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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Pacific Gas & Electric Company,	)	Docket Nos. 50-275-LT
Diablo Canyon Nuclear Power Plant	)	and 50-323-LT
Unit Nos. 1 and 2	)	

PETITION FOR LEAVE TO INTERVENE, COMMENTS, REQUEST FOR DEFERRAL OR, IN THE ALTERNATIVE REQUEST FOR HEARING OF THE 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 THE TRINITY PUBLIC UTILITY DISTRICT

The Transmission Agency of Northern California ("TANC"), the M-S-R Public Power Agency ("M-S-R"), the Modesto Irrigation District ("MID"), and the California Cities of Santa Clara ("Santa Clara"), Redding ("Redding"), Palo Alto ("Palo Alto"), and the Trinity Public Utility District ("Trinity") (collectively "Petitioners"), by and through counsel, Wallace L. Duncan, James D. Pembroke, Michael Postar, Lisa S. Gast, Sean M. Neal, Peter J. Scanlon and Derek A. Dyson, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully tender this Petition for Leave to Intervene, Request for Deferral, or, In the Alternative, Request for Hearing ("Petition") in the above-captioned proceeding and state as follows:

I. PRELIMINARY STATEMENT

1. This Petition is filed pursuant to Section 189 of the Atomic Energy Act ("AEA"), 42 U.S.C. § 2239 (2000 & West Supp. 2001), the Rules of Practice for

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SECY-02

Domestic Licensing Proceedings and Issuance of Orders of the Nuclear Regulatory Commission ("NRC" or "Commission"), 10 C.F.R. §§ 2.1305, 2.1306 and 2.1308 (2001), the Commission's January 17, 2002 Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing, establishing February 6, 2002 as the date by which Petitions for Leave to Intervene, Comments, and Requests for Hearings are to be filed in this proceeding.

2. In accordance with 10 C.F.R. § 2.1313(a) e-mail correspondence in connection with this proceeding should be sent to: ndr@dwgp.com. The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to 10 C.F.R. § 2.1313(a) (2001):

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II. DESCRIPTION OF THE PARTIES

3. TANC is a joint exercise of powers agency organized and existing under the laws of the State of California and is a "municipality" as defined in Section 3(7) of the Federal Power Act ("FPA"), 16 U.S.C. § 796(7) (1985 & West Supp. 2000). Among TANC's purposes is the provision of electric transmission facilities and services for the use of its Members.[1/] TANC is a Participant in, and the Project Manager of, the California-Oregon Transmission Project ("COTP"), which is a 500 kV transmission project extending from the California-Oregon border to near Pacific Gas and Electric Company's ("PG&E") Tesla Substation in central California. TANC also has an allocation of 300 MW of firm bidirectional service over PG&E's transmission system

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1/ TANC's Members are the California Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah; the Sacramento Municipal Utility District; the Modesto Irrigation District; and the Turlock Irrigation District. The Plumas-Sierra Rural Electric Cooperative is an associate member of TANC.

between PG&E's Tesla and Midway Substations pursuant to the South of Tesla Principles ("SOTP").[2/] TANC's SOTP Entitlement is allocated among certain Members of TANC.

4. M-S-R is a public entity, without taxing power, created pursuant to Sections 6500, *et seq.*, of the Government Code of the State of California and a Joint Exercise of Powers Agreement, dated April 29, 1980 (as amended and restated on November 17, 1982) among MID, Santa Clara and Redding ("M-S-R Members"). M-S-R is authorized, *inter alia*, to acquire, construct, maintain and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its Members. M-S-R has an ownership entitlement to approximately 150 MW of capacity and related energy in the San Juan Generating Station Unit 4 which is located in northwest New Mexico.

5. Redding is a General Law City, organized under the laws of the State of California, which owns and operates a municipal electric utility system engaged in the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail. Redding purchases a portion of its power and energy requirements from the Western Area Power Administration ("Western") and supplies the remainder of its requirements through its own generation and third party purchases. As noted, Redding is an M-S-R Member and a Member of TANC. As a Member of TANC, Redding has a percentage share of TANC's Entitlement to capacity on the COTP and an allocation of TANC's Entitlement to capacity on the PG&E electric system under the SOTP.

2/ PG&E FERC Rate Schedule No. 143.

6. Santa Clara is a city, duly chartered under the laws of the State of California, which owns and operates a municipal electric utility system known as Silicon Valley Power ("SVP"). Through SVP, Santa Clara is engaged in the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail. In addition to its own generation, Santa Clara purchases a substantial amount of power and energy from Western and from third party utilities. Santa Clara also purchases a portion of its power and energy requirements, and certain power, transmission and coordination services from PG&E pursuant to certain contracts, including the Interconnection Agreement ("IA") which is dated September 30, 1983, and which was accepted by the Federal Energy Regulatory Commission ("FERC") in Docket No. ER84-6-000 and designated as PG&E Rate Schedule FERC No. 85. Santa Clara utilizes a portion of PG&E's transmission system to effect power purchases and sales including power purchased from Western. As noted, Santa Clara is an M-S-R Member and a Member of TANC. As a Member of TANC, Santa Clara has a percentage share of TANC's Entitlement to capacity on the COTP and an allocation of TANC's Entitlement to capacity on the PG&E electric system under the SOTP.

7. Palo Alto is a city, duly chartered under the laws of the State of California, which owns and operates a municipal electric utility system and engages in the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail. Palo Alto is a "municipality" as defined by Section 3(7) of the FPA, 16 U.S.C. § 796(7)(1994). Palo Alto's largest supplier is Western. Palo Alto is a Member of the Northern California Power Agency ("NCPA") and a Member of TANC.

8. MID is an irrigation district, organized and operated under the laws of the State of California, which undertakes both electric and irrigation operations. As regards its electric operations, MID owns and operates facilities for the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail. MID's system is interconnected with PG&E's transmission system under the PG&E/MID IA, on file with the FERC as PG&E Rate Schedule No. 116. MID is a fully integrated, fully resourced, credit-worthy utility. The electric utility side of MID serves approximately 95,000 customers with a peak summer load of 600 MW. The water utility serves 3,000 irrigation customers, and annually provides 30 million acre-feet of wholesale treated water to the City of Modesto. MID and the Turlock Irrigation District jointly own the Westley-Tracy Transmission Project, which interconnects their systems with Western transmission facilities at Western's Tracy Station. As noted, MID is an M-S-R Member and a Member of TANC. As a Member of TANC, MID has a percentage share of TANC's Entitlement to capacity on the COTP and an allocation of TANC's Entitlement to transmission service on the PG&E transmission system under the SOTP.

9. Trinity is a public utility district organized and existing under the California Public Utility District Law and is located in Trinity County in the northwest portion of the State of California. Trinity is authorized, *inter alia*, to purchase and sell electric energy at wholesale and retail. Trinity receives all of its power and energy from Western with such power and energy being delivered to Trinity over certain of the transmission facilities of PG&E in accordance with the terms of an integration/wheeling agreement between Western and PG&E commonly known as Contract 2948A. Trinity is

a municipality as that term is defined in Section 3(7) of the FPA, 16 U.S.C. § 796(7) (1994).

10. PG&E is an investor-owned utility which generates, transmits, distributes, purchases and sells electric power and energy at wholesale and retail in a large area of central and northern California. PG&E is a "public utility" as defined in Section 201 of the FPA, 16 U.S.C. § 824(e) (1994), and is subject to the jurisdiction of this Commission.

11. Electric Generation, LLC ("Gen"), formed on October 29, 2001, is a wholly owned subsidiary of Newco Energy Corporation, formed on October 19, 2001. Newco is a wholly-owned subsidiary of PG&E Corporation ("Parent"), the parent company of PG&E. According to the Application, Gen is established as part of the PG&E Plan of Reorganization ("POR"), and will be the transferee of the majority of its generating assets. *See* Application at 1-2. Gen will act as an electric utility holding company that holds and owns the membership interests in numerous separate limited liability companies ("GenSub LLCs") formed to hold specific assets and project-specific liabilities. *See id.* at 2.

12. Diablo Canyon LLC ("Nuclear") is one of the GenSub LLC's. Nuclear was formed to hold the ownership interest in Diablo. *See id.* As is the case with most of the GenSub LLC arrangements, Nuclear will lease Diablo to Gen under terms that assign all rights to the output and capacity to Gen, and make Gen responsible for all costs of plant operation. *Id.* Nuclear will not have a board of control, officers or employees. The business of Nuclear will be conducted under the direction of its sole member, Gen. *Id.* at 6.

13. ETrans, LLC is a newly formed subsidiary of Newco, a subsidiary of PG&E Corporation, to which PG&E proposes to transfer the majority of its electric transmission assets and liabilities. *Id.* at 1-2.

III. BACKGROUND

14. On November 30, 2001, PG&E submitted for filing, purportedly in compliance with Section 184 of the AEA, an "Application for License Transfers and Conforming Administrative License Amendments."

15. PG&E seeks consent of the Commission to transfer the operating licenses for Diablo Canyon Power Plant Units 1 and 2 ("Diablo"). The transfer is part of PG&E's POR, described above, under which PG&E's generating and electric transmission assets are being transferred to Gen and ETrans, respectively. Gen will sell all of the output from Diablo (and other plants in its Portfolio) to PG&E under a proposed Power Sales Agreement ("PSA") with a term of 12 years. *Id.* at 9. The PSA is subject to FERC approval and subject to change. *Id.* Based on the revenue stream from the power sales to *PG&E*, Gen hopes to raise over $2 billion in debt, and then transfer cash and notes back to PG&E so it may pay its creditors. *See* POR, Attachment 1 to *Application* at 54-55.

16. Under the Application, Gen would become a licensee authorized to posses, use and operate Diablo. *Application* at 2. Nuclear would become a licensee authorized only to possess (own) Diablo. *Id.* The Application proposes that PG&E, ETrans and Gen be named as responsible Licensees under the antitrust conditions to the license. *Id.* at 3.

17. PG&E asks that the Commission issue an order on or before July 31, 2002. *Id.* at 18. PG&E requests the Commission's consent to be effective immediately upon issuance, with an allowance of 12 months *to ma*ke the transfer. *Id.*

18. The instant application is one of a number of requisite approvals being sought by PG&E. The Bankruptcy Court must approve the POR before PG&E can make the asset transfers. *Application* at 18. The California Public Utility ("CPUC") Commission generally has jurisdiction over the transfer of PG&E's assets.[3/] There are seven applications pending at the FERC, seeking approval of electric transmission and natural gas pipeline asset transfers, debt issuances, and the terms and conditions of the PSA on which Gen bases its financial projections. *See id.* at 18. In addition, the Securities Exchange Commission must approve certain aspects of the POR transactions, and PG&E also seeks an Internal Revenue Service ("IRS") ruling. *Id.*

IV. INTERESTS OF PETITIONERS AND BASES FOR PETITION FOR LEAVE TO INTERVENE

19. All of the Petitioners are market participants in the California energy and transmission markets and all depend, to varying extent, on the use of PG&E's transmission systems and generation assets. Several of the Petitioners have individual contracts with PG&E for interconnection, transmission service and/or power supply. A number of the Petitioners are beneficiaries of certain antitrust conditions, known as the Stanislaus Commitments, which obligate PG&E to provide essential transmission, scheduling, interconnection, generation and related services to those Petitioners. Each

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3/ Although the Application indicates that PG&E sought Bankruptcy Court approval to make the transfers without state and local agency review, Application at 18, the Bankruptcy Court has not yet indicated it will exercise its authority to do so. The Bankruptcy Court recently permitted CPUC to submit the details of its proposed competing reorganization plan.

Petitioner has interests that will be substantially affected in numerous and various ways by the proposed reorganization of PG&E, including by the sale of the Diablo output under the PSA from Gen to Reorganized PG&E. The interests of the Petitioners can not be represented by other parties. The specific interests of the Petitioners are described in greater detail below, but the categories of interests include:

A. Ensuring reorganized PG&E continues to have the ability to comply with the Stanislaus Commitments, discussed in greater detail in the Comments, below.

B. Preservation of contractual rights to transmission services.

C. Preservation of contractual rights to generation capacity.

D. Ensuring the financial obligations of reorganized PG&E are fairly apportioned among the various subsidiaries, so that entities such as Gen and Nuclear are financially viable, and capable of meeting their contractual obligations, as well as their responsibility to operate Diablo in accordance with the terms of the licenses.

E. Ensuring that the long term obligations of Gen are not ignored and deferred until after the PSA expires.

F. Since PG&E plans to have Gen operate generation facilities in which certain Petitioners have an interest, the Petitioners need to determine if Gen's obligations under the Diablo license will impair its financial ability to meet its obligations at other facilities.

G. Gen's plan to discontinue PG&E's annual contributions to the decommissioning trust funds raises concerns about the ability of Gen to meet its decommissioning obligations, especially since it will no longer have the ability to pass any excess costs through rates.[4/]

4/ By comparison, PG&E's application regarding the Humbolt Bay Power Plant directly relies on the California Public Utility Code for the ability to pass unfunded decommissioning costs onto ratepayers. *See* Humbolt Bay, Docket No. 50-133, Application for Indirect License Transfer at 7-8.

H. Under the proposed terms of the PSA, Gen gives up its rights to seek rate increases during the 12 year term of the agreement. The inability to raise power sales rates may impair Gen's ability to meet its operating obligations at Diablo and/or other Portfolio facilities.

20. TANC has a 79% interest in the COTP, the third high voltage link between California and the Pacific Northwest, which became operational on March 17, 1993. TANC is the Project Manager of the COTP and coordinates its use of the COTP both among its Members, and with other COTP Participants, under agreements which may be impacted or affected by PG&E's filing herein. The COTP is interconnected and operated in coordination with facilities which have been turned over to the Operational Control of the California Independent System Operator Corporation ("ISO") by PG&E, Southern California Edison Company ("Edison"), San Diego Gas & Electric Company ("SDG&E") and the City of Vernon, California ("Vernon"). TANC has an agreement with PG&E known as the SOTP under which TANC is entitled to use 300 megawatts of firm bidirectional service on PG&E's transmission system between PG&E's Tesla and Midway substations. TANC's Entitlement to the South of Tesla transmission service is fully allocated to certain Members of TANC. PG&E has agreed to act as the Scheduling Coordinator in connection with schedules utilizing TANC's SOTP's rights. Additionally, PG&E coordinates the operation of the COTP and the Pacific AC Intertie under the terms of the Coordinated Operations Agreement ("COA"), a FERC tariff which was filed jointly by PG&E, Edison and SDG&E and accepted and approved by the FERC in

Opinion Nos. 389[5/] and 389-A.[6/] In light of these above-described rights, responsibilities and agreements, it is clear that TANC has a compelling interest in PG&E's rates, operations, long-term planning procedures, protocols and agreements which will affect the use of the COTP, and TANC has both a unique and particular interest in the matters addressed in the immediate filing. Redding, Santa Clara, Palo Alto and MID are members of TANC and thus, share TANC's interests in this proceeding.

21. Santa Clara has several contracts with PG&E that will be impacted by the disaggregation of assets contemplated by this proceeding, particularly the Grizzly Development and Mokelumne Settlement Agreement ("Grizzly Agreement"), in relation to which PG&E and Santa Clara are co-licensees of the Bucks Creek hydroelectric project and the Santa Clara/PG&E IA under which PG&E is interconnected with the Santa Clara electric system and provides services to Santa Clara. Santa Clara also purchases a portion of its power requirements from Western, which power is delivered to Santa Clara under Western's contracts with PG&E.

22. Redding purchases a portion of its power requirements from Western. While Redding is not interconnected with PG&E and does not rely directly on PG&E for transmission service, the rates for power under Contract 2948A may be affected by the outcome of the Bankruptcy proceeding. Redding's rights as a Member of TANC and an M-S-R Member will also be impacted by the implementation of the POR and the approval of the Application filed herein.

5/ *Pacific Gas and Electric Co., et al.*, 67 FERC ¶ 61,239 (1994) ("Opinion No. 389").

6/ *Pacific Gas and Electric Co., et al.*, 85 FERC ¶ 61,230 (1998) ("Opinion No. 389-A").

23. Palo Alto accesses and uses PG&E's transmission facilities through the IA between the NCPA (of which Palo Alto is a Member) and PG&E and purchases a portion of its power requirements from Western under Western's Contract No. 2948A with PG&E. Palo Alto also operates a gas distribution system and is interconnected with, and dependent upon, PG&E's gas pipeline facilities.

24. M-S-R and its Members have an allocation of TANC's SOTP rights which may be impacted by this proceeding.

25. As stated above, MID is a fully-integrated, load serving, publicly owned utility in Northern California, interconnected with PG&E's transmission system under the PG&E/MID IA. As explained above, MID's transmission facilities include a percentage share of TANC's Entitlement to capacity on the COTP and an allocation of TANC's Entitlement to transmission service under the SOTP.

26. As noted above, Trinity purchases all of its power and energy from Western under Western's Contract No. 2948A with PG&E under which PG&E provides transmission service for the delivery of Western power to Trinity, which will be affected by the Applicants' filing.

27. For all the above reasons, TANC, Redding, Santa Clara, Palo Alto, M-S-R, MID and Trinity have an interest in this proceeding and a right to intervene to protect their interests as they may appear. Their participation in this case is necessary and appropriate to the administration of the AEA and will be in the public interest. Their interests will be affected by this proceeding and will not be adequately represented by any other party. TANC, Redding, Santa Clara, Palo Alto, M-S-R, MID and Trinity, therefore,

request the Commission to grant their Petition for Leave to Intervene and make them parties to this proceeding.

V. COMMENTS

A. Stanislaus Commitments

28. The Stanislaus Commitments arose out of PG&E's proposed development of two nuclear generating projects. In 1976, PG&E, as part of its efforts to secure licensing for two nuclear power projects (Stanislaus Nuclear Project and Diablo Canyon Nuclear Project), agreed, in the so-called "Stanislaus Commitments," to certain licensing conditions to resolve an ongoing dispute over providing transmission services, power sales, interconnection arrangements and other services to "Neighboring Distribution Systems" and "Neighboring Entities." MID, SVP, Redding, Palo Alto and Trinity PUD are "Neighboring Distribution Systems" and/or "Neighboring Entities." The Stanislaus Commitments have a term extending at least through January 1, 2050.

29. Initially, the Stanislaus Commitments were set forth in an April 30, 1976 letter and related attachments from John F. Bonner (then President of PG&E) to the Assistant Attorney General, Antitrust Division, United States Department of Justice. PG&E's letter to the Department of Justice made clear PG&E's obligation to provide transmission service, power sales services and related services to Neighboring Distribution Systems and Neighboring Entities. Those obligations are embodied in NRC Antitrust conditions.

30. While the Stanislaus Project was never constructed, the Stanislaus Commitments were included as part of the NRC license for PG&E's Diablo Canyon

Nuclear Project.[7/] In the Stanislaus Commitments, PG&E agreed to provide the following services, among others:

A. The requirement that interconnection agreements provide for reserve coordination in which each of the parties maintains adequate reserves for its estimated peak firm load, and specifying that (except in specified circumstances which are not relevant) a Neighboring Entity shall not be required to carry reserves higher than those of PG&E, and PG&E is obligated to sell capacity to a Neighboring Entity for use as reserves if the capacity is available. *See* Stanislaus Commitments, §§ III (A), (B) and (C).

B. The requirement that PG&E offer to coordinate maintenance schedules with a Neighboring Entity, and to exchange or sell maintenance capacity and energy when available. *See id.*, § III (E).

C. The requirement that PG&E sell emergency power to a Neighboring Entity if that Neighboring Entity maintains the level of minimum reserves agreed to (and vice-versa). *See id.*, § IV.

D. The requirement that (when it has adequate generation available) PG&E offer to sell firm, full or partial requirements power to Neighboring Distribution Systems or Neighboring Entities. *See id.*, § VI.

E. The requirement that PG&E transmit power pursuant to interconnection agreements for a Neighboring Entity and/or a Neighboring Distribution System, and/or others dealing in bulk power supply. See id., § VII(A).

F. The requirement that PG&E shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission capacity as may be required by a Neighboring Entity. See id. § VII(B).

G. The requirement that all rates, charges, terms and practices are and shall be subject to the acceptance and approval of

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7/ While the Antitrust Conditions maintain the "Stanislaus Commitments" moniker, those Conditions are applicable to the Diablo Canyon Nuclear Project license.

> any regulatory agencies or courts having jurisdiction over them. See id., § IX(A).

The Stanislaus Commitments are in effect and PG&E retains the obligations briefly described above.

31. Currently, these substantial transmission and generation obligations reside with PG&E. However, in the post- reorganization world, reorganized PG&E will have neither the generation nor the transmission capabilities to satisfy the Stanislaus Commitments. To attempt to remedy this failure, reorganized PG&E proposes that the reorganized PG&E (albeit hobbled by the reorganization) retain its obligations under the Stanislaus Commitments and that Gen and ETrans be added as Diablo Canyon licensees subject to the Stanislaus Commitments antitrust conditions and that reorganized PG&E, Gen and ETrans will be jointly and severally responsible for those conditions. *Application* at 12-14.

32. The Petitioners have at least four concerns with respect to PG&E's proposal on the Stanislaus Commitments.

33. First, while the PG&E Application states that PG&E's, Gen's and ETrans' liability will be joint and several, the mark-ups of the proposed license, at Enclosures 4 and 5, do not clearly state that the obligations are joint and several. "Joint and several" language should be added to the proposed license to clarify the status of PG&E's, Gen's and ETrans' responsibility. If desegregation occurs and there is no clear joint and several obligation, choosing the PG&E affiliate which is responsible for performing a specific aspect of the Stanislaus Commitments could devolve into a risky shell game of identifying the appropriate affiliate.

34. Second, at page 13 of the Application, PG&E states that it is proposing this joint and several liability among PG&E, Gen and ETrans to "preserve as nearly as possible the current antitrust obligations." *Id.* at 13. Thus, PG&E intimates that its antitrust obligations in the post-reorganization world may differ from its current obligations. PG&E should be required to specify in what fashions its obligations may change as a result of the reorganization.

35. Third, it is not clear at all that PG&E/Gen/ETrans can provide firm transmission after its reorganization. Section VII(A) of the Commitments requires PG&E to transmit power pursuant to interconnection agreements "with provisions which are appropriate to the requested transaction...." That is, firm power sales or purchases must be supported by firm transmission. Under the ISO regime, "firm transmission" is not firm in the traditional sense, but rather is subject to a series of constraints. PG&E must be required to establish how it will provide truly "firm transmission" in the post-reorganization world either through its own rights and efforts or through Gen and/or ETrans.

36. Fourth, in the instant Application, at 13, PG&E states that it will retain the Stanislaus Commitments antitrust conditions "at this time." PG&E should be required to state for how long it intends to retain responsibility for the antitrust license conditions and to describe the circumstances under which its responsibility may change.

37. In brief conclusion to this aspect of the Petitioners' Comments, they state that, while PG&E proposes to extend joint and several responsibility for the Stanislaus Commitments antitrust conditions to Gen and ETrans, as shown above, it is not clear how and to what extent PG&E intends to perform the obligations. Particularly

since the Stanislaus Commitments extend until at least 2050, the NRC must confirm and require that PG&E's proposed reorganization will not result in any diminution of PG&E's obligations under the Stanislaus Commitments or of its ability to perform them.

B. OTHER CONCERNS

38. The intervenors have additional concerns related to the technical and financial ability of the proposed licensees to comply with the obligations and conditions of the licenses. Those concerns include:

A. The PSA, as proposed, will lock in the rates Gen receives from PG&E for 12 years. The rates may be inadequate to meet Gen's operating expenses and decommissioning expenses. The lack of publicly available information regarding Gen's projected expenses casts further doubts on Gen's financial qualifications.

B. Gen does not intend to contribute to the decommissioning trust funds. The assumption that the current funds in the decommissioning trusts will meet the decommissioning expenses without any additional contributions by Gen raises concerns. The CPUC's approval of contributions of $24 million as recently as last year, raises concerns as to why contributions are no longer necessary. PG&E's filings with the CPUC and its decommissioning study for the Diablo units may also shed light on the actual expected level of decommissioning expenses, as opposed to the general regulatory minimums PG&E uses for comparison.

C. As noted in the request for deferral in Part VI, hereof, the pending review of the POR, or components thereof, by the Bankruptcy Court, FERC, CPUC, SEC and IRS create a shifting sand foundation on which to make any decision regarding the license application.

D The arrangements for service contracts have not been made, and it is unclear if PG&E will transfer sufficient employees to Gen to provide the required technical qualifications to operate in accordance with the licenses.

39. The Commission should consider each of these matters in its determination of the issues in this proceeding.

VI. REQUEST FOR DEFERRAL

40. With all due respect for the exigencies and problems created by PG&E's current bankruptcy proceeding,[8] and PG&E's proposed POR under Chapter 11 of the Bankruptcy Code, PG&E's Application is demonstrably premature, and the Petitioners respectfully request the Commission to hold the filings in abeyance, and defer the adoption of a procedural schedule and hearing dates, for the reasons set forth herein below.

41. The Application made herein seeks to implement those components or elements of PG&E's POR which are subject to the jurisdiction of the NRC under the AEA. Namely, the transfer and amendment of licenses to operate the Diablo Canyon Nuclear Power Plant. That transfer is only worthy of consideration by this Commission if the Bankruptcy Court approves the POR. At present there is considerable opposition to the POR, and the Bankruptcy Court is permitting the CPUC to file the details of its proposed competing plan. Accordingly, there is a substantial likelihood that the subject transfer of assets will not be consummated, at least not in the proposed form. It would be a waste of this Commission's resources to hold hearings and decide the present application prior to bankruptcy Court approval of the POR.

42. As noted above, the CPUC also has jurisdiction over the transfer of some of PG&E's assets. Even if the Bankruptcy Court approves the POR, the

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8/ *In re Pacific Gas and Electric Company*, United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 01-30923 DM.

Bankruptcy Court has not indicated it will use its authority to bypass state and local governmental approvals under Section 1123 of the Bankruptcy Code. As such, even if the Bankruptcy Code approves the POR, the Application is premature since PG&E has not secured (nor sought) necessary state approvals.

43. The Application recognizes that the PSA requires FERC approval, and is subject to change before it is executed. *Application* at 9, n.6. The PSA forms the financial cornerstone of the Application. *See id.* At 9. If the PSA is rejected or substantially modified the financial projections on which Gen bases its Application will be inaccurate at best.

44. Other aspects of the Application demonstrate it is premature as well. Gen will rely on as yet uncompleted arrangements for services to and from PG&E to meet its technical qualifications requirements. *Application* at 7-8. It appears that the plans for operating the Plant are not yet solidified, yet an Application is filed. Without the service agreements it is impossible to determine if Gen will have the technical qualifications to operate the Plant, or if it does, how much it will cost it to do so.

45. For all of the above reasons, and in the interest of administrative economy, Petitioners request that the Commission issue an order holding this Application in abeyance at least pending final approval of the POR by the Bankruptcy Court.

VII. REQUEST FOR HEARING

46. Petitioners respectfully request that the Commission hold a hearing on the disputed issues of fact raised in this proceeding. As described in detail above, PG&E's application raises numerous issues of fact which require the Commission to set these matters for hearing.

47. Inasmuch as Petitioners have requested the Commission to hold PG&E's Application in abeyance pending the final adoption of the POR by the Bankruptcy Court, the Petitioners request that the Commission order a hearing in this proceeding, but defer adoption of a procedural or hearing schedule until the POR is finally approved.

VIII. RESERVATION OF RIGHTS

48. The foregoing represents the Petitioners' initial analysis of, and objections to, Gen's filing in this proceeding. The Petitioners reserve the right to posit additional issues based upon additional information developed during the course of this proceeding, or otherwise. Additionally, the Petitioners reserve the right to supplement this Petition based on changes in PG&E's POR made either voluntarily or by mediation, or required by the Bankruptcy Court, the FERC, the CPUC, the Securities and Exchange Commission or the IRS, which result in supplemental filings with this Commission by PG&E.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Transmission Agency of Northern California, the City of Redding, California, the City of Santa Clara, California, the City of Palo Alto, California, the M-S-R Public Power Agency, the Modesto Irrigation District and the Trinity Public Utility District respectfully request that the Commission grant the following relief:

1. Grant the Transmission Agency of Northern California's, the City of Redding, California's, the City of Santa Clara, California's, the City of Palo Alto, California's, the M-S-R Public Power Agency's, the Modesto Irrigation District's and the Trinity Public Utility District's Petitions for Leave to Intervene and order that they each be allowed to participate fully as a party to these proceedings;

2. Ensure that PG&E's obligations under the Stanislaus Commitments remain fully in force, whether performed by reorganized PG&E and/or PG&E affiliates, and remain unaffected by the proposed reorganization;

3. Defer any action on PG&E's request until the United States Bankruptcy Court has approved a final Plan or Reorganization;

4. If the Request for Deferral is denied, set the proceeding for hearing; and

5. Grant such other relief as the Commission may deem necessary and appropriate.

Dated: February 6, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first class mail, postage prepaid upon each person designated on the official service list compiled by the Secretary of the Nuclear Regulatory Commission in this proceeding.

Dated at Washington, D.C., this 6th day of February, 2002.

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