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CITY COUNCIL MEETING

October 27, 1982

ESCROW AGREE-
MENT WITH
PG&E APPROVED

Following introduction of the matter, Council, on motion of Mayor Reid, Olson second, agreed in concept the establishing of an escrow fund for the monies in dispute between the City and PG&E resulting from the City's purchase of NW energy from NCPA and side agreement with WAPA. The motion carried by unanimous vote.

LAW OFFICES

SPIEGEL & McDIARMID

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1982 OCT 25 AM 11:00

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October 22, 1982

OF COUNSEL
SUSAN T. SHEPHERD

Mr. Henry A. Graves, Jr.
City Hall
221 West Pine Street
Lodi, California 95240

Dear Mr. Graves:

Enclosed, for the consideration of the Lodi City Council, are:

1. An Agreement in a form satisfactory to PG&E and to me which establishes an escrow fund for the monies in dispute between the City and PG&E resulting from the City's purchase of NW energy from NCPA.
2. A form of agreement to be entered into by the City with WAPA and NCPA in order to protect their interests in the monies to be deposited in the escrow fund. WAPA has approved this agreement and is prepared to execute it.
3. A copy of a letter agreement I reached with PG&E, subject, of course, to the approval of the various NCPA Cities.

The monies Lodi is to place in escrow if it approves the agreement will be returned to Lodi by NCPA.

I am convinced that establishment of the escrow fund is in the best interest of the City and strongly recommend its approval. Under approval, there is a fair chance that the matter may be settled without litigation and on favorable terms. The agreement also protects the City against a lawsuit by PG&E to establish an escrow fund and against the possibility (if a lawsuit on the underlying arrangement is lost) of having to pay interest in excess of that earned on the withheld funds. If

Mr. Henry A. Graves, Jr.

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October 22, 1982

the Council approves, the only potential additional liability which the City might incur would be its share of NCPA's expenses in connection with these transactions and its share of the amount paid to the bank to administer the escrow fund.

If you have any questions, please contact me either at my office or at my home (202-363-2937).

Very truly yours,



Daniel I. Davidson

Enclosures

CITY/PGandE ESCROW AGREEMENT

Pacific Gas and Electric Company (PGandE) and the City of _____ (City) are parties to a contract as amended for the supply and purchase of electric power to _____ dated _____ (Contract). During the period May 1-September 30, 1982, the parties disagree as to the quantity of energy provided by PGandE and received by the City under said Contract (hereinafter "disputed energy"). The City contends that during such period energy ordinarily provided by PGandE was provided by the Northern California Power Agency (NCPA), pursuant to its letter agreement with the Western Area Power Administration for the purchase of surplus Northwest energy, dated May 28, 1982. PGandE contends that the City has not received such energy and that during such period the City has and will continue to receive energy provided by PGandE under the Contract.

Pending a final, nonappealable resolution of this dispute by mutual agreement of the parties or by final decision of a court or agency having jurisdiction to determine the rights of the parties under the Contract, the parties agree as follows:

1. The City and PGandE shall establish a new escrow with the _____ bank ("Escrow Holder") and execute escrow instructions in the form attached hereto as "Attachment A" [such instructions to bank to be agreed upon].
2. The City shall make payments to Escrow Holder in the amount of PGandE's May-September bills for the disputed energy.
3. If, as a result of a final nonappealable judgment or determination of a court or agency, all of the disputed energy billed to the City was provided by PGandE, all monies (including interest) in the escrow fund shall be paid to PGandE in full payment for the disputed energy provided under the tariff.
4. If, as a result of a final nonappealable judgment or determination of a court or agency, none of the disputed energy was provided by PGandE, then all funds in the escrow fund minus the figure PGandE asserts it is entitled to for services it provided to City shall be paid to the City. The remaining funds shall be retained in escrow pending mutual agreement or a final nonappealable judgment of a court or agency.

5. If, as a result of a final nonappealable judgment or determination of a court or agency, some of the disputed energy was provided by PGandE and some provided by NCPA, there shall be retained in escrow the amount PGandE asserts it is entitled to for services it has provided to the City in connection with the energy furnished by NCPA. The amount PGandE billed for the energy it furnished shall be paid to PGandE (with pro rata interest) as full payment for the disputed energy provided by PGandE under the tariff. The remaining monies above those to be retained in escrow shall be paid to the City. The funds retained in escrow shall remain in escrow pending mutual agreement or a final nonappealable judgment of an agency or a court.
6. If the City and PGandE reach a settlement with respect to the amount of energy provided by NCPA to the City without obtaining a final determination in the court or agency action, then the City or PGandE shall have the right to obtain a final judgment or a final determination of their respective rights to the monies held in escrow, unless PGandE and the City are able to agree as to the manner of distribution of said monies.
7. The costs of the escrow shall be paid to the bank as follows: if PGandE is determined to have provided all of the disputed energy to the City, the City shall pay the costs of the escrow. If NCPA is determined to have provided all of the disputed energy to the City, PGandE shall pay the costs of the escrow. If PGandE and NCPA each provided a portion of the disputed energy to the City, PGandE and the City shall pay a pro rata portion of the cost of the escrow, based on the proportion PGandE and NCPA provided.

As used herein and in the escrow, the phrase "final non-appealable judgment or determination" shall mean any judgment or determination by a court or agency of competent jurisdiction which determines the rights of the parties and from which no further appeal of the matter can be prosecuted.

SPEER, PC
C. MCCLANED
J. STACEL
MART A. JACOB
JAMES H. MORWOOD
ALAN J. ROTH
FRANCIS E. FRANCIS
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THOMAS W. MERRILL, JR.
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NANCY E. WICKERS

PM letter

October 19, 1982

Joshua Bar-Lev, Esq.
Pacific Gas & Electric Company
77 Beale Street
San Francisco, California 94104

Re: Escrow arrangements with Uriah, Neeldsburg, Lodi,
Lompoc and Alameda

Dear Mr. Bar-Lev:

This will confirm our telephone conversation this morning regarding the establishment of separate escrow accounts between PG&E and each of the above-named Cities. I have agreed to strongly recommend the following to each City for prompt action by its utility authority and, if necessary, by its city council:

1. Each City shall establish a separate escrow account with PG&E.
2. The amount of the PG&E bills which each City deducted as a result of the purported sales of Northwest energy by NCPA shall be placed in the escrow.
3. The terms of the escrow agreement will be those contained in the attachment to your October 12 letter to each City as modified and agreed to between us in our discussions. We will finalize these terms by the close of business on Tuesday, October 19, 1982.
4. PG&E will contact each City confirming and agreeing upon the amount to be placed in each escrow.
5. PG&E and each City will agree upon and execute the bank's escrow instructions and a finalized escrow agreement.
6. Each City will act on my recommendation as rapidly as feasible under its required procedures. Based

upon my telephone conversations today with their officials each City should be able to act upon the following schedule.

Alameda - Monday, October 25 or sooner if absolutely necessary.

Healdsburg - Friday, October 22.

Lodi - Wednesday, October 27.

Lompoc - Friday, October 29.

Ukiah - Wednesday, October 20.

The funds will be deposited with a designated bank within three working days after approval by each City.

PG&E, MCPA and City will agree to defer filing an action against each other provided each item specified above is satisfied according to the schedule stated above. The deferral shall be to allow the parties to explore settlement of the dispute, and shall expire November 19, 1962.

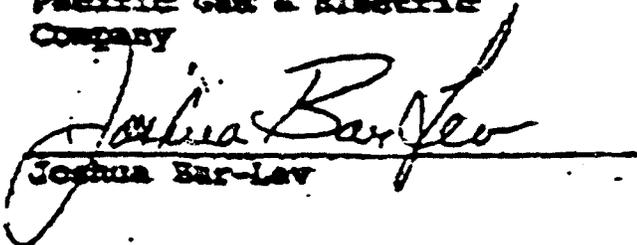
If you agree with the foregoing, please execute this letter in the space provided below, and telecopy it to me.

Very truly yours,



Daniel I. Davidson

Agreed to on behalf of
Pacific Gas & Electric
Company



Joshua Bar-Lev

October __, 1982

Dear Mr. Coleman:

As you know escrow accounts are being established by the City of (Alameda, Lodi, Lompoc, Healdsburg, and Ukiah) (hereinafter "City") and PG&E. These accounts will contain the monies in dispute resulting from the energy sold by WAPA to NCPA under their agreement of May 28, 1982. The City agrees with WAPA and NCPA that it will not take any action that would cause release of the funds in escrow (except as a result of a final non-appealable judgment or final determination by a court or agency) without the consent of WAPA and NCPA. Such consent may be withheld by WAPA or NCPA solely to protect their legitimate financial interests in receipt of the payments to which they are entitled pursuant to their contracts with each other or the City arising out of the transactions related to the energy sold under the NCPA WAPA letter agreement of May 28, 1982. The existing contracts between or among the signatories to this agreement shall be modified to reflect the terms of this agreement.

If you agree to the foregoing would you please execute this letter in the space provided below and transmit a copy to me.

Very truly yours,

Agreed to on behalf of
the Western Area Power
Administration by

Agreed to on behalf of
the Northern California Power
Agency by