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December 3, 1979

William H. Armstrong, Esq.
McCutchen, Doyle, Brown & Enerson
3 Embarcadero Center
San Francisco, California 94111



Re: Pacific Gas & Electric Company,
(Stanislaus Nuclear Unit No. 1)
NRC Docket No. P-564A
Privileged Status of Current Negotiations

Dear Mr. Armstrong:

In view of PG&E's stated insistence that matters related to the current set of negotiations be maintained as privileged, NCPA has undertaken the considerable burden of withholding such materials and providing individual claims as to each such document. NCPA has honored this commitment even in the face of consistent cross-examination of NCPA witnesses on such matters by counsel for PG&E in the current proceedings in FERC Docket Nos. E-7777(II) and E-7796. 1/ Recently, by letter of November 19, 1979, the Department of Water Resources has indicated it will object to any agreement between NCPA and PG&E which will withhold from production documents relevant to this proceeding. 2/ This position obviously raises questions as to the viability of this procedure. I would like to know what your response is

1/ See Attachment A, which is an excerpt from the transcripts of those hearings on November 9, 1979.

2/ See Attachment B.

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William H. Armstrong, Esq.

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with regard to this matter as soon as possible as it greatly affects the processing and delivery of the current NCPA document production to PG&E. If PG&E intends to amend its document request or withdraw it, it is obviously going to have a significant impact upon the work we must do.

Very truly yours,

John Michael Adragna (kg)

John Michael Adragna
Attorney for Northern California
Power Agency and its members

JMA:kg

Enclosures

cc: Service List

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CH- 9277-A

AFTERNOON SESSION

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1:15 p.m.

PRESIDING JUDGE: On the record.

Thereupon

HERBERT C. WESTFALL

a witness, having been duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION (resumed)

MR. ADRAGNA: Your Honor, as you will recall in our discussion prior to the recess, I requested some time to call my office and speak with Mr. McDiarmid on this matter of the privileged status of the negotiations, that particular agreement between NCPA and PGandE. I have spoken with Mr. McDiarmid and his recollection and his understanding of that agreement is in concert with both mine and Mr. Westfall's.

As a result, it is my position that Mr. Westfall has stated nothing in his testimony to date which breaches that agreement in any way. If Mr.--

PRESIDING JUDGE: I do not know why you are telling me this. I donot have to rule on anything about the agreement.

MR. ADRAGNA: I want to make the record clear NCPA has not to date breached any agreement.

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Q Mr. Westfall, to your knowledge, is the issue of the type of provision that you were describing in the NCPA-SCANDL contract regarding transferring services to the California Power Pool still being discussed between

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1 NCPA and PGandE?

2 A Mr. Reidenbach, in order for me to respond to that,
3 I think I would have to go into the area of privilege. I
4 can respond if you wish me to do so with that understanding.

5 Q Would you respond, please?

6 A It is my understanding that it is still
7 NCPA's position that that provision be incorporated in the
8 contract.

9 MR. REIDENBACH: Your Honor, that was not the
10 question and I would ask that the answer be stricken as non-
11 responsive.

12 PRESIDING JUDGE: Read the question.

13 (Record read.)

14 MR. ADRAGNA: Your Honor--

15 PRESIDING JUDGE: I do not think that does answer
16 the question.

17 Mr. Westfall, I think that is a question that can
18 be answered yes, no or I don't know. Are discussions
19 continuing?

20 The content of the discussion is not requested.

21 THE WITNESS: I can answer that yes, your Honor.

22 PRESIDING JUDGE: Thank you.

23 BY MR. REIDENBACH:

24 Your Honor, I would indicate for the record that
25 our attempt to establish the fact that discussions are

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1 continuing in our opinion doesn't breach the privilege
2 and we do not concede Mr. Westfall's characterization about
3 that.

4 BY MR. REIDENBACH:

5 Q Mr. Westfall, when NCPA inquire regarding
6 membership in the California Power Pool?

7 A I cannot identify a specific date when they
8 first applied. The first discussions of that or
9 recommendations made by myself and others date back to, I
10 would say at least 1975. Or possibly earlier.

11 Q It is a fact, is it not, such inquiries were
12 made in the early seventies?

13 A It could have been, that is correct.

14 Q It is a fact, is it not, that the response to
15 NCPA was precisely the situation that existed at that
16 time which was that NCPA had absolutely no generation and that
17 NCPA's plans were in an early preliminary stage?

18 A I think that the responses could be characterized
19 in that manner, those responses that I saw; that is correct.

20 Q It is a fact, is it not, NCPA's plans at that
21 time were in a very preliminary stage?

22 A At what point in time are you referring to?

23 Q When NCPA made whatever inquiries were made
24 regarding membership in the California Power Pool?

25 A I will accept your statement of the early 1970's.

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SPIEGEL & MCDIARMID

State of California
Department of Justice
George Deukmejian
(PRONOUNCED DUKE-MAY-JIN)
Attorney General
November 13, 1979

ATTACHMENT B

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(213) 736-2304

John Michael Adragna, Esq.
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

RE: Pacific Gas and Electric Co.
(Stanislaus Nuclear Project, Unit
No. 1) USNRC Docket No. P-564A

Dear Mr. Adragna:

This is in reply to your October 26, 1979, letter regarding document production.

The Department of Water Resources has consistently taken the position that ongoing negotiations between PG&E and other utilities are highly relevant to this proceeding and essential to an evaluation of the Stanislaus commitments. Accordingly, DWR has refused to make its negotiations with PG&E confidential and does not recognize any basis for confidentiality of PG&E's negotiations with NCPA. In particular, we do not agree with and do not consider ourselves bound by the agreement between Messrs. Ingraham, Hughes, Daines, and Gallavan.

If a genuine need to protect specific documents from general disclosure can be demonstrated, the appropriate mechanism would be production of the documents in question subject to a protective order that protects any legally cognizable interest any party may have in confidentiality. We would be happy to discuss the terms of such a proposed order with you and any other parties.

Very truly yours,

GEORGE DEUKMEJIAN
Attorney General

MICHAEL S. STRUMWASSER
Deputy Attorney General
(213) 736-2101

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TO: JA
ACTION COPY
DOES NOT NEED TO BE FILED
MJS:lc

cc: Jack R. Goldberg, Esq.
Peter K. Matt, Esq.
William E. Armstrong, Esq.

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