

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF NUCLEAR REACTOR REGULATION
DOCKET NO. P-564-A

TO: Nuclear Regulatory Commission and the
Director of Nuclear Reactor Regulation

In The Matter Of)
)
Pacific Gas and Electric Company) Docket Nos. 50-275,
(Diablo Canyon Nuclear Power) 50-~~276~~ 323
Plant, Unit 1, Unit 2))
(Stanislaus Nuclear Project,) Docket No. P-564-A
Unit No. 1))

MOTION TO SUPPLEMENT "PETITION TO ENFORCE AND
MODIFY LICENSE CONDITIONS" OR ALTERNATIVELY
MOTION FOR LEAVE TO LODGE DOCUMENTS

On December 4, 1981, the Northern California Power Agency ("NCPA") filed with this Commission a motion to enforce and modify the license conditions attached to PG&E's Diablo Canyon Nuclear Power Plant and proposed Stanislaus Nuclear Project Unit No. 1. 1/ . In that document NCPA adduced evidence which demonstrates that PG&E has chosen to continue in its anticompetitive activities, in violation of its existing license conditions, and has sought "to utilize its interpretation of other license conditions, together with its

1/ By letter of January 7, 1982, the Director of the Office of Nuclear Reactor Regulation acknowledged receipt of the Petition and informed NCPA that it would be considered in accordance with 10 C.F.R. §2.206. Notice was published in the Federal Register on January 20, 1982, 47 Fed. Reg. 2965.

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violation, to attempt to exercise its monopoly power to prevent or impede the development of new sources of generation by NCPA or by others." Petition at 2. 1/

On March 10, 1982, NCPA moved to supplement its "Petition to Enforce and Modify License Conditions," or alternatively for leave to lodge with this Commission two documents, each containing representations by PG&E regarding its interpretation of its obligations under the Stanislaus Commitments. The two documents which NCPA there sought to submit to this Commission are PG&E's "Brief of Petitioners Pacific Gas and Electric Company on Petitions to Review Orders of the Federal Energy Regulatory Commission," 2/ and PG&E's "First Post-Hearing Brief of Pacific Gas and Electric Company" before the Presiding Law Judge in FERC Docket Nos. E-7777(II) and E-7796. As NCPA stated its Motion of March 10, 1982:

The interpretations reflected in the two documents here sought to be lodged are conflicting, and, in the case of PG&E's representations to the United States

1/ Unless otherwise specified, references to NCPA's December 4, 1981 "Petition to Enforce and Modify License Conditions" will be preceded by the designation "Petition."

2/ Pacific Gas and Electric Co. v. FERC, CADC Case Nos. 79-1882 and 80-2192. The decision of the Court of Appeals for the District of Columbia Circuit was handed down on May 17, 1982. The Court affirmed, without opinion, the order of the Federal Energy Regulatory Commission.

Court of Appeals for the District of Columbia Circuit, manifestly inconsistent with PG&E's interpretation before this Commission of its obligations under the Stanislaus Commitments.

Motion at 2.

NCPA submits that PG&E's interpretations of its obligations under the Stanislaus Commitments, as reflected in the above mentioned documents, are clearly relevant to this Commission's consideration of the matters raised in NCPA's December 4, 1981 petition. For the same reasons set forth in our Motion of March 10, 1982, NCPA submits that PG&E's most recent oral and written representations in the same proceedings before the Court of Appeals for the District of Columbia and before the FERC are relevant to this Commission's consideration of the issues raised in NCPA's December 4, 1981 petition.

NCPA therefore moves, pursuant to 10 C.F.R. §2.730, to supplement its December 4, 1981 Petition, or, should this Commission deem it more appropriate, alternatively requests leave to lodge with this Commission three additional documents containing PG&E's representations 1/ regarding the Stanislaus Commitments:

1/ Reference to PG&E representations before the Court of Appeals and FERC should not, of course, be construed as NCPA concurrence in or acceptance of such Company statements. As is apparent from the Petition of December 4, 1981, while NCPA believes the Stanislaus Commitments oblige PG&E to provide some services, they do not approach a complete remedy of PG&E's anticompetitive conduct and practices. By this motion, NCPA again seeks to provide this Commission with the most current Company interpretations of the Commitments.

Reply Brief of Petitioner Pacific Gas and Electric Company on Petition to Review Orders of the Federal Energy Regulatory Commission," Pacific Gas and Electric Co. v. FERC, CADC Case Nos. 79-1882 and 80-2192, March 18, 1982.

"Transcript of Proceedings" in the United States Court of Appeals for the District of Columbia" Pacific Gas and Electric Co. v. FERC, CADC Case Nos. 79-1882 and 80-2192, April 28, 1982. 1/

"Second Post-Hearing Brief of Pacific Gas and Electric Company" Before the Federal Energy Regulatory Commission, Pacific Gas and Electric Co., FERC Docket Nos. E-7777(II) and E-7796.

These documents provide further indication that PG&E's representations to the United States Court of Appeals for the District of Columbia Circuit are inconsistent with PG&E's interpretation before this Commission of its obligations under the Stanislaus Commitments and inconsistent with its representations before the Federal Energy Regulatory Commission. In NCPA's view, the documents we submit

1/ Because of the manifest inconsistencies in PG&E's representations before the FERC and the Court of Appeals for the District of Columbia Circuit regarding its obligations under the Stanislaus Commitments, NCPA requested that a Court Reporter be present during oral argument before the Court of Appeals for the District of Columbia Circuit. That request was reviewed and granted by the panel. A reporter from a company designated by the court was present during those proceedings, and a "Transcript of Proceedings" was prepared by him. Copies of that transcript were furnished by NCPA to the Court and to all parties involved in that proceeding.

herewith, in addition to those previously submitted, present evidence of PG&E's lack of candor which raises serious questions about PG&E's basic fitness as a licensee. Especially in regard to the safety and antitrust matters assigned to this Commission, there must be an absolute assurance that a licensee's representations are meaningful and that the licensee will do what it tells the Commission it will do.

NCPA believes that the attached documents reflect PG&E's ongoing efforts to avoid appropriate regulation and persist in its anticompetitive activities. As asserted in NCPA's December 4, 1981 Petition, PG&E is actively using the Stanslaus Commitments and its varied interpretations thereof to continue to frustrate the efforts of entities like NCPA to develop viable electric systems independent of and in competition with PG&E. NCPA believes PG&E's employment of the Stanslaus Commitments to such an end, as reflected in the attached documents and elsewhere, is an affront to this Commission's process.

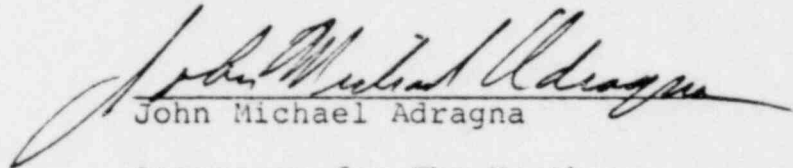
CONCLUSION

For the reasons stated above, NCPA respectfully requests that this Commission accept the attached documents and consider them in conjunction with our pending Petition to Enforce and Modify License Conditions, dated December 4, 1981. In view of their seriousness, NCPA further requests this Commission's prompt attention to these matters.

Respectfully submitted,



Robert C. McDiarmid



John Michael Adragna

Attorneys for The Northern
California Power Agency
And Its Members

Law Offices of:
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037
(202) 333-4500

May 20, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter Of)
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Pacific Gas and Electric Company) Docket Nos. 50-275,
(Diablo Canyon Nuclear Power) 50-276
Plant, Unit 1, Unit 2))
(Stanislaus Nuclear Project,) Docket No. P-564-A
Unit No. 1))

CERTIFICATE OF SERVICE

I hereby certify that copies of the MOTION TO
SUPPLEMENT "PETITION TO ENFORCE AND MODIFY LICENSE
CONDITIONS" OR ALTERNATIVELY MOTION FOR LEAVE TO LODGE
DOCUMENTS in the above-captioned proceeding have been served
on the following by deposit in the United States mail, first
class, postage prepaid, this 20th day of May, 1982.

Morton B. Margulies, Esq.
Presiding Administrative
Law Judge
4350 East-West Highway
Room 461
Bethesda, MD

Donald A. Kaplan, Esq.
P.O. Box 14141
Washington, D.C. 20044

Jerome Saltzman, Chief
Utility Finance Branch
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docketing and Service Station
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

George Deukmejian, Esq.
Attorney General of
California
Deputy Attorney General
of California
3580 Wilshire Boulevard
Suite 600
Los Angeles, CA 90010

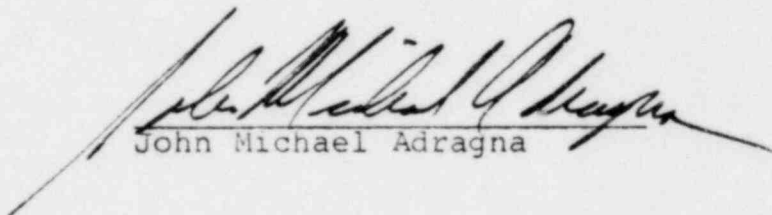
Philip A. Craine, Jr., Esq.
Glen West, Esq.
Richard L. Meiss, Esq.
Pacific Gas & Electric Co.
P.O. Box 7442
San Francisco, CA 94106

Clarice Turney
3900 Main Street
Riverside, CA 92521

Joseph Rutberg, Esq.
Benjamin H. Vogler, Esq.
Jack R. Goldberg, Esq.
N.R.C. Staff Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Morris M. Doyle, Esq.
William H. Armstrong, Esq.
Terry J. Houlihan, Esq.
Meredith J. Watts, Esq.
Jane E. Cosgriff, Esq.
McCutchen, Doyle, Brown
and Enersen
Three Embarcadero Center
28th Floor
San Francisco, CA 94111

Harold R. Denton, Director
Office of Nuclear Reactor
Regulation
Nuclear Regulatory Commission
Room P-428
Bethesda, MD



John Michael Adragna

May 20, 1982

Law Offices of:
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037
(202) 333-4500