



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 24, 2004

Mark J. Langer, Clerk
U. S. Court of Appeals
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., N.W.
Washington, D.C. 20001

RE: Northern California Power Agency v. NRC, No. 03-1038 (D.C. Cir.)

Dear Mr. Langer:

We have received a copy of a post-oral argument letter filed by the Northern California Power Agency (NCPA) in the above-captioned docket. NCPA indicates that its letter was necessary to clarify that the copy of Pacific Gas and Electric's (PG&E) Motion to Terminate Proceeding that NCPA received on April 13, 2004 was not a draft but the final version of PG&E's motion.

The distinction that NCPA makes -- i.e., that it received a final copy as opposed to a draft copy of PG&E's motion on April 13 -- is irrelevant. NCPA has not claimed that it would have objected to PG&E's motion had it in fact received a draft copy in advance of filing. The relevant point is that NCPA was aware on April 13 of PG&E's unqualified representation that NCPA did "not object to termination of this proceeding," and NCPA could have taken immediate steps before the Court acted on PG&E's motion to correct any misimpression. Since NCPA remained silent regarding vacatur until it filed its own motion several days later, on April 16, the NRC reasonably understood NCPA's "original" position as an unqualified consent to dismissal of the case as moot. This Court acted on that same understanding when it dismissed the case and issued its mandate.

In its letter, NCPA also notes that the "standard practice" for voluntary termination is for the petitioner to file a motion to dismiss. To the extent that NCPA may now be implying that the initial filing of a motion to dismiss by intervenor PG&E rather than NCPA may have contributed to NCPA's failure to alert the parties of its intention to seek vacatur, NCPA failed to so state in either its motion for dismissal and vacatur, filed on April 16, 2004, or its initial and reply briefs in this docket.

Sincerely,

Grace H. Kim
Senior Attorney
Office of the General Counsel

cc: service list