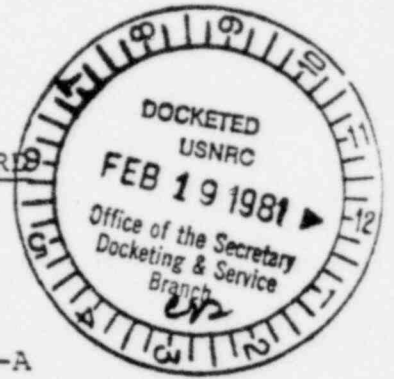


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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
)
)

2/18/81

MOTION OF THE NORTHERN CALIFORNIA POWER AGENCY
FOR A PROTECTIVE ORDER

Pursuant to 10 C.F.R. §2.740(c), the Northern California Power Agency ("NCPA") hereby moves for a protective order to prevent the noticed deposition of senior officials of the Cities of Alameda, Lodi and Lompoc, California. Section 2.740(c) of the Nuclear Regulatory Commission ("NRC") Rules of Practice provide that, for good cause shown, the presiding officer may make any order which justice requires to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." NCPA submits that a protective order is appropriate in order to prevent the unnecessary burden and harassment of the senior officials of its Members. As will be demonstrated below, since the formal notice of these depositions, PG&E has, with the NRC Staff, jointly moved to suspend the discovery in this proceeding. 1/

1/ "Joint Motion by Pacific Gas and Electric Company and the NRC Staff to Suspend Discovery and Motion Activity", February 03, 1981.

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This Motion and stipulation, not agreed to by NCPA 1/ provides that currently noticed depositions be taken prior to cessation of discovery in this proceeding. While not addressing the merits of this Joint Motion at this time, NCPA seeks to be placed in the same situation as PG&E, that of incurring no further unnecessary discovery burden.

These depositions were originally noticed by PG&E on January 20, 1981, and January 28, 1981. At that time, there had apparently been ongoing discussions between PG&E and the Staff regarding the possible suspension of discovery in this proceeding. In the days immediately following the first notice of deposition, there were several discussions between NCPA and PG&E regarding the scheduling of these depositions. On January 23, 1981, PG&E created another discovery issue by unilaterally abrogating its agreements with NCPA by which documents relating to the ongoing NCPA-PG&E negotiations for an interconnection agreement were to be deemed confidential and withheld from production to the other parties in this proceeding. 2/ During initial discussions,

1/ NCPA's opposition to this Joint Stipulation will be the subject of a separate filing within the near future.

2/ NCPA will shortly file a motion to compel the production of those documents withheld by PG&E under this now abrogated agreement. PG&E's abrogation of this agreement came about when it filed testimony, more than a year after the last date for so doing, at the FERC, which discussed the positions of the parties in the negotiations in some detail.

counsel for PG&E recognized the now moribund status of this agreement and both sides agreed to discuss the immediate exchange of these documents. After further discussion, by letter of February 12, 1981, counsel for NCPA transmitted tentative dates for the depositions of the city officials of Alameda, Lompoc, and Lodi. At that time, however, NCPA expressly noted that it expected to receive a firm commitment from PG&E, by February 17, 1981, regarding the immediate exchange of those documents withheld under the now abrogated agreement. NCPA further stated that, in the event that such agreement was not forthcoming, it would ask that PG&E voluntarily postpone these depositions. To date, there have been no agreements reached regarding the immediate exchange of these documents, or the voluntary postponement of these depositions. Indeed, PG&E has simply renoticed the deposition for the proposed dates. In light of these facts, NCPA feels compelled to seek a protective order in order to prevent the undue harassment of its Members.

The Joint Motion to Suspend Discovery in this proceeding exempts two substantive discovery matters from immediate suspension. Specifically, PG&E would go forward with and conclude "currently noticed depositions," of which those of NCPA member officials are the only examples, and conclude the delivery of documents previously selected from DWR and currently in the process of delivery. Nothing is said about

the delivery or copying of documents previously selected from PG&E files. If the proceeding is to be terminated, or suspended, the mechanical conveyance of documents already selected may be justified on the grounds that it is best to conclude the physical production of documents already designated in files and subject to production. No doubt, the passage of time will make it more difficult for those officials of DWR who must use such files and those persons designated to physically reproduce the documents selected by PG&E. No such justification exists for the currently noticed depositions of NCPA members. Unlike document production, the depositions of individuals are, obviously, easily divisible. There is little chance of confusion or oversight in the event that, at some time in the future, PG&E wishes to resume depositions. 1/

PG&E's desire to continue these depositions could, perhaps, be justified were they currently in the process of deposing members of an individual city, or indeed, had been compelled to suspend the deposition of an individual city representative. Neither is the case. PG&E and the Staff seek to suspend the discovery efforts in this proceeding in

1/ Indeed, PG&E originally noticed the depositions of some 85 officials of NCPA members and other persons in California, on July 25, 1979. To date, they have conducted the depositions of only the city officials of Santa Clara and Palo Alto, California, among the NCPA members in December, 1979. At no point during this process had NCPA objected to these depositions.

order to mitigate costs which, ultimately, could prove wasted if PG&E chooses to abandon its application. It lies particularly ill for the party moving for such a suspension to, at the same time, seek to continue discovery efforts against its opponent. If the Board grants the Joint Motion, the only basis for continuing any discovery efforts would be to conclude the mechanical actions being taken in order to ease and facilitate the successful suspension of this application proceeding. There is no such justification for the depositions in question.

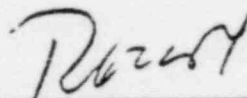
As drafted, the Joint Motion places no additional discovery burden on PG&E, but adds a discovery burden, i.e., the depositions in question, to NCPA's already considerable expenditures in this proceeding. NCPA has stated its willingness to forego its opposition to these depositions in return for a commensurate discovery effort by PG&E. Specifically, NCPA has sought to prevent this matter from coming before the Board by offering to submit to these depositions in return for PG&E's voluntary agreement to exchange those documents withheld under the now abrogated confidentiality agreement between NCPA and PG&E in a time period which would permit these documents to be used to respond to the testimony with which PG&E abrogated the agreement as to

confidentiality. Once again, there is no agreement for such a voluntary exchange. 1/ PG&E has not been willing to offer a quid pro quo unless NCPA was prepared to join in the Joint Motion. Consequently, NCPA is compelled to move to prevent this one-sided, undue harassment and burden of its Members by this unnecessary and unwarranted further discovery. NCPA's response to the Joint Motion will be filed in accordance with the Rules.

CONCLUSION

For the reasons stated above, NCPA moves that an order issue that the noticed depositions of city officials in Alameda, Lompoc, and Lodi, California, be delayed until the final resolution of the Joint Motion of PG&E and the Staff, at which time they may be reconsidered.

Respectfully submitted,

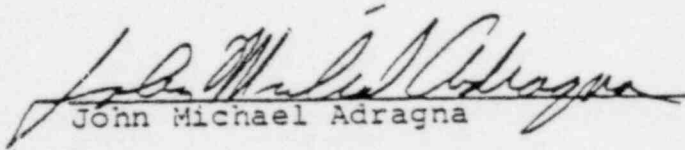


Robert C. McDiarmid

February 18, 1981

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Members

1/ NCPA has, this day, and yesterday, sought to contact Jack Fallin, Jr., Esq., of PG&E, in order to receive his response on these matters. NCPA has been unable to obtain a response from Mr. Fallin, and in light of prior request that such an agreement be forthcoming by February 17, 1981, we feel compelled to file this Motion.

UNITED STATES OF AMERICA
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 MOTION OF THE
NORTHERN CALIFORNIA POWER AGENCY FOR A PROTECTIVE ORDER in
the above-captioned proceeding have been served on the
following by deposit in the United States mail, first class,
this 18th day of February, 1981.

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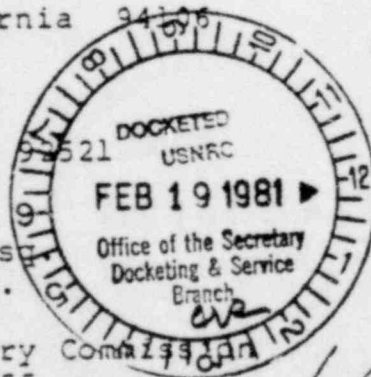
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