



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

December 4, 1978



\*\*\*\*\* NRC PUBLIC DOCUMENT ROOM

Jack F. Fallin, Jr., Esq.  
Pacific Gas and Electric Company  
77 Beale Street, 31st Floor  
San Francisco, California 94106

Re: Pacific Gas and Electric Company,  
Stanislaus Nuclear Project, Unit  
No. 1, NRC Docket No. P-564A

Dear Mr. Fallin:

In my letter of November 3, 1978, to Bill Armstrong, and during our meeting in San Francisco on November 14-15, 1978, I requested that PG&E modify its instructions to its legal assistants for producing and classifying documents to include those documents which relate to what PG&E terms "municipalization" of PG&E facilities. I pointed out that PG&E's specific exclusion of "municipalization" documents (Stanislaus Screening Guide, Part II, Para. 33) was inconsistent with the Board's January 18, 1978, Order Concerning Production of Documents. You refused, however, to modify the instructions, insisting at the meeting and again in your letter of November 17, 1978, that all parties submit to the Board a stipulation to amend the Production Order.

The Staff and Intervenor believe "it is entirely unnecessary to amend the Production Order since the Order clearly calls for "municipalization" documents as written. Indeed, Paragraph 35 was specifically designed to capture all documents relating to the "municipalization" of PG&E's facilities. That paragraph calls for all documents relating to competition for the franchise to serve at retail. This subject is precisely included in your own definition of "municipalization": "the possibility that PG&E's electric wholesale or retail distribution facilities might be taken over by municipal action" (your November 17th letter, page 4).

Furthermore, since the object and inevitable result of a municipality's taking over PG&E's retail distribution facilities is to serve at retail the customers reached by those facilities, all municipalization documents are also clearly required by paragraph 45 of the Production Order which calls for "[a]ll documents relating to the possibility that other electric utilities [defined in Paragraph A.2 of the Production Order to include "potential" electric utilities] might take electric wholesale or retail customers from or lose such customers to PG&E."

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Finally, many "municipalization" documents are encompassed within the request of paragraph 33 dealing with PG&E's actions and policy toward public power and public power entities as such.

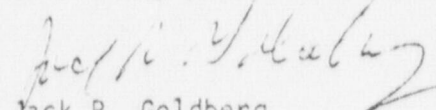
In light of the overwhelming clarity of the Production Order as written with respect to the requirement of producing "municipalization" documents, 1/ we decline to stipulate to your proposed amendment to the Document Production Order. Doing so would likely result in PG&E not producing "municipalization" documents from the files it is searching (e.g., current executive offices) until the effective date of the amendment. Rather, we believe it is necessary to request the Board to rule that its January 18, 1978, Order Concerning Production of Documents as written requires the production of "municipalization" documents. Under such a ruling, of course, PG&E would be required to produce all such documents from its files to which Staff and Intervenors were not granted access by the Stipulation Concerning Production of Documents. If doing so would require PG&E to search for a second time those files it already has searched once, then it is due solely to PG&E's narrow and erroneous interpretation of a Board Order.

The Staff and Intervenors are extremely disappointed at your refusal to modify your instructions to comply with the Document Production Order. We regret that, as a result, we must request the Board to rule that the January 18, 1978, Order Concerning Production of Documents requires the production by PG&E of "municipalization" documents. This letter serves to notify PG&E that Staff and Intervenors will request such a ruling at the scheduled continuation of the Prehearing Conference in San Francisco on January 23, 1979.

1/ Even if the Production Order were not clear on its face regarding the requirement of producing "municipalization documents," PG&E was on notice since at least December 1, 1977, that Paragraph 35 was intended to call for such documents. On that date at the "conference with counsel," the Board heard oral arguments on PG&E's objections to the Amended Joint Document Request. In the context of the arguments concerning Paragraph 35, Mr. McDiarmid, counsel for NCPA, made it clear that "municipalization" documents were requested, citing the Berkeley and Foster City attempts to take over PG&E's distribution facilities. (Tr. p. 987).

Alternatively, if PG&E would stipulate to a retroactive amendment to the Production Order which insured production of "municipalization" documents from all of PG&E's files to which Staff and intervenors were not granted access, whether or not already searched by PG&E, then we would consider amending the Production Order.

Very truly yours,

  
Jack R. Goldberg  
Counsel for NRC Staff

cc: All Parties on Service List