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DOCKETED
USNRC

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

2002 MAY 13 PM 2: 57

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of
Pacific Gas and Electric Company
Application for License Transfers and
Conforming Administrative License
Amendments for Diablo Canyon Power
Plant, Units 1 and 2

Docket Nos. 50-275, 50-323

**FURTHER BRIEFING OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION ON THE QUESTIONS POSED BY THE NUCLEAR
REGULATORY COMMISSION ON APRIL 12, 2002**

Pursuant to Memorandum and Order CLI-02-12, issued by the Nuclear Regulatory Commission ("Commission") in this matter on April 12, 2002, the Public Utilities Commission of the State of California ("CPUC") hereby provides the Commission with the further briefing it requested on the following question:

"Have recent filings in PG&E's bankruptcy proceeding had any effect on the pending motions to hold this license transfer in abeyance?"

As the Commission is already aware, on April 6, 2001, Pacific Gas and Electric Company ("PG&E") filed a petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court").

In previous filings with the Commission in this matter,¹ the CPUC has explained why the Commission should dismiss the Application submitted in the above-captioned dockets, or, at the very least, to hold the Application in abeyance pending final action by the Bankruptcy Court. Of particular importance in this regard (as was noted in the CPUC's March 1, 2002 filing herein) is the fact that on February 27, 2002, the Court terminated PG&E's exclusive right to file a plan under section 1121 of the Bankruptcy Code, and permitted the CPUC to file an alternate plan of reorganization for PG&E by April 15, 2002.

Recent Developments and Schedule

On April 15, 2002, the CPUC did file with the Bankruptcy Court a Disclosure Statement for its Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for PG&E ("CPUC Plan"), which sets forth the manner in which claims against and equity interests in PG&E would be treated under the CPUC Plan. A copy of the CPUC Plan and Disclosure Statement and any revisions and updates² are available at the CPUC's website

¹ See, Petition of the California Public Utilities Commission for Leave to Intervene, and Motion to Dismiss Application, or, in the Alternative, Request for Stay of Proceedings, and request for Subpart G Hearing Due to Special Circumstances, filed in this matter on February 5, 2002; the Renewed Motion to Dismiss Applications, or in the Alternative, to Hold Applications in Abeyance, and Notice of Bankruptcy Court Ruling, that was filed on February 11, 2002; and Reply of the Reply of the California Public Utilities Commission ("CPUC") to the Answer of Pacific Gas & Electric Company to the CPUC's Petition to Intervene, Motion to Dismiss Application, Etc., that was filed in this matter on February 20, 2002.

2. In order to address objections from other parties, the April 15, 2002 CPUC Plan and Disclosure Statement was amended in a number of relatively minor respects, and on May 8, 2002, the CPUC lodged an amended Disclosure Statement with the Court. The CPUC may further amend, modify or supplement its Plan and Disclosure Statement in a continuing effort to address the objections of other parties. It is not atypical for parties to file amended disclosure statements and plans in complex bankruptcy matters such as PG&E's. We accordingly note that PG&E filed its first Disclosure Statement and Plan in September 2001, its first Amended Disclosure Statement in December 2001, and its second amended Disclosure Statement in March 2002. Between the date of those filings, and also between March 7 and April 8,

at: www.cpuc.ca.gov. A brief summary of the CPUC Plan, as filed with the Bankruptcy Court, is attached hereto as Exhibit A.³

Other important milestones in the PG&E bankruptcy proceeding since the CPUC last briefed the Commission on this issue on March 1, 2002, are the following:

- After several hearings on objections to its disclosure statement, the Court approved PG&E's Disclosure Statement for its Plan of Reorganization on April 24, 2002.
- On May 9, 2002, the Court held a hearing on objections to the CPUC Plan and Disclosure Statement. This hearing was continued to May 15, 2002, in order to resolve the remaining objections.

The expected next steps in the proceeding are the following:

- The Court has set an expedited schedule for the processing of the two competing Plans, with June 17, 2002 being the target date for sending out a joint ballot to creditors and solicitation of votes for the competing plans. Under the Court's procedures, creditors may vote for both plans, but may express a preference for one plan.
- After a 45-60 day vote solicitation period, we expect that votes will be counted at the end of August. After votes are counted and certified, then we will proceed to confirmation hearings, probably in September.

2002, when the Court approved PG&E's Disclosure Statement for dissemination, PG&E lodged several revisions to its Disclosure Statement with the Court. In this regard, it is important to recall that PG&E's March 7, 2002 filing was necessitated by the Court's ruling on February 7, 2002 that it would not approve PG&E's Disclosure Statement in its then-current form. The CPUC brought the Court's February 7 ruling to the Commission's attention in the Renewed Motion to Dismiss Applications, or in the Alternative, to Hold Applications in Abeyance, and Notice of Bankruptcy Court Ruling that was filed in this matter on February 11, 2002.

³ Exhibit A sets forth the text of the Summary of the CPUC's Plan, as set forth at pages 5-7 of the Disclosure Statement that the CPUC lodged with the Bankruptcy Court on May 8, 2002.

The CPUC is optimistic that the Bankruptcy Court will approve the Disclosure Statement for the CPUC Plan soon after the May 15, 2002 hearing on its Disclosure Statement, and that the schedule set forth above will proceed accordingly.

The PG&E Plan Is Not Confirmable; the CPUC Plan Is

The CPUC will be vigorously objecting to PG&E's plan during the confirmation hearings that are expected to start this coming September. Specifically, the CPUC will object to PG&E's plan on grounds that it is unlawful, that it is incapable of being confirmed, and that there is a hidden rate increase contained in PG&E's plan. PG&E's plan is not confirmable, because, among other reasons, it unjustifiably and illegally preempts state law. The detailed explanation of why this is so was presented in Exhibit C to the CPUC's initial February 5, 2002 filing in this matter and will not be repeated here.

By contrast, the CPUC Plan pays creditors in full and returns PG&E to investment grade no later than January 31, 2003. The CPUC firmly believes that its Plan is better for ratepayers, for California's economy and environment, as well as for PG&E's creditors.

The CPUC Plan has the following advantages to ratepayers:

- It restores PG&E's financial viability and allows PG&E to resume purchasing power for its customers by January 2003.
- There is no rate increase.
- Rates can decrease after PG&E's emergence from bankruptcy.
- It protects ratepayers from \$8.6 billion in higher generation rates under PG&E's plan.

- It avoids taking nearly \$5 billion from ratepayers due to the transfer of valuable assets from PG&E to its shareholders under PG&E's plan.
- It avoids harmful environmental consequences.
- The utility remains integrated and subject to State and Federal laws.
- It ensures safety and reliability of service from an integrated utility.
- PG&E shareholders contribute a total of \$3.35 billion:
 - \$1.6 billion in foregone profits during 2001, 2002, and January 2003;
 - \$1.75 billion from the sale of PG&E common stock.
- It provides for return to cost-of-service ratemaking after allowed claims are paid in full, reinstated and/or refinanced provides security for consumers and investors.

The CPUC Plan has the following advantages for Creditors:

- It provides full payment of debts in cash to creditors sooner than under PG&E's plan and no one is paid with notes.
- It avoids lengthy state jurisdiction battle and related litigation that would result from PG&E's illegal plan.

For the foregoing reasons, the CPUC Plan is in all respects superior to the PG&E plan, and the CPUC is hopeful that the Bankruptcy Court will ultimately confirm its Plan rather than the defective PG&E plan.

The Commission Should Continue to Hold This Matter in Abeyance

As the foregoing discussion of the developments in the PG&E bankruptcy case that have transpired since the CPUC's latest briefing to the Commission on the matter on March 1, 2002, there continues to be no reason for this Commission to act on PG&E's pending Application. There are now two plans of reorganization submitted to the

Bankruptcy Court: (1) PG&E's defective plan, which continues to raise serious legal and constitutional problems that cloud its ability to be implemented; and (2) the CPUC Plan, which provides for full payment of all of PG&E's creditors without posing the legal and jurisdictional problems that are an intrinsic element of the PG&E plan.

Most importantly for this Commission's purposes, however, under the CPUC Plan, PG&E would retain ownership of DCPD. No license transfer would be required. No Commission approvals would be required. This Commission's jurisdiction would not be invoked.

It accordingly makes no practical or common sense for the Commission to move forward on PG&E's Application in this matter at this time. Until the Bankruptcy Court approves one or the other of the two completing plans of reorganization that are currently before it, the underlying threshold issue in this case, namely, whether DCPD even requires a license transfer at all, remains unresolved. It would be a waste of administrative resources for the Commission, its staff, as well as for the CPUC and all the other parties who are vitally interested in the outcome of this matter, to participate in any proceedings on PG&E's Application for a license transfer, when there remains substantial and reasonable doubt that any such license transfer will ever be required.

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The Commission should accordingly continue to hold any proceedings in this matter in abeyance, at least until the Bankruptcy Court has made a decision on which of the two competing plans of reorganization it will confirm.

May 10, 2002

Respectfully submitted,

GARY M. COHEN, General Counsel
AROCLES AGUILAR, Asst. General Counsel
LAURENCE G. CHASET, Staff Counsel

/s/ LAURENCE G. CHASET

Laurence G. Chaset
Staff Counsel

Public Utilities Commission of the State of
California
505 Van Ness Avenue
San Francisco, California 94102

Attorneys for the Public Utilities Commission
of the State of California

EXHIBIT A

(All uses of the term, "Commission," in the attached Exhibit refer to the California Public Utilities Commission.)

Summary Of The Plan Of Reorganization

On April 9, 2002, the Commission approved the filing and prosecution of the Plan by a unanimous 5-0 vote. The Commission developed its Plan to restore the Debtor's financial viability and to provide for the payment in full of all Allowed Claims at the earliest possible date. See Section VI.B of this Disclosure Statement for detailed information regarding the payment of Allowed Claims. In short, the Commission's Plan seeks to provide the Debtor with the means to repay in full in Cash (with interest) the short term indebtedness incurred by the Debtor during California's energy crisis. Much of the Debtor's long term indebtedness would remain outstanding and be satisfied through the reinstatement of such indebtedness.

The Commission's Plan provides the Debtor with a purely economic solution to its financial difficulties. Under it, the Debtor's business and operations would remain fully integrated and would continue in all respects to be subject to applicable state and local laws and regulations. In fact, the Plan does not provide for any changes in the Debtor's regulatory environment; none are necessary to the Debtor's reorganization. Upon its emergence from chapter 11, the Debtor will continue to be regulated by the Commission in a manner that will allow it to recover its reasonable, prudently incurred costs of service through rates and will have an opportunity to earn a reasonable rate of return. The statutory rate freeze, which ended on March 31, 2002, no longer stands as an obstacle to the Debtor's cost recovery. Under California regulation, a regulated utility may also propose other regulatory approaches for the Commission's consideration.

The Commission's Plan relies, in large part, upon the "headroom" in rates enjoyed by PG&E since at least June 2001. This "headroom," which represents the positive difference between the Debtor's retail electric rates and operating costs, including its wholesale power procurement costs, has allowed the Debtor to stockpile massive amounts of Cash which may now be used to repay creditors. In addition, to satisfy the funding gap between the Allowed Claims to be paid on the Effective Date pursuant to the Plan and the Debtor's projected available Cash, the Commission's Plan provides for the Debtor's issuance and sale, through one or more

public or private offerings, of new debt and equity securities, namely, Reorganized Debtor New Money Notes and Common Stock in the Reorganized Debtor. The Commission believes that the sale of these securities, when combined with the Debtor's available Cash upon its emergence from bankruptcy, and the liquidity under its Exit Facility will provide the Debtor with the means to repay its creditors in full and emerge as a viable entity.

The purpose of the Commission's Plan is to enable the Debtor to pay all Allowed Claims in full and emerge from chapter 11 with a strong and sustainable business so that the Debtor's customers can once again be assured of a safe and reliable supply of electricity and gas. It is expected that the Plan will also restore the Debtor to an investment grade credit upon its emergence from chapter 11, thus providing the necessary assurance that the Reorganized Debtor will be able to service the debt issued in connection with or reinstated under the Plan. The Commission is committed to this aspect of the Plan and has included it as a condition precedent to the Plan's Effective Date. The investment grade condition is waivable only after notice and hearing.

The Commission believes that its Plan is workable, fair and in the public interest. The Plan enables the Reorganized Debtor to regain financial viability and to resume full procurement of power for its retail customers. In doing so, the Plan calls for contributions from each of the Reorganized Debtor's significant constituencies: the Reorganized Debtor itself, its ratepayers, and its Parent, which is required under the Plan to contribute to the solution through a dilution in its ownership interest in the Reorganized Debtor. In addition, the Plan requires the Reorganized Debtor to remain subject to Commission and State regulation.

The Commission believes that the Plan will enable the Debtor to reorganize successfully its business consistent with, and in furtherance of, the objectives of chapter 11, and that acceptance of the Plan is in the best interests of the Debtor, its creditors and all parties in interest.

CERTIFICATE OF SERVICE

I hereby certify that in accordance with the Commission's regulation at 10 CFR 2.1313, I have this day caused the foregoing document be served upon the parties by mailing by first-class mail a copy thereof properly addressed to each such party:

Dated at San Francisco, California, this 10th day of May, 2002.

/s/ LAURENCE G. CHASET

Laurence G. Chaset

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 10, 2002

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudication Staff

Re: In the Matter of Pacific Gas and Electric Company Application for License Transfers and Conforming Administrative License Amendments for Diablo Canyon Power Plant, Units 1 and 2, Docket Nos. 50-275, 50-323

To Whom It May Concern:

Enclosed for filing in the above-docketed case, please find an electronic version of a document entitled "**FURTHER BRIEFING OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION ON THE QUESTIONS POSED BY THE NUCLEAR REGULATORY COMMISSION ON APRIL 12, 2002.**"

The original, signed version of this filing, plus an additional hard copy is being sent to you via Federal Express this afternoon. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Laurence G. Chaset".

Laurence G. Chaset
Staff Counsel

Enclosure