

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'82 NOV -8 A10:55

In The Matter of )  
(Stanislaus Nuclear Project, )  
Unit No. 1) )

Docket No. P-564A

OFFICE OF SECRETARY  
OF SERVICE

RESPONSE OF  
PACIFIC GAS AND ELECTRIC COMPANY TO  
COMMENTS OF THE NORTHERN CALIFORNIA POWER  
AGENCY AND ITS MEMBERS AND THE CITIES OF  
ANAHEIM AND RIVERSIDE, CALIFORNIA ON  
PROPOSED ORDER CONCERNING PRESERVATION  
OF DOCUMENTS

I

PRELIMINARY MATTER

Before responding directly to the comments filed on behalf of the Northern California Power Agency (NCPA) and the Cities of Anaheim and Riverside, California (Southern Cities) herein, Pacific Gas and Electric Company (PGandE) would like to complete an issue left open at the hearing on September 21, 1982. At the hearing PGandE indicated that intervenors NCPA and Southern Cities had in fact made use of documents produced in the Stanislaus proceeding in other proceedings, specifically now concluded cases before the Federal Energy Regulatory Commission. At the hearing intervenors' counsel expressed some uncertainty about the fact of that use. PGandE has now confirmed its original statement and has located 42 separate documents entered as exhibits

by NCPA and Southern Cities in FERC Docket E-7777 (Phase II) and Project Nos. 2735 and 1988. Nineteen of those documents were submitted by NCPA, 17 documents were submitted by Southern Cities and the intervenors jointly sponsored 6 documents gathered from the production in the Stanislaus proceeding. A listing of the exhibit numbers of these items in the FERC proceedings and the dates of their introduction is attached hereto as Exhibit A.

## II

### RESPONSE TO NCPA AND SOUTHERN CITIES' COMMENTS

PGandE will respond to the comments provided by NCPA and Southern Cities, many of which seem more inquiries than objections. In general the stipulation executed by PGandE, the Department of Water Resources, and Commission Staff stands on its own and NCPA/Southern Cities have provided no sound basis for altering it. In providing these remarks, PGandE has focused on the more outlandish of the NCPA/Southern Cities' comments and on areas where their comments confuse the actual context of production and preservation.

Turning first to the definition of Central Files (Proposed Order ¶12), PGandE believes that the only "dispute" with respect to this term relates to efforts by NCPA to exclude certain of its members' central files, as opposed to those held only by individuals in private offices, from document production by revising the definition to its own

advantage. Whatever the outcome of that dispute with respect to the scope and requirements to actual document production, a simple definition of all centrally gathered (non-private office) files is adequate and serviceable in determining what documents are to be preserved. PGandE, Intervenor Department of Water Resources (DWR) and Staff have no difficulty with understanding and applying this term.

With respect to the member cities in which NCPA attempted to exclude access to PGandE based on the self-conducted earlier inspection by NCPA itself (discussed at pages 3 and 4 of NCPA's comments), PGandE agrees that a reasonable resolution of that problem can be worked out. In fact, pursuant to a telephone request from NCPA's counsel on the eve of the filing of its comments herein, PGandE has agreed to a reasonable accommodation requested by NCPA. A copy of our letter to NCPA's attorneys is attached as Exhibit B.

With respect to the comments on paragraph 1.8, Cities' confusion is unwarranted. The intent is to exclude copies of documents once held for counsel for a party to this proceeding who may no longer be employed by that party. For example, the California Attorney General represents DWR as retained counsel but should not be required to preserve all the documents it has in its possession.

As to the description of placement in the central files, PGandE sees no problem with the present requirement (¶2.3) which includes all material flowing into those files

! in the ordinary course of business, while not attempting to artificially freeze that "ordinary course of business" in its past or present format. Obviously, this was the method through which documents now in central files got there in the first place. PGandE would object to any provision in a preservation order that would interfere with the ordinary process of improvement in any party's filing system. At the same time PGandE is confident that all parties will not engage in changes designed to subvert document preservation.

With respect to the documents not flowing to central files in the ordinary course of business, the parties intended that this proposed preservation order not reach documents created in the future that would not ordinarily be filed in the central files. Continued preservation of everything that is or will be filed in "private files" would create a very significant burden, especially for PGandE. Given the parties' experience with document production in this case, this added burden is not justified.

With respect to NCPA's request that each party prepare lists of documents for which privilege is asserted, one of the primary reasons for the parties' establishment of this preservation order was and is the elimination of further expenditure of time and money by all parties. PGandE's claimed privileged documents are now all retained physically by PGandE, and we presume every other party has taken the same step concerning his claimed privileged documents. The process of reviewing and analyzing those documents

and compiling a list would require extensive attorney time in order to assure that the listing does not itself compromise the privileged material. That is a very substantial job and will be totally unnecessary if this proceeding is eventually terminated as seems most likely under the facts. Keeping the documents themselves will be more than adequate to preserve each party's position.

The notion that a document preservation order entered in this proceeding should be extended beyond the Stanislaus Nuclear Project to include any other nuclear project carries no justification whatever. This is particularly true given PGandE's reasons for seeking termination of this proceeding. The original objection to the language drafted by DWR for inclusion in the proposed order was that it was confined to individual units within the Stanislaus Project. That objection was eliminated by referring to the project and the site generally as "Stanislaus Nuclear Project". This proceeding concerns only the Stanislaus Nuclear Project, was only intended to concern an application for a license to construct this one project, and could not be expanded to include any other project. The order entered in this preservation order should have those same boundaries as spelled out in the PGandE-DWR-Staff agreement.

Next, with respect to usability of discovery documents, PGandE has no objection to use of photocopies of documents duly produced in this proceeding in other Nuclear Regulatory Commission proceedings without the necessity of producing originals. Anything more is unsupportable.

Finally, concerning any hypothetical enforcement proceeding in the Diablo Canyon or any other NRC docket, decisions as to what should be or should not be the subject of discovery or included in the record in any such proceeding will be the subject of Commission action in that proceeding. The scope of that hypothetical proceeding should not be prejudged in the process of creating this preservation order.

III

CONCLUSION

In light of these remarks and the matters discussed at the hearing in San Francisco, PGandE urges the Presiding Judge to approve the Proposed Order Concerning Preservation of Documents in accordance with its terms as stipulated by PGandE, Intervenor DWR, and the NRC Staff.

Respectfully submitted,

ROBERT OHLBACH  
JACK F. FALLIN, JR.  
RICHARD L. MEISS

By   
JACK F. FALLIN, JR.

November 3, 1982

EXHIBIT "A"

PGandE Documents Discovered in NRC Docket P-564A  
 Used as Exhibits in Federal Energy Regulatory  
 Commission Proceedings

1. FERC Docket No. E-777 (Phase II)

<u>Doc. No.</u>	<u>Joint</u> <sup>1</sup>	<u>NCPA</u> <sup>2</sup>	<u>A &amp; R</u> <sup>3</sup>	<u>Date Intro.</u>	<u>Ex. No.</u>
AXF627581		x		4-23-80	2505
AXF627582		x		4-23-80	2505
AXF638448	x			6-26-79	7084
AXF638448		x		6-21-79	R7084
AXF689304	x			11-18-80	7000
AXF689304			x	6-1-79	7000
AXF697321		x		8-22-80	2569
AXF761273		x		4-23-80	2483
AXF765346			x	6-10-80	3257
ZWI781680		x		6-6-80	2527
ZLA791871	x			2-24-81	7324
ZLA791872	x			2-24-81	7324
ZLA793645			x	6-13-80	3235
ZLA795323	x			2-24-81	7233
ZLA802205			x	6-12-80	3228
ZLA802206			x	6-12-80	3228
ZLA802349			x	6-12-80	3226
ZLA831905			x	6-12-80	3225
ZLA831921			x	6-12-80	3224
ZLA831930			x	6-12-80	3221
ZLA831931			x	6-12-80	3221
ZLA831933			x	6-12-80	3220
ZLA831935			x	6-12-80	3223
ZLA831937			x	6-12-80	3222
ZLA831962			x	6-12-80	3219
ZLA831970			x	6-12-80	3219
ZLA832067			x	6-10-80	3197
ZLA832069			x	6-10-80	3196
ZLA833838	x			2-24-81	7305
AXE857101		x		8-28-80	2590
EXA939055		x		7-1-79	2430
EXA939056		x		7-1-79	2430
E A939083		x		7-1-79	2430
EXA939085		x		7-1-79	2430
EXA939086		x		7-1-79	2430
EXA939149		x		7-1-79	2430
EXA939498		x		7-1-79	2430
EXA941028		x		7-1-79	2413
EXA941034		x		7-1-79	2413
EXA941048		x		7-1-79	2430

<u>Doc. No.</u>	<u>Joint</u>	<u>NCPA</u>	<u>A &amp; R</u>	<u>Date Intro.</u>	<u>Ex. No.</u>
EXA941143		x		7-1-79	2430
EXA958022			x	6-6-80	3188
AXK984337		x		8-28-80	2597
ZZJ1117689		x		8-26-80	2587

2. Helms Pumped-Storage Project,  
Project Nos. 2735 and 1988

EXA939055		x		7-13-81	8119
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1. Sponsored jointly by NCPA and the Cities of Anaheim and Riverside
  2. Northern California Power Agency
  3. Cities of Anaheim and Riverside, California



EXHIBIT "B"

PACIFIC GAS AND ELECTRIC COMPANY

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October 21, 1982

John Michael Adragna  
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2600 Virginia Avenue, N.W.  
Washington, D.C. 20037

Re: Pacific Gas and Electric Company  
Stanislaus Nuclear Project, Unit No. 1  
NRC Docket No. P-564-A

Dear Mr. Adragna:

During yesterday's telephone conversation you requested us to consider a modification to the proposed document preservation to accommodate the needs of certain members of NCPA. We have considered your request and agree to it as described in this letter.

There are six member entities whose files were not surveyed as part of the so-called "green dotting" process. These entities include the cities of Gridley, Healdsburg, Roseville, Santa Clara, Ukiah and the Plumas-Sierra Rural Electric Cooperative.

With respect to these NCPA entities, we are agreeable to treating those files contained in each entity's central files maintained by the city clerk and utility department (or their equivalents) which have documents that respond to PGandE's document request as though those files were "green dotted." Our agreement here is meant only to meet the needs of the proposed document preservation order and is not meant to resolve any other dispute we may have regarding document discovery from these NCPA entities.

We are also agreeable to review the necessity of continued preservation of these documents on the same terms and conditions and at the same time as the parties review the necessity for continued preservation of PGandE's documents.

Mr. John Michael Adragna

-2-

October 21, 1982

Because I was unable to reach either you or Mr. Davidson by telephone today, I have telecopied this letter to you so you may have our acceptance of your proposal promptly.

Very truly yours,

*Richard L. Meiss*  
RICHARD L. MEISS

RLM:bjb

cc: Hon. Morton B. Margulies  
Peter K. Matt  
Michael J. Strumwasser  
Benjamin H. Vogler

UNITED STATES OF AMERICA  
Before the  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
GENERAL

'82 NOV -8 A10:55

In The Matter Of )  
)  
(Stanislaus Nuclear Project, )  
Unit No. 1) )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
Docket No. P-264A

CERTIFICATE OF SERVICE

I hereby certify that copies of the "RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY AND ITS MEMBERS AND THE CITIES OF ANAHEIM AND RIVERSIDE, CALIFORNIA ON PROPOSED ORDER CONCERNING PRESERVATION OF DOCUMENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, postage prepaid, this 3rd day of November, 1982.

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