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July 1, 2003

## Via Hand Delivery

Mark Langer  
United States Court of Appeals for the  
District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, NW  
Washington, DC 20001-2866

Re: Northern California Power Agency v. Nuclear Regulatory Commission;  
United States of America

Dear Mr. Langer:

Enclosed please find an original plus six copies of the Motion of the Northern California Power Agency to Suspend Briefing Schedule and Hold Proceeding in Abeyance. Please stamp and return the two extra copies with our messenger.

Sincerely,



Andrea G. Lonian

Enclosures

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**Northern California Power Agency,  
Petitioner,**

**v.**

**No. 03-1038**

**Nuclear Regulatory Commission; United  
States of America,  
Respondents**

**The City of Santa Clara, California;  
Intervenor For  
Petitioner**

**Pacific Gas & Electric Company,  
Intervenor**

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**MOTION OF THE NORTHERN CALIFORNIA  
POWER AGENCY TO SUSPEND BRIEFING  
SCHEDULE AND HOLD PROCEEDING IN  
ABEYANCE**

Pursuant to Circuit Rules 27 and 28(j), Petitioner the Northern California Power Agency ("NPCA") respectfully requests that the briefing schedule established by the Court's order of June 26, 2003, be suspended. Due to recent developments in the Nuclear Regulatory Commission ("NRC") Dockets 50-275-LT and 50-232-LT, in which the order on review was issued, and in the Pacific Gas and Electric Company's ("PG&E") Chapter 11 bankruptcy proceeding, it is possible the order below will be nullified and in turn that this appeal will become

moot. As explained below, recent events constitute extraordinary circumstances sufficient to justify holding this proceeding in abeyance pending resolution of PG&E's proposed settlement in its Chapter 11 Bankruptcy case, and its Motion to Hold Proceeding in Abeyance. NCPA has conferred with counsel for all parties pursuant to Circuit Rule 28(f)(3), and has been authorized to represent that this motion is supported by Respondent, the Nuclear Regulatory Commission, and Intervenor, the City of Santa Clara, California. Intervenor Pacific Gas and Electric Company indicates that it takes no position at this time, and will respond to this motion in due course.

On June 26, 2003, the Pacific Gas and Electric Company submitted a motion to hold the proceedings in NRC dockets 50-275-LT and 50-232-LT in abeyance in order to allow time for approvals and conditions precedent to a proposed settlement in PG&E's bankruptcy proceeding to take place, events that will take a lengthy, but unspecified time in PG&E's estimate, and may not occur at all. PG&E's motion makes clear that the settlement, if executed, will nullify the need for the NRC approvals, as PG&E's motion states, "If successful, the bankruptcy settlement would eliminate the need for the license transfer approval previously granted and moot all matters still pending before the Commission related to the above-captioned dockets." (PG&E Motion at 1).

The Court's June 26, 2003 scheduling order established a deadline of August 14, 2003, for NCPA's Initial Brief, with final briefs to be submitted in November 2003. The PG&E motion and related events, which were completely beyond NCPA's control, create the possibility that the orders under review will be rendered null. NCPA respectfully submits that the immediacy of the filing deadline, combined with the reasonable possibility that this appeal will be rendered moot given PG&E's request to hold the NRC proceeding below in abeyance, constitute the sort of extraordinary circumstances necessary to justify suspension of an established procedural schedule.

In light of these developments, NCPA seeks a suspension of the schedule established in this proceeding, in the interest of judicial economy.

Respectfully submitted,

A handwritten signature in cursive script, reading "Ben Finkelstein", positioned above a horizontal line.

Robert C. McDiarmid

Ben Finkelstein

Andrea G. Lonian

Attorneys for Northern California  
Power Agency

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**CERTIFICATE OF PARTIES AND AMICI OF THE  
NORTHERN CALIFORNIA POWER AGENCY**

Pursuant to Circuit Rule 28(a)(1) Petitioner, the Northern California Power Agency ("NCPA") respectfully submits this Certificate as to Parties, Rules, and Related cases:

**PARTIES AND AMICI**

In the agency proceedings below, Nuclear Regulatory Commission Docket Nos. 50-275-LT, 50-323-LT, the following parties appeared:

- Pacific Gas & Electric Company
- California Public Utilities Commission

- Northern California Power Agency
- Transmission Agency of Northern California, M-S-R Public Power Agency, Modesto Irrigation District, the California Cities of Santa Clara, Redding, and Palo Alto, and Trinity Public Utility District
- Official Committee of Unsecured Creditors of PG&E
- County of San Luis Obispo, CA

Before this Court the Parties are the Petitioner Northern California Power Agency and the Respondents Nuclear Regulatory Commission and United States of America. In addition, the Pacific Gas & Electric Company and the City of Santa Clara have filed timely motions to intervene.

### **RULINGS UNDER REVIEW**

*Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Memorandum and Order, CLI-03-02 (Feb. 14, 2003).*

### **RELATED CASES**

*Northern California Power Agency v. Nuclear Regulatory Commission and United States of America*, Case No. \_\_\_\_\_. On July 1, 2003, NPCA submitted a Petition for Review of Order Approving Transfer of Licenses from Pacific Gas and Electric Company to Electric Generation, LLC and Diablo Canyon LLC, and Approving Conforming Amendments (TAC Nos. MB3523 and MC 3524), issued on May 27, 2003 by the Nuclear Regulatory Commission ("NRC") in the matter of

## **CERTIFICATE OF SERVICE**

I hereby certify that I have on this 1<sup>st</sup> day of July, 2003, caused the foregoing pleading to be served upon each person listed below, in accordance with Fed. R. App. P. 25(b) in the manner indicated:


Served via first class mail:

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