

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter Of:

Pacific Gas & Electric Company,
(Stanislaus Nuclear Units 1
and 2)

)
)
) Docket P-564-A
) 3/17/81

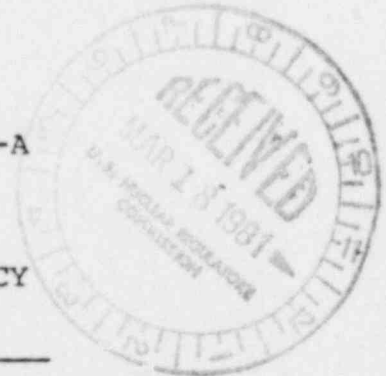
REPLY OF THE NORTHERN CALIFORNIA POWER AGENCY
TO RESPONSE OF PG&E TO MOTION TO COMPEL
PRODUCTION OF DOCUMENTS.

On March 10, 1981 PG&E responded to NCPA's motion to compel production of documents it had withheld from production in this proceeding. 1/ These documents relate to the on-going PG&E-NCPA negotiations for an interconnection agreement and were withheld under a now-abrogated agreement of counsel by which those negotiation were to remain confidential. In its response, PG&E takes an opportunity to recount its version of the events which lead to the abrogation of this agreement. In the process, PG&E makes several misstatements of fact which require correction. More importantly, PG&E concedes the obvious, which is that no valid basis now exists and, indeed, has ever existed for its continued refusal to produce these documents.

PG&E correctly notes that it continues to maintain

1/ "Motion of the Northern California Power Agency To Compel Production of Documents Withheld By Pacific Gas & Electric Company," February 19, 1981.

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documents for which it cannot validly assert a claim of privilege. (PG&E Response, p. 3, f.n. 2) These documents predate the commencement of the confidentiality agreement in November, 1977. 1/ Therefore, the confidentiality agreement never applied to them and PG&E has long been under the duty imposed by this tribunal to produce them.

The Presiding Judge in FERC Docket E-7777 (II), upon NCPA's motion in response to PG&E's filing of testimony which abrogated the confidentiality agreement, 2/ ordered the production of all documents which postdate the confidentiality agreement. PG&E implies that the Presiding Judge did not order the production of those withheld documents which predate the agreement on the grounds that all parties to the FERC and the instant proceedings were free to challenge such improper claims at any time. This representation borders on the intentionally misleading. The Presiding Judge in that case refused to order the production of those documents which predate the confidentiality agreement because of what he perceived to be the potential burden of such production on PG&E.

1/ In its Motion of February 19, 1981, NCPA originally requested that PG&E be required to produce all documents relating to these negotiations which it withheld from production. PG&E has apparently produced about one-half of these documents in response to an order in FERC Docket No. E-7777 (II).

2/ NCPA sought production of these documents in the FERC proceeding in order to assist in the preparation of its cross-examination of the two additional Company witnesses who have recently filed testimony concerning the negotiations.

No argument analogous to the pseudo-laches argument now raised by PG&E was even made by PG&E in response to NCPA's motion before the Presiding Judge at the FERC.

While the Board has previously ruled that the disposition of claims of privilege at FERC are not binding at this Commission, the fact remains that PG&E has never even asserted confidentiality claims as a bar to production of these documents at the FERC. Here, PG&E is well aware that parties to this proceeding have not yet filed challenges to the privilege claims to be asserted before this Board. 1/ As such, it is ludicrous to assert that any party to this proceeding or the FERC proceeding could have challenged PG&E's improperly withheld documents at any time prior to the present. 2/

Predictably, PG&E fails to respond to the most salient argument with regards to these documents. Regardless of which party breached this confidentiality agreement, both parties agree that the agreement no longer exists. As such,

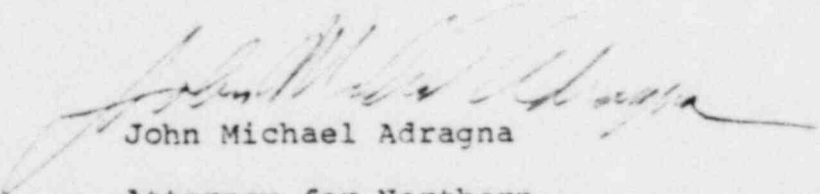
1/ Indeed, the signatory of PG&E's Response attended a meeting of all parties in this proceeding in September, 1980, at which it was agreed that challenges to PG&E's claims were to be postponed until November, 1980, in order to allow PG&E time to add additional factual information to its early claims. PG&E has yet to fulfill that obligation.

2/ NCPA inadvertently withheld some documents which predated the November, 1977 commencement date for this confidentiality agreement. NCPA, recognizing this mistake, provided PG&E with copies of all such documents on March 3, 1981. PG&E has, to date, refused to provide any documents which predate November, 1977 date.

there is no legitimate basis for PG&E to continue withholding these admittedly relevant documents from production to all parties. PG&E asserts that NCPA is "forum-shopping" in its motion before this Board. On the contrary, it appears that PG&E seeks to avoid the clear implication of its failure to comply with this Board's outstanding discovery orders by a shell game of rhetoric and obsfucation.

There never was and certainly is no longer any legitimate basis upon which PG&E can withhold production of these documents. NCPA respectfully requests that PG&E be ordered to immediately provide these documents.

Respectfully submitted,



John Michael Adragna

Attorney for Northern
California Power Agency
and its members

March 17, 1981

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
Pacific Gas & Electric Company) NRC Docket No. P-564-A
(Stanislaus Nuclear Project,)
Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the REPLY OF THE
NORTHERN CALIFORNIA POWER AGENCY TO RESPONSE OF PG&E TO MOTION
TO COMPEL PRODUCTION OF DOCUMENTS in the above-captioned pro-
ceeding have been served on the following by deposit in the
United States mail, first class, this 16th day of March,
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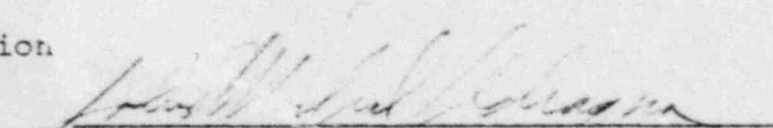
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