put back into the para-
15 legals' instructions. So in the first set, if anything, it's
16 going to be -- it should be an unusually high number of signi-
17 ficant documents in the unresponsive category because there
18 were some responsive documents in that category.

19 CHAIRMAN MILLER: Well, let me inquire of all
20 Counsel, in requesting the balance of the files to be examined
21 and processed, have you given thought to the priority of your
22 own requirements, documents, for example, that were described,
23 that they are consistent with the requests that were made and
24 the schedule that was adopted I believe as we saw before.

25 Now my inquiry is as to the remaining categories

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1 of those not yet processed and supplied. Have you weighted
2 them to establish the highest priority, to the next, and the
3 next highest priority, and the like?

4 MR. STRUMWASSER: For DWR, Mr. Chairman, we think
5 the priorities that Mr. Fallin has described is correct;
6 namely, we think it is most important to get the privileges
7 resolved.

8 We are next most interested in the unresponsive
9 and sensitive designations, and we have suggested ways for that
10 to be speeded up and expedited.

11 And we are third most interested in the Dewey
12 Decimal missing documents. I am frankly surprised that there
13 is a substantial number of documents in this third group be-
14 cause I thought that the solution would have been for them,
15 simply on a per se basis, to produce all the documents. If
16 they want to withhold them and list them instead, I'm surprised
17 to see that they are going to that trouble. That is the third
18 priority for us but it is still something we are interested in.

19 MR. GOLDBERG: The Staff would agree.

20 I would like to emphasize the importance of getting
21 the list of privileged documents combed by PG&E as early as
22 possible and to have whatever arguments are going to be made
23 on a factual basis for the claims or the law that is to be
24 applied, and Board determinations.

25 I'm really afraid that if we don't get that as soon

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1 as possible, we're going to come down toward the end of dis-
2 covery and the Board is going to be presented with a massive
3 list of claimed privileged documents, there are going to be
4 extensive arguments and the Board is going to be faced with
5 some kind of, in many cases, in camera review perhaps of a
6 lot of these documents.

7 I think it's essential to our preparation of the
8 case to get those claims of privilege made as early on in the
9 process as possible, and to have it done on a continuing basis.

10 MR. FALLIN: I think that it's true that these things
11 should be gotten out as soon as we can, on a good basis. One
12 thing is that there are small ameliorating facts in this, one
13 of them being the numbering system which, once one moves out
14 of this category it moves right back into its source and loca-
15 tion in the stream.

16 Mr. Chairman, your question, I'm not sure, may have
17 gone beyond just the privileged and asked about the ranking
18 of our discovery through the ranking departments.

19 CHAIRMAN MILLER: Yes.

20 MR. FALLIN: That was arrived at-- We are now into
21 our original ranking. At the time, that was the ranking that
22 was established by Intervenor. I don't know whether they have
23 come across anything that would want them to move those de-
24 partments around or not.

25 As we discussed previously, our best -- we're going

1 to make the most hay or cut the most timber or whatever analogy
2 we want to use once we get into the green-dotted documents
3 and move down that list in whatever order. So if there are
4 changes in the order they would be useful to us so we can
5 arrange that in advance.

6 MR. GOLDBERG: We don't have anything that would,
7 as far as the Staff is concerned, warrant a change in the order
8 of production that we previously specified. At least so far
9 as we're concerned right now, we think that's a good order.

10 The only thing which would impact on that is produc-
11 tion from the warehouse, and I'm fairly confident that we would
12 want to work in production from the warehouse in toward the
13 top of that list rather than toward the end of it.

14 MR. MATT: I would think the warehouse production --
15 before we try to factor in, the best thing would be to work out
16 an arrangement whereby the Intervenors go in and green-dot, or
17 whatever the process is, and I think we can make a determination
18 from there as to how critical that material is in terms of
19 fitting into our list of production.

20 For Southern Cities, I would agree with the Staff,
21 at this time we don't see any reason or any real need to change
22 the order of production as we had previously determined it.

23 MR. FALLIN: The last time when we did get into
24 changes or perspective changes in the order, we continued to
25 work against the stacking we have now. In other words, we

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1 always have enough to work inst pending discussions because
2 we use that green-dotted mass.

3 CHAIRMAN MILLER: Well, there are some matters that
4 Counsel should be giving thought to, and that is the
5 priority of the immediate production of documents that you wish,
6 which would be the so-called claims of privilege or relevancy
7 and the like.

8 The Board feels we should put a date upon the
9 assertion of the claims of privilege and the reason for non-
10 production. We think it should probably be about 60 days, or
11 less if possible. Those matters should be attended to imme-
12 diately, currently, and resolved.

13 I don't know that we have set a date for the produc-
14 tion of the so-called Part B or the factual data that we dis-
15 cussed earlier, but it will depend in part upon Counsel con-
16 ferring and agreeing upon those interrogatory requests which
17 relate to the data as opposed to the contention type. But
18 there again we would feel that 60 days ought to be sufficient
19 to get those matters both resolved and the responses in.

20 There may be some informational aspects where either
21 by agreement or upon appropriate recourse to the Board there
22 would be more time. The Board is trying to get these matters
23 pulled together and set up a schedule.

24 MR. EVANS: Mr. Chairman, in light of your ruling
25 with regard to factual interrogatories, does that impact upon

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1 the Staff's motion to compel discovery?

2 CHAIRMAN MILLER: I don't know. I haven't had any
3 report on it. We haven't really considered that. I think we
4 should have a report on that after the lunch recess.

5 MR. EVANS: All right.

6 MR. FALLIN: Two quick comments, Mr. Chairman.

7 One, the privileged list is obviously going to be
8 moving through the departments as production is made.

9 CHAIRMAN MILLER: It better start moving pretty fast
10 because we're going to give you some more dates.

11 MR. FALLIN: What I'm saying is tentatively at least,
12 given the ones that we have so far, we have made the decision
13 or commenced to work against the current 32nd floor executive
14 offices on the theory, as was advanced by Intervenor before,
15 that they felt that that would be the most exciting or interest-
16 ing or current or whatever, in terms of production and also
17 in terms of the kinds of privilege problems we would get into.

18 That's the direction we will move in unless there
19 is somebody who thinks we ought to go back and we ought to
20 do the Planning stuff now, in that order. That seems to be the
21 most sensible way of doing it, so that the most significant
22 the ones where we're probably going to get the strongest stuff,
23 is going to come out first.

24 CHAIRMAN MILLER: Since the Intervenor has sug-
25 gested the order of the departments that they want, we are

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1 recommending that they give serious consideration to the order
2 of priorities and indicate to PG&E if there be any change in
3 the previous order as scheduled, or any shifting about. This
4 is the time to do it.

5 MR. STRUMWASSER: What Mr. Fallin is alluding to
6 is the fact that this whole question of privilege is sort of
7 a rolling process. We had at one time suggested the procedure
8 which I think is still pretty good, and that is that some period
9 like 30 days after they have completed production from each
10 department, that they provide the other parties with a list of
11 the documents which they propose to claim privilege for; that
12 the other parties be obliged promptly to respond to them with
13 an agreement as to which documents they are not going to press
14 their claim on, and request that they make a motion for a
15 protective order and an objection on the balance of the docu-
16 ments within a prompt period after that.

17 MR. FALLIN: Yes. The point I was making was that
18 in this period of time, I think the ideal would be for us to
19 have the 32nd floor current list out. Then I have a question
20 whether we should move to the Law Department or Retired
21 Executive.

22 MR. STRUMWASSER: Retired Executive, probably,
23 because it's fewer and you'll finish it faster.

24 MR. FALLIN: Okay.

25 CHAIRMAN MILLER: It is our preliminay impression

20
1 you are describing entirely too leisurely and cumbersome a
2 process. You've got a certain group of documents and it doesn't
3 really matter which department it came from. We think you'd
4 better turn to immediately with whatever resources you have now
5 or you augment; that's your choice.

6 But we think that all documents that are withheld
7 because of any privilege claims, those that are to be listed
8 because of the method of selection, should be rated current
9 within 60 days.

10 We think also that the production of documents or
11 the answers to interrogatories of a factual nature as dis-
12 tinguished from a contention basis we have previously been over
13 also should be both the subject of conference among Counsel
14 to determine which are within that category, and the answers
15 or production also within 60 days.

16 Now we say this within this context:

17 We previously indicated to you that we recognize
18 the problems that all of you have, and that this is not a per-
19 fect world, but we are going to have to put a terminal date
20 to discovery. We are going to have to go to trial and get the
21 evidentiary hearing underway. We may well just have to go with
22 what we have.

23 MR. ARMSTRONG: One clarifying question on the factual
24 data again.

25 At the moment the only questions outstanding are

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1 from DWR to us. We will of course be promptly submitting
2 similar questions to the other Intervenors. And I think the
3 Staff as well ought to be putting forward whatever it is they
4 have.

5 Again, we are at somewhat of a disadvantage because
6 apparently Staff and Intervenors have pursued sources outside
7 the litigation process here, and we don't know what they are,
8 so what we're going to try and do is elicit that information.
9 We have an understanding as to the basic rules of that situation.
10 Would it be a 60-day kind of a time frame there, assuming
11 it's the same sort of information that DWR has asked of us?

12 CHAIRMAN MILLER: These are interrogatories that you
13 haven't yet filed? Is that what it is?

14 MR. ARMSTRONG: That's correct. We thought we would
15 get contentions first, and apparently the Board doesn't agree
16 with that approach. I'm just saying if the concept is to get
17 some sort of let's everybody put their data on the table with
18 respect to market shares, et cetera, the sort of thing we
19 talked about earlier in connection with DWR's questions to us--

20 CHAIRMAN MILLER: That should be done on DWR's
21 proposed questions.

22 MR. ARMSTRONG: Would the same rules apply when we
23 send the same questions to the other parties, including Staff,
24 because I think if other parties have this data, it all ought
25 to be there. I'm just wondering if they would be under the

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1 same time compunction as PG&E?

2 CHAIRMAN MILLER: We think it is fair. We think 60
3 days is a reasonable time. We think PG&E, in framing such
4 requests for agreement as to facts or comparison of facts,
5 should do the same as we're asking DWR, to set forth those
6 affirmatively that you believe are accurate, and ask for agree-
7 ment or the basis for disagreement in the same fashion.

8 We might have a period of responses, substantive
9 responses, not objections or--

10 MR. ARMSTRONG: The simplest way might be, since
11 apparently DWR has moved up on this question and they're going
12 to provide their draft, if you will, is just to ask everybody
13 to comment essentially, and put it in the right framework and
14 say if you disagree with DWR's table--

15 CHAIRMAN MILLER: I don't know. DWR's questions were
16 addressed to PG&E. I don't know whether DWR chooses to address
17 it to the others or not.

18 MR. STRUMWASSER: I'm sure we can find some way to
19 adapt our needs to their things and everything will work out
20 fine.

21 CHAIRMAN MILLER: All right. We'd like to have the
22 thing cut at about 60 days. The reason we say this, we're
23 going to recess for lunch. How long do you want, an hour, an
24 hour and a half?

25 MR. STRUMWASSER: I think an hour and a half because

eb23

1 there's a question to be resolved among us.

2 CHAIRMAN MILLER: All right, we will recess at 12:00
3 and resume at 1:30.

4 What the Board is considering is to terminate dis-
5 covery as of March 1 next year, 1980, and about 60 to 90 days
6 thereafter to commence an evidentiary hearing. We're saying
7 this to you now. We have always told you we were reserving
8 the right to terminate discovery upon six months' notice. This
9 is a little bit more than six months, but we're telling you
10 so that you can feed into your respective needs in response
11 to discovery the fact that we're approaching the time where
12 we're going to have to cut it, for better or for worse, and
13 we're going to have to go with what we have.

14 We don't want anybody to be disadvantaged. We don't
15 want any withholding or slowing down by anyone for tactical
16 or other reasons. We would like for you to deal fairly and
17 reasonably, but it is obvious that you are not going to have
18 as much time as 1.7 million documents might indicate.

19 However, we want you to have a reasonable opportunity
20 to do the best you can within the resources and the time that's
21 available.

22 MR. ARMSTRONG: Mr. Chairman, for our planning
23 purposes, may we inquire if the Board has considered when we
24 might anticipate answers to our contention interrogatories so
25 we can begin to prepare our defense in the case?

2056 094

eb24

1 CHAIRMAN MILLER: Well, we'll give that some thought.
2 No, we hadn't included that, but we are now giving you what we
3 regard as probably the terminal date, and so by process of
4 working back, we may be able to get some indication for you
5 after lunch.

6 MR. ARMSTRONG: As I think you might appreciate,
7 it's going to be difficult to really move up on the defense
8 strategy or approach until we know what the contentions are.

9 CHAIRMAN MILLER: You do know the contentions at
10 this time, don't you?

11 MR. ARMSTRONG: I think not. I think we know--

12 CHAIRMAN MILLER: You don't know what they're con-
13 tending?

14 MR. ARMSTRONG: They're claiming a lot of things for
15 which I think they're going to abandon ship. They'll end up
16 with a more refined approach when we get down to the nitty-
17 gritty, and that's what we'd like to do at some point.

18 CHAIRMAN MILLER: This may be. The contentions
19 presently are pleading matters, and I think you are now con-
20 sidering to what extent they will be supported by evidence of
21 one type or another.

22 MR. ARMSTRONG: That's right.

23 CHAIRMAN MILLER: We'll give that some thought. We
24 will be working backwards from our projected terminal date for
25 discovery for that purpose.

eb25

1 MR. STRUMWASSER: Mr. Chairman, may I ask that the
2 Board request that PG&E at the end of the recess be able to tell
3 us what March 1 corresponds to in terms of the list of depart-
4 ments that Mr. Meiss has gotten? In other words, at the current
5 rate and the rate which he projects, disregarding for the moment
6 the warehouse, where would we be on March 1?

7 CHAIRMAN MILLER: Yes. We'll ask that that projec-
8 tion be made.

9 You might consider March 1-- Obviously it is not
10 going to be at the same pace because by March 1 you're going
11 to have to have at least gone over in some fashion a lot more
12 than you might have accomplished at the given rate. I don't
13 know how you're going to do it.

14 With that cautionary note, we will ask you to give
15 it some thought and give us some projections. And I suppose
16 it would be fair for everyone to be thinking along these terms
17 because you're going to have to compress your schedules and
18 your needs, and we'd like to do it as fairly as we can.

19 We recognize none of you is going to be satisfied,
20 but we're approaching the point, as we have indicated, where
21 we're going to have to cut it and do the best we can with the
22 evidence.

23 MR. MATT: When you say March 1 for discovery, you
24 include all depositions, et cetera, whatever would be associated
25 with discovery?

eb26

1 CHAIRMAN MILLER: Yes, cut discovery, in other words,
2 have a date by which we would complete whatever forms it may
3 take. We would always have to exercise discretion but we would
4 suggest you get as far along as you can with that as an abso-
5 lute cutoff date so that everyone is treated fairly and equally
6 if, nonetheless inadequately, as you see it according to your
7 own lights.

8 Okay, we'll have lunch.

9 (Whereupon, at 12:00 noon, the conference of
10 counsel in the above-entitled matter was recessed to
11 reconvene at 1:30 p.m. the same day.)

End WRB
Madelon fls.

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MPB/wbl

1

AFTERNOON SESSION

2

(1:30 p.m.)

C6

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CHAIRMAN MILLER: The prehearing conference will resume.

5

6

A proposed order has been handed up by Staff counsel which the Board is now examining.

7

(Pause)

8

9

Okay. Would you explain to us now the nature and purpose of the proposed order?

10

MR. EVANS: Yes, Mr. Chairman.

11

12

13

14

Pursuant to the Board's instructions yesterday, the Staff and Pacific Gas & Electric Company met this morning to discuss our Motion to Compel PG&E's response. And we met in an attempt to work out the differences between us.

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I think we had a very successful discussion. As it remains, the Staff is completely satisfied with several of the answers that have now been provided by PG&E. Some other responses will be supplemented by PG&E voluntarily.

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We have already received additional information in PG&E's response. And they will be providing additional information over the next thirty days or so. And I think that the Staff and PG&E have reached an understanding that this will be, this additional information will be filed as a supplemental response to the interrogatories directed against us; which of course means we'll be under oath and properly filed.

MPB/wb2

1 The reason we have drafted the order which is now
2 before the Board is simply to put some time limits upon our
3 attempt to work this out informally.

4 I call your attention to the last paragraph, which
5 provides that as we work toward obtaining more information we
6 may need extensions of time, and would ask the Board to, as
7 it were, in advance, to grant its approval to stipulations be-
8 tween PG&E and the Staff for extensions of time.

9 CHAIRMAN MILLER: Very well. The order seems to
10 be well performed. I sign it as Chairman. And I take it
11 copies have been, or will be, supplied to the parties.

12 MR. EVANS: Yes.

13 CHAIRMAN MILLER: We will resume our discussion now
14 on the status of production of documents, discovery, scheduling,
15 and like matters.

16 Who wishes to proceed.

17 MR. STRUMWASSER: Mr. Chairman, I'd just like to
18 tidy up one other matter left over from this morning. That
19 was the interrogatories that we have propounded, the Part B
20 interrogatories.

21 I have identified twenty-three interrogatories
22 in Part B that are what we consider to be of a factual as
23 opposed to a contention nature.

24 CHAIRMAN MILLER: Has counsel for PG&E been shown
25 it?

MPB/wb3

1 MR. STRUMWASSER: I've shown it to them, but I
2 don't have any response back from them.

3 CHAIRMAN MILLER: Are you able to advise us whether
4 you agree or not?

5 MR. FALLIN: I've had a chance to glance at them.
6 Mr. Armstrong hasn't. Let's see.

7 I think that, not changing our position on what
8 we've already said, and not reiterating it either, but just
9 looking at these in terms of whether I feel they fit the inten-
10 tion of the Board's order, I think in general they do.

11 CHAIRMAN MILLER: Are you looking over them with
12 Mr. Armstrong? In the meantime, Mr. Strumwasser, please dictate
13 for the record the numbers that you're proffering as being
14 within the purview of the production order.

15 MR. STRUMWASSER: We're asking for answers to
16 Interrogatories 289 through 292; 296 and 297; 395 and 396;
17 397 through 405; 407 through 411, and 415.

18 I don't think PG&E has objected to any except 415,
19 for which there is an objection and a motion for a protective
20 order. and we have our response and a Motion to Compel.

21 CHAIRMAN MILLER: All right. We'll give counsel
22 for PG&E a few minutes to see whether they concur in the
23 proffer.

24 MR. STRUMWASSER: This is, of course, in addition
25 to the matter of the 416 through 631 that we spoke of earlier.

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MPB/wb5

1 MR. FALLIN: No, no. But what I'm saying is, it is
2 being produced as a document, they are being produced as docu-
3 ments.

4 CHAIRMAN MILLER: Well if I were running an elec-
5 tric utility I wouldn't be greatly shocked if somebody wanted
6 to know my rate schedules. And I bet I could lay my hands on
7 them in ten minutes.

8 MR. FALLIN: Well, then we move to 404, your Honor.

9 CHAIRMAN MILLER: Just a minute. Let me see if
10 my colleagues concur.

11 MR. WENNER: Why do you want to know that?

12 MR. STRUMWASSER: Well, the problem is this--

13 MR. WENNER: Every rate schedule they've got?

14 MR. STRUMWASSER: All the electric rate schedules
15 that are currently in effect, and then as to each of them we
16 have a certain number of questions.

17 We just want to make sure we can identify the
18 revenue sources and classes of service that PG&E is dispensing.

19 Frankly, I can't tell you in detail why we want
20 it because this is something that our consultants have asked
21 us to identify.

22 Now we could work through the document production
23 request, but as Mr. Miller has indicated, I think it's easier
24 for them to identify where they all are. I don't know whether
25 they've all been produced or whether they will all be produced

MPB/wb6

1 by the time March 1st rolls around.

2 MR. ARMSTRONG: Mr. Chairman, I think Mr. Fallin
3 is going to turn next to 404, but before we leave 403 I think
4 subparts (f) and (g) deserve our attention.

5 CHAIRMAN MILLER: All right.

6 MR. ARMSTRONG: Because it's the same kind of
7 problem.

8 CHAIRMAN MILLER: Let's hear about it.

9 MR. ARMSTRONG: It's predictive.

10 It says, "State, as to existing rate schedules,
11 whether you expect the rate schedule to be in effect during
12 the first year of operation of Stanislaus." And (g) says: if
13 that's so, then your best estimate of the rate for the service
14 in that year and each subsequent year.

15 CHAIRMAN MILLER: What are those? (f) and (g)?

16 MR. ARMSTRONG: 403(f) and 403(g).

17 CHAIRMAN MILLER: 403(f) and (g) will be denied.

18 MR. ARMSTRONG: And 404 asks for PG&E to enumerate
19 each and every electric rate schedule not yet filed that you
20 expect to file before the first year of operation of Stanislaus
21 and that you expect to be in effect during that year, and the
22 followup information.

23 MR. STRUMWASSER: May I be heard on these?

24 CHAIRMAN MILLER: Yes.

25 MR. STRUMWASSER: First of all, I would like to

MPB/wb7

1 point out that there is no pending objection to those inter-
2 rogatories and no motion for a protective order on them.

3 CHAIRMAN MILLER: Well we consider it's being done
4 orally.

5 MR. STRUMWASSER: Well, orally. And belatedly.

6 CHAIRMAN MILLER: The Board has ruled now, and
7 you can make whatever other points you wish.

8 MR. STRUMWASSER: All right. The point is this:
9 As I said with some other interrogatories earlier, we aren't
10 asking them to cook up estimates that they don't have now.
11 If they have in their Rate Department reasonable expectations
12 that they're going to be filing this kind of a rate or that
13 kind of a rate, or creating a new class of service, we'd like
14 to know about it. We're trying to identify the economic
15 conditions under which DWR and PG&E will be competing in the
16 first year of Stanislaus operation.

17 CHAIRMAN MILLER: Well let me indicate to all
18 counsel that we are going to direct that by November 1st, 1979
19 all parties respond to contention type or other deferred
20 interrogatories of PG&E. By November 15th PG&E is directed to
21 respond to all contention type and other deferred interrogatories
22 filed with it, to it, by any of the other parties.

23 In other words, the contention type now will be
24 responded to November 1st by the other parties, in view of
25 the fact theirs was filed first in January, but November 15th,

MPB/wb8

1 shortly thereafter, the reverse.

2 MR. STRUMWASSER: May I be heard on that question
3 also?

4 CHAIRMAN MILLER: Yes.

5 MR. STRUMWASSER: What we're talking about here is
6 laying out our evidentiary cases. I think there is much to be
7 said for the proposition that each party puts his case on the
8 table at exactly the same time. The whole timing of our
9 interrogatories was intended to achieve exactly that result.

10 PG&E propounded its interrogatories first. As
11 of right now those interrogatories are subject to extensions
12 of time based on the Board's opportunity to rule on the
13 objections.

14 We are very concerned about the prospect of our
15 having to lay out our evidentiary case before PG&E does.
16 We think it's just like-- These are functionally very similar
17 to trial briefs. Everybody files his trial brief ahead of
18 time and simultaneously so that nobody can rely on any omissions
19 by any other party, nobody can sandbag anybody else.

20 It's just a question of fairness.

21 CHAIRMAN MILLER: We will direct that all trial
22 briefs be filed simultaneously by March 15th, 1980, discovery
23 being over, concluded by March 1st. By March 15th, 1980 we
24 would like to have the trial briefs of all parties, which will
25 go into this and other types of matters, witnesses, summaries,

MPB/wb9

1 and all the rest of it.

2 MR. STRUMWASSER: The question, though, of basic
3 fairness in the answers to these interrogatories, and avoiding
4 the possibility that one party will sandbag anybody else, is
5 still a matter that we think is worthy of concern here.

6 We don't want PG&E's answers to be filed....

7 (The Board conferring)

8 MR. STRUMWASSER: I'm sorry; we don't want PG&E's
9 answers to our interrogatories to be filed after consideration
10 of what evidence we may have missed in answering theirs. We
11 think that in order to avoid sandbagging, to avoid exploita-
12 tion of our partial level of preparation for the case that it's
13 important that they be required to file their answers and
14 identify their evidentiary materials at exactly the same time
15 we do so that they cannot exploit any of our weaknesses that
16 have arisen specifically out of the haste to prepare.

17 CHAIRMAN MILLER: Who do you consider to have the
18 burden of proof?

19 MR. STRUMWASSER: It depends on the issue. Many
20 of them, us; a couple of them, them.

21 CHAIRMAN MILLER: In that event what's unfair about
22 having those who made allegations and have the burden of
23 proof, at least indicating by approximately two weeks the
24 nature of the proof they intend to put on?

25 It's a limited period. It won't give a great

MPB/wb10 1 advantage, but we do think it's-- You made the charges, and
2 you're getting the discovery. It's only fair that you indicate
3 some basis a little in advance. We want to avoid sandbagging,
4 that's why we made them two weeks apart. Nobody is going to
5 get sandbagged very hard in two weeks. But we do think that
6 under the circumstances it's only fair by then for you to come
7 forward. By then you'll probably be refining the pleading
8 aspects when you get down to the trial issues anyway. And we
9 would encourage all parties to do this.

10 We believe it's fair to let them know what your
11 shots are by then, but not to give them an undue length of
12 time to take advantage. So we have that in mind in seeking a
13 rough compromise, Mr. Strumwasser.

14 MR. ARMSTRONG: Mr. Chairman, I understand the
15 Board's position and ruling.

16 First of all I agree two weeks isn't much time to
17 do any sandbagging. But I think this might as well be the time
18 to make an observation for the record.

19 As we understand the Board's prior orders -- whic,
20 so far as we know, are still in effect -- PG&E has been directed
21 not to turn any resources whatever to evaluation of the evi-
22 dence or the issues, but to pull out all the stops that are
23 available to produce documents.

24 CHAIRMAN MILLER: Wait a minute. You were requested
25 and directed to produce documents. And you've indicated what

MPB/wb11

1 You did do and we've maybe asked for a little acceleration,
2 but this was not in any way depriving you of the opportunity
3 to continue development of your case, whatever that might be.
4 We weren't telling you you could put all your eggs in one
5 basket.

6 MR. ARMSTRONG: Well it was our understanding that
7 any additional resources we obtained should be devoted to
8 expediting the document production effort.

9 CHAIRMAN MILLER: I don't recall saying that.
10 I mean, this might be what you would decide to do in conjunc-
11 tion with the discovery posture of the other parties and you-
12 self. The Board wasn't telling you what to do, any more than
13 we were telling them. They told us they were limited in
14 resources, which they are, and said they'd like to be able to
15 keep on analyzing yours and not be bothered by these things.

16 We know all parties have these problems.

17 MR. ARMSTRONG: But I think it has been clear that
18 the Board did ask, having the testimony of Mr. Cleary and the
19 arguments available, that all resources were being committed,
20 the Board's request was that we treat that production rate,
21 which obviously meant increase the devotion of resources,
22 which we were able to do to some extent.

23 I think the question-- Perhaps this is not an
24 observation, then, but a question: If we do add resources, is
25 it the Board's feeling that we would be permitted to continue

MPB/wb12

1 the document production effort at the same level as has been
2 the case to date, which I think it's clear is not going to be
3 able to produce but a minority of the documents which have been
4 requested of us by the time of March of 1980?

5 MR. STRUMWASSER: Before the Board rules we would
6 ask that Mr. Meiss's answer to the question propounded before
7 lunch be answered.

8 MR. ARMSTRONG: Well, you know-- That's fine.
9 Have you made that estimate?

10 I think the question asked was, What department do
11 you estimate you will be in in March of 1980, assuming a
12 continuation of the production rate today?

13 MR. MEISS: The answer is, somewhere in the Electric
14 Operations Department, but I couldn't say with any more
15 precision than that.

16 MR. STRUMWASSER: Mr. Chairman, for our purposes
17 we would like the record to be very clear on this point. We
18 don't think this case can go to hearing without production
19 from the entire Electric Operations Department, including Power
20 Control, without any production from Rates and Valuations,
21 or Governmental Relations. The other departments are of lesser
22 importance, but there are some that are omitted there that we
23 think have to be completed before this case can go to trial.

24 CHAIRMAN MILLER: That's why we indicated, too, the
25 prospective trial date, to enable you to readjust your

MPB/wb13

1 priorities in your requests. It is not within your power to
2 determine in what order the departments, or the extent to which
3 they are performed by PG&E.

4 MR. STRUMWASSER: The order is just fine. But there
5 is a nucleus of departments that simply have to be covered in
6 the production.

7 CHAIRMAN MILLER: Put them first, then.

8 MR. STRUMWASSER: Well they are first. But they
9 ain't going to finish all the first ones. That's the problem.

10 CHAIRMAN MILLER: You'd better figure out a way to
11 cut down all this stuff. We went with your method, we went
12 for a year and a half. We'll go for another ten months. But
13 whatever you come up with, that's it.

14 Now we really don't think you're doing it by the
15 most efficient method. We think you'd better settle down and
16 re-evaluate, and figure out where you want to put your priority
17 of effort.

18 And we'll ask PG&E not to diminish their resources,
19 manpower, and so forth, that they are committing, which are the
20 maximum commitment for the past the months. We want no
21 decrease.

22 But, on the other hand, it's obvious that you're
23 not going to be able to cover everything, and probably should
24 consider where you want them to devote these resources.

25 MR. STRUMWASSER: All right, just so the record is

MPB/wbl4 1 clear:-- I want the record to be very clear on this point
2 that we object to any proceeding to trial without the complete
3 production from the Electric Operations Department and all
4 those of a higher priority. And we think that the obligation
5 of this Board is to see that that is done before we go to trial
6 by whatever means it has at its disposal. We have none at our
7 disposal.

8 CHAIRMAN MILLER: You can list what documents you
9 want. You can abandon this whole process if you like, and you
10 can zero in -- as by now we think you should be able to, if
11 you want to ask for the production of documents and let them
12 produce them as they wish.

13 MR. STRUMWASSER: I think the Chairman has made his
14 point clear and I've made mine.

15 MR. ARMSTRONG: Well the point that I started with
16 before we heard from Mr. Strumwasser on his point was the dif-
17 ficulty which we have had, as we understood the priority which
18 was established by the Board to move along the path which was
19 set for PG&E's document production. And we acknowledge
20 delinquency in certain particulars, and that's despite the
21 commitment of effort which has been described earlier. But we
22 have had, because of all that, no devotion of resources to
23 evaluation of evidence, and I was advised over the lunch hour
24 that I was wrong in what I said this morning when I said that
25 we had indexed the CID documents. Even that has not been done.

MPB/wr15

1 So we are confronted-- We are, I expect, the party
2 with the least work done at this point on evaluation of the
3 monumental amount of effort, or evidence which is being pro-
4 duced here. We're not going to get the statement of the
5 other parties' case until November 1st of this year. And
6 depending on what additional resources we can obtain, it's going
7 to have to be substantial: we've been given additional respon-
8 sibilities here today in various respects, and those are going
9 to have to be attended to.

10 I think we have a real concern as to whether we're
11 going to get a fair opportunity to meet the allegations which
12 are being made. At November we're going to have four months
13 in which to conduct discovery to whatever statement of the
14 case is made at that time. And I think in a case of this
15 magnitude, four months is not a large amount of time.

16 CHAIRMAN MILLER: Well I can only say that it's
17 probably no great mystery to you what the allegations are, and
18 you can start taking depositions tomorrow. You don't have to
19 wait until November.

20 MR. ARMSTRONG: I beg to differ with you,
21 Mr. Chairman. Some of the issues, as to some of the parties,
22 we're clear on. As to others, I think it is incorrect to say
23 that we're clear. Indeed, the parties themselves who are making
24 allegations claim that they are unable now to tell us in detail
25 what their cases are, what any of the evidence is. That's what

MPB/wb16

1 they have to say to tell you that they can't now provide even
2 preliminary answers to the contention interrogatories. If they
3 can't do it, I don't know how we can be expected to speculate
4 as to what those answers might be.

5 CHAIRMAN MILLER: What they can't do, therefore, is
6 suggest the least part of their evidentiary case, and the part
7 that you know or can surmise, or that they have or will indicate to
8 you,-- We recognize that there are FERC and other proceedings.
9 --to that extent that could be certainly the bulk of your trial
10 preparation. To the extent that they don't have evidence to
11 sustain charges, that might lead you to suppose that at the
12 moment they don't really know of much evidence, and that would
13 suggest also you're not going to have a great deal of necessity
14 for development of rebuttal.

15 MR. ARMSTRONG: That's the easiest possible case,
16 yes.

17 CHAIRMAN MILLER: Yes. I think you ought to work
18 out the major ones, and they should, vice versa.

19 MR. ARMSTRONG: I think that's right.

20 The concern that we have is not merely theoretical.
21 We're told, and we've been told at these conferences continually
22 that the document production is yielding little bits of gold
23 as they go along, and neither the Board nor we know what these
24 bits of gold are or what significance they are thought to have,
25 what witnesses might be expected, whom we ought to depose.

MPB/wb17

1 That's the problem that we have, aside from what's been made
2 clear in the FERC proceeding, and that much we know. But this
3 I think is broader and we have other parties here.

4 CHAIRMAN MILLER: Well no doubt you're not going to
5 be idle in this time that's available both from now to November
6 and then from November until March. No doubt you'll be seeking
7 to know the names of the witnesses, the experts, the people
8 who are analyzing. And once they're asked they have to be up-
9 dated, probably. And you'll start getting some idea of what
10 their proof is, I suppose through the other proceedings that you
11 and other counsel mentioned. You'll start developing ideas.
12 I would think nobody is going to sit around and not start
13 taking depositions. That's up to counsel. We expect in the
14 next few months deposition activity would be under way on a
15 substantial basis, which will furnish information probably to
16 a lot of you in terms of where you're going to direct your time
17 and resources to get ready for trial.

18 You'll all in the same boat.

19 MR. FALLIN: Your Honor, are we back to the
20 interrogatories?

21 CHAIRMAN MILLER: No. Mr. McDiarmid has asked for
22 the floor.

23 Mr. McDiarmid.

24 MR. MC DIARMID: Your Honor, I'd like to associate
25 myself with Mr. Strumwasser's statement of distress.

MPB/wb18

1 CHAIRMAN MILLER: Distress is noted.

2 I will point out that you're engaged in the FERC
3 matters. You and your firm are not novices in this kind of
4 case or this particular adversary. But probably your firm, in
5 the present state, is to be ready for trial in six months from
6 this date. I don't say you're going to have to, and I know
7 that the others can't. But we recognize the facts of life as
8 they've been indicated to us from time to time.

9 MR. MC DIARMID: Yes, Your Honor. I think it
10 certainly is clear that we're further advanced.

11 The problem is I think you are proceeding on a
12 mistaken hypothesis; which I'd like to point out, if I may.

13 We now know that an effort has been made to transfer
14 materials from one file into other files, or to cull files.
15 We furnished you that data yesterday that appeared in our micro-
16 film, as a matter of fact the day before we began this, on
17 Monday.

18 We have offered in the past, the intervenors and
19 staff have offered in the past, and will offer again, to send
20 our people in to go through PG&E's files, which we think would
21 substantially expedite the procedure. PG&E has declined
22 repeatedly.

23 I'm afraid what you're telling Mr. Strumwasser
24 and staff and, to some extent, us as well, is that, yes, it
25 may very well be true that you are entitled to a set of material

2256 115

MPB/wb19

1 described in a document request, but you won't get it because
2 PG&E has said they haven't got the staff to staff up to do it.
3 Mr. Armstrong says on that that all of their resources -- I
4 think he said that all of their resources committed to this
5 case -- are involved in the production process within PG&E.
6 If he did qualify it as I remember it being qualified it's an
7 important qualifier and one that you should focus on. Because
8 to the extent the FERC proceeding covers similar issues, as
9 Mr. Armstrong stated yesterday, PG&E has already filed a quite
10 extensive case, several feet worth, over there at the beginning
11 of May. And they have a different set of personnel who seem to
12 be working on that than are working on this. But certainly
13 information is fungible, certainly when it's information within
14 PG&E's Law Department and technical departments and within
15 Mr. Armstrong's firm, as all of this is.

16 It is fungible, and it's not, I think, a fair
17 representation to suggest that PG&E is doing nothing but produc-
18 ing documents. Nor is it fair to suggest, I think on the
19 Board's part, that everything in PG&E's files is where it would
20 be expected to be, because we now know -- we have thought for
21 some time it was the case, and we now believe we know why.
22 If it were within the files where it was expected to be, I guess
23 our current information, our most recent information would be
24 that the Law Department files would be in Siting, and maybe
25 vice versa. And so far as we know we have received nothing from

MPB/wb20

1 the Law Department so far. The line is: all files previously
2 labeled by the Law Department will be placed in the Siting
3 Department.

4 It makes it very difficult for us to say, Yes, we
5 recognize the production is going to be cut short, PG&E.
6 Mr. Armstrong, we'd like you to look in the most logical places,
7 and here are the most logical places. But it doesn't appear to
8 be structured that way.

9 MR. ARMSTRONG: Mr. Chairman, I think we're being
10 asked now to either accept Mr. McDiarmid's representations of
11 the facts or to accept some documents which were produced
12 yesterday as an accurate description of what Mr. McDiarmid
13 would like to believe is the case. As an evidentiary proposition
14 it's something that a first year law student wouldn't be per-
15 mitted to assert, and I don't think it should be asserted here.

16 CHAIRMAN MILLER: We're not taking it in any
17 evidentiary sense. It occurs to us that it wouldn't take very
18 long to take a deposition, whom did what to whom when. But
19 we're not going to tell you what to do.

20 MR. ARMSTRONG: Well we invite that, Mr. Chairman.

21 CHAIRMAN MILLER: As far as evidence is concerned
22 we don't accept it as evidentiary. We do know that assertions
23 are made by counsel.

24 MR. ARMSTRONG: As to the other aspects of
25 Mr. McDiarmid's comments, I'd like to make sure that we are

MPB/wb21

1 clear: there is a FERC hearing going on in which I'm not
2 involved. Neither is Mr. Fallin. Now what I said was correctly
3 reported by Mr. McDiarmid. It is also true that the documents
4 which we have been referring loosely to as the green-dotted
5 documents have not been evaluated by anybody at PG&E for the
6 purpose of preparing this case for trial. As far as I know, the
7 people in the FERC proceeding haven't had any such evaluation
8 made either.

9 MR. FALLIN: That's correct; not just as a matter
10 of, you know--

11 MR. ARMSTRONG: That was my point. And I think
12 the Board has that point, and I'm not sure there is any further
13 purpose in going into it. Maybe we can return to the inter-
14 rogatories which Mr. Strumwasser had identified. Because we
15 have two more that I think we were going to talk about.

16 CHAIRMAN MILLER: All right. You concur, then,
17 in that identification. So I'll accept the two that you're about
18 to discuss.

19 MR. FALLIN: I was doing--

20 CHAIRMAN MILLER: We'd like to get commitments on
21 those that are possible.

22 MR. FALLIN: We were taking them serially, your
23 Honor. We're just about at the end of them, I think.

24 MR. STRUMWASSER: Mr. Chairman, may I ask:-- The
25 ruling, if it stands, on 403(f) and (g), was that a ruling that

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MPB/wb22

1 the questions would be deferred until the November 1 date?

2 CHAIRMAN MILLER: Well, the matter is premature at
3 this time. We are requiring immediate exchange of the facts
4 and information.

5 We recognize that as we approach the November 1st
6 date you're going to be working upon contentions concerning this
7 or projections which certainly bid fair to be the subject
8 matter. Only the ruling at this time would affect it.

9 MR. STRUMWASSER: Yes, I just wanted to make
10 it clear that there wasn't any objection based on the intrinsic
11 question itself.

12 CHAIRMAN MILLER: We weren't ruling substantively
13 at all.

14 Now that you have the dates of some of these other
15 matters, including the November date, certainly your contentions
16 and interrogatories are going to be shaped, framed, and responded
17 to by November 1 or 15 respectively. Accelerate your prepara-
18 tion, do the best you can with the materials at hand.

19 MR. ARMSTRONG: Well, Mr. Chairman, we have the
20 same situation. And I think Mr. Strumwasser might just concur
21 that Interrogatory 404 is the same sort as 403(f) and (g) in
22 the sense that it's predictive.

23 CHAIRMAN MILLER: It covers projections and so on?
24 Why don't we have the same ruling on that?

25 MR. STRUMWASSER: All right.

MPB/wb23

1 CHAIRMAN MILLER: Now you understand, Mr. Armstrong,
2 we're not sustaining objections.

3 MR. ARMSTRONG: It's a deferral, yes; not an
4 elimination.

5 CHAIRMAN MILLER: A deferral of response from
6 them to you and from you to them. All right.

7 MR. ARMSTRONG: All right.

8 The next one and last one as to which we have a
9 concern, and it's in the same order, the same province as
10 415. It's the one that basically asks the identification of
11 persons contacted as potential -- is it experts, or potential
12 witness? I can't....

13 MR. STRUMWASSER: Yes.

14 MR. ARMSTRONG: But, in any event, I think that
15 is the kind of thing that ought to go along with the November
16 sequence instead of the current sequence.

17 MR. STRUMWASSER: On the contrary.

18 CHAIRMAN MILLER: Well I'm not so sure on that.
19 Because you're all having problems, and we recognize that. Now
20 to the extent that you can start producing-- Forget the topics
21 and all that: we're past that stage. Start working with each
22 other. To the extent that you can give them this information
23 or that you can receive information, give it. Don't play games.

24 MR. ARMSTRONG: It's not a question of playing
25 games.

MPB/wb24

1 CHAIRMAN MILLER: If you ask for certain experts,
2 if you can give anything at this time, give it. If you can't
3 at this time, say you can't at this time, and consider you're
4 under a continuing duty which, in any event, would come to
5 fruition by November the 15th, or the 1st, whichever it is.

6 MR. ARMSTRONG: The question asks for identification
7 of anyone who has been contacted wholly or in part for the
8 purposes of preparing for the hearing of the case.

9 I think there is already a ruling in another
10 matter before the NRC that indicates that this sort of question
11 should be limited to those that are engaged in specific--

12 CHAIRMAN MILLER: Those who advise counsel are not
13 to be called as witnesses, and whose work product is not to be
14 fed into witnesses. And that ruling that you refer to was
15 South Texas, I take it? At least the ruling was made in the
16 South Texas case, and refers to the ability of counsel to consult
17 experts. It does not put any umbrella of immunity over experts
18 whose work product or effort goes into another witness or
19 themselves as witness, or that kind of thing. That was the
20 point of distinction.

21 MR. ARMSTRONG: No; I'm referring to the case
22 entitled In the matter of General Electric Company, NRC 461.
23 The ruling there--

24 CHAIRMAN MILLER: Was that an ALAB or--

25 MR. ARMSTRONG: It's the Vallecitos Nuclear Center.

MPB/wb25

1 CHAIRMAN MILLER: What's the number?

2 MR. ARMSTRONG: The docket is 50-70 and 70-54,
3 October 24th last year.

4 The synopsis, in any event, differentiates between
5 informal contacts and persons specifically contacted to
6 consult on this one case.

7 The question really relates to, How broad do they
8 really want to go in connection-- You know, what amount of
9 contact is significant contact for purposes of triggering a
10 response.

11 CHAIRMAN MILLER: I take it that you're all experi-
12 enced trial counsel. What they're asking is, What experts have
13 you been consulting with in the sense of developing your trial
14 preparation. We're giving you the benefit of those men, those
15 experts that you as attorney may be consulting with. Your
16 witness is not going to be called, nor is his work going to
17 be fed into another. So you're protected on that. Everything
18 else gets in.

19 MR. ARMSTRONG: Well the practical problem,
20 Mr. Chairman, is this: my cohorts who are working on the FERC
21 matter have contacted certain experts who are nominated as
22 witnesses in that proceeding.

23 CHAIRMAN MILLER: Is it possible or probable that
24 you might use them?

25 MR. ARMSTRONG: It's a possibility in the sense that

MPB/wb26

1 the universe is possible.

2 CHAIRMAN MILLER: List them. Give the name and
3 address. It's no big deal. Let's not play games now.

4 MR. ARMSTRONG: Well you see the reason I think it
5 might be playing games to identify them is that at this point
6 we really haven't moved on the question of who are even possible
7 witnesses in this case. I don't want to be precluded later
8 from moving them in.

9 CHAIRMAN MILLER: Well you should list all wit-
10 nesses you might call. They're entitled to that information.
11 And you're going to be entitled to get that from them.

12 Remember now, we're getting toward the trial time.
13 The time for tactics is past, ladies and gentlemen, it is
14 past.

15 MR. ARMSTRONG: I've always been more annoyed when
16 my adversary gives me a list of twenty-five names and only two
17 of whom he'd ever talked to, and he says, Well it's possible
18 we might get the others. And then you just have to run around
19 a lot.

20 CHAIRMAN MILLER: I know. I've practiced law, and
21 I've given long lists, and they might I had not. But that's
22 the price you pay for asking. But, on the other hand, it's
23 also valuable to try to inquire.

24 MR. STRUMWASSER: The interrogatory question asks
25 for, with respect to each person, whether they've decided

MPB/wb27

1 whether he'll be called and, if not, when they expect to.

2 I don't feel it is any serious problem.

3 CHAIRMAN MILLER: I don't think it is now, and
4 I think you're under a continuing duty, just as the other
5 parties are, to answer it. So I think that eventually as you
6 resolve, refine your contentions, they're going to surface
7 and you're going to be the beneficiary, and the same kind of
8 thing from the other people.

9 So let's get ready for trial. Let's start thinking
10 now that you're going to go to trial. When you think that way
11 many of these things assume a little different proportion.

12 MR. FALLIN: I think that's the last one. 415 is
13 it.

14 MR. STRUMWASSER: There's one loose question that
15 occurred to us during lunch that I might pose to the Board
16 right now. That is, the 60 days to get the listing of privileges
17 shaped up. There is one body of documents for which there are
18 privilege claims that we haven't been discussing, and that is
19 the entire body of what we call CID documents, which includes
20 the FERC submissions and all that. As I understand it, they
21 are to submit those. I think the Board has already ruled that
22 any documents withheld from the CID and FERC productions that
23 we were ordered to be received, that those would be subject to
24 a claim of privilege before this board.

25 CHAIRMAN MILLER: Yes.

MPB/wb28

1 MR. STRUMWASSER: We have been deferring that also.
2 But that I assume is also subject to the sixty-day rule.

3 CHAIRMAN MILLER: Yes. We'd like to get all of
4 your assertions in a form where you will think about them. If
5 you wish to persevere, fine, then do the work necessary to assert
6 them, and the Board will rule on them.

7 The sixty-day rule will apply.

8 MR. FALLIN: Well, all I can do is what we're
9 ordered to do, and always are: we're going to do our best to
10 get that material out by that date. And you're going to be
11 able to test how much time we put in doing it.

12 CHAIRMAN MILLER: That's fair enough. And if you
13 feel moved to ask for an extension of time, try to overcome the
14 impulse. And if you can't do that, produce what you can. And
15 let's talk about the unproduced parts, not just have a motion:
16 we've done so much and we need another two weeks or a month.

17 Produce everything that you reasonably can. Because
18 this is part of your showing. If there are insuperable circum-
19 stances we'll look at them. But we're not going to look at them
20 if you're just sitting there compiling extensions on extensions.

21 So get to work and produce what you can and then
22 we'll take it from there in a practical lawyerlike manner.

23 MR. MC DIARMID: Your Honor, simply as a matter of
24 what I believe to recall to be fact, and which might conceivably
25 help a little bit: Claims of privilege were made at the FERC--

MPB/wb29

1 CHAIRMAN MILLER: So we've been informed, yes.

2 MR. MC DIARMID: --as to the so-called 'ID documents.

3 But there's a slightly different version of the CID version
4 that got produced here.

5 CHAIRMAN MILLER: I don't know. We know that there
6 were things. We said that we would not want to get into
7 collateral inquiry into any agency, or whatever. So make them
8 here. To the extent you made them before you're that much
9 farther along. Nevertheless, bring them into us and we'll rule
10 on them. That way it's what is presented here that we'll rule
11 on, not what was, or might, or might not have been before FERC
12 or anyone else.

13 Stick to this. We'll try to stay with it with you,
14 and I think we'll get along a lot faster.

15 Anything else?

16 MR. ARMSTRONG: Not on that subject, Mr. Chairman.
17 But if we're closed on the subject of interrogatories--

18 CHAIRMAN MILLER: Have we concluded all interrogatory
19 questions now from anyone?

20 MR. STRUMWASSER: There are going to be-- There are
21 outstanding objections to some of the deferred interrogatories,
22 ours and theirs. I don't know whether the Board wants to rule
23 on all those now or whether it wants to take the--

24 CHAIRMAN MILLER: Are these the contention type?

25 MR. STRUMWASSER: Yes. --or wants to pick them up

MPB/wb30 1 at some prehearing conference before November, but--

2 CHAIRMAN MILLER: I suppose it might be more
3 expeditious for you to submit in writing your contentions and
4 so forth--

5 MR. STRUMWASSER: Both sides have filed written
6 motions for protective orders and objections.

7 CHAIRMAN MILLER: We don't really care. However
8 you've indicated some of you want to fly. The Board will go
9 either way on that. If you've indicated by your motion -- and
10 I don't have it before me. If your motion for a protective
11 order sufficiently indicates the grounds, then there's a
12 response. We can see what it is.

13 MR. STRUMWASSER: It's all there.

14 I might ask, has the Board selected a date for the
15 next prehearing conference?

16 CHAIRMAN MILLER: No, we haven't. We have in mind
17 two more conferences. We have in mind a final prehearing
18 conference some time after discovery, and probably-- What
19 did we set for March 15th? It was trial briefs, wasn't it?
20 Somewhere in that period, I don't know whether you want to be
21 thinking about it now or not, after the termination of discovery
22 and possibly in or around the time of trial briefs, we could
23 have our final prehearing conference in accordance with our
24 rules, which is where you have all your final motions and
25 that kind of thing. We thinking in terms of March 15th or 20th,

MPB/wb31

1 whatever is convenient.

2 MR. STRUMWASSER: Under the circumstances, since
3 the Board doesn't appear to contemplate another prehearing
4 conference in the next month or two, it may be required that
5 we ask the Board to rule on two sets of motions. There are not
6 a lot of interrogatories involved, there's probably half a dozen
7 objections that each side has made. So it may be appropriate
8 for the Board to take--

9 CHAIRMAN MILLER: We have no objection to doing it
10 this afternoon, time permitting.

11 MR. ARMSTRONG: I'm not sure that anything more
12 eloquent could be said about any of these arguments than what's
13 been said already in the written papers. And for our part we'd
14 let it stand submitted. Some of the matters have been mooted
15 by--

16 CHAIRMAN MILLER: At a recess we'll take a look
17 at them, and then we'll discuss them with you further. It may
18 be if you are satisfied to have a decision made upon the sub-
19 mission, the Board will.

20 Give us a chance to look at them.

21 Now is there anything else with relation to past,
22 present or future interrogatories, or other discovery?

23 MR. ARMSTRONG: Yes. I believe I wrote you a note
24 a week or so ago on the question obtaining, as part of our
25 scheduling, some indication from the Board, a resolution of

MPB/wb32

1 what may be just another trivial dispute.

2 CHAIRMAN MILLER: Is this the NCPA letter of May th
3 4th?

4 MR. ARMSTRONG: Yes. We want to begin the discovery
5 of documents in the individual member cities of NCPA. As
6 Mr. Matt told you this morning, Anaheim and Riverside, which
7 are not members of NCPA, have already done this. NCPA stipulated
8 to this, oh, it was a year or so ago. There was at that time
9 a question whether member cities were appropriate targets of
10 discovery. That matter was decided--

11 CHAIRMAN MILLER: The Board ruled they were.

12 MR. ARMSTRONG: That's right; that was last July.
13 And we've all been doing other things.

14 I think NCPA's production from its central offices
15 or executive offices, or whatever they call it, has been con-
16 cluded now for a while.

17 CHAIRMAN MILLER: What is it that you want now?

18 MR. ARMSTRONG: We would like now an indication
19 that now, or within sixty days, whatever seems right to the
20 Board, is the time to begin our review of the members cities'
21 documents. We're not hung up on the order in which we go to
22 the cities. We would like to get it started. But, what I said
23 in that early May letter, it's more urgent now that we've got
24 some fires lit under us.

25 CHAIRMAN MILLER: Let me inquire: maybe we can

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MPB/wb33

1 resolve it easily.

2 MR. MC DIARMID: Perhaps I can, your Honor.

3 NCPA has provided PG&E with a total of some 20
4 documents, 20 B documents.

5 CHAIRMAN MILLER: Are these the central files?

6 MR. MC DIARMID: No, not entirely.

7 We tried to work out an arrangement where, after
8 review of all the central files for potential privilege, PG&E
9 would be permitted to just send its people in and go through
10 all of the central files of NCPA. It did that.

11 As a practical matter it did not work very well
12 so far as NCPA was concerned, in terms of the disarray into
13 which its files were felt to fall as a result of this, out of
14 which it is only now recovering.

15 We stipulated with the Company that we would go ahead
16 with a discovery procedure which was equivalent -- I believe
17 that was either the word, or the essential word -- to the
18 discovery procedures which they were using.

19 CHAIRMAN MILLER: What's the issue between you?
20 Do they want to send people to look at your various cities'
21 files?

22 MR. MC DIARMID: Yes.

23 CHAIRMAN MILLER: Are you willing or not?

24 MR. MC DIARMID: No.

25 CHAIRMAN MILLER: What do you suggest?

MPB/wb34

1 MR. MC DIARMID: I'm sorry, your Honor; it's not a
2 question of not being willing, it's a question of not being
3 willing now.

4 CHAIRMAN MILLER: What's the problem?

5 MR. MC DIARMID: Time. Time and attorney avail-
6 ability. We have everybody we have tied up.

7 CHAIRMAN MILLER: Was it you this morning who told
8 me you produced everything that was required to date in dis-
9 covery? Or was it Mr. Matt?

10 MR. MC DIARMID: That was Mr. Matt.

11 CHAIRMAN MILLER: I had the impression from one of
12 you gentlemen, one of you three there, that you guys had
13 produced everything.

14 MR. ARMSTRONG: It was Mr. Matt, Mr. Chairman.

15 MR. MC DIARMID: Anaheim and Riverside I believe
16 have produced everything.

17 CHAIRMAN MILLER: And it seems to be a different
18 story when you get to the other cities; is that the problem?

19 MR. MATT: Well, Mr. Chairman, Anaheim and Riverside
20 have a different physical setup.

21 CHAIRMAN MILLER: I just said you're in the same
22 law firm. I do know the majority of the conclusions therefrom.

23 MR. MATT: Well I think you have to recognize that
24 there are two cities included in the thirteen.

25 CHAIRMAN MILLER: We understand that. We appreci-

MPB/wb35

1 ate it. We are now understanding that the other cities repre-
2 sented by the other members of your firm seem to be in a
3 somewhat different position in terms of production of dis-
4 covery.

5 MR. MC DIARMID: Yes, they are, your Honor.
6 It's partially a question of time.

7 CHAIRMAN MILLER: Well the request was made, and
8 we did rule last summer. I recall that.

9 MR. MC DIARMID: That's right, your Honor.

10 CHAIRMAN MILLER: Why don't we have them produced?
11 Why don't we have anything accomplished by now?

12 MR. MC DIARMID: For the same reason, your Honor,
13 that PG&E has now told us they'll never get through the
14 production that is demanded of them.

15 CHAIRMAN MILLER: Well let's not answer a question
16 by a question.

17 How many cities are involved, first of all?

18 MR. MC DIARMID: Eleven.

19 CHAIRMAN MILLER: Why can't you arrange to have
20 the files available? This was the procedure to be followed,
21 to designate a representative, just as you apparently have
22 done in other cases.

23 MR. MC DIARMID: Because somebody has to go through
24 them. Some lawyer has to go through them first for privilege.

25 CHAIRMAN MILLER: Well you'd better start going

MPB/wb36

1 through them.

2 MR. MC DIARMID: Your Honor, no one has even asked
3 to see any of DWR's documents yet, and they've been available
4 for years.

5 CHAIRMAN MILLER: Now wait a minute. You don't
6 represent DWR.

7 MR. MC DIARMID: That's correct.

8 I'm saying, your Honor, NCPA is farther ahead in
9 its discovery than anybody here except Anaheim and Riverside.

10 CHAIRMAN MILLER: I'm beginning to think that
11 doesn't mean anything anyway. Let's stick to the issues.
12 They have a right to see the documents. You should get with it
13 if you're going to want to examine them by some counsel first.

14 Let's get it done. Because we're entering orders
15 of sixty days, because we intend to move this thing.

16 We ruled a year ago or so that the individual
17 cities were subject to it.

18 MR. MC DIARMID: Yes, your Honor.

19 CHAIRMAN MILLER: So what is the reason you haven't
20 got through it by the attorney? Now you've got a limited
21 period.

22 MR. MC DIARMID: That's right, your Honor, and
23 we'll do our best to comply. But the problem is--

24 CHAIRMAN MILLER: When will you be able to comply?

25 MR. MC DIARMID: The problem, your Honor, is a

MPB/wb37

1 physical one having to do with the FERC hearings. The FERC
2 hearings are due to begin on June 4th.

3 CHAIRMAN MILLER: I don't care anything about the
4 FERC hearings. And I kind of think the less I hear the better.

5 MR. MC DIARMID: Well I'm sure that's right, your
6 Honor; I wouldn't blame you a bit.

7 CHAIRMAN MILLER: We're trying to move this along.
8 We've been two years on it, and I'm telling you we're going to
9 move it.

10 Now if they're entitled to the production it's
11 up to you to do it. You've had apparently a year almost in
12 which to do whatever it was you felt you had to do. The fact
13 that they weren't pushing it is decisive. At any rate, we've
14 told them now to start producing on certain expedited matters.
15 And I think the DWR is doing the same thing. But it doesn't
16 do any good to look at others; you've got to look at yourself.

17 We want to know now: when are you going to have
18 those documents available for inspection, whether you green-dot
19 them or however you do it.

20 MR. MC DIARMID: Your Honor, I hope we would get
21 it done before March 1st.

22 CHAIRMAN MILLER: It should be done long before
23 March 1st.

24 MR. MC DIARMID: But it is a physical impossibility
25 to have a body in two places at once. And you're asking us--

MPB/wb38

1 CHAIRMAN MILLER: Then maybe you'd better go hire
2 some bodies, then. We've been telling PG&E to hire people.

3 MR. MC DIARMID: Yes, your Honor; but they
4 haven't.

5 CHAIRMAN MILLER: All right.

6 You wanted to intervene and you've intervened
7 and now we expect you to do what reasonably has to be done.
8 And we expect that if you're going to participate then you're
9 going to provide the available material. If that involves
10 getting more counsel, get more counsel. Do whatever is
11 necessary to make available in a reasonable time, which we
12 want you to tell us about, the documents which are the subject
13 of discovery by these individual cities.

14 MR. MC DIARMID: Your Honor, I have no problem in
15 being able to produce 100 percent of NCPA's documents by
16 March.

17 CHAIRMAN MILLER: By March when?

18 MR. MC DIARMID: By March 1st. That's the date
19 that it was cut off.

20 CHAIRMAN MILLER: Well, you're not telling me
21 anything. Of course you can do it by March 1. You're going
22 to do it before then or you may cease to be an intervenor or
23 you may be a consolidated intervenor.

24 Let's take a recess. Now I want you to think
25 about this. Because I don't want any more of this shouting.

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MPB/wb39 1 MR. MC DIARMID: Your Honor, I object to that.

2 CHAIRMAN MILLER: All right. Your objection is
3 noted.

4 I want counsel to settle down and get ready for
5 trial. We're having a lot of demands made of everybody else,
6 and I don't expect you to come up with the reason: I'm busy
7 here, there and elsewhere. We're not letting PG&E do it, and
8 we're not letting anybody else do it.

9 We're going to have a recess.

10 MR. STRUMWASSER: Mr. Chairman,

11 CHAIRMAN MILLER: Yes.

12 MR. STRUMWASSER: The document you referred to
13 that you were going to take a look at during the recess, our
14 objection to PG&E's interrogatories, dated February 16th,
15 1979. The first four pages of that I think are basically
16 mooted. So we're interested in pages 5 through 15. --excuse
17 me; 5 through 14.

18 CHAIRMAN MILLER: Okay. We'll take a look at it.

19 (Recess)

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MPB/wb39

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CHAIRMAN MILLER: Mr. Strumwasser, we'll return your document, thank you. We've given some thought and the Board wishes to take it under advisement unless anyone wants to be heard now and we'll rule on the matter in a couple of weeks.

6
7

MR. STRUMWASSER: That's fine.

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12

One thing I guess should be noted about our objections and that is that those enumerated in I, II, III and IV -- no, just I, II and III and VII are no longer operative, either because of rulings the Board has made at this conference or because PG&E's responses indicated a willingness to accept what we proposed to give them, so only the residual parts of that motion are still in effect.

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CHAIRMAN MILLER: Which numbers, you might indicate those too.

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MR. STRUMWASSER: So we are really only interested in rulings on IV, V and VI.

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MR. ARMSTRONG: Similarly, Mr. Chairman, because of the decisions which have been rendered to date, the only matters which I believe are still at issue with respect to our motion, there are some of the definitional questions which I don't think are all that important. III and VI at Page Seven of our brief are still at issue. VII, VIII are still at issue on Pages Nine and Ten of the brief.

24
25

MR. STRUMWASSER: Can I have those numbers again, III, IV, VII, VIII?

MPB/agb2

1 MR. ARMSTRONG: I think that's what I said.

2 CHAIRMAN MILLER: Yes. III, IV, VII and VIII, Pages
3 Nine and Ten of the brief of PG&E.

4 MR. ARMSTRONG: Well numbers III and IV are Pages
5 Seven and Eight, yes, so seven through ten are where these
6 roman sections appear, III, IV, IX -- III, IV, VIII and IX --
7 I'm sorry, III, IV, VII and VIII. I think we've already dis-
8 posed of IX.

9 MR. STRUMWASSER: Well I think we've pretty much
10 disposed of VIII, haven't we? VIII goes to the data request.

11 MR. ARMSTRONG: Well perhaps not. It does go to the
12 data request, Mr. Chairman, but it addresses an issue which
13 was not identified and I guess we'd better get it resolved
14 now fairly quickly, because the issue posed there was whether
15 it was proper to ask, as DWR did, for data going back to
16 1947, I think.

17 MR. STRUMWASSER: Right.

18 MR. ARMSTRONG: The Board had previously indicated a
19 cutoff of 1960. Mr. Strumwasser, in his brief, made some
20 observations as to why he felt 1947 was more appropriate. I
21 think it basically had to do with a desire to get additional
22 data for purposes of conducting some statistical regressions.

23 I'm not persuaded myself that he needs that many
24 additional years in order to make the regressions valid. I
25 don't think one should simply throw out a statistical term

MPB/agb3 1 and say Well gee, we really need a regression for all of these
2 materials. That, to me, doesn't seem to be good cause.

3 MR. STRUMWASSER: I'll be glad to stipulate to a
4 omission of them if you'll stipulate to the validity of the
5 regressions. The period was specified, was specifically
6 requested of us by our consultants and he explained the reason
7 for it, and I don't know that it would help any of us very much
8 if we got into a disposition on regression analysis.

9 But it seems to me that the whole point is not
10 terribly important. We intend to present now to PG&E the
11 data we have going back to 1947 insofar as we've got it. If
12 they've got other data, if they dispute our data, let them
13 answer the interrogatory to that effect. If they say they
14 don't want to collect it, they don't have it, that's fine,
15 we're going to go with our 1947 data and the whole question
16 is whether they want to avail themselves of an opportunity to
17 challenge it.

18 The point is, if they're ever going to challenge the
19 data that we intend to offer in evidence concerning data which
20 may go back to 1947, we would like them to identify their
21 challenge in this request.

22 MR. WENNER: Why don't you just send them a request
23 for submission?

24 MR. STRUMWASSER: Well we had thought about doing that.
25 But requests for permission are somewhat more burdensome,

MFB/ACB4

1 because a request for permission does, in fact, inflict on them
2 the obligation of doing some investigation before they deny
3 or say they don't know.

4 As I understand the federal practice, an interrogatory
5 merely says tell us what you've got now and update it if it
6 changes later. It seemed to us to be a more -- to be less
7 burdensome on PG&E.

8 MR. ARMSTRONG: I think we've already resolved the
9 quarrel as to how to do this. I think my question now, the
10 objection we've made goes to the question of relevance. And
11 I think it should be observed that the regression analysis
12 would only be useful in helping to determine possible cor-
13 relations between events which occurred in the period under
14 examination. I think the Board's earlier determination that
15 1960 ought to be, at least for starting purposes, as far back
16 as we need to go.

17 The question I think we address in our objection is
18 what's the purpose. Even if you could establish some
19 correlation from 1947 to 1960 between some series of events,
20 so what? Maybe it's too ancient to be of any meaning here.

21 MR. STRUMWASSER: Boy I sure hope this Board doesn't
22 intend to answer that question without expert testimony.

23 MR. ARMSTRONG: I think the kind of good cause, which
24 ought to be necessary, ought to address the question why do
25 we need to go behind -- beyond 1960 in order to establish

MPB/agb5

1 any fact relevant to any material issue in the case.

2 CHAIRMAN MILLER: We'll take it under advisement.

3 MR. STRUMWASSER: Might I correct one matter? That is,
4 the Board's ruling on 1960 was a general rule, there were
5 exceptions that were provided at the time. A number of the
6 document production requests, the Board specifically made
7 without respect to time. And I don't think it's fair to
8 characterize this Board's decision as having established any
9 kind of an automatic cutoff date of 1960.

10 CHAIRMAN MILLER: If you wish to address it any further
11 with a supplemental brief, feel free to do so on that one
12 issue.

13 MR. STRUMWASSER: Okay.

14 MR. ARMSTRONG: Mr. Chairman, if I might then refer
15 to our discussion of the question of document discovery
16 in the member cities of NCPA, I guess the only thing I would
17 say in that connection, many things having already been said,
18 is that a little bit earlier counsel for NCPA advised the
19 Board that the production of documents from PG&E's warehouse
20 should be no problem for PG&E because Intervenors had adequate
21 resources to do that effort involving some million documents
22 themselves.

23 I can only suggest that if they have the effort to
24 read and evaluate a million documents in PG&E's warehouse,
25 they ought to be able to come up with the resources to go to

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MPB/agb6

1 these member cities, each of whom ought to have a City Attorney,
2 to take care of any questions of privelege or what have you.

3 We're talking again about municipalities, many of
4 whose documents are subject to the equivalent of the Freedom
5 of Information Act. They have the California Act of Freedom
6 of Public Information kind of thing. I don't think this is any
7 larger problem than the problem of the PG&E warehouse which
8 they said they had the resources to accomplish.

9 We'd like to have a schedule established by which
10 we can show up with our bright and shining faces at somebody's
11 document location and begin to do the work.

12 CHAIRMAN MILLER: What schedule do you suggest,
13 Mr. Armstrong?

14 MR. ARMSTRONG: Well 60 days seems to be acquiring
15 some precedential value here. I guess I'd ask for 30, but
16 60, 30 days, something on that order of magnitude ought to give
17 them enough time to do whatever they reasonably have to do.

18 MR. DAVIDSON: Your Honor, we've been hearing for a
19 day PG&E's representatives expressing frustration at various
20 things and I'd like to express my frustration and make an
21 inquiry.

22 I thought Mr. McDiarmid went further than I would
23 when he said we would comply and furnish 100 percent of the
24 documents requested by March 1. I'd like to know why this
25 Board has de facto stated that PG&E will produce 60 percent

MPB/agb7

1 of the material ordered produced but that NCPA must produce
2 100 percent of the material PG&E seeks.

3 Everything that we do to furnish then 100 percent
4 takes away from our ability to handle this. It has been
5 determined that PG&E does not have to complete document
6 production, indeed, that it cannot.

7 And I don't understand why NCPA, which has given
8 50- or 60,000 documents already, which has given PG&E free
9 access to our headquarters in over half our cities as of this
10 moment, has to devote resources to producing 100 percent of
11 what PG&E desires, particularly when I think a moment's thought
12 will indicate that what you are trying is PG&E's conduct and
13 the evidence as to PG&E's conduct is largely found within
14 PG&E files, not within the files of a group of small
15 municipalities.

16 MR. ARMSTRONG: Well Mr. Chairman, if I might just say
17 a word on that subject it's clear that the Applicant, PG&E,
18 is entitled to present its defense and discovery in that
19 connection. I think it's also clear that PG&E's production of
20 documents has imposed a burden on the company, we've hired
21 28 people or something for the case.

22 I'm not clear that it's true that the production from
23 the member cities should involve any efforts on the part of
24 Spiegel and McDiarmid, given the fact, as I say, that
25 the individual member cities obviously employ clerical people

MPB/agb8 1 who, so far as I know, have not been burdened with any effort
2 in this case and each city probably has a City Attorney who,
3 again, as far as I know, has not been burdened.

4 And the question of privilege, attorney-client privilege
5 kinds of questions would, ought to be something the City
6 Attorney could handle. Now maybe not, but in any event, I think
7 it's clear that producing or processing millions of documents
8 is a different order of magnitude than processing 10,000
9 documents or whatever the number is.

10 (The Board conferring.)

11 MR. MATT: Mr. Chairman, if I might?

12 (The Board conferring.)

13 CHAIRMAN MILLER: We'll take a recess.

14 (Recess.)

15 CHAIRMAN MILLER: Are we ready to proceed?

16 All right. The Board is desirous of doing whatever
17 scheduling is possible in order to achieve the most fairness
18 we can to all of the parties involved, but recognizing that
19 nobody is going to be completely satisfied.

20 I think, Mr. Strumwasser, the Board would like to have
21 you tell us again, you've already done it in part, what is the
22 additional discovery or document material that you deem
23 essential for the purpose of yourselves and the other Inter-
24 venors for trial?

25 MR. STRUMWASSER: I'm working, Mr. Chairman, off of a

MPB/agb91 list that Mr. Meiss did. The departments which have been
2 completed are, that we consider to be the highest priority,
3 were the engineering, research, executive files, retired
4 executive and legal.

5 CHAIRMAN MILLER: Those have been completed now,
6 I believe?

7 MR. STRUMWASSER: Those are completed or in the process,
8 legal is in the process and the others have been completed,
9 as I understand.

10 Now there's a nomenclature problem here. We have,
11 within the engineering research, planning and research,
12 planning and research. Some of them are departments and some
13 of them are parts of other departments. But I think that
14 Mr. Meiss and we all understand what we are talking about
15 there.

16 Half of the research and the planning department,
17 I think, is done. Siting is not done, that is the next
18 priority when we get back to the green dotted file that
19 Legal has finished and we are interested that that be done
20 next.

21 CHAIRMAN MILLER: Now wait a minute. What is to be
22 your first order priority?

23 MR. STRUMWASSER: Our first priority after they finish
24 the non-green dotted, that would be the executive and legal,
25 would be siting because that's where the contracting work is

MPB/agbl0

1 done.

2 CHAIRMAN MILLER: Well let's see if we understand you
3 now.

4 Do you understand what he is saying, Mr. Meiss?

5 MR. MEISS: Yes, I do, Mr. Chairman.

6 CHAIRMAN MILLER: And when he says he wants siting
7 as the next in priority, do we know what it is that you are
8 talking and about how many documents are involved?

9 MR. MEISS: Yes, Mr. Chairman.

10 CHAIRMAN MILLER: About how many are involved?

11 We'll take the priorities as you're listing them now.
12 Siting will make number one.

13 MR. MEISS: We're talking about something in the
14 neighborhood of 200,000 pages.

15 CHAIRMAN MILLER: 200,000 pages to be examined or
16 produced or what?

17 MR. MEISS: This is going to be both the Intervenors'
18 green dotted, approximately 119,000 pages, and we estimate from
19 the personal offices that we'll obtain another third again
20 that will be produced. So we're talking about that the
21 Intervenors will carry away with them about 200,000 pages out
22 of the Siting Department.

23 CHAIRMAN MILLER: Well why is it that there's 119,000
24 green dotted but the others you will produce? Is that some
25 arrangements you've made?

MPB/agbl11

2 MR. MEISS: The departments are divided into two
3 components, if you will. One is the central file room where
4 the Intervenors did their green dotting. Then there are the
5 personal offices where the individual engineers keep their
6 office files which was not green dotted but were obligated to
7 produce documents from those offices as well.

8 CHAIRMAN MILLER: I understand. This is the number
9 one priority presently.

10 MR. STRUMWASSER: That's right.

11 MR. ARMSTRONG: Mr. Chairman, I think so that every-
12 body's on the same wavelength, when Mr. Meiss says 200,000
13 pages to be carried away, that implies approximately, what,
14 80,000 documents to be carried away from personal files.

15 But we do not have on the table the number of pieces
16 of paper which will have to be reviewed in those personal
17 files and from which the 80,000 pages will be produced. Those
18 are two different numbers.

19 Do you have that other number?

20 MR. MEISS: No, I don't. This is based on experience
21 from having done discovery in these departments before.

22 CHAIRMAN MILLER: Approximately how long will it take
23 you with your present forces?

24 MR. STRUMWASSER: 119,000, I just worked the
25 calculation, at 5000 a day would be 23 days, 24 days.

MR. MEISS: Which is one full month. There's roughly

MPB/agbl2

1 20 working days in a month. So we're talking about --

2 CHAIRMAN MILLER: So that would be one month in order
3 to accomplish what now?

4 MR. STRUMWASSER: The green dotting of siting, and then
5 I don't know how much to do the private files that we were not
6 given access to.

7 CHAIRMAN MILLER: Well is there any way that they
8 could be given access and get some mutuality of effort there?

9 MR. MEISS: I don't believe so, because you're talking
10 about going into a person's office where he's working and
11 then going through his desk, going through the files sitting
12 behind him. It would just be too disruptive of his work.

13 CHAIRMAN MILLER: In view of the fact that you have
14 some time constraints, Mr. Strumwasser, do you consider it
15 essential that the second operation be performed?

16 MR. STRUMWASSER: Oh yes, absolutely.

17 CHAIRMAN MILLER: All right, then. In other words,
18 you're having to adjust what is feasible and so we want you
19 to be sure you make your judgments in terms of your own felt
20 highest order of need.

21 MR. STRUMWASSER: Right.

22 CHAIRMAN MILLER: So we've got one month, then, for
23 the green dotted and another period of time for about 80,000,
24 which would be the result of going through personal files.

25 MR. STRUMWASSER: Right.

MPB/agb13

1 CHAIRMAN MILLER: Well let's have an estimate on that.

2 MR. MEISS: My estimate is it would take between
3 five and six weeks to do that.

4 MR. STRUMWASSER: That's five or six additional weeks,
5 I gather.

6 MR. MEISS: That's right, in addition to the one month
7 we're already talking about.

8 CHAIRMAN MILLER: All right. We've got 2.5 months,
9 then, for the so-called siting.

10 MR. STRUMWASSER: Right.

11 CHAIRMAN MILLER: Okay.

12 MR. STRUMWASSER: The next department that we deemed
13 essential was electric operations.

14 CHAIRMAN MILLER: Electric operations?

15 MR. STRUMWASSER: Right. That included steam
16 generation, which is the people that run the fossil plants,
17 hydrogeneration, the people that run the hydro plants --

18 CHAIRMAN MILLER: Those you're excluding?

19 MR. STRUMWASSER: No, that's what makes up electric
20 operations.

21 CHAIRMAN MILLER: All right.

22 MR. STRUMWASSER: Power control, which does the
23 transmission and power control and system protection. And I
24 don't know whether Mr. Meiss has that broken down by the four
25 parts or the whole electric operations involved.

MPB/agbl4

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CHAIRMAN MILLER: All right.

2

Mr. Meiss, tell us what that consists of so far as you

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can.

4

MR. MEISS: As to the green dotted files we're talking

5

about --

6

CHAIRMAN MILLER: Are these green dotted?

7

MR. STRUMWASSER: Again, we were --

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MR. MEISS: These were green dotted files.

9

MR. STRUMWASSER: We were not given access to green

10

dotted files.

11

MR. MEISS: As to the green dotted files, we're talking

12

about some 350,000 pages that were green dotted.

13

CHAIRMAN MILLER: Yes, and about how much time would

14

that take?

15

MR. STRUMWASSER: At 5000, that's 70 days.

16

MR. MEISS: Which is approximately -- this is getting

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close to four months, I would say.

18

MR. FALLIN: 70 days.

19

MR. MEISS: I'm sorry, 70 days?

20

MR. STRUMWASSER: It would have to be 3, 3.5.

21

MR. MEISS: That's close to four months.

22

CHAIRMAN MILLER: Is it three months or four months?

23

MR. MEISS: It's close to four months, I would say.

24

CHAIRMAN MILLER: Okay.

25

MR. STRUMWASSER: In all cases, we're doing 5000 a

MPB/agbl5 1 day, basically some 5000 a day. Mr. Meiss indicated this range
2 was four to six.

3 : CHAIRMAN MILLER: Okay.

4 MR. STRUMWASSER: I guess you're waiting for an estimate
5 on private files of electric operations.

6 MR. MEISS: That I don't have, so I could not give
7 you even a ballpark figure for what we're talking about there.
8 But based on experience as to how much we can expect to produce
9 for the Intervenors, we will probably produce once again another
10 100,000 to 125,000 pages out of the individual offices.

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1 I'm not sure how many pages we would have to
2 review in order to end up with that number.

3 CHAIRMAN MILLER: These are pages produced?

4 MR. MEISS: That's right.

5 CHAIRMAN MILLER: All right.

6 What kind of time are we estimating on that?

7 MR. MEISS: Mr. Chairman, this once again is an
8 extremely rough guess, but I would say between two and three
9 months to do that. We're talking about four departments.

10 I suppose between two and a half to three months.

11 CHAIRMAN MILLER: In addition to the four months
12 you've estimated for the green dotting?

13 MR. MEISS: That is correct.

14 MR. MC DIARMID: For 125,000 pages you'll take
15 three to four months?

16 MR. MEISS: What we're talking about, Mr.
17 McDiarmid, this is net.

18 CHAIRMAN MILLER: This is what you come out
19 with. To get that he's estimating that on some kind of a
20 ratio. It could be well in excess, I take it.

21 MR. MATT: We have reached March 1st, under the
22 schedule.

23 CHAIRMAN MILLER: I knew we were somewhere near
24 it.

25 MR. STRUMWASSER: There are two other departments

MPB/mpb2

1 that we deem essential. That is government relations and
2 rates valuation..

3 CHAIRMAN MILLER: All right. What's the story
4 on government relations?

5 MR. MEISS: Mr. Chairman, the Intervenors green
6 dotted approximately 21,000 pages in the central file room
7 there. That's roughly a week's work.

8 I don't have any idea how many pages there are
9 in the personal offices. And the reason for this is the
10 governmental affairs department is a peculiar request of the
11 Intervenors. Rather than review all of the files, they are
12 interested in only specific classifications of documents.
13 And we have not done any -- had previous experience with
14 that kind of discovery. So I couldn't give you an estimate.

15 CHAIRMAN MILLER: Okay.

16 And what's the last one?

17 MR. STRUMWASSER: Rates and valuation department.

18 CHAIRMAN MILLER: Rates and evaluation.

19 MR. STRUMWASSER: Rates and valuation.

20 CHAIRMAN MILLER: Okay. What's the story on that
21 one?

22 MR. MEISS: This department consists of three
23 parts: the rate department, the valuation, and the economics
24 and statistics department. All together the Intervenors and
25 Staff green dotted approximately 98,000 pages.

MPB/mpb3

1 CHAIRMAN MILLER: How long?

2 MR. STRUMWASSER: That's exactly 20 days.

3 MR. MEISS: That's a month's worth of work also.

4 CHAIRMAN MILLER: Now are there any un-green-
5 dotted ones?

6 MR. MEISS: Yes. This department created peculiar
7 difficulties since these are some of the large departments.
8 We would probably not produce many relevant documents, but
9 we would probably look for something in the neighborhood of
10 2- to 300 individual offices. I'm not sure how long that
11 would take.

12 CHAIRMAN MILLER: 2- to 300....

13 MR. MEISS: Offices.

14 CHAIRMAN MILLER: Offices?

15 MR. MEISS: Offices; just like yours and mine
16 are offices..

17 MR. STRUMWASSER: We've never heard about this
18 problem. We may be able to help them eliminate some of
19 those people. We just don't know. We've never heard about
20 it before.

21 CHAIRMAN MILLER: 2- to 300 offices.

22 MR. MEISS: To give you an idea, Mr. Chairman,
23 in the headquarters building there are approximately 5000
24 employees. So this does not represent a particularly large
25 segment.

MPB/mpb4

1 MR. STRUMWASSER: Mr. Chairman, I might add that
2 I have omitted from this first priority the following depart-
3 ments: civil engineering, electrical engineering, mechanical
4 and nuclear engineering, engineering quality control,
5 customer operations, public relations, financial planning
6 and analysis.

7 I mean, I have grave concerns about missing some
8 of that. There may be a way to go back and pick up a couple
9 of files that may linger in our memory on a few of those
10 departments, but....

11 CHAIRMAN MILLER: You don't have any estimate,
12 then, for these 2- to 300 offices of personal files that
13 will have to be looked through, is that it, Mr. Meiss?

14 MR. MEISS: That is correct, Mr. Chairman.

15 CHAIRMAN MILLER: Well, give me a ballpark
16 guess, then.

17 MR. STRUMWASSER: This ballpark estimate is going
18 to be especially loose, Mr. Chairman, because, as I say, we
19 may be able to help him shorten it by eliminating people.

20 CHAIRMAN MILLER: Yes, I understand that.

21 MR. MEISS: Mr. Chairman, assuming we can send
22 out two teams of legal assistants to review files, it would
23 take approximately six weeks to do these offices.

24 CHAIRMAN MILLER: And that's providing there were
25 no diminution of the number, the quantities, as Mr.

MPB/mpb5

Strumwasser has suggested as a possibility.

MR. MEISS: And this also assumes that we don't run into some person who just happens to be a pack rat and has stored 70,000 pages in his office.

MR. FALLIN: It also assumes as a practical matter that the fellow who stands over his files with his sharpened pencil doesn't try to take them away from us. And it happens. It's not a big thing.

CHAIRMAN MILLER: While we're looking at this rate of production, refresh my memory and the record now what you've done to date. When did you start this operation, how many did you examine, how many did you produce? Let's compile the statistics while we're at it.

MR. MEISS: Mr. Chairman, we started the green dotting process on the day the stipulation was signed, which was April 25, 1978.

CHAIRMAN MILLER: April 25, '78.

MR. MEISS: I believe thus far we've produced approximately 450,000 pages of files solely in response to the document order in this case.

CHAIRMAN MILLER: 450,000 --

MR. MEISS: Something like that.

CHAIRMAN MILLER: -- documents that were produced as a result of the orders in this case.

MR. MEISS: That is correct.

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MPB/mpb6

1 CHAIRMAN MILLER: Now how many did you examine,
2 or are you making the difference between those examined and
3 the amount produced, as I think you did in some cases in
4 the estimates? Is that a meaningful method for you or not?
5 It seemed to me in estimating on the other question that you
6 in some instances showed the number that you would have to
7 go through, or a large number in order to wind up with the
8 production of like 98,000 or whatever.

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9 MR. MEISS: The only green dottings -- well,
10 there are two green dottings that we have done.

11 We have produced approximately 275,000 to 300,000
12 pages solely from green dotted files. In addition we've
13 produced approximately 200,000 pages from the active
14 executive files which were not green dotted.

15 CHAIRMAN MILLER: So that's how you -- well,
16 that gives you a total of 475,000?

17 MR. MEISS: Well, that's the amount produced.
18 That would be the number that Mr. Strumwasser's contractor
19 has actually copied.

20 CHAIRMAN MILLER: Well, then, that replaces the
21 estimated 450,000 pages produced in this case? It super-
22 sedes it? You gave that to me first.

23 MR. MEISS: It's about -- I don't have exact
24 numbers with me, so they're about equivalent magnitudes.

25 CHAIRMAN MILLER: Well, but they're the same

MPL/mpb7

1 number of documents.

2 MR. MEISS: That's right, we're talking about
3 the same documents.

4 CHAIRMAN MILLER: I don't add them together, I
5 keep them separate.

6 Now in order to produce these numbers, how many
7 were examined, approximately, gone through, processed,
8 whatever you did?

9 This is the end product produced, as I under-
10 stand you, and copied and so forth.

11 MR. MEISS: Out of the green dotted files
12 virtually everything that was examined was produced, with
13 the exception of documents that are currently withheld as
14 privileged or irrelevant or sensitive. To that extent,
15 we would say we actually reviewed about 280,000 pages.

16 CHAIRMAN MILLER: 280,000 of the green dotted
17 pages reviewed.

18 MR. MEISS: That's correct.

19 CHAIRMAN MILLER: What about the others?

20 MR. MEISS: To get through the executive files
21 we went through substantially more than the 200,000 pages
22 that we ultimately produced. I would estimate that we
23 reviewed somewhere in the neighborhood of approximately
24 350,000 pages.

25 CHAIRMAN MILLER: That's in addition to the

MPB/mpb8

1 280,000 green?

2 MR. MEISS: That is correct.

3 CHAIRMAN MILLER: So therefore we get a total
4 review, then, of 635,000?

5 MR. MEISS: That sounds about right-

6 CHAIRMAN MILLER: Okay.

7 Now that's production to date, and commencing
8 when?

9 MR. MEISS: Starting as of April 25th, which
10 is when the green dotting began. This is not when documents
11 actually began flowing into the depositories for the
12 Intervenors' reviews. That happened substantially later.

13 CHAIRMAN MILLER: When was that? When did you
14 start tripping at the typewriters?

15 MR. MEISS: I believe, subject to check, Mr.
16 Chairman, that the first documents started actually being
17 made available to the state for its copying in August of
18 1978.

19 CHAIRMAN MILLER: It was August or September,
20 as I recall.

21 MR. MEISS: I think you may recall that there
22 was substantial discussion of the startup problems we were
23 experiencing in finding, hiring and training people to do
24 this work.

25 CHAIRMAN MILLER: Yes.

MPB/mpb8

1 MR. ARMSTRONG: That was at the September
2 conference of last year, and I think by that time some
3 documents had begun to be delivered.

4 CHAIRMAN MILLER: I think so, just on the eve
5 of it. And that extends through what period of time, to the
6 present time or what?

7 MR. MEISS: This is as of May 4th.

8 CHAIRMAN MILLER: May 4, '79. Okay.

9 Now was there anything else that was done by
10 the crew in order to examine and produce this number, or
11 have we covered pretty much the work effort?

12 MR. MEISS: Another number I'd like to advise
13 the Board of is we have approximately 102,000 pages currently
14 in processing in our shop. It's currently being reviewed
15 to be made available to the state for microfilming.

16 CHAIRMAN MILLER: All right. What's the source
17 of that 102,000?

18 MR. MEISS: This comes out of the law department's
19 four central file rooms.

20 CHAIRMAN MILLER: The law department's four
21 central file rooms?

22 MR. MEISS: The four central file rooms. We
23 have not yet begun the review on the documents in the
24 individual lawyer's offices.

25 MR. MATT: Excuse me, Mr. Chairman.

MPB/mpb10

1 I believe Mr. Meiss said it would take about
2 three months this morning -- someone might have given that
3 number -- so I think that has to be --

4 CHAIRMAN MILLER: That has already been done?
5 You mean 102,000 has already been processed?

6 MR. MEISS: It is in processing but is not yet
7 available. That's how much we're actually handling right
8 now.

9 CHAIRMAN MILLER: How long will that require?
10 Or is it included in your previous figures?

11 MR. MEISS: This will be part of the group of
12 documents we ultimately produce from the law department.
13 This is sort of--if you will, this is goods in progress that
14 will ultimately become part of the state's inventory.

15 MR. MATT: I believe there's an additional --
16 If I understood, there's an additional three months of work
17 before the entire law department would be completed.

18 MR. MEISS: That's correct.

19 CHAIRMAN MILLER: Three more months.

20 MR. ARMSTRONG: You said it would be finished in
21 July?

22 MR. MEISS: I believe the law department will
23 be finished before the end of July.

24 CHAIRMAN MILLER: Two and a half, then.

25 MR. ARMSTRONG: Say two months, then.

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2 MR. MATT: Two and a half, whatever. I'm just
3 indicating that there is a period of time before they go
4 back to the green dotting process, as I understand it.

5 MR. GOLDBERG: In addition to that, Mr.
6 Chairman, I'm afraid there is a little bit more bad news.

7 Mr. Strumwasser was indicating the important
8 department by memory. And we have here a copy of DWR's
9 motion for extension of discovery schedule, which they
10 filed back in September of '78, which has attached to it
11 the proposed order which lists all the departments in the
12 order in which they would like production.

13 And upon looking at that, we find out there are
14 a couple more departments which are essential which have
15 not been mentioned.

16 Overlooked was the customer operations depart-
17 ment and the financial planning and analysis department.
18 I guess those two were overlooked.

19 MR. STRUMWASSER: There is also some ambiguity
20 in our minds. My recollection is that I was the one who
21 asked for financial planning and analysis and that the other
22 people were not as hot on it as I. So I would be willing
23 to waive it if my recollection is correct.

24 CHAIRMAN MILLER: You were what?

25 MR. STRUMWASSER: My recollection of the cir-
cumstances of putting that list together is that I was the

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2 one who was hot on financial planning and analysis without
3 having seen the documents. The people who saw them thought
4 that they were of lower priority. So I would be willing to
5 waive that one in preference to something else.

6 But customer operations, I should have included
7 at least that portion which deals with the PG&E wholesale
8 customers and municipals.

9 I don't remember how many documents there are
10 in customer operations. Mr. Meiss might be able to tell us.

11 MR. MEISS: Originally, Mr. Chairman, when the
12 stipulation was signed Intervenor and Staff decided that
13 departments would be broken into two groups, what we call
14 category one departments and category two departments. The
15 category one departments were supposedly the ones with the
16 highest priority that they wanted documents from and that
17 we should look at the files of all of the people who worked
18 in those departments.

19 The customer operations department is a
20 category two department, which means that the only places
21 we will be searching for documents were where the Intervenor
22 and Staff did the green dotting and approximately two or
23 three individuals. So the total that should come from
24 this department will be in the neighborhood of 80,000 pages.

25 CHAIRMAN MILLER: Green dotted?

MR. MEISS: And from personal offices as well.

MPB/mpbl3

1 MR. STRUMWASSER: That's total. That's exactly
2 one month. It's less than a month, I'm sorry. Three weeks
3 to a month.

4 CHAIRMAN MILLER: Three weeks to a month.

5 Now this work has been performed or will be
6 performed by Staff; and a crew consisting of what?

7 MR. MEISS: We currently have a staff of 38
8 support personnel working on this.

9 CHAIRMAN MILLER: 38?

10 MR. MEISS: 38.

11 CHAIRMAN MILLER: And it's -- go ahead.

12 MR. MEISS: Which consists of 16 legal assistants
13 and 22 clerks.

14 CHAIRMAN MILLER: As a condition of that, do
15 you have lawyers who have some review function?

16 MR. MEISS: We have a pool of seven lawyers
17 that have been reviewing documents.

18 MR. WENNER: Full-time, part-time?

19 MR. MEISS: This is on a part-time basis. We
20 would probably violate the 8th Amendment to have them work
21 full-time.

22 MR. STRUMWASSER: 13th, isn't it?

23 (Laughter.)

24 CHAIRMAN MILLER: Does that include any of the
25 present counsel?

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MR. MEISS: No, it does not, not anybody sitting at the table.

CHAIRMAN MILLER: Are the employees house counsel?

MR. MEISS: It's a combination of lawyers supplied from Mr. Armstrong's firm and also house counsel.

CHAIRMAN MILLER: Anybody else?

MR. MEISS: I think that completes it.

CHAIRMAN MILLER: And this group or assembly of personnel are the ones who are capable of producing on the average 5000 a day or between 4- and 6000?

MR. MEISS: That's what we've -- at the September prehearing conference you asked us what in essence was to do 150 percent of what we'd been doing before, and that resulted in our hiring program. And so we've managed to both reduce unemployment and raise our document production to somewhere between 4- and 6000 pages a day, depending on how well our machines are running.

CHAIRMAN MILLER: I think that's why we've requested you to increase your production, too, didn't we, as a goal?

MR. MEISS: That's correct.

CHAIRMAN MILLER: Now what's the story on machines? Are you burning out bearings or wearing out machines or something?

MR. MEISS: We have to Xerox machines. One of

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2 the Xerox machines we've been giving such a beating to that
3 the customer representative came out and asked us to
4 replace it.

5 CHAIRMAN MILLER: It was somebody else's?

6 MR. MEISS: Well, they wanted us to upgrade the
7 machine because we were giving it a beating it was not
8 designed to take. We were putting approximately one month's
9 copies on every week. So they asked us to replace it.

10 So today the machine -- we are getting a Xerox
11 9400 today, which is their biggest, most powerful, deluxe
12 machine, which should help with that problem. It's about
13 three times as fast as the one we're replacing. So that
14 should help out a lot.

15 CHAIRMAN MILLER: How many will you have in
16 operation then, one or two?

17 MR. MEISS: We have a Xerox 9200 right now which
18 has been the backbone. Unfortunately we've been using it
19 so heavily that it's been breaking down very regularly.
20 And then the machine we're replacing is a Xerox 4500, and
21 that will be gone as of today and replaced with the 9400.

22 I am informed that we have as much copying
23 capacity on Xerox machines as the company's reprographics
24 departments. We have introduced competition into the company.

25 (Laughter.)

MR. EVANS: That's a first.

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1 MR. METT: That is a new license commitment, I
2 believe.

3 CHAIRMAN MILLER: And what is your capability,
4 then, with these two machines in normal operation?

5 MR. MEISS: I really don't know. I couldn't
6 tell you at this point.

7 CHAIRMAN MILLER: You haven't had enough produc-
8 tion experience with them.

9 MR. MEISS: The 9400, we had to take out a
10 wall to bring it in. So we had basically one machine all
11 of last week while they were taking the wall out and doing
12 the wiring for this.

13 MR. STRUMWASSER: It should give them substantial
14 spinning reserve capability.

15 MR. MEISS: That's true.

16 MR. GOLDBERG: Have you thought about hiring
17 that monk who gets the miracles?

18 (Laughter.)

19 MR. MEISS: Xerox has told us we can expect
20 some difficulties with the machine until the new parts
21 settle in. So probably in about three weeks it should be
22 up to speed.

23 CHAIRMAN MILLER: You do believe it is capable
24 of about 5- or 6000 a day, though, I suppose.

25 MR. MEISS: By itself? I'm not sure. I really

MPB/mpbl7 1

don't know.

2

CHAIRMAN MILLER: Well, the combination of

3

capabilities --

4

MR. MEISS: Oh, the two of them, ver. With the

5

two machines, we have the 4500 and the 9200, we were able

6

to do 4- to 6000 pages a day, with some overtime.

7

CHAIRMAN MILLER: That will be enhanced?

8

MR. MEISS: At least on the copying end of

9

things we should be able to speed up.

10

MR. ARMSTRONG: I think the bottomline ought to

11

be that we should maintain that average more consistently

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than we have in the past.

13

The problem has been that we maintain the average

14

when we're working. We just -- we've been down one day out

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of three. If we can reduce that down time we'll improve the

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net, although the average per day may stay the same.

17

MR. STRUMWASSER: My calculation is that those

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two machines should be capable of 28,000 pages a day each.

19

MR. MEISS: Mr. Chairman, I should advise you

20

that the reason we've been able to meet the schedules you

21

set out is because we have spent a substantial amount of

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time in overtime to use the machines when they are available.

23

So that what we're hoping is by having machines that are

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more reliable we'll be able to reduce the overtime cost.

25

CHAIRMAN MILLER: All right.

MPB/mpb18 1

2 Are there any more statistics? It seems like a
3 pretty all-encompassing picture, but have we left anything
4 out?

5 MR. MEISS: Not that I can think of.

6 CHAIRMAN MILLER: The capabilities, the volume
7 of documents to be produced and the like?

8 Well, we might as well get the figures from the
9 Northern California Power Authority.

10 How many documents approximately -- what is it,
11 eleven cities that we're talking about?

12 MR. DAVIDSON: Yes, sir.

13 CHAIRMAN MILLER: And can you give us a ballpark
14 figure on the number of documents we're talking about?

15 MR. MC DIARMID: No, we really can't, Your
16 Honor. And the problem is really a sort of mechanical one.

17 The last time we had to do a complete file
18 search of those eleven cities and co-op for PG&F was
19 approximately 1974. There are eleven different cities
20 filing systems, some of which are much better than others,
21 and the co-op has its own.

22 In order to complete that, it took several
23 months of lawyer-time then, interviewing people, attempting
24 to make sure that we had all of the responsive documents
25 at that point. And what we fear is that we'll have to go
through the -- we're reasonably confident that we will have

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to go through the same procedure again.

2 So it's not really -- we'll have to effectively

3 go through all of the cities' files to make sure that we're

4 able to respond.

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1 CHAIRMAN MILLER: All of the cities' files or all
2 the cities' files that related to utility operation?

3 MR. MC DIARMID: In some cases you're talking about
4 some very small cities, your Honor, so that virtually everything
5 may be related in some way to the utility operation. In some
6 cases it will be possible to distinguish so that we won't have
7 to go through some fairly discrete collection of files.

8 CHAIRMAN MILLER: Can you give us an estimate either
9 of the number of documents, the number of days, the number of
10 man-hours, some way to quantify this?

c9 11 MR. MC DIARMID: Mr. Matt informs me that at
12 Anaheim and Riverside it took two people continuously two
13 months.

14 CHAIRMAN MILLER: Two months, utilizing the services
15 of two people.

16 MR. MC DIARMID: Two legally trained people, yes.

17 Now Anaheim and Riverside are bigger than all but
18 two of the NCPA cities, Palo Alto and Santa Clara, so you can
19 scale down from there. As a practical matter, the PG&E per-
20 sonnel were in the NCPA central headquarters, which is con-
21 siderably smaller than some of the cities, for a period of some
22 several weeks.

23 CHAIRMAN MILLER: Mr. Armstrong, do you have any
24 information on the time required to examine the files of
25 either the particular eleven cities and one co-op, or any way

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eb2

1 we can extrapolate?

2 MR. ARMSTRONG: Might I have just a moment?

3 CHAIRMAN MILLER: Yes.

4 (The Board conferring.)

5 MR. ARMSTRONG: Mr. Chairman, I think, number one,
6 we don't have any factual basis on which to estimate the
7 quantity of documents at any of these cities, other than the
8 City of Alameda. PG&E has not sent representatives to any
9 of these member cities, so we just have no idea what the
10 documentary problem is. In Alameda, the contact there wasn't
11 sufficient to begin to guess.

12 I think, though, that the purpose behind the stipu-
13 lation which was entered last April and in which at page 6
14 is indicated the procedures that were being set forth here as
15 to PG&E would be followed to the extent sensible to do so in
16 the production from the NCPA and the Cities, the City members.

17 But it says that before the procedures for the
18 production of documents by Intervenors are finalized, PG&E
19 reserve the right to a preliminary inspection of these parties'
20 filing arrangements to determine to what extent the above-
21 outlined procedures are adaptable. That's what was said then.

22 It probably still makes sense that before we jump
23 into this pool of documents that somebody stick a toe in and
24 see what the temperature is, and all that. And I think that's
25 where we would like to begin. And if there is this great volume

eb3

1 problem, then I suppose the answer to that may be the same
2 answer which was used in the reverse with respect to PG&E's
3 documents, and that would be for us, as the requesting party,
4 to provide personnel to green-dot the municipalities' files.

5 It is just a suggestion, but as to the quantity and
6 magnitude of the problem, I think we don't really have a handle
7 on it, but it clearly ought to be manageable in comparison to
8 what we are already undertaking in PG&E. And I think that the
9 green-dotting procedure should be the next step, as it was with
10 PG&E.

11 Again, the equivalency of the procedures was sug-
12 gested to the extent it was adaptable, and as long as we're
13 talking about us doing the green-dotting, we're talking about
14 the files of a public entity, most of which, as I say, is
15 public information anyhow.

16 They might want to say Okay, the files in the City
17 Attorney's Office would be like the PG&E Law Department and
18 we want to have a different procedure there. But as to these
19 other files, I think it would be appropriate for PG&E per-
20 sonnel, after this initial survey, to put up a team and go down
21 and do some green-dotting.

22 MR. MC DIARMID: With all respect, your Honor, it is
23 not a problem of volume or number of documents we rather
24 anticipate from previous experience. We went through six
25 of the cities that were designated by PG&E in one of the FERC

eb4

1 proceedings fairly recently with respect to particular issues.
2 It happened to be a particular issue where the documents were
3 in a filing form where retrieval was possible with less effort
4 than would be the case in answering everything here.

5 We produced a total of something more than 10,000
6 pages, not a tremendous volume. The problem is not the volume.
7 There was a volume problem at the NCPA Central Offices because
8 essentially PG&E copied everything they had.

9 We have concluded as a result of that effort, in
10 which we were a great deal more liberal than PG&E has been with
11 us in permitting them to themselves select documents rather
12 than files, we concluded as a result of that effort that it was
13 substantially -- it appeared to be substantially more expen-
14 sive and time-consuming than just doing the search ourself.

15 We had to go through and we had to look for the
16 privileged materials. We had to have people out there for that.
17 We wanted to make sure that they had access to all of the
18 possible files that would be potentially responsive. The
19 problem is going to be very substantially simply having some-
20 body out there and going through everything the city has got
21 that might possibly be responsive first anyhow. As long as
22 they're there, they might as well do the response.

23 That is essentially the conclusion we have come to
24 so that we think we can probably more expeditiously -- certainly
25 from our part more expeditiously and I think in terms of getting

eb5

1 the documents to PG&E as well, do it that way. But it does
2 require, any of these require having somebody out there to go
3 through the material and to determine what privileges apply,
4 if any, and to locate the material to which PG&E is looking.

5 MR. ARMSTRONG: Mr. Chairman, I think that there
6 are different things going around. Again, it is getting very
7 confused. If the problem is not volume then I'm not clear what
8 the problem is.

9 If the problem is getting the party to whom the
10 request was directed to get his act together and put his files
11 in place, that's common. You get it every time you get a new
12 client and a new lawsuit. I don't think that the problem here
13 would be any different in that respect. If the request had
14 been served in a separate lawsuit as third party discovery
15 on any one of these cities they would still have to comply
16 and they would have to use their own resources or hire another
17 law firm to assist them or hire Spiegel and McDiarmid or who-
18 ever.

19 But the problem of collecting the documents and
20 getting the client's clerical people to do the job is common
21 in any document production.

22 The problem then is-- The other problem is that of
23 Spiegel and McDiarmid's resources to provide a person to both
24 I guess encourage the client to do all of these requirements
25 and to screen the material for privilege or whatever else.

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eb6

1 To the extent it is something besides privilege
2 I would say the green-dotting procedure takes care of that
3 screening problem. They can cull all their files and indeed,
4 that's what the stipulation contemplates, I believe, the files
5 from the pertinent departments and all, and set up some kind
6 of procedure for identifying all of the parties and that sort
7 of thing.

8 The files are just set in a room the way we did
9 it for our production, and then look at the file folders and
10 do a green-dotting kind of a process. That's our problem.
11 If we're going to have to augment staff, that's our problem.
12 To the extent they're worried about privilege, that may be
13 their problem, but I suggest it can either be solved by lawyers
14 from Spiegel and McDiarmid or by the City Attorney's office,
15 or by somebody else.

16 In any event I come back to saying, you know, when
17 we were talking about the PG&E warehouse, they had all the
18 resources necessary to do that job, and now the resources have
19 somehow evaporated when we start talking about going to the
20 Cities. We'd like to get this show on the road and set up
21 some sort of a reasonable timetable.

22 At this point, whatever can be said about PG&E, at
23 least we've produced several hundred thousand pages of docu-
24 ments and we hired 28 people. At this point, the member
25 Cities of NCPA don't even know how many documents are going

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eb7

1 to have to be reviewed in order to come up with this requirement.

2 MR. FALLIN: Mr. Chairman, would it be helpful to
3 review just the mechanics of the green-dotting because it may
4 be that Mr. McDiarmid doesn't recall--

5 MR. MC DIARMID: I recall it very well.

6 Your Honor, I am still a little distressed at all
7 of this. In fact, I'm still a lot distressed.

8 CHAIRMAN MILLER: I'm distressed all the time now.

9 MR. MC DIARMID: Sure.

10 The proposed order which was drafted for your
11 Honors back in October maybe by Intervenors and Staff and
12 objected to in part by PG&E had in it a provision that said
13 that the obligation of the other parties to produce would be
14 at a commensurate rate with PG&E, and nobody objected to that
15 part of that order. The order was not entered for other reasons.

16 NCPA has produced far more than a commensurate part
17 to date. NCPA intends to stay ahead of PG&E in terms of a
18 commensurate production.

19 CHAIRMAN MILLER: By that you mean you have produced
20 in some cities and cooperatives?

21 MR. MC DIARMID: No, your Honor, we have produced
22 from Central Offices entirely.

23 CHAIRMAN MILLER: So you haven't produced any cities?

24 MR. MC DIARMID: We have produced a great deal of
25 information from those cities and cooperatives which I --

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eb8

1 CHAIRMAN MILLER: Not into your Central Office?

2 MR. MC DAIRMID: But not-- No, but not in this
3 proceeding.

4 CHAIRMAN MILLER: Oh, I see.

5 MR. MC DIARMID: Okay. No, but they've been pro-
6 duced --

7 CHAIRMAN MILLER: In this proceeding, have they?

8 MR. MC DIARMID: They've been produced to PG&E, but
9 not in this proceeding.

10 It is really a problem of scheduling in such a way
11 as to try to stay alive, if you will, and to try to handle
12 these proceedings which, as you know, are proceeding at the
13 same time.

14 CHAIRMAN MILLER: You are talking now about the FERC
15 proceedings?

16 MR. MC DIARMID: Yes, two of them.

17 CHAIRMAN MILLER: Do those FERC proceedings involve
18 antitrust issues between your clients and PG&E?

19 MR. MC DIARMID: Yes, they do.

20 CHAIRMAN MILLER: Are they similar in any way to
21 some of the issues involved in this proceeding?

22 MR. MC DIARMID: Some of them are.

23 CHAIRMAN MILLER: Now you say you have prefiled
24 the direct testimony in those cases?

25 MR. MC DIARMID: In one.

eb9

1 CHAIRMAN MILLER: Well, how did you get the infor-
2 mation there in order to proceed on those antitrust aspects?
3 I don't want to go into the details but was it overlapping with
4 some of the factual and legal matters that are involved or may
5 be involved in this proceeding?

6 MR. MC DIARMID: Yes, your Honor, some of them do
7 overlap.

8 CHAIRMAN MILLER: And you were able then to obtain
9 information somehow to enable you to get to the evidentiary
10 stage in that case. What I'm curious about is why you're not
11 similarly able, at least in part, to accomplish the same thing
12 in this proceeding.

13 MR. MC DIARMID: Well, I think we are, your Honor.

14 CHAIRMAN MILLER: You are. I had misunderstood you
15 then.

16 MR. MC DIARMID: No, but by the same token, PG&E has
17 filed its evidence against us with the discovery they have
18 against us which they've had from the Cities, all of the Cities
19 in those cases.

20 CHAIRMAN MILLER: Those involve some of the issues
21 that are involved here?

22 MR. MC DIARMID: Yes, your Honor.

23 CHAIRMAN MILLER: On the part of PG&E?

24 MR. MC DIARMID: Yes.

25 CHAIRMAN MILLER: Did you file some of the same

eb10

1 defenses?

2 MR. MC DIARMID: Yes, there is definite overlap.

3 CHAIRMAN MILLER: Well, in that sense why would it
4 take so long for either PG&E or your clients to proceed to an
5 evidentiary hearing in this case on the issues here as between
6 the two of you now, excluding for the moment the other parties?

7 It would seem to me from what you're telling me
8 now that the March 1st cutoff date could really be a trial
9 date as far as you two groups of parties are concerned, and
10 excluding from that consideration the other Intervenors and
11 the Staff as well.

12 MR. MC DIARMID: Your Honor, if we didn't have two
13 other sets of hearings to go through between now and then, it
14 might well be.

15 CHAIRMAN MILLER: I see.

16 MR. FALLIN: Mr. Chairman, two points.

17 CHAIRMAN MILLER: We're running out of points. We're
18 going to recess. What are the points? There's an awful lot
19 of information and we need to do a little thinking.

20 MR. FALLIN: Very quickly, we had the same situation
21 going in our discovery, but as we've already produced 450,000
22 page and other things, specifically nothing that has been
23 produced previously gets produced again.

24 The specific agreement in the stipulation was that
25 the particulars, and I'm quoting now:

eb11

1 "The particulars of the above-described
2 procedure apply only to PG&E. Comparable proce-
3 dures which are substantively similar will be
4 agreed to for the production of documents from the
5 files of the NCPA and its Member Cities."

6 That's the stipulation.

7 MR. MC DIARMID: Yes, your Honor. No one contends
8 that the Member Cities are certainly subject to production.
9 However, if you look back in the stipulation to which
10 Mr. Fallin adverts you will note that there are several pro-
11 duction procedures including the green-dotting procedure and
12 including the obligation of PG&E itself to search and produce
13 certain of the other files which they have been discussing
14 today.

15 And we have given out complete privilege lists on
16 everything we've produced, and we have produced a heck of a
17 lot.

18 CHAIRMAN MILLER: I think we're getting repetitious
19 now. I think in a moment that Mr. Wenner is going to ask some
20 questions around the room. However, I'm just curious now for
21 my own information, from what you're telling us today, have
22 you given any thought as to the feasibility of a severance of
23 parties and issues to the extent that, taking into considera-
24 tion your own trial commitments in FERC, that we could proceed
25 to an evidentiary hearing involving on the one hand NCPA and

eb12

1 on the other PG&E, on at least a substantial number of anti-
2 trust issues and/or applicable remedies, and let the rest be
3 working on their discovery or whatever they want.

4 To proceed on the evidentiary hearing between these
5 two parties might have some interesting results.. Has that
6 ever occurred to you?

7 MR. MC DIARMID: It might very well, your Honor.
8 Yes, that and other alternatives, some of which may be obvious
9 to you, have occurred to us.

10 Now I think you will recognize-- I'm sure you will
11 recognize as you look around the room that various of the
12 parties here have various positions on all of the alternatives
13 that could possibly be suggested. And in accordance with the
14 instructions of the Board, the Intervenors and Staff have
15 attempted to coordinate approaches as I believe we've been
16 directed to do.

17 In addition, I would point out that the issues that
18 are stated in the Statement of Issues here are not exactly
19 congruent at least with the matters that are to proceed to
20 hearing on June 4. They may be--

21 CHAIRMAN MILLER: Well, some of them are not so far
22 afield though, are they?

23 MR. MC DIARMID: No.

24 CHAIRMAN MILLER: Some of those issues, both Section
25 1 and Section 2, there are a good many that really get to

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eb13

1 the guts of this whole thing.

2 MR. MC DIARMID: Yes, yes.

3 CHAIRMAN MILLER: And as far as remedies are con-
4 cerned, all of the desires and interests of all of the parties
5 are not the same, of course, nor identical. The analysis made
6 I think by you gentlemen on behalf of your client embodies
7 a very substantial number of the alleged defects which the
8 others find; not totally, but very substantially, from your
9 own analysis.

10 MR. MC DIARMID: Your Honor, I think I should say
11 also for your consideration that there are two distance FERC
12 proceedings. One is the 7777 proceeding which I think all the
13 discussion today has been about.

14 CHAIRMAN MILLER: How long has that been pending?

15 MR. MC DIARMID: That has been pending since --
16 well, technically I suppose you could say since 1972. It was
17 originally filed as a different kind of case and the FERC
18 itself converted it into an antitrust case by an order in 1974.

19 CHAIRMAN MILLER: '74?

20 MR. MC DIARMID: '74.

21 CHAIRMAN MILLER: Was there discovery on the anti-
22 trust issues at any rate substantially?

23 MR. MC DIARMID: Well, there has been discovery on
24 the antitrust issues.

25 CHAIRMAN MILLER: About how many documents have been

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1 involved?

2 MR. MC DIARMID: Your Honor, the so-called CID wave
3 of discovery here I believe produced all of the documents that
4 had been produced both in 7777 and in Helms Creek.

5 CHAIRMAN MILLER: Four hundred and some thousand
6 approximately?

7 MR. MC DIARMID: I'm sorry?

8 CHAIRMAN MILLER: About four hundred and some
9 thousand?

10 MR. MC DIARMID: Something on the order of that.

11 CHIARMAN MILLER: Was that the totality of the docu-
12 ment production, or substantially so?

13 MR. MC DIARMID: It was substantially the production--
14 I think substantially.

15 Southern California Edison was also a party to
16 7777, and so is San Diego Gas and Electric. At an earlier
17 stage there was a companion case, 7796, which had the other
18 parties to the so-called Seven Party Agreement, the four
19 Northwest companies, Pacific Power and Light, Portland Gas and
20 Electric, Portland General Electric, PGE, Washington Water
21 Power, and Puget Sound.

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2 That went through a stage where, without trying
3 to categorize it, NCPA and I believe the FERC staff filed
4 testimony last summer -- I mean the end of last spring, and
5 thereafter instead of filing responsive testimony, the
6 Northwest companies filed a notice of termination of the
7 seven party agreement and said they would be willing to
8 settle with anybody on the same terms and therefore the
9 issue was moot as far as they were concerned.

10 And there's been some procedural back and forth
11 on whether or not that was adequate. A preliminary hearing
12 has been held on that, which notices have been rendered.

13 In addition, however, there is the so called
14 Helms Creek proceeding, an application by PG&E for a hydro-
15 electric license, which the FERC -- actually the old Federal
16 Power Commission has set for a full scale investigation
17 into all of PG&E's anticompetitive activities. And in a
18 sense that is a more concurrent proceeding that is now
19 scheduled to go to hearing the beginning of next year, I
20 believe early January.

21 Mr. Fallin and Mr. Armstrong are now counsel in
22 that as well. And if I'm misstating dates....

23 CHAIRMAN MILLER: And due to the involvement of
24 your firm and PG&E's counsel, then may we expect that next
25 year we'll be confronted with motions for further delays
in this proceeding because of one or more of the FEPC

MPB/mpb2

1 proceedings?

2 MR. FALLIN: Mr. Chairman, it's my --

3 CHAIRMAN MILLER: He hasn't answered.

4 MR. MC DIARMID: I don't think we've seen that
5 yet, Mr. Chairman. I don't think anybody has yet moved for
6 a --

7 CHAIRMAN MILLER: I asked whether it was likely
8 to come about.

9 MR. MC DIARMID: Your Honor, if it looks like
10 there will be overlapping trial dates, there may very well
11 be motions for extensions of time one place or another of
12 some sort.

13 CHAIRMAN MILLER: On the basis of your request
14 here, or your indication to the Board that you really
15 couldn't state that you would be able or willing to produce
16 the documents requested by PG&E before March the 1st, 1979
17 was because of your impending involvement in certain FBI
18 matters. I thought that was what you told us.

19 MR. MC DIARMID: Yes, Your Honor. I didn't mean
20 to say that we couldn't produce it before March 1.

21 What I meant to say was that we would produce
22 it. We would stay ahead of PG&E in terms of production rate.

23 CHAIRMAN MILLER: Which may not be the same
24 thing. Producing them may not be the same thing as staying
25 ahead, as you view it, of PG&E.

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1 MR. MC DIARMID: Yes, I recognize that they
2 may not complete their production. I recognize that they
3 very likely will not with their current schedule.

4 We intend to produce -- and all I can say is I
5 cannot promise a date. I'm quite sure I cannot do 60 days,
6 for example. But I will undertake to get production going
7 as fast as I can make people available to do it.

8 It is not a question of people sitting around
9 our office doing nothing.

10 CHAIRMAN MILLER: Now we're just asking for
11 dates. We know you're going to have a problem with doing
12 it. But could you give us the -- the occurrence of an event
13 that's contingent upon eventualities, that's not quite the
14 same thing as giving an estimated date.

15 MR. MC DIARMID: I beg your pardon, Your Honor.
16 I lost the last line of what you said.

17 CHAIRMAN MILLER: Well, it's like a negotiable
18 instrument. If it's payable on a date certain, you know
19 what you've got. If it's payable when and if he does so-
20 and-so, you don't have a negotiable instrument.

21 I'm just saying what projected dates were you
22 or are you willing to advance to the Board as available for
23 the completion of the document discovery requested of your
24 clients by PG&E? Before you told me March 1, and I was tak-
25 ing that as being the date. Apparently you don't quite mean

MPB/mpb4 1 that, if I now follow you.

2 MR. MC DIARMID: No, Your Honor. What I mean
3 is that we will -- All I can say is we will make the
4 efforts that we can make. If PG&E were to give up some of
5 the cities --

6 CHAIRMAN MILLER: That doesn't add up to a date,
7 now, doing everything you can and so on and so forth. We're
8 trying to get to your estimated date.

9 MR. ARMSTRONG: Mr. Chairman --

10 CHAIRMAN MILLER: Now wait a minute. I'm not
11 through.

12 You can't give me an estimate, or what?

13 MR. MC DIARMID: It would be extremely hard for
14 me to give you an estimate. If I gave you an estimated date,
15 Your Honor, I would hope it would be something that I would
16 seriously hope I would be able to make.

17 CHAIRMAN MILLER: Yes.

18 MR. MC DIARMID: Now my problem is I and every-
19 body who is working on this is now responsible for trying
20 to get responsive testimony to PG&E's May 1, approximately,
21 testimony and to FERC. Everybody who is available is work-
22 ing on that.

23 It's currently due on June 4. A motion has been
24 filed for a 30 day extension to get that in. That would
25 make it July 4, approximately. The hearing is going to begin

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1 to begin on June 4th. There has been no extension requested
2 for that.

3 PG&E counsel have indicated that they would take
4 some months on cross-examining our witnesses. If that turns
5 out to be the case, then after our responsive testimony is
6 in I can make some people available to go out and begin the
7 process on the coast. If it turns out that their cross-
8 examination is nowhere nearly as long as they think, that
9 means that we have to begin cross-examination of their people
10 which, as you know, is a more lawyer-hour-intensive kind of
11 operation.

12 And we're not talking about small amounts of
13 testimony. We're talking about a couple of feet worth of
14 exhibits plus a couple of feet worth of testimony, prefiled.

15 CHAIRMAN MILLER: This is now all in the anti-
16 trust aspect?

17 MR. MC DIARMID: Yes. That's essentially all
18 there is in these cases.

19 CHAIRMAN MILLER: I see.

20 MR. MC DIARMID: So it really is something which
21 is a little difficult for me to project. I have to use
22 people who have some familiarity with the cases so they
23 know what PG&E is looking for. I have to use some people
24 who have some familiarity with the cities involved, so they
25 know where to find it or have an idea where to find it.

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It really depends on the course of that hearing.

2 Now I don't anticipate that hearing is going to go constantly
3 through the summer, although that has been said. Representa-
4 tions have been made that there will be no days off, that
5 we will go constantly from 9:00 or 8:30 in the morning
6 through 6:00 or 7:00 at night. I find it difficult to
7 believe that that will actually come to pass, but it may.
8 And if it does, since representation has been made, we've
9 got to be prepared for it.

10 I think really it's a question of we'll try to do
11 our best, and we will get the material to PG&E obviously
12 well before they complete their discovery to us. But I
13 cannot say exactly when. And I think it would be meaningless
14 to try to say 'Well, yes, on August 1 I'll have some files
15 all done, and on September 1, I'll have additional files,
16 and on October 1 I'll have more.' I could say things like
17 that, and it would be just really whistling in the dark.
18 And I think it would not be the most efficient way of produc-
19 tion.

20 MR. ARMSTRONG: We agree with that part.

21 CHAIRMAN MILLER: I'm glad you're in agreement
22 on part.

23 MR. ARMSTRONG: Yes, Mr. Chairman.

24 The first step --

25 MR. WENNER: Before you go on, could I inquire

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about something?

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I think we know it. Everybody's been saying

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this.

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I would like to find out what everybody thinks

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about time. Now Staff, what's your view about time?

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MR. GOLDBERG: Well, first of all, we're in

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100 percent agreement that there is a great public interest

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in proceeding as expeditiously as possible. There also,

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however, are some other public interests which must be

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considered. And that is to make the statutory findings on

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the basis of a full and complete record.

12

You don't want to make findings quickly for the

13

sake of satisfying that aspect of the public interest while

14

foregoing the public interest in coming to a correct conclu-

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sion about what the competitive situation is in California

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and involving PG&E and what are appropriate license condi-

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tions.

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So we want to do an expeditious job, but we also

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want to do a complete and thorough job to make sure that

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the record on which you base your findings is sufficiently

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complete so that there can be some confidence in your find-

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ings.

23

The Staff, from our point of view, is faced

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with an enormous amount of material that must be digested

25

to try to unravel all of the various allegations of the

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1 Intervenor on the one hand, and the defenses that are put
2 forth by PG&E on the other. We are just overwhelmed with
3 the amount of documentary discovery in this case.

4 We have more limited resources than any party
5 in this case and we have an inability to add additional
6 people to our resources because of Federal Government
7 regulations on hiring additional people now. At the same
8 time our very limited antitrust staff has a couple of other
9 major antitrust cases in the middle of discovery at this
10 time, as the Chairman well knows.

11 CHAIRMAN MILLER: Yes, South Texas.

12 MR. GOLDBERG: Right. And the Florida Power case.

13 We are simply incapable of doing as thorough a
14 job as these complex issues and volumes of material deserve.
15 It is an extreme burden on us, but we're doing the best we
16 can.

17 We are even willing to give up some of what
18 others would consider necessary to a thorough preparation
19 for the sake of the other part of the public interest you
20 mentioned of doing this quickly.

21 We have that interest in mind as we go through
22 this also. And so we are trying to balance these competing
23 interests in the preparation of our case.

24 On the one hand, we would want discovery to be
25 over in the not too distant future and proceed with hearing.

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1 On the other hand, we want to do a good job at evaluating
2 this complex situation and arriving at our position on the
3 issues and presenting a full case to the Board.

4 MR. WENNER: Focus on when in your view you would
5 be ready to complete discovery, or when you think things
6 should be done. I want to find out what you think. And if
7 you can within the ballpark and problems of estimating and
8 whatnot, what's your idea of dates?

9 MR. GOLDBERG: Again, it's a fair guess. It's
10 based on a lot of unknown factors. But I would guess that
11 some time if we completed the discovery phase of the proceed-
12 ings some time next summer --

13 MR. WENNER: This summer? A year from now?

14 MR. GOLDBERG: A year from this summer, July.

15 MR. WENNER: Of 1980?

16 MR. GOLDBERG: Yes.

17 And then another thing which I'm very much
18 concerned about is the ability to complete discovery and
19 then have an adequate amount of time to complete the prepara-
20 tion of the expert testimony, to digest the material that
21 has been produced during that discovery phase and then
22 preparing your actual case. And so I would be concerned
23 about moving from the close of discovery to trial in the
24 periods of time that have been suggested. For example, 30
25 to 60 days. I would think a minimum of 120 days would be

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2 necessary because remember, as discovery closes there's
3 a large amount of material that is obtained at the end of
4 discovery that we need time to digest and factor into your
5 testimony.

6 CHAIRMAN MILLER: You're into 1981 now, aren't
7 you?

8 MR. GOLDBERG: No, I'm talking about concluding
9 discovery around July 1, 1980, and late fall.

10 CHAIRMAN MILLER: And digesting and preparing
11 testimony and getting your experts and everthing, getting
12 information and filing motions for summary dispositions,
13 you're pretty close to 1981, aren't you? Aren't you past
14 New Years, anyway, of '81?

15 MR. GOLDBERG: Well, it's the end of '80, the
16 beginning of '81. It's close to '81. It's far too much
17 in the future than any estimate I'd like to give, but it
18 seems to me to be required by the facts we've heard today
19 about the length of time it will take to produce the docu-
20 ments that are deemed essential. And that's cutting out a
21 tremendous number of other documents which the Board has
22 already ruled are relevant to the issues in this proceeding.

23 The original document request that was put
24 before the Board was considered by the Board. Objections
25 of PG&E were heard on their relevancy; they were dealt with.
And when appropriate they were sustained and when appropriate

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2 they were overruled. But the point is that it was deter-
3 mined by the Board that those documents were relevant to the
4 issues in this case.

5 CHAIRMAN MILLER: Were relevant for discovery
6 purposes with the broad screening that the Board employed
7 for that purpose, which is to say possible relevance or
8 possibly leading to the discovery of relevant information.
9 We used a broad gauge standard of discovery.

10 MR. GOLDBERG: Yes. That's the correct standard
11 that is used in discovery. And on that basis it was ruled
12 that the Intervenor and the Staff were entitled to those
13 documents.

14 CHAIRMAN MILLER: You didn't tell us at the time
15 that you were talking about four million documents and four
16 years either, did you?

17 MR. GOLDBERG: Mr. Chairman, that is not our
18 fault. It is not our fault that the relevant documents are
19 so large in number. It's determined that those categories
20 of documents are relevant. Now we find out that, you know,
21 it involves several million pages. But that is not our
22 fault and I don't see why we should be penalized for the
23 fact that there happened to be in this case an extremely
24 large number of documents that have been determined by the
25 Board to be relevant to determining the issues in this case.

CHAIRMAN MILLER: Well, they seem to be able to

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2 we don't want to press any of you to go into collateral
3 matters that involve a substantial number of antitrust
4 issues similar to many that are involved there between
5 two of the present parties. They seem to be able to
6 stagger into it or something, prefiling information and so
7 forth without four million documents, or maybe it's the
8 product of the examination of four million. Maybe you
9 should look at that too, I don't know.

10 MR. GOLDBERG: Some of those issues are the
11 same. I would suggest that the issues in this case are
12 broader. But also you're talking about parties who have
13 been living and negotiating with PG&E and working in that
14 area, living in that area, and subject to PG&E's policies
15 and actions, you know, for decades. And Staff just comes to
16 this --

17 CHAIRMAN MILLER: And all at once it takes four
18 million documents and four more years for those same parties
19 who have great familiarity who are here before us -- and
20 we're not even an antitrust tribune, we're not charged
21 primarily with antitrust responsibility, we're looking in
22 terms of license conditions. And all that great familiarity
23 that we always had suddenly vanishes, at least as far as the
24 carry-over goes.

25 MR. GOLDBERG: I can't answer that. All I know

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2 is that two, two and a half years ago the Staff knew very
3 little about PG&E and the situation in California. And
4 since that time we've been working absolutely as hard as we
5 can to learn --

6 CHAIRMAN MILLER: We think the Staff has worked
7 very hard and very effectively. Let me make that very clear.
8 With the limited resource, we think you've accomplished a
9 great deal.

10 MR. GOLDBERG: Well, I appreciate that.

11 MR. WENNER: Could you just focus on time,
12 Counsel? Give us as specifically as you can what you feel
13 from your point of view the public interest warrants as to
14 time. Give me some dates, end of discovery, beginning of
15 trial.

16 MR. GOLDBERG: Okay.

17 I can give you my own opinion based on the
18 very rough estimates we've heard. I cannot state now what
19 the official Staff position would be on what the public
20 interest demands by way of a date for end of discovery
21 would be.

22 My own estimate -- and it's my own personal
23 estimate -- would be that it would be appropriate to aim
24 at concluding discovery approximately July 1st, 1980, and
25 beginning trial, November 1st, 1980.

MR. WENNER: Okay. Thank you.

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Mr. McDiarmid? The same question, sir.

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1 MR. MC DIARMID: Having in mind, your Honor, that the
2 issues before this tribunal are argued to be somewhat broader
3 than those before the FERC, I think that NCPA is prepared to
4 meet any arguably reasonable dates that this Board sets that
5 anybody else can meet. In other words, I don't think we will
6 be the stumbling block.

7 MR. WENNER: I just want to get your views.

8 MR. MC DIARMID: Yes.

9 We are being obligated to go to trial in the Helms
10 Creek proceeding in January of next year, January, 1980. Now
11 that proceeding is using the discovery in this proceeding in
12 part, so there are interrelationships that may not have been
13 entirely apparent.

14 MR. WENNER: Are we getting any advantages of dis-
15 covery in that proceeding?

16 MR. MC DIARMID: From us? Well, there hasn't been
17 any separate discovery in that proceeding since the original
18 CID discovery which we did get here separately.

19 MR. WENNER: Do you want to take a few minutes?
20 I'm interested in dates and what the various parties think.

21 MR. MC DIARMID: On the assumption that we are going
22 to use live witnesses, as I believe has been indicated before
23 by this Board, I would think it would be conceivably possible
24 for NCPA to go to trial on approximately the same January,
25 1980, date, assuming that we get the --

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1 CHAIRMAN MILLER: Go to trial when?

2 MR. MC DIARMID: As early as January.

3 CHAIRMAN MILLER: 1980?

4 MR. MC DIARMID: Yes. Now remember that's
5 NCPA because NCPA does--

6 CHAIRMAN MILLER: I understand you're speaking only
7 for your own client.

8 MR. MC DIARMID: Yes. But that would have to
9 assume either a joint hearing or a delay in the other pro-
10 ceeding --

11 MR. WENNER: Well, there is no joint hearing under
12 consideration at this point.

13 MR. MC DIARMID: At this point.

14 MR. WENNER: Nor by saying "at this point" do I mean
15 a negative pregnant.

16 MR. MC DIARMID: But the problem is, your Honor, I
17 base that assumption on the equivalent assumption that
18 Mr. Davidson and I are available to do that work, because we
19 are the ones who have put in a tremendous amount of effort in
20 acquiring the background, so it would have to be on the assump-
21 tion that there were no overlap.

22 MR. WENNER: Yes. Well, if you have two proceedings
23 that are going to begin in January-- Am I correct, January,
24 1980?

25 MR. MC DIARMID: Well, if this one began in January,

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1 '80, and the other one also begins in January, '80 as now
2 scheduled, I don't think it would be possible for us to do,
3 which is the reason why I give that as the most optimistic
4 time that I could see, which I perceive to be the point of
5 your question.

6 MR. WENNER: Well, that isn't the point of my
7 question. The point of my question is what's a practical date
8 that you feel is in your interests from your client's point
9 of view to begin for these various dates, the end of discovery,
10 the beginning of trial?

11 MR. MC DIARMID: I think as a practical matter,
12 your Honor, you are probably talking July.

13 MR. WENNER: July, 1980, for the end of discovery
14 or the beginning of trial?

15 MR. MC DIARMID: I was thinking in terms of the
16 beginning of trial, your Honor, but that's with live witnesses,
17 so it is not necessary to do the prefiled testimony which takes
18 a considerable amount of time in advance.

19 MR. WENNER: Right.

20 Now when would discovery end in your view?

21 MR. MC DIARMID: I think that assumes your date
22 for the end of discovery, your Honor.

23 MR. WENNER: March?

24 MR. MC DIARMID: Yes.

25 MR. WENNER: March, 1980. Well, now does that mean

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1 that you will have completed discovery, the discovery that
2 they wish? In other words, if all discovery must be completed
3 by March, 1980, that was something you found difficulty with
4 before.

5 MR. MC DIARMID: I would like to assume complete
6 discovery from PG&E by that time.

7 MR. WENNER: Well, don't assume anything. From
8 your point of view do you think this is practical? In other
9 words, are you satisfied with what PG&E indicates it is going
10 to produce by March, 1980?

11 MR. MC DIARMID: Not really, no. I am also not
12 satisfied, however, that it is necessary to take quite that
13 long in production of those elements which Mr. Strumwasser
14 listed.

15 MR. WENNER: Well, give me the date so I can line
16 these up. What, in your view-- And incidentally, when you
17 say March, that means you're going to be completed?

18 MR. MC DIARMID: Yes.

19 MR. WENNER: All right.

20 MR. MC DIARMID: I think it is possible for us to
21 complete it by March.

22 MR. WENNER: Discovery by March, 1980.

23 MR. MC DIARMID: Yes.

24 MR. WENNER: Okay.

25 Mr. Matt?

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1 MR. MATT: Mr. Wenner, Mr. Chairman, during this
2 discussion I added up the time frame given to us by PG&E's
3 recitation of how long it would take to do the areas indi-
4 cated by Mr. Strumwasser. That would indicate PG&E would
5 complete that discovery, which is not the complete discovery,
6 by October 1980, October 1980.

7 I would join with Staff in saying that we would
8 want two to four months, 90 to 120 days after the completion
9 of discovery --

10 MR. WENNER: Discovery to be completed in October
11 1980?

12 MR. MATT: That is based on what PG&E has given us
13 today.

14 MR. WENNER: Now Staff only said July 1980.

15 MR. MATT: As I said, all I did was simply added
16 the time PG&E has just given to all of us, and anyone could
17 have done that.

18 MR. WENNER: Don't give me the addition, give me
19 your view. We can do addition, too.

20 MR. MATT: My view is that I think that time period
21 could be speeded up with a little pushing and the discovery
22 could be completed by July 1980, I believe, July 1, 1980. And
23 a hearing could be commenced-- Assuming the end of discovery
24 includes rulings on all outstanding privilege claims and other
25 sort of related discovery motions that always come up at the

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1 end of discovery, hearing could commence October 1. That's 90
2 days after that.

3 I also-- Just to keep the record clear, I want
4 to disassociate myself from any concept of joint hearing,
5 at least on behalf of Southern Cities at this point, or any
6 suggestion of joint hearings.

7 MR. WENNER: Joint hearings with FERC?

8 MR. MATT: Yes, **sir**, joint hearing with FERC.
9 That is purely Mr. McDiarmid's client's view at this point.

10 MR. WENNER: Thank you.

11 Mr. Strumwasser, same questions.

12 MR. STRUMWASSER: At the outset, I would like to
13 acknowledge the positive virtues of regulatory speed and
14 efficiency, and having paid my dues, I would like to then
15 resist any notion that the public interest is best served by
16 matching the progress of this case against a calendar as a
17 primary reference point.

18 MR. WENNER: You remember the line from Don Juan,
19 I take it.

20 MR. STRUMWASSER: Please remind me.

21 (Laughter.)

22 MR. WENNER: It's the one that Mr. Justice Jackson
23 quoted in the Seagram case. Resisting-- It's about like this:

24 Resisting and resisting, saying "I'll ne'er consent,"
25 she assented.

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1 MR. STRUMWASSER: Since I've been invited to comment
2 on the public interest, I feel somewhat greater freedom to
3 resist.

4 We have taken the position since last fall that
5 the proper measure in this case is the time that it takes to
6 do the job, and that the only countervailing interest that's
7 of any importance is that we be able to conclude the antitrust
8 proceeding in a time that permits the antitrust phase to get
9 out of the way of the construction licensing.

10 As a matter of fact, during the last break we
11 asked Counsel for PG&E when their application for a construc-
12 tion permit would be filed and were unable to-- I gather
13 that they don't have any numbers for that. The application
14 for a construction permit has not been filed. I am aware that
15 there is no application currently before the State Energy
16 Commission which has a two and a half year hearing to hold
17 before it can authorize construction.

18 So I see no reason for departing from the framework
19 which we had advanced in September and that was that we are
20 prepared to say that all discovery can be concluded in time for
21 PG&E to conclude production pursuant to the first production
22 request, and that all appearances are that that falls well
23 within the time period that would permit this proceeding to
24 stay out of the way of the construction permit.

25 We think that that is the just way to resolve the

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1 question of timing. As long as we can get this hearing dis-
2 posed of in a fair fashion, allowing the parties full rights
3 of discovery, without impacting on -- I hate that word --
4 without having adverse effects on their construction schedule,
5 we think that the public interest is served by that.

6 This is an antitrust proceeding. It is inherently
7 one that has wide-ranging issues and requires examination of
8 large volumes of evidence. This proceeding does not of itself
9 turn into a pumpkin at any hour, and so we --

10 MR. WENNER: What are your dates?

11 MR. STRUMWASSER: Oh, you like dates?

12 MR. WENNER: What are your suggestions -- not your
13 suggestions so much, but when do you think your interests
14 would be served for the discovery and trial?

15 MR. STRUMWASSER: Following the principle I have
16 enunciated, I think that PG&E ought to be able to be finished
17 with discovery some time towards the end of 1980. I endorse
18 the 120 day concept that Mr. Goldberg enunciated, and so I
19 think we ought to be going trial some time in early 1981.

20 MR. WENNER: December 1980 for discovery?

21 MR. STRUMWASSER: Right.

22 MR. WENNER: And April 1981?

23 MR. STRUMWASSER: That's about right. But again,
24 I assert that I do not seek to measure it by the calendar but
25 by the progress of discovery.

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1 MR. WENNER: Right.

2 PG&E. Mr. Armstrong., the same questions.

3 MR. ARMSTRONG: I think that the controlling ques-
4 tion on the cutoff of discovery is just how much more document
5 discovery PG&E is going to be asked to do. I have no problem
6 defending anywhere the reasonableness of the effort which has
7 been put forth in that regard.

8 Referring back to the question the Chairman asked
9 the Staff regarding the notion that in the beginning nobody
10 knew this was going to be this large, I have to disagree with
11 the Staff's response--

12 MR. WENNER: Oh, no, don't go into that.

13 MR. ARMSTRONG: All I am saying is all one has to
14 do is to look at the papers that had been filed at the time,
15 which has been going on since Day One. We said it was going
16 to take this long; nobody believed us then.

17 MR. WENNER: Don't apologize for anything or anybody
18 or yourself. I just want to focus on dates.

19 When do you think that it would be practical to
20 complete discovery and go to trial?

21 MR. ARMSTRONG: The dates that were mentioned by
22 Mr. Matt, October of next year for completion of discovery,
23 are accurate based on the assumptions made by Mr. Meiss.

24 MR. WENNER: Mr. Matt's dates were July 1980, and
25 October 1980 for trial.

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1 MR. ARMSTRONG: Well, Mr. Matt said that if PG&E
2 were to go through the production schedule as indicated --

3 MR. WENNER: Yes, yes.

4 MR. ARMSTRONG: -- it would be October 1980. Then,
5 you know, we get into the wand waving that has gone on in this
6 document discovery since the beginning --

7 MR. WENNER: Don't go into the wand waving.

8 MR. ARMSTRONG: Well, somehow PG&E can do it faster.
9 It can't. One thing we've been right about all along is the
10 speed of document discovery. October 1980 was based on the
11 assumption that the initial estimates were correct. As
12 Mr. Meiss also told us, his estimates were off by 30 percent
13 in the Retired Executive files.

14 If that error rate prevails, then the October 1980
15 date is incorrect and we'd have to add about four months in
16 order to allow for that 30 percent error rate.

17 MR. WENNER: May I apologize to you? You mentioned
18 Mr. Meiss before and I confused him with Mr. Matt

19 MR. ARMSTRONG: Okay.

20 MR. WENNER: Excuse me.

21 MR. ARMSTRONG: Mr. Matt was counting the months.
22 Mr. Meiss was giving us all the individual data.

23 MR. WENNER: Mr. Meiss has been very helpful and I
24 appreciate it.

25 MR. ARMSTRONG: Mr. Matt pulled out his calendar as

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1 he went along.

2 MR. WENNER: Right.

3 MR. ARMSTRONG: AT any rate all of that assumes the
4 exclusion from production of the remainder of the document
5 requests including the warehouse. If they want the warehouse,
6 that's going to be another period of time, perhaps a year.
7 And you know--

8 MR. WENNER: That's at the same rate you're moving
9 now?

10 MR. ARMSTRONG: That's right.

11 And I think, you know, as to the cutoff of dis-
12 covery, I think once you determine you can either do it on the
13 basis of saying Well, the month of X in the year of Y seems
14 like a good time to cut it off and you guys figure out what that
15 means for discovery, or you can say--

16 MR. WENNER: When will discovery be finished, in
17 your view, discovery that they're talking about?

18 MR. ARMSTRONG: The discovery they've talked about
19 I would say, splitting the difference on that error rate I
20 mentioned, we could say the end of calendar 1980. And I think
21 I've talked a little bit around the problems of delineating
22 that cutoff. It depends on the document discovery.

23

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2 Now we're talking about the restricted list or the
3 limited list that Mr. Strumwasser gave us this morning, so
4 we're --

5 MR. WENNER: You finished that.

6 MR. ARMSTRONG: The several departments we went through
7 and all of that. It does not include the warehouse, it does
8 not include the other departments.

9 Whenever the discovery cutoff occurs, the important
10 thing to PG&E, I think, is that after that discovery cutoff
11 there be a sufficient amount of time to evaluate that evidence,
12 make motions for partial summary disposition as indicated
13 and get the case ready for trial.

14 I think four months, given the magnitude of paper
15 we're going to have at that point, might be a little on the
16 shy side. I think more realistically, given the number of
17 motions and the arguments that would go along with it, I think
18 six months after close of discovery would be more realistic.

19 MR. WENNER: I have then December 1980, complete
20 discovery; June 1981 for trial.

21 Mr. Armstrong, do you wish to yield your time to your
22 colleague?

23 This is a legal proceeding, Counsel, and I would
24 like some decorum.

25 CHAIRMAN MILLER: I think we'll recess for the day
in about five minutes, if this will be of any assistance to

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2 MR. WENNER: Well let me ask you one question. These
3 are dates when you could finish discovery -- Now, if you'll
4 give me your view of what I've talked about, the public
5 interest, which has a number of factors -- from your view,
6 what would the public interest require in the way of time
7 other than the fact that the proceeding should be dismissed
8 summarily right now? Give me your view as to how this --
9 what time frame we should consider from the point of view
10 of PG&E's interests and as PG&E views the public interest,
11 those factors which should be considered by the Board.

12 MR. ARMSTRONG: Well I'm not clear which public
13 interest factors are the most important, but it's clear that
14 they are in some respects contrary. I think that the public
15 interest could best be served, as Mr. Strumwasser suggests,
16 not by a reference first to the calendar but by a reference
17 first to the issues and to the discovery.

18 And that's been our position from the beginning,
19 that the document request was the number of the problem,
20 not the number of the solution here. The Justice Department
21 got by with a lot less documents, FERC is getting somewhere
22 and they've proceeded to hearing with a lot less documents
23 and this proceeding is unique in having millions and millions
24 of documents to worry about and it's those documents which
25 are creating the time problem.

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1 Now if one concludes, as the Board at least preliminarily
2 did, that the production of those documents was in the public
3 interest then it must follow that the public interest demands
4 the time to do that, to evaluate them and to carry on from
5 there.

6 We have not, as you know, shared that view. We do not
7 now share that view. But it relates to the notion of how
8 broad the document production is and that, we feel, is
9 buttressed by the evidence, by the find rate in these green
10 dotted files is something on the order of magnitude of a
11 handful of documents out of every 20,000 or 25,000 reviewed.

12 That effort and the expenditure that goes into it
13 that ultimately some portion of the public pays does not, to
14 us, seem to be in the public interest. Others may differ
15 about that.

16 But it seems to us that's the critical feature here
17 as to the public interest vis-a-vis the construction of this
18 nuclear unit. What Mr. Strumwasser said was essentially
19 accurate, this proceeding does not appear at the moment, nor
20 in the foreseeable future, to threaten any construction
21 schedule for this unit.

22 So I think with those comments, I've said about all
23 that I can profitably say about it.

24 MR. WENNER: Okay, thank you.

25 MR. ARMSTRONG: I would say that the thing that we

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feel critical about is that interval between close of discovery
and start of hearing in order to deal with this tremendous mass.
We don't want to have to take 2 million documents and say
Okay we've got 30 days to read them all because we'd never
have it happen.

CHAIRMAN MILLER: We'll recess until 9:00 a.m.

(Whereupon, at 4:55 p.m., the hearing in the
above-entitled matter was recessed, to reconvene at
9:00 a.m., the following day.)

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