

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

**NORTHERN CALIFORNIA POWER
AGENCY,**

Petitioner

v.

No. 03-1184

**NUCLEAR REGULATORY
COMMISSION and UNITED STATES
OF AMERICA,**

Respondents

**MOTION OF THE NORTHERN CALIFORNIA
POWER AGENCY TO HOLD PROCEEDING IN
ABEYANCE**

Pursuant to Circuit Rule 27, Petitioner the Northern California Power Agency ("NPCA") respectfully requests that this proceeding be held in abeyance. Due to recent developments in the Nuclear Regulatory Commission ("NRC") Dockets 50-275 and 50-323, in which the orders on review were issued, and in the Pacific Gas and Electric Company's ("PG&E") Chapter 11 bankruptcy proceeding, it is possible the orders below will be nullified and in turn that this appeal will become moot. NPCA has conferred with counsel for Respondent, the Nuclear Regulatory Commission, and is informed that the Commission does not oppose this motion, but reserves its right to file a dispositive motion in this case. Pacific

Gas and Electric Company, which has not yet intervened in this case but will file to intervene shortly, does not oppose this motion.

On June 26, 2003, the Pacific Gas and Electric Company submitted a motion to hold the proceedings in NRC dockets 50-275 and 50-323 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).

This appeal is closely related to an appeal filed by NCPA on February 25, 2003, Case No. 03-1038. The Court's June 26, 2003 scheduling order in that proceeding established a deadline of August 14, 2003, for NCPA's Initial Brief, with final briefs to be submitted in November 2003. NCPA filed a motion to hold that proceeding in abeyance on July 1, 2003, on the ground that the reasonable possibility that the appeal will be rendered moot given PG&E's request to hold the NRC proceeding below in abeyance constitutes the sort of extraordinary circumstances necessary to justify suspension of an established procedural

schedule. The Court has not yet acted on NCPA's motion in that case. NCPA asks that this proceeding be held in abeyance for the same reason. The orders under review in this appeal may likewise be nullified by approval of the PG&E settlement.

For the foregoing reasons, NCPA asks that this proceeding be held in abeyance in the interest of judicial economy.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ben Finkelstein", is written over a horizontal line.

Robert C. McDiarmid

Ben Finkelstein

Andrea G. Lonian

Attorneys for NCPA

Law Offices of:

Spiegel & McDiarmid

1333 New Hampshire Avenue, NW

Washington, DC 20036

(202) 879-4000

July 14, 2003

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

**Northern California Power Agency,
Petitioner,**

v.

No. 03-1184

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

**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, 50-323, 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.

RULINGS UNDER REVIEW

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 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) (May 27, 2003).

RELATED CASES

Northern California Power Agency v. Nuclear Regulatory Commission and United States of America, U.S. Court of Appeals for the D.C. Circuit Case No. 03-1038 .

In that case NCPA seeks review of the February 2003 orders of the Nuclear Regulatory Commission ("NRC") approving the transfer of PG&E facilities in the matter of Diablo Canyon Nuclear Power Plant, Units 1 and 2, Docket Nos. 50-275

and 50-323. The legal issues and parties involved in that appeal are substantially similar to those involved in this case.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ben Finkelstein", is written over a horizontal line.

Robert C. McDiarmid

Ben Finkelstein

Andrea G. Lonian

Attorneys for NCPA

Law Offices of:

Spiegel & McDiarmid

1333 New Hampshire Avenue, NW

Washington, DC 20036

(202) 879-4000

July 14, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of July, 2003, caused the foregoing documents to be served upon each person listed below, in accordance with Fed. R. App. P. 25(b):

Served via first class mail:

Grace H. Kim, Attorney
John F. Cordes, Jr., Solicitor
E. Leo Slaggie, Deputy
U.S. Nuclear Regulatory Commission
(NRC) General Counsel
Mail Stop OGC- MS 15 D21
Washington, D.C. 20555

U.S. Department of Justice
Civil Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001



Andrea G. Lonian

Law Offices of:
Spiegel & McDiarmid
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 879-4000