

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
OF ENERGY
REGULATORY & SERVICE
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In The Matter Of)
)
(Stanislaus Nuclear Project,) Docket No. P-564A
Unit No. 1))

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

Pursuant to the Presiding Judge's order (Tr. 122),
the Northern California Power Agency and its members ("NCPA")
and the Cities of Anaheim and Riverside, California
("Southern Cities") hereby submit comments on the Proposed
Order Concerning Preservation of Documents submitted to the
Presiding Judge on September 21, 1982. 1/ By providing these
comments, Cities do not waive or intend to modify the
positions expressed in our opposition to PG&E's attempt to
terminate this proceeding, dated May 19, 1982. 2/ Briefly,
Cities submit that PG&E should not be permitted to terminate
this proceeding. Without waiving this overriding objection,

1/ NCPA and Southern Cities hereinafter are referred to
collectively as "California Cities" or "Cities".

2/ Joint Response of Northern California Power Agency and
the Cities of Anaheim and Riverside, California to Pacific
Gas and Electric Company's Motion for Withdrawal, dated
May 19, 1982.

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Cities hereby provide comments on the Proposed Order Regarding Preservation of Documents.

Paragraph 1.2 defines "Central Files" in vague and ambiguous terms. NCPA and PG&E have had a long-standing dispute with regard to the meaning of this term. For the sake of clarity, Cities believe that each Party should provide a list of those of its files which it designates "Central Files" subject to this order. This process should be simple, not burdensome, and will accurately apprise each Party of its obligations pursuant to the document preservation order.

Paragraph 1.5 of the Proposed Order defines "Documents Produced" as documents that:

have already been made available for copying by other Parties in this proceeding. Documents are not "Documents Produced" merely by virtue of having been made available for preliminary screening.

Proposed Order at 2. This language is ambiguous because it is unclear what is meant by the phrase "made available for preliminary screening." For example, PG&E was permitted access to the files of NCPA headquarters and six NCPA member cities. PG&E examined those files and designated which files it wished produced pursuant to the "green dotting" procedure. Similarly, PG&E was given access to all files containing relevant documents in Anaheim and Riverside. It examined those files and designated certain files and documents for production, and that production was completed by Anaheim and

Riverside. Cities consider such a procedure to be well beyond the "preliminary screening" stage, and would expect that those materials not designated for production at the time of the "green dotting" review are appropriately characterized as "Eliminated Documents," as defined by Paragraph 1.6 of the Proposed Order. Cities believe that the phrase "made available for preliminary screening" should be separately defined or otherwise clarified.

The aforementioned definitions do not readily lend themselves to the situation of six NCPA members from which NCPA voluntarily produced documents in response to PG&E's document requests and in which PG&E was not permitted to conduct discovery. 1/ PG&E contested the adequacy of NCPA's production from those six members but, because of PG&E's subsequent efforts to suspend discovery and terminate the proceeding, the matter was never brought before the Atomic Safety and Licensing Board for resolution. Because PG&E was not permitted access to the files of those six NCPA members pending resolution of the dispute, there are no "Documents Produced" 2/ or "Eliminated Documents" within the meaning of those terms as defined in the Proposed Order Regarding Preservation of Documents. In order to clarify this situation, and not impose an unwarranted burden on those six

1/ The six NCPA members in question are the Cities of Santa Clara, Roseville, Ukiah, Healdsburg, Gridley, California, and the Plumas-Sierra Rural Electric Cooperative.

2/ NCPA did produce tens of thousands of pages of documents from the files of the six disputed members.

NCPA members, NCPA's obligations under the Proposed Order with regard to the disputed six members should be satisfied by the retention by those six members of all documents and files in the City Clerk and Utilities departments required to be retained by the 1977 Documents Preservation Order. The remainder of the files of the disputed six members will be subject to the same requirements as the Private Files of the Parties pursuant to the Proposed Order Regarding Preservation of Documents. 1/

Paragraph 1.6(b) defines "Eliminated Documents" with regard to "Private Files" 2/ as "documents that have been reviewed by other Parties and determined not to be required for production." This language is potentially unclear in that, for example, Intervenors and Staff were not permitted by PG&E to review PG&E's Private Files, such review as was conducted having been made by representatives of the Company. Consequently, under Paragraph 1.6(b), there would be no "Eliminated Documents" in the Private Files of PG&E, because those files "were not reviewed by other Parties and determined not to be required for production." PG&E would

1/ PG&E and NCPA have been discussing the situation posed by the six disputed NCPA members and tentatively have agreed that the procedure described above should be followed. NCPA is still in the process of attempting to reach PG&E to secure firm agreement. If NCPA and PG&E do not reach firm agreement, then NCPA requests that the procedure described above be approved as part of the order to be issued. PG&E's responsive pleading should state whether or not a firm agreement has been reached. It is understood by the Parties that such agreement has been made without waiver of the rights of NCPA and PG&E to seek redress of this matter should the Presiding Judge decide not to terminate the proceeding.

2/ "Private Files" are defined by Paragraph 1.8 as essentially all files other than "Central Files."

therefore be under an obligation to maintain all documents in "Private Files" save "Documents Produced" as defined in Paragraph 1.5 of this Order. This obligation on all parties should be made unequivocal in the document preservation order.

Paragraph 1.7 essentially defines "Private Files" as all files other than "Central Files." The second sentence of the paragraph states that "Private Files" do not include "documents in custody of counsel not employed by the Party." Cities do not understand the meaning of this sentence. The second sentence of Paragraph 1.8 should be explained or deleted. Cities reserve the right to comment upon the second sentence to Paragraph 1.8 if an explanation is provided.

Paragraph 2.3 states:

The documents not presently contained in Central Files that would, in the ordinary course of business, be placed in Central Files shall be retained, provided they would, in the ordinary course of business, be filed in Designated Files.

(emphasis supplied). This Paragraph should be clarified to make clear that documents created in the future which would, in the prior ordinary course of business, be placed in Central Files will be retained.

Subsection c of Paragraph 2.4 should be deleted in its entirety. That subsection states that, "[d]ocuments generated after the date of this Order, which would not, in

the ordinary course of business, be sent to Central Files, need not be retained." This language would permit the destruction of any relevant documents created after the date of this order which would not ordinarily be filed in "Central Files." The deletion of this language would require the Parties to continue to maintain documents in "Private Files" pursuant to the 1977 Order on preservation of documents.

Paragraph 2.5 obliges each Party to retain all documents which "would have been produced but for the determination of a Party not to produce it and instead to make a claim of privilege ... [t]his requirement includes documents for which no claim of privilege has ever in fact been made." Cities agree with this requirement, but believe that each Party should be required to submit a list of all documents so withheld. Such a list need not constitute formal assertions of privilege, but should contain information sufficient to permit the other Parties to identify the withheld documents. Such a requirement is a further guarantee of the preservation of relevant, potentially probative documents which, but for the unilateral PG&E decision to withhold documents required to be produced pursuant to order of the Board, would already be in the hands of the other Parties. In addition, documents withheld on claim of privilege should be maintained for a period of no less than three years, or until such time as the Parties agree that such documents may be destroyed.

Paragraphs 3.2, 3.3 and 3.4 all pertain solely to the Stanislaus Nuclear Project. Cities submit that the language of these three paragraphs should be broadened to include the Stanislaus Nuclear Project or "any other nuclear project which PG&E intends to construct or in which PG&E intends to acquire an ownership interest" Any nuclear project which PG&E seeks to construct will occasion precisely the kind of proceeding which PG&E now seeks to terminate. Any ownership interest in a nuclear unit which PG&E seeks to acquire will likewise occasion substantially the same kind of proceeding. There is no valid reason for permitting PG&E, through the artifice of a changed name or site, to avoid the requirements of this order.

All Parties should be required to agree that any document produced in this proceeding shall be useable in other proceedings without concession of the admissibility of such documents.

All Parties should be required to agree to the transfer of all discovery and the record of this proceeding to any enforcement action the Commission may order in PG&E's Diablo Canyon docket.

All Parties should agree to stipulate to the admissibility of photocopies rather than original documents in any subsequent proceeding before this forum.

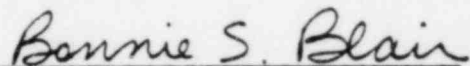
Regardless of the other conditions of the Order, the Presiding Judge should expressly provide that the rights and obligations of all Parties are preserved in the event that the proceeding is revitalized at some time in the future.

Respectfully submitted,



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October 21, 1982

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "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 21st day of October, 1982.

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