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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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**BEFORE THE COMMISSION**

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of: )  
 )  
Pacific Gas and Electric Co. )  
 )  
(Diablo Canyon Power Plant, )  
Units 1 and 2) )

Docket Nos. 50-275-LT  
50-323-LT

**BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY IN RESPONSE TO  
COMMISSION MEMORANDUM AND ORDER CLI-02-12**

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COMMISSION MEMORANDUM AND ORDER CLI-02-12

I. INTRODUCTION

In its Memorandum and Order, CLI-02-12, issued on April 12, 2002, the Commission invited the applicant and the petitioners in this license transfer proceeding to address two questions:

1. What is the Commission's authority under the Atomic Energy Act to approve the proposed license transfers and related license amendments where the current licensee (PG&E) as well as a company engaged solely in transmission activities would not, after the transfer, be engaged in activities at Diablo Canyon requiring a license, yet would remain or become named licensees on the Diablo Canyon licenses?
2. Have recent filings and developments in PG&E's bankruptcy proceeding had any effect on the pending motions to hold this license transfer proceeding in abeyance?

Pacific Gas and Electric Company ("PG&E") herein answers the two questions. PG&E demonstrates that: (1) in the specific circumstances presented by the proposed license transfer here at issue, the Commission has the authority to approve the license transfer and, in furtherance of its antitrust jurisdiction, to name in the license certain successor transmission and

distribution entities for the limited purpose of continued compliance with the existing antitrust license conditions; and (2) there have been no developments in PG&E's bankruptcy proceeding that would warrant holding this NRC license transfer proceeding in abeyance and therefore the pending motions should be denied.

## II. BACKGROUND

This proceeding relates to PG&E's application for NRC approval, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended ("AEA") and 10 C.F.R. § 50.80, of a proposed direct transfer of the operating licenses for the Diablo Canyon Power Plant, Units 1 and 2 ("DCPP"). In PG&E's application, dated November 30, 2001, PG&E requested the NRC's approval of the transfer of the DCPP operating licenses in support of a comprehensive Plan of Reorganization ("Plan") for PG&E. The Plan, which provides for a disaggregation and restructuring of PG&E's four business lines, will allow PG&E to pay allowed claims in full, with interest, restore equity value, continue the employment of its current work force, and emerge from Chapter 11 as a financially viable company.

On April 24, 2002, the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court") entered an Order (the "Disclosure Statement Order") approving PG&E's Disclosure Statement dated April 19, 2002 (the "Disclosure Statement") relating to the Plan, after determining that it contained "adequate information" as required under Section 1125(a) of the Bankruptcy Code to allow holders of allowed claims and allowed equity interests to make an informed judgment whether to vote to accept or reject the Plan.<sup>1</sup> Subject to the scheduling of certain deadlines and other proceedings, approval of the Disclosure Statement,

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<sup>1</sup> A copy of the Disclosure Statement Order is annexed hereto as Attachment A.

a necessary predicate to solicitation of votes on the Plan, permits PG&E to move forward with confirmation proceedings for its Plan.

Under the Plan, PG&E will divide its operations and the assets of its business lines among four separate operating companies. The majority of the assets and liabilities associated with the PG&E's electric transmission business will be contributed to ETrans LLC ("ETrans"); the majority of PG&E's gas transmission assets and liabilities will be contributed to GTrans LLC ("GTrans"); and the majority of the assets and liabilities associated with PG&E's generation business, including DCP, will be contributed to Electric Generation LLC ("Gen") or to its subsidiaries. Ownership of DCP will be assigned to a wholly-owned subsidiary of Gen, Diablo Canyon LLC ("Nuclear").

After some intermediate steps described in the license transfer application, ETrans, GTrans and Gen will, under the Plan, become indirect wholly-owned subsidiaries of PG&E Corporation (which will change its name). Reorganized PG&E will retain most of the remaining assets and liabilities, and will continue to conduct local electric and gas distribution operations and associated customer services. Reorganized PG&E will be separated ("spun off") from re-named PG&E Corporation.

The DCP operating licenses presently include antitrust license conditions (the so-called "Stanislaus Commitments").<sup>2</sup> With respect to these antitrust license conditions, PG&E is not proposing any substantive changes. Rather, the antitrust license conditions would be carried forward intact. Gen, ETrans, and Reorganized PG&E would be licensees specifically responsible for the antitrust conditions. (ETrans and Reorganized PG&E would be licensees

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<sup>2</sup> The Stanislaus Commitments originally resulted from a statement of commitments by PG&E to the United States Department of Justice in 1976 that were included in the DCP

solely for the purpose of the antitrust conditions. Gen and Nuclear would be licensees by virtue of the fact that they would, respectively, operate and own the DCPD units.) In effect, for NRC enforcement purposes with respect to the antitrust conditions, Gen, ETrans and Reorganized PG&E would be jointly and severally responsible for the antitrust conditions. PG&E's proposal was specifically supported by the Northern California Power Agency ("NCPA") in its conditional request for hearing and petition to intervene in this license transfer matter.<sup>3</sup> The proposal was also, in effect, supported (subject to certain comments such as that the "joint and several" responsibility should be more express in the license) in the petition of the Transmission Agency of Northern California ("TANC"), et al.<sup>4</sup>

In the NRC's *Federal Register* notice on the DCPD license transfer application, the NRC raises the possibility of an alternative to PG&E's proposal with respect to the DCPD antitrust license conditions. The NRC's notice states:

Notwithstanding the proposed changes to the antitrust conditions proffered as part of the amendments to conform the licenses to reflect their transfer from PG&E to Gen and Nuclear, the Commission is considering specifically whether to approve either all of the proposed changes to the conditions, or only some, but not all, of the proposed changes, as may be appropriate and consistent with the Commission's decision in *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 466 (1999). In particular, the Commission is considering

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operating license. References to the Stanislaus Commitments and the DCPD antitrust license conditions are, substantively, interchangeable.

<sup>3</sup> See "Petition of the Northern California Power Agency for Leave to Intervene, Conditional Request for Hearing and Suggestion that Proceeding Be Held In Abeyance," dated February 6, 2002 ("NCPA Petition"), at 19, 28-29.

<sup>4</sup> See "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," dated February 6, 2002 ("TANC Petition"), at 19-21.

approving only those changes that would accurately reflect Gen and Nuclear as the only proposed entities to operate and own Diablo Canyon.

Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing, 67 Fed. Reg. 2455, 2456 (Jan. 17, 2002). This language reflects that the Commission is considering an alternative whereby only Gen and Nuclear would be the DCPD licensees and therefore would be the only entities directly responsible to the NRC for compliance with the antitrust conditions.

To be clear, PG&E has no objection to the alternative proposal described in the *Federal Register* notice. If Gen<sup>5</sup> is designated as the only entity directly responsible to the NRC as the licensee with respect to the antitrust conditions, Gen, ETrans, and Reorganized PG&E will continue to have obligations to meet the Stanislaus Commitments. Regardless of which entities are named in the NRC license, Gen, ETrans, and Reorganized PG&E will execute an agreement whereby these three entities will be jointly and severally responsible to each other for the antitrust conditions. The agreement will also designate with respect to each of the antitrust conditions which of the three entities will have primary functional responsibility for meeting the obligation. Accordingly, the antitrust conditions will not be substantively changed.<sup>6</sup>

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<sup>5</sup> PG&E is not proposing that Nuclear be assigned responsibility for the antitrust license conditions. While Nuclear would hold the ownership interest in the DCPD units, Nuclear would be a wholly-owned subsidiary of Gen. Gen would have day-to-day responsibility for operation of the units. *See also* NCPA Petition at 25.

<sup>6</sup> The contractual arrangement between Gen, ETrans, and Reorganized PG&E will be consistent and in accordance with a Stipulation that PG&E, NCPA and Palo Alto have agreed to submit to the Bankruptcy Court as a settlement. The Stipulation provides that PG&E will assign the 1991 Settlement Agreement to Reorganized PG&E, ETrans, and Gen, and that those entities will be jointly and severally responsible for the commitments. The Stipulation also identifies which of the three businesses will have primary responsibility for arranging to provide each of the various services referred to in the Stanislaus Commitments.

Nonetheless, as discussed previously by PG&E in this proceeding, and as discussed below, PG&E finds the NRC's proposed alternative with respect to the DCPD antitrust licensees to be unnecessary.<sup>7</sup> To the extent that PG&E's original proposal is more satisfactory to at least some of the petitioners in this matter, PG&E continues to support the original proposal. Specifically, PG&E's proposal appears to eliminate any material dispute that might otherwise exist with respect to matters identified in the NCPA and TANC Petitions.

### III. DISCUSSION

#### A. The NRC Has the Authority To Designate ETrans and Reorganized PG&E as Licensees for the Limited Purpose of the Existing Antitrust Conditions

There is no dispute that PG&E's proposal with respect to the existing DCPD antitrust license conditions is consistent with the proposed disaggregation of PG&E's current businesses, in that Reorganized PG&E and ETrans will control the distribution and transmission assets, respectively. Gen, as a generating entity, will not be in a position to comply in its own right with many of the current antitrust conditions, given that many of those conditions relate to transmission and distribution functions. Likewise, Nuclear will be a company whose single purpose, as a subsidiary of Gen, is to hold the ownership interest in DCPD.<sup>8</sup>

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<sup>7</sup> See "Answer of Pacific Gas and Electric Company to Northern California Power Agency Request for Hearing and Suggestion that Proceeding be Held in Abeyance," dated February 15, 2002, at 11-14. PG&E also concludes that there is no dispute between NCPA and PG&E that would form the basis for a Subpart M hearing at the NRC. See 10 C.F.R. § 2.1306(b)(2)(iv). PG&E urges the Commission to adopt PG&E's proposal, mooting NCPA's conditional hearing request issue.

<sup>8</sup> As discussed in the license transfer application (at 13), PG&E is currently a participating transmission owner in the California Independent System Operator ("ISO"), the entity that operates and controls most of the electric transmission facilities owned by the State's three major investor-owned utilities and provides open access to electric transmission services on a non-discriminatory basis. The ISO uses PG&E's transmission facilities to provide open access transmission service. As part of the restructuring, PG&E will contribute its approximately 18,500 circuit miles of electric transmission lines and cables located in California to ETrans. PG&E will also assign to ETrans its contractual

There can also be no dispute that, given the agreement to be entered between and among the entities as described above, both PG&E's proposal and the NRC's alternative will assure the continuity of the antitrust conditions, substantively unimpaired. However, PG&E's proposal additionally allows the NRC to retain a direct regulatory relationship with all of the entities that will, as a practical matter, have the ability to directly assure compliance with the antitrust conditions. The fact that the three entities would be jointly and severally responsible to the NRC for compliance with the conditions would closely replicate the status quo. Currently, PG&E, an integrated utility, controls compliance with all aspects of the conditions. In the proposed approach, all three entities will be effectively "bundled" for continued compliance with those conditions.

Moreover, under the specific circumstances of this case and for the reasons discussed below, the NRC has the authority to retain Reorganized PG&E on the license and to add ETrans as a licensee — both for the limited purpose of compliance with the existing antitrust license conditions.

*1. The Commission Has Authority With Respect to Successor Entities*

Under Section 184 of the AEA, 42 U.S.C. § 2234, the NRC must consent to the transfer of control of any license issued under the AEA. Additionally, under Section 103.a of the AEA, 42 U.S.C. § 2133.a, the NRC is authorized to issue licenses to transfer commercial nuclear

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obligations as a participating transmission owner in the ISO. Under the agreement referred to above, ETrans will become principally responsible for interconnection and transmission service. Reorganized PG&E will remain principally responsible for implementation of other services under the Stanislaus Commitments, including interconnection where the voltage is less than 60 kV, reserve coordination, and emergency power, power exchange and wholesale power sales for the first eleven years consistent with the proposed PSA. Gen will be principally responsible for emergency power, power exchange and wholesale power sales after year 11. To the extent

plants “subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.” The Commission’s regulations, 10 C.F.R. § 50.80, establish the Commission’s authority to consent to license transfers, the information required to be submitted, and the required findings to be made. The Commission can therefore condition its license transfer consent and the license itself to assure that the transfer will be consistent with the AEA and the findings required by NRC regulations.

The Commission’s antitrust authority is established by Section 105 of the AEA, 42 U.S.C. § 2135. This authority primarily applies at the time of issuance of a construction permit or operating license for a nuclear facility. *See generally Kansas Gas & Elec. Co.*, (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). In particular, Section 105.c(5) requires the Commission, with respect to a license application, “to make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws . . . .”<sup>9</sup> Section 105.c(6) further provides the Commission with the authority to refuse to issue the license, or to “issue a license with such conditions as it deems appropriate.”

As explained by the Commission in *Wolf Creek*, at the time of licensing:

. . . all entities who might wish ownership access to the nuclear facility, and who are in a position to assert that the activities under the license would create or maintain a situation inconsistent with the antitrust laws, are able to seek an appropriate licensing remedy from the Commission prior to actual operation of the facility, thus realizing their fair benefits of nuclear power from the beginning of electrical power generation.

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applicable, Gen will also have primary responsibility with respect to the condition related to participation in new nuclear plants.

<sup>9</sup> This finding would be required in connection with issuance of a construction permit. It would also be required in connection with issuance of an operating license if the Commission determines that “significant changes” have occurred subsequent to the previous antitrust review. *See* 42 U.S.C. § 2135.c(2).

. . . At the time Congress enacted Section 105, it envisioned this broad and comprehensive review at the construction permit phase of licensing a facility but, as we shall see, not at other licensing or post-licensing phases for the facility in question. Congress believed that at the construction phase — before the plant is built and before its operation is authorized by the Commission — the Commission would be peculiarly well-positioned to offer meaningful remedies, such as license conditions, if it found that granting the license would create or maintain a situation inconsistent with the antitrust laws.

*Wolf Creek*, CLI-99-19, 49 NRC at 451. In the case of DCP, the antitrust license conditions (the “Stanislaus Commitments”) were adopted pursuant to this antitrust authority at the time of initial licensing.

As also reflected in *Wolf Creek*, the Commission has concluded that — based both on its view of its legal authority and as an exercise of its discretion — an antitrust review in connection with a license transfer is limited to the disposition of the existing antitrust conditions. The Commission explained that in a license transfer case it would “entertain submissions by licensees, applicants, and others with the requisite antitrust standing that propose the appropriate disposition of existing antitrust conditions.” *Wolf Creek*, CLI-99-19, 49 NRC at 466. One option the Commission hypothesized in that case was the option to “modify references to licensees in the conditions when existing licenses to whom the conditions apply merge among themselves or with other entities and new corporate licensees will result.” *Id.* Therefore, the Commission clearly contemplated modifying the antitrust licensees to conform to the post-reorganization situation.<sup>10</sup> PG&E’s proposal is a license modification within the scope of options contemplated by the Commission in *Wolf Creek*.

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<sup>10</sup> The Commission emphasized that it “plainly has continuing authority to modify or revoke its own validly imposed conditions.” *Id.* (citing *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), CLI-92-11, 36 NRC 47, 54-59 (1992)).

The present DCPD antitrust conditions apply by their terms to “Pacific Gas and Electric Company, any successor corporation, or any assignee of this license.” See Operating License, Appendix C (“Antitrust Conditions”), ¶ (1)a. (Attachment B hereto is a copy of the Unit 1 antitrust license conditions for ease of reference.) Consistent with the Commission’s antitrust authority and the clear intent of the original license conditions imposed pursuant to that authority, Gen, ETrans, and Reorganized PG&E would be “successors” to the current licensee (PG&E). They would be successors as direct transferees and direct corporate descendants of PG&E. Accordingly, licensing jurisdiction with respect to ETrans and Reorganized PG&E should be found to exist based upon the precicensing antitrust jurisdiction and the terms of the license itself. The Commission may, pursuant to that jurisdiction, designate appropriate successor entities in the license for antitrust purposes regardless of the fact that these entities would not otherwise be subject to licensing jurisdiction (*i.e.*, they would not “possess, use or operate” the plant).<sup>11</sup>

Even apart from the terms of the present license, the NRC’s Section 105 antitrust authority must be read to allow the Commission to continue antitrust conditions in place and to designate — in appropriate circumstances — successor entities as licensees with continuing responsibility for those conditions. To conclude otherwise might allow a licensee to negate antitrust conditions merely by transactions or restructurings (involving either affiliated or unaffiliated entities) designed to transfer the plant to avoid antitrust conditions previously imposed.<sup>12</sup> The authority to apply conditions to a licensee and to its successor derives from the

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<sup>11</sup> Indeed, an additional alternative would be to simply leave the license conditions unmodified and applicable to PG&E “and its successors.” This would have the same effect as PG&E’s proposal, but would lack the clarity of PG&E’s proposal.

<sup>12</sup> This would be the inverse of a potential problem identified by the Licensing Board in *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-13, 7 NRC 583

prelicensing antitrust jurisdiction. Such authority would seem to exist most clearly where, as here, the successors are either currently affiliates of the original licensee or direct corporate descendants.

The NRC has in the past retained a licensee, Mississippi Power and Light Company, on the Grand Gulf operating license after a license transfer for the limited purpose of the antitrust conditions. The NRC reached this result notwithstanding that Mississippi Power and Light was no longer either the owner or operator of the nuclear station, and where it had specifically requested that it be deleted from the license. Mississippi Power & Light Co., Notice of Denial of Amendments to Facility Licenses and Opportunity for Hearing, 55 Fed. Reg. 21,128, 21,129 (May 22, 1990). The Commission also specifically cited in that case its authority under Section 103.a of the Atomic Energy Act to impose conditions upon persons transferring nuclear facilities to others.<sup>13</sup>

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(1978). Although that decision may be effectively overruled by the Commission in *Wolf Creek*, the Licensing Board there observed that a failure to conduct an antitrust review for license transfer applications involving new co-licensees could allow licensees to avoid prelicensing antitrust review by adding the owners after the antitrust review was complete. *Id.* at 588. In the present situation the Commission can address the inverse issue consistent with *Wolf Creek*, because it would not be conducting a new antitrust review; it would be addressing only the fate of existing license conditions without the need for any antitrust review. With the consent of the affected entities, and consistent with the current license terms, the conditions would continue to be applied to the successors.

<sup>13</sup> The present case is distinguishable from at least two other recent cases in which the NRC, in connection with license transfers, opted to delete antitrust conditions entirely. In connection with the transfer of the Clinton Power Station license from Illinois Power to AmerGen Energy Company, LLC, the NRC, at the applicant's request, deleted the antitrust license conditions. Similarly, the NRC recently agreed to delete antitrust license conditions following the transfer of the license for the Comanche Peak Steam Electric Station from TXU Electric to an affiliate, TXU Generation Company, LP, that would generate electricity for sale in the wholesale power market. In both cases, unlike the present case, there was a request to delete the conditions and there was apparently no opposition to such a change. However, the NRC in the March 22, 2002, Safety Evaluation Report prepared with respect to the Comanche Peak antitrust conditions, at

In recent license transfer proceedings, the Commission has addressed the issue of its ongoing regulatory authority with respect to former licensees following license transfers. In these cases, the Commission found jurisdiction by virtue of the entities' prior involvement in licensed activities. In approving the transfer of the Shoreham facility from the Long Island Lighting Company ("LILCO") to the Long Island Power Authority ("LIPA"), the Commission imposed a condition requiring LILCO to "take back" the license if LIPA were dissolved by a state court. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-92-4, 35 NRC 69, 79-80 (1992). In addition, LILCO — the former licensee — was required to certify that it would retain and maintain sufficient capacity to take back the license if the state court dissolved LIPA. *Id.* The imposition of these conditions "implies a continuing authority over former licensees even after they transfer their licenses to other entities." *Power Auth. of N.Y.* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 554 (2001) ("Indian Point 3"). *Cf. Nuclear Eng'g Co., Inc.* (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673 (1979) (following a licensee's "unilateral termination" of its license, holding that the Director of NMSS acted reasonably in issuing an immediately effective order directing the "former" licensee to show cause why it should not resume its responsibilities under its license for the site, and ordering it to resume its responsibilities immediately); *U.S. Ecology, Inc.* (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), LBP-87-5, 25 NRC 98 (1987) (later holding that the licensee could not terminate its license without affirmative action by the Commission).

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page 5, noted that a key difference between the Comanche Peak case and the Clinton case is the "fact that AmerGen was never affiliated or otherwise related to Illinois Power before or after the proposed transfer." Although this did not affect the outcome with respect to the Comanche Peak conditions, the statement highlights a sensitivity to the "successor" or "affiliate" issue.

In their applications to transfer the Indian Point, Unit 3 and FitzPatrick facilities from the Power Authority of the State of New York (“PASNY”) to subsidiaries of the Entergy Corporation, the applicants proposed that PASNY would retain all rights, title, and legal and beneficial interest in the decommissioning trust for both facilities. An intervenor in the proceeding on those applications asserted, among other things, that approval of the application would deprive the Commission of post-transfer regulatory authority to assure that PASNY would satisfy NRC requirements for decommissioning and remediation of the site. *Indian Point 3*, CLI-01-14, 53 NRC at 552. In its orders approving the license transfers, the NRC Staff imposed a set of license conditions requiring PASNY’s acceptance of continuing NRC regulatory authority with respect to its administration of the decommissioning funds. PASNY was not, post-transfer, otherwise engaged in activities that would require a license. With respect to its post-transfer jurisdiction, the Commission cited *Shoreham*, discussed above.

The Commission also stated in *Indian Point 3* that its “statutory authority to issue orders ‘is not confined to those who hold licenses from the Commission’ but rather is a ‘uniquely broad and flexible authority’ which extends ‘to any person . . . who engages in conduct within the Commission’s subject matter jurisdiction.’” *Indian Point 3*, CLI-01-14, 53 NRC at 554, quoting Final Rule, Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40,664, 40,666, 40,668 (Aug. 15, 1991).<sup>14</sup> The Commission continued:

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<sup>14</sup> In its discussion of the scope of the deliberate misconduct rule, the Commission stated:

Where Congress does not include statutory provisions governing *in personam* jurisdiction, it is appropriate to look to the scope of the subject matter jurisdiction in order to determine the scope of *in personam* jurisdiction. Since Congress did not include any specific personal jurisdiction in the [AEA], or any limitations on such jurisdiction, the NRC is authorized to assert its personal jurisdiction over persons based on the

Indeed, we consider this authority to extend to anyone “who engages in conduct *affecting activities* within the Commission’s subject-matter jurisdiction” — including those who (like PASNY) “*have been engaged in licensed activities.*”

*Indian Point 3*, CLI-01-014, 53 NRC at 554-55 (emphasis in original) (citation omitted). The Commission specifically extended this rationale to apply in the context of license transfer regulations. *Id.* at 555.<sup>15</sup> Even though these determinations derived from the Commission’s expansive health and safety subject matter jurisdiction over non-licensees from AEA Section 161.i, the rationale would seemingly apply equivalently to the NRC’s antitrust subject matter jurisdiction pursuant to Section 105.

In sum, the valid antitrust license conditions contained in the DCPD license, imposed by virtue of the Commission’s prelicensing antitrust jurisdiction, specifically designate that the conditions will apply equally to any “successor corporation.” Gen, Reorganized PG&E, and ETrans will be the direct “successors” to the current licensee, engaged in the same activities that were subject to the NRC’s prelicensing antitrust jurisdiction. In particular, Reorganized PG&E and ETrans will be the successors to the current licensee’s transmission and distribution

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maximum limits of its subject matter jurisdiction. The agency’s personal jurisdiction is established when a person acts within the agency’s subject matter jurisdiction.

Final Rule, Deliberate Misconduct by Unlicensed Persons, 63 Fed. Reg. 1890, 1892 (Jan. 13, 1998) (quoting 56 Fed. Reg. at 40,667).

<sup>15</sup> The Commission applied a similar rationale to the transfer of Indian Point, Units 1 and 2, from Consolidated Edison (“Con Edison”), again to subsidiaries of Entergy Corporation. Under the Asset Purchase & Sale Agreement, Con Edison retained liability for radiological materials deposited offsite during its period of ownership. An intervenor asserted that approval of the license transfer would deprive the Commission of post-transfer regulatory authority over Con Edison with respect to those radiological materials. For the same reasons articulated in *Indian Point 3*, the Commission concluded that the intervenor’s “worries about the Commission’s continuing authority over [Con Edison] are unfounded.” *Consolidated Edison Co. of N.Y.* (Indian Point, Units 1 & 2), CLI-01-19, 54 NRC 109, 148 (2001).

functions — the very focus of NRC’s precicensing antitrust jurisdiction. The Commission may, therefore, pursuant to that antitrust jurisdiction and the terms of the present license itself, designate these successors in the license following the transfer solely for purposes of the continuing responsibility for antitrust conditions previously imposed. By virtue of the current license and the direct license transfer, the NRC has continuing subject matter jurisdiction over Reorganized PG&E and ETrans as entities involved in activities falling within the scope of the AEA.

2. *The Commission Has Authority by Virtue of a Consent to Jurisdiction*

As discussed above, Gen, ETrans, and Reorganized PG&E will execute an agreement whereby the three entities will be jointly and severally responsible to each other for the DCPD antitrust conditions. The agreement will also assign primary functional responsibility among the three entities for each obligation. As a result of these arrangements, ETrans and Reorganized PG&E need not be included in the license in order to ensure the continued vitality of the antitrust conditions. Nonetheless, in the license transfer application these entities have effectively consented to NRC licensing and enforcement jurisdiction for the limited purpose of compliance with the antitrust conditions. This consent confers authority on the NRC, even if it does not otherwise exist under the AEA, to designate these entities as licensees and to take action against them to enforce the antitrust conditions if ever necessary.

In *Indian Point 3*, discussed above, PASNY agreed to amend the relevant decommissioning trust agreements between PASNY and the trustee, to provide additional measures by which the NRC could control decommissioning expenditures. *See* Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Order Approving Transfer of License and Conforming Amendment, 65 Fed. Reg. 70,843, 70,844 (Nov. 28,

2000)(“Indian Point 3 Order”); Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant, Order Approving Transfer of License and Conforming Amendment, 65 Fed. Reg. 70,845, 70,846-47 (Nov. 28, 2000) (“FitzPatrick Order”) (License Conditions 7, 9, and 10). PASNY also agreed, in an amendment to the license transfer application, to the following consent to NRC jurisdiction, which was memorialized as a license condition in the order granting the license transfer for both Indian Point 3 and FitzPatrick:

The Authority shall waive any right to deny, contest or challenge the NRC’s jurisdiction over the Authority with respect to IP3 [and JAF] to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC’s decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund[s] and retained by the Authority, and remain subject to the Commission’s jurisdiction under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning compliance with the Commission’s decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund[s] and retained by the Authority, until such time as the Authority transfers the decommissioning trust fund[s] to [ENIP3 or ENF] or the decommissioning of [IP3 or JAF] has been completed in accordance with NRC regulations and guidance, whichever occurs first.

Indian Point 3 Order, 65 Fed. Reg. at 70,844-45; FitzPatrick Order, 65 Fed. Reg. at 70,847.

Thus, the Commission has implicitly recognized consent as one mechanism to retain jurisdiction over a former licensee with respect to ongoing activities that are within NRC’s subject matter jurisdiction. There seems no logical basis to distinguish licensing jurisdiction and enforcement jurisdiction, because the former merely confers the latter.<sup>16</sup> The NRC may exercise jurisdiction

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<sup>16</sup> The Indian Point 3/FitzPatrick precedent also suggests another possible approach to the DCPD antitrust license conditions. Rather than naming ETrans and Reorganized PG&E as licensees, the license transfer could include a license condition whereby the successor entities waive any right to deny, contest, or challenge the NRC’s jurisdiction over them with respect to enforcing continued compliance with the antitrust license conditions duly

over a former licensee or other successor entity who consents to such jurisdiction, and should do so in this case.<sup>17</sup>

### 3. Conclusion

PG&E concludes that the Commission has the authority to name ETrans and Reorganized PG&E in the DCPD license solely with respect to existing antitrust license conditions, for the reasons discussed above. While designating only Gen in the license would be acceptable to PG&E, PG&E has proposed an approach which, in deference to NCPA, TANC, and others that might share their “issue,” most closely replicates the current situation.

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imposed under Section 105 of the AEA. However, it is unclear why simply naming the entities in the license would be any less appropriate.

<sup>17</sup> The NRC also implicitly recognized consent to jurisdiction in a 1993 enforcement order in which it held Sequoyah Fuels Corporation (“SFC”), an NRC materials licensee, and its non-licensee parent, General Atomics (“GA”), jointly and severally responsible for providing financial assurance for decommissioning of SFC’s Gore facility under 10 C.F.R. § 40.36. Order, Sequoyah Fuels Corporation, General Atomics (Gore, Oklahoma Site Decontamination and Decommissioning Funding, 58 Fed. Reg. 55,087 (Oct. 25, 1993). In a March 19, 1992, letter to then-Chairman Selin, GA’s chairman reiterated a commitment, initially made in a public meeting on March 17, 1992, that GA would fund site remediation should SFC fail to do so. *Id.* Then, in a public meeting on December 21, 1992, the chairman stated, among other things, that GA could no longer provide the financial assurance, but that GA had restructured the business activities of SFC to satisfy SFC’s outstanding commitments. *Id.* The Staff ultimately found that supplemental funding assurance would be required from GA, because “GA’s control over the operations and business of SFC, *combined with its representations*” were sufficient in the Staff’s eyes to render GA responsible to satisfy NRC financial assurance requirements. *Id.* at 55,091. NRC ultimately entered into separate settlement agreements with GA and SFC, which were approved by the Commission. *See Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Okla. Site Decontamination and Decommissioning), CLI-97-13, 46 NRC 195 (1997). The Commission did not reach the issue of whether GA was a *de facto* licensee; nonetheless, this case clearly demonstrates that the NRC will rely on a non-licensee’s commitments to find jurisdiction. Although GA never expressly consented to NRC jurisdiction, the NRC asserted jurisdiction based upon the implicit consent in GA’s commitments.

Should the Commission determine that the agency lacks the authority to issue the transfer with ETrans and Reorganized PG&E as licensees, PG&E disagrees with NCPA's suggestion (NCPA Petition at 27) that a full antitrust review with formal adjudicatory procedures would be necessary in order for the Commission to adopt the alternative proposal. A full review would be inconsistent with the Commission's decision in *Wolf Creek* and would be inconsistent with the Commission's objective in promulgating the Subpart M hearing procedures of assuring a timely process on license transfers. In the *Wolf Creek* case the Commission — after deciding the issue of the required scope of an antitrust review related to a post-operating license transfer — contemplated addressing the issue of the disposition of the existing antitrust conditions on papers ("submissions"), rather than in any formal Subpart G or Subpart M evidentiary proceeding. *Wolf Creek*, CLI-99-19, 49 NRC at 466. Given the current briefing of the issue that is the basis for the alternative approach, the NRC should simply decide the issue "on the papers" and instruct the NRC Staff as to the appropriate approach to the licensees for the DCPD antitrust conditions. Other matters raised with respect to the antitrust conditions do not give rise to genuine or substantial issues that would warrant further hearings.

B. Developments in the Bankruptcy Case Underscore that this NRC License Transfer Proceeding Should Not be Held in Abeyance

PG&E, in response to the petitions to intervene and subsequent filings in this matter, has previously addressed arguments that this proceeding should be held in abeyance pending or in light of developments in the Bankruptcy Court with respect to PG&E's Plan. Such a deferral clearly would be inconsistent with NRC policy and precedent. The Commission has held that the pendency of parallel proceedings in other forums is not grounds to stay an NRC license transfer proceeding. *Power Auth. of N.Y.* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 289 (2000); *Niagara Mohawk Power Corp.*

(Nine Mile Point Nuclear Station, Units 1 & 2), CLI-99-30, 50 NRC 333, 343-44 (1999); *Consol. Edison Co. of N.Y.* (Indian Point, Unit 1 & 2), CLI-01-08, 53 NRC 225, 228-30 (2001).<sup>18</sup> Furthermore, there have been no decisions by the Bankruptcy Court or any other developments that would suggest that PG&E's Plan cannot be confirmed and/or that timely NRC action is not needed. To the contrary, the Bankruptcy Court recently approved PG&E's Disclosure Statement, a necessary predicate for solicitation of votes on PG&E's Plan. *See* Attachment A.

As the Commission is aware, PG&E is a debtor in possession in the Chapter 11 bankruptcy case, *In re Pacific Gas & Elec. Co.*, No. 01-30923DM (Bankr. N.D. Cal. Filed Apr. 6, 2001) (the "Bankruptcy Case"). Ultimately, to be implemented, PG&E's Plan must be confirmed under Section 1129 of the Bankruptcy Code, 11 U.S.C. § 1129. PG&E has in prior filings on this docket addressed the facts that, despite characterizations otherwise, the Bankruptcy Court is permitting PG&E's Plan to proceed to confirmation proceedings. The Plan remains viable and the process of plan confirmation is ongoing. Nothing in the ongoing Bankruptcy Court proceedings warrants delay in the NRC's consideration of the proposed DCPD license transfer.

As discussed in PG&E's prior filings, the Bankruptcy Court previously determined that confirmation proceedings with respect to PG&E's Plan could go forward if

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<sup>18</sup> In the *Wolf Creek* case, the Commission addressed the issues in controversy and even approved the transfer order. Later, the transactions that necessitated the NRC license transfers were not approved. *See* "Answer of Pacific Gas and Electric Company to California Public Utilities Commission Petition for Leave to Intervene, Motion to Dismiss Application or, In the Alternative, Request for Stay of Proceedings, and Request for Subpart G Hearing," dated February 15, 2002, at 11. This highlights that the NRC will proceed to address an application at hand notwithstanding the need for other conditions to be satisfied before the transfer can be completed.

PG&E made certain changes to its Disclosure Statement.<sup>19</sup> The required modifications were made to PG&E's Disclosure Statement, and the Bankruptcy Court has now approved the Disclosure Statement. *See* Attachment A. The Bankruptcy Court has also authorized the California Public Utilities Commission ("CPUC") to file an alternative competing plan of reorganization, which was filed on April 15, 2002.<sup>20</sup> Both plans will be circulated to creditors for voting, once the CPUC Disclosure Statement is approved. Attachments C and D hereto are transcript excerpts from the March 26, 2002 and April 11, 2002 hearings before the Bankruptcy Court regarding the procedural schedule for solicitation of creditors' votes.

Consistent with prior decisions, the Bankruptcy Court set a May 3, 2002, deadline for objections to the CPUC's Disclosure Statement (objections were filed by PG&E on that date) and scheduled a hearing on the CPUC's Disclosure Statement on May 9, 2002. (At the May 9 hearing, the Bankruptcy Court heard objections to the CPUC Disclosure Statement and, significantly, also granted PG&E's motions authorizing the company to incur certain expenses related to implementation of PG&E's Plan. The hearing will continue on May 15, 2002, to address voting procedures related to the plans.) The Bankruptcy Court has also previously set June 17, 2002 as the target date for the beginning of solicitation of creditors' votes for PG&E's Plan, as well as the CPUC alternative plan if its Disclosure Statement is approved. *See* Attachment C, March 26th Transcript at 127-29, 336-37. Thus, the schedule established by the Bankruptcy Court is designed to permit the solicitation of votes to begin in mid-June as a critical

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<sup>19</sup> *See, e.g.*, "Answer of Pacific Gas and Electric Company to California Public Utilities Commission Renewed Motion to Dismiss Application or, in the Alternative, to Hold Applications in Abeyance," dated February 25, 2002, at 2-4.

<sup>20</sup> *See* "Motion of Pacific Gas and Electric Company to Strike California Public Utilities Commission Reply to the Answer of Pacific Gas and Electric Company to the CPUC's Renewed Motion to Dismiss Applications or, in the Alternative, to Hold Applications in Abeyance," dated March 15, 2002, at 5-6.

next step toward confirmation of PG&E's Plan. Attachment C, March 26th Transcript at 337 ("everything keyed to a June 17th commencement of solicitation").

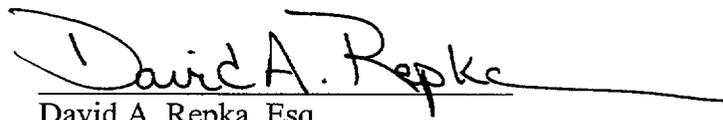
Under the bankruptcy process, two competing plans of reorganization can be considered by the creditors. PG&E continues to believe that the CPUC plan is neither feasible nor confirmable. It seeks to make up for a shortfall in the CPUC's prior plan by issuing billions in new debt and through a scheme to issue stock in the utility to raise cash. The CPUC plan would eliminate any return on equity of the utility and fund amounts owed by ratepayers with a compulsory sale of equity. The CPUC plan would therefore violate federal and state law and prompt substantial litigation. The creditors will shortly have the opportunity to vote on and accept the PG&E Plan, and PG&E continues to believe that the creditors will accept the PG&E Plan and that the Bankruptcy Court will confirm the Plan.<sup>21</sup> Accordingly, PG&E is moving toward confirmation of its Plan and is continuing to seek the necessary regulatory approvals to implement the Plan expeditiously upon confirmation. To assure timely completion of the NRC process, this proceeding on the DCPD license transfer application should not be held in abeyance.

#### IV. CONCLUSION

For the reasons set forth above, the Commission should find that it has the authority to adopt PG&E's approach to the DCPD antitrust license conditions. In the alternative, if the Commission concludes that it lacks the requisite licensing authority, it should — without the need for any further evidentiary hearings — direct that Gen be the entity responsible for those conditions. The obligations of the transmission and distribution entities to meet the terms of the antitrust conditions will in either event be established by contract to assure that the antitrust conditions are not substantively impaired.

Also, for the reasons discussed above, this proceeding should not be held in abeyance pending developments in the Bankruptcy Court. That matter is progressing and there have been no developments that suggest that PG&E's Plan cannot be confirmed. Accordingly, Commission action on the DCPD license transfer application is still required and remains appropriate.

Respectfully submitted,



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ATTORNEYS FOR PACIFIC GAS &  
ELECTRIC COMPANY

Dated in Washington, District of Columbia  
This 10<sup>th</sup> day of May 2002

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<sup>21</sup> This view has been echoed in the assessments of various financial analysts that are a matter of public record.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of: )  
)  
Pacific Gas and Electric Co. ) Docket Nos. 50-275-LT  
) 50-323-LT  
(Diablo Canyon Power Plant, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER CLI-02-12" in the above captioned proceeding have been served as shown below by electronic mail, this 10<sup>th</sup> day of May 2002. Additional service by deposit in the United States mail, first class, has also been made this same day as shown below.

Richard A. Meserve, Chairman  
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Washington, DC 20555-0001

Edward McGaffigan, Commissioner  
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Nils J. Diaz, Commissioner  
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Washington, DC 20555-0001

Jeffrey S. Merrifield, Commissioner  
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Greta J. Dicus, Commissioner  
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Office of Commission Appellate Adjudication  
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Attn: Rulemakings and Adjudications Staff  
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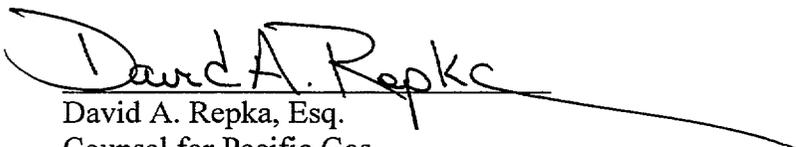
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**ATTACHMENT A**

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11 Attorneys for Debtor and Debtor in Possession  
12 PACIFIC GAS AND ELECTRIC COMPANY

**FILED**  
APR 24 2002  
UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

13 In re  
14 PACIFIC GAS AND ELECTRIC  
15 COMPANY, a California corporation,  
16 Debtor.  
17 Federal I.D. No. 94-0742640

Case No. 01-30923 DM  
Chapter 11 Case  
Date: April 24, 2002  
Time: 9:30 a.m.  
Place: 235 Pine Street, 22nd Floor  
San Francisco, California

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

ORDER APPROVING DISCLOSURE  
STATEMENT FOR PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR  
PACIFIC GAS AND ELECTRIC COMPANY (DATED APRIL 19, 2002)

23 At the date and time set forth above, the Court held a hearing on final approval of the  
24 Disclosure Statement for Plan of Reorganization Under Chapter 11 of the Bankruptcy Code  
25 for Pacific Gas and Electric Company Proposed by Pacific Gas and Electric Company and  
26 PG&E Corporation (Dated April 19, 2002), filed herein by Pacific Gas and Electric  
27 Company, debtor and debtor in possession herein ("PG&E"), and PG&E Corporation (the  
28 "Disclosure Statement"). Appearances were as noted in the record.

1 The Court, having reviewed the "Errata to Disclosure Statement for Plan of  
2 Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric  
3 Company Proposed by Pacific Gas and Electric Company and PG&E Corporation (Dated  
4 April 19, 2002)" and the "Errata to Plan of Reorganization Under Chapter 11 of the  
5 Bankruptcy Code for Pacific Gas and Electric Company Proposed by Pacific Gas and  
6 Electric Company and PG&E Corporation (Dated April 19, 2002)," each of which were filed  
7 with the Court on April 23, 2002, and copies of which were made available to creditors and  
8 interested parties (collectively, the "Errata"), and having found that the proposed corrections  
9 set forth in the Errata are appropriate, and do not affect in a materially adverse manner the  
10 rights of any creditors or parties in interest, and the Court having considered objections filed  
11 by various parties, which objections have been withdrawn or otherwise resolved, and having  
12 found that the Disclosure Statement contains adequate information, within the meaning of  
13 Section 1125(a) of the Bankruptcy Code:

14 IT IS HEREBY ORDERED that:

- 15 1. The Disclosure Statement (as corrected by the Errata) is approved;
- 16 2. Notwithstanding Rule 3017(d) of the Federal Rules of Bankruptcy Procedure, the  
17 Court shall fix the record date for purposes of such subdivision of Rule 3017 pursuant to a  
18 separate order;
- 19 3. The Court expressly finds and determines that neither Rule 2002(c)(3) nor Rule  
20 3017(f) of the Federal Rules of Bankruptcy Procedure are implicated by the Disclosure  
21 Statement, and that the Court therefore need not establish the procedures referenced in Rule  
22 3017(f)(1) and (2) during the hearing on the Disclosure Statement; and
- 23 4. The Court shall by separate order establish procedures and rules governing the  
24 solicitation of acceptances of the Plan of Reorganization proposed by PG&E and PG&E  
25  
26  
27  
28

HOWARD  
RICE  
NEMENOVSKI  
CANADY  
BLIK  
& RABKIN  
A Professional Corporation

1 Corporation, and governing the timing for filing objections, and the hearing on confirmation,  
2 of such Plan.

3 DATED: April 24, 2002

4  
5 DENNIS MONTALI  
6 United States Bankruptcy Judge  
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14 HOWARD  
15 RICE  
16 NEMEROVSKI  
17 CANADY  
18 FALK  
19 & RAIBIN  
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A Professional Corporation

**ATTACHMENT B**

APPENDIX CANTITRUST CONDITIONSFACILITY OPERATING LICENSE NO. DPR-80(1) Definitions

- a. "Applicant" means Pacific Gas and Electric Company, any successor corporation, or any assignee of this license.
- b. "Service Area" means that area within the exterior geographic boundaries of the several areas electrically served at retail, now or in the future, by Applicant, and those areas in Northern and Central California adjacent thereto.
- c. "Neighboring Entity" means a financially responsible private or public entity or lawful association thereof owning, contractually controlling or operating, or in good faith proposing to own, to contractually control or to operate facilities for the generation, or transmission at 60 kilovolts or above, of electric power which meets each of the following criteria: (1) its existing or proposed facilities are or will be technically feasible of direct interconnection with those of Applicant; (2) all or part of its existing or proposed facilities are or will be located within the Service Area; (3) its primary purpose for owning, contractually controlling, or operating generation facilities is to sell in the Service Area the power generated; and (4) it is, or upon commencement of operations will be, a public utility regulated under applicable state law or the Federal Power Act, or exempted from regulation by virtue of the fact that it is a federal, state, municipal or other public entity.
- d. "Neighboring Distribution System" means a financially responsible private or public entity which engages, or in good faith proposes to engage, in the distribution of electric power at retail and which meets each of the criteria numbered (1), (2) and (4) in subparagraph "C" above.

- e. "Costs" means all capital expenditures, administrative, general, operation and maintenance expenses, taxes, depreciation and costs of capital including a fair and reasonable return on Applicant's investment, which are properly allocable to the particular service or transaction as determined by the regulatory authority having jurisdiction over the particular service or transaction.
- f. "Good Utility Practice" means those practices, methods and equipment, including level of reserves and provisions for contingencies, as modified from time to time, that are commonly used in the Service Area to operate, reliably and safely, electric power facilities to serve a utility's own customers dependably and economically, with due regard for the conservation of natural resources and the protection of the environment of the Service Area, provided such practices, methods and equipment are not unreasonably restrictive.
- g. "Firm Power" means that power which is intended to be available to the customer at all times and for which, in order to achieve that degree of availability, adequately installed and spinning reserves and sufficient transmission to move such power and reserves to the load center are provided.

(2) Interconnection

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs "a" through "g":

- a. Applicant shall not unreasonably refuse to interconnect and operate normally in parallel with any Neighboring Entity, or to interconnect with any Neighboring Distribution System. Such interconnections shall be consistent with Good Utility Practice.
- b. Interconnection shall be at one point unless otherwise agreed by the parties to an interconnection agreement.

Interconnection shall not be limited to lower voltages when higher voltages are preferable from the standpoint of Good Utility Practice and are available from Applicant. Applicant may include in any interconnection agreement provisions that a Neighboring Entity or Neighboring Distribution System maintain the power factor associated with its load at a comparable level to that maintained by Applicant in the same geographic area and use comparable control methods to achieve this objective.

- c. Interconnection agreements shall not provide for more extensive facilities or control equipment at the point of interconnection than are required by Good Utility Practice unless the parties mutually agree that particular circumstances warrant special facilities or equipment.
- d. The Costs of additional facilities required to provide service at the point of interconnection shall be allocated on the basis of the projected economic benefits for each party from the interconnection after consideration of the various transactions for which the interconnection facilities are to be used, unless otherwise agreed by the parties.
- e. An interconnection agreement shall not impose limitations upon the use or resale of capacity and energy sold or exchanged under the agreement except as may be required by Good Utility Practice.
- f. An interconnection agreement shall not prohibit any party from entering into other interconnection agreements, but may provide that (1) Applicant receive adequate notice of any additional interconnection arrangement with others, (2) the parties jointly consider and agree upon additional contractual provisions, measures, or equipment, which may be required by Good Utility Practice as a result of the new arrangement, and (3) Applicant may terminate the interconnection agreement if the reliability of its system or service to its customers would be adversely affected by such additional interconnection arrangement.

- g. Applicant may include provisions in an interconnection agreement requiring a Neighboring Entity or Neighboring Distribution System to develop with Applicant a coordinated program for underfrequency load shedding and tie separation. Under such programs the parties shall equitably share the interruption or curtailment of customer load.

(3) Reserve Coordination

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs "a" through "e" regarding reserve coordination:

- a. Applicant and any Neighboring Entity with which it interconnects shall jointly establish and separately maintain the minimum reserves to be installed or otherwise provided under an interconnection agreement. Unless otherwise mutually agreed upon, reserves shall be expressed as a percentage of estimated firm peak load and the minimum reserve percentage shall be at least equal to Applicant's planned reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide reserves for that portion of its load which it meets through purchases of Firm Power. While different reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater reserve percentage than Applicant's planned reserve percentage, except that if the total reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to install or provide additional reserves in the full amount of such increase.
- b. Applicant and Neighboring Entities with which it interconnects shall jointly establish and separately maintain the minimum spinning reserves to be provided under an interconnection agreement. Unless otherwise mutually agreed upon, spinning reserves shall be expressed as a percentage of peak load and the minimum spinning reserve percentage shall be at least equal to Applicant's spinning

reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide spinning reserves for that portion of its load which it meets through purchases of Firm Power. While different spinning reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater spinning reserve percentage than that which Applicant provides, except that if the total spinning reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to provide additional spinning reserves in the full amount of such increase.

- c. Applicant shall offer to sell, on reasonable terms and conditions, including a specified period, capacity to a Neighboring Entity for use as reserves if such capacity is neither needed for Applicant's own system nor contractually committed to others and if the Neighboring Entity will offer to sell, on reasonable terms and conditions, its own such capacity to the Applicant.
- d. Applicant may include in any interconnection agreement provisions requiring a Neighboring Entity to compensate Applicant for any reserves Applicant makes available as the result of the failure of such Neighboring Entity to maintain all or any part of the reserves it has agreed to provide in said interconnection agreement.
- e. Applicant shall offer to coordinate maintenance schedules with Neighboring Entities interconnected with Applicant and to exchange or sell maintenance capacity and energy when such capacity and energy are available and it is reasonable to do so in accordance with Good Utility Practice.

(4) Emergency Power

Applicant shall sell emergency power to any interconnected Neighboring Entity which maintains the level of minimum reserve agreed upon with Applicant, agrees to use due diligence to correct the emergency and agrees to sell

emergency power to Applicant. Applicant shall engage in such transactions if and when capacity and energy for such transactions are available from its own generating resources, or may be obtained by Applicant from other sources, but only to the extent that it can do so without impairing service to Applicant's retail or wholesale power customers or impairing its ability to discharge prior commitments.

(5) Other Power Exchanges

Should Applicant have on file, or hereafter file, with the Federal Energy Regulatory Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, limited-term capacity and energy, long-term capacity and energy or economy energy, Applicant shall, on a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity, when such forms of capacity and energy are available, recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions. Applicant shall respond promptly to inquiries of Neighboring Entities concerning the availability of such forms of capacity and energy from its system.

(6) Wholesale Power Sales

Upon request, Applicant shall offer to sell firm, full or partial requirements power for a specified period to an interconnected Neighboring Entity or Neighboring Distribution System under a contract with reasonable terms and conditions including provisions which permit Applicant to recover its costs. Such wholesale power sales must be consistent with Good Utility Practice. Applicant shall not be required to sell Firm Power at wholesale if it does not have available sufficient generation or transmission to supply the requested service or if the sale would impair service to its retail customers or its ability to discharge prior commitments.

(7) Transmission Services

- a. Applicant shall transmit power pursuant to interconnection agreements, with provisions which are appropriate to the requested transaction and which are consistent with these license conditions. Except as listed below, such service shall be provided (1) between two or among more than two Neighboring Entities or sections of a Neighboring Entity's system which are geographically separated, with which, now or in the future, Applicant is interconnected, (2) between a Neighboring Entity with which, now or in the future, it is interconnected and one or more Neighboring Distribution Systems with which, now or in the future, it is interconnected and (3) between any Neighboring Entity or Neighboring Distribution System(s) and the Applicant's point of direct interconnection with any other electric system engaging in bulk power supply outside the area then electrically served at retail by Applicant. Applicant shall not be required by this Section to transmit power (1) from a hydroelectric facility the ownership of which has been involuntarily transferred from Applicant or (2) from a Neighboring Entity for sale to any electric system located outside the exterior geographic boundaries of the several areas then electrically served at retail by Applicant if any other Neighboring Entity, Neighboring Distribution System, or Applicant wishes to purchase such power at an equivalent price for use within set areas. Any Neighboring Entity or Neighboring Distribution System(s) requesting transmission service shall give reasonable advance notice to Applicant of its schedule and requirements. Applicant shall not be required by this Section to provide transmission service if the proposed transaction would be inconsistent with Good Utility Practice or if the necessary transmission facilities are committed at the time of the request to be fully-loaded during the period of which service is requested, or have been previously reserved by Applicant for emergency purposes, loop flow, or other uses consistent with Good Utility Practice; provided, that with respect to the Pacific Northwest-Southwest Intertie, Applicant shall not be required by this Section to provide the requested transmission service if it would impair Applicant's own use of this facility consistent with Bonneville Project Act, (50 Stat. 731, August 20, 1937), Pacific Northwest Power Marketing Act (78 Stat. 756, August 31, 1964) and the Public Works Appropriations Act, 1965 (78 Stat. 682, August 30, 1964).

- b. Applicant shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission facilities as may be required for the transactions referred to in paragraph (a) of this Section, provided any Neighboring Entity or Neighboring Distribution System gives Applicant sufficient advance notice as may be necessary to accommodate its requirements from a regulatory and technical standpoint and provided further that the entity requesting transmission services compensates Applicant for the Costs incurred as a result of the request. Where transmission capacity will be increased or additional transmission facilities will be installed to provide or maintain the requested service to a Neighboring Entity or Neighboring Distribution System, Applicant may require, in addition to a rate for use of other facilities, that payment of Costs associated with the increased capacity or additional facilities shall be made by the parties in accordance with and in advance of their respective use of the new capacity or facilities.
- c. Nothing herein shall require Applicant (1) to construct additional transmission facilities if the construction of such facilities is inconsistent with Good Utility Practice or if such facilities could be constructed without duplicating any portion of Applicant's transmission system, (2) to provide transmission service to a retail customer of (3) to construct transmission outside the area then electrically served at retail by Applicant.
- d. Rate schedules and agreements for transmission services provided under this Section shall be filed by Applicant with the regulatory agency having jurisdiction over such rates and agreements.

(8) Access to Nuclear Generation

- a. If a Neighboring Entity or Neighboring Distribution System makes a timely request to Applicant for an ownership participation in the Stanislaus Nuclear Project, Unit No. 1 or any future nuclear generating unit for which Applicant applies for a construction permit during the 20-year period immediately following the date of the construction permit for Stanislaus Unit 1, Applicant shall offer the requesting party an opportunity to participate in such units, up to an amount reasonable in light

of the relative loads of the participants. With respect to Stanislaus Unit No. 1 or any future nuclear generating unit, a request for participation shall be deemed timely if received within 90 days after the mailing by Applicant to Neighboring Entities and Neighboring Distribution Systems of an announcement of its intent to construct the unit and a request for an expression of interest in participation. Participation shall be on a basis which compensates Applicant for a reasonable share of all its Costs, incurred and to be incurred, in planning, selecting a site for, constructing and operating the facility.

- b. Any Neighboring Entity or any Neighboring Distribution System making a timely request for participation in a nuclear unit must enter into a legally binding and enforceable agreement to assume financial responsibility for its share of the costs associated with participation in the unit and associated transmission facilities. Unless otherwise agreed by Applicant, a Neighboring Entity or Neighboring Distribution System desiring participation must have signed such an agreement within one year after Applicant has provided to that Neighboring Entity or Neighboring Distribution System pertinent financial and technical data bearing on the feasibility of the project which are then available to Applicant. Applicant shall provide additional pertinent data as they become available during the year. The requesting party shall pay to Applicant forthwith the additional expenses incurred by Applicant in making such financial and technical data available. In any participation agreement subject to this Section, Applicant may require provisions requiring payment by each participant of its share of all costs incurred up to the date of the agreement, requiring each participant thereafter to pay its pro rata share of funds as they are expended for the planning and construction of units and related facilities, and requiring each participant to make such financial arrangements as may be necessary to ensure the ability of the participant to continue to make such payments.

(9) Implementation

- a. All rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them.

- b. Nothing contained herein shall enlarge any rights of a Neighboring Entity or Neighboring Distribution System to provide services to retail customers of Applicant beyond the rights they have under state or federal law.
- c. Nothing in these license conditions shall be construed as a waiver by Applicant of its rights to contest the application of any commitment herein to a particular factual situation.
- d. These license conditions do not preclude Applicant from applying to any appropriate forum to seek such changes in these conditions as may at the time be appropriate in accordance with the then-existing law and Good Utility Practice.
- e. These license conditions do not require Applicant to become a common carrier.

**ATTACHMENT C**

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

--oOo--

In Re:	)	Case No. 01-30923-DM
	)	
PACIFIC GAS AND ELECTRIC	)	San Francisco, California
COMPANY,	)	Tuesday, March 26, 2002
	)	9:37 A.M.
Debtor.	)	
	)	Chapter 11

Hearing re: debtor's amended disclosure statement.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:  
For Debtor:

JAMES L. LOPES  
WILLIAM J. LAFFERTY  
KEITH D. KESSLER  
Howard, Rice, Nemerovski,  
Canady, Falk & Rabkin  
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San Francisco, CA 94111-4065  
(415)434-1600

For California Public  
Utilities Commission:  
(Telephonic)

MARK SKAPOF  
BRIAN HERMANN  
Paul, Weiss, Rifkind, Wharton  
& Garrison  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3209

For Robo Bank:

RICHARD W. ESTERKIN  
Morgan, Lewis & Bockius  
300 S. Grand Avenue, Suite 2200  
Los Angeles, CA 90071  
(213) 612-2500

1 so, yes. A quick turnaround.

2 THE COURT: Well, but I mean suppose we have a hearing, you know, in the first or second week of April, then what? Another hearing combined with the status conference on the Commission's plan.

MR. LAFFERTY: Well, I think we need one more hearing --

MR. LOPES: Your Honor, we are going to continue after lunch today?

THE COURT: I assume so.

MR. LOPES: Yeah.

MR. LAFFERTY: Yeah.

MR. LOPES: So --

MR. LAFFERTY: So we're hoping to get --

MR. LOPES: We're going to be down to a fairly discrete --

THE COURT: Yes.

MR. LOPES: -- number of issues I think, and -- so I thing a couple of weeks.

THE COURT: Well, let's do this. I'll tell you what. Let's -- so we don't spend the rest of today on just debating calendar, let's do this.

I will set a status conference on the -- which will be the first hearing on the Commission's disclosure statement and it will tentatively be a continued hearing on the PG&E's

1 disclosure statement, but we'll probably set an even earlier  
2 date later today after we see where we are.

MR. LOPES: All right.

THE COURT: Okay. So, Ms. Belli, let's have the 23rd  
or the 24th?

THE CLERK: The 24th

THE COURT: What time?

THE CLERK: At 9:30.

THE COURT: Okay. April 24th at 9:30 will be status  
conference on the CPUC disclosure statement and as I stated  
already, there are only four parties that I'm going to direct  
participate in it, but I encourage others to participate, and  
it'll be just sort of -- just talk about what we're doing.

It is also going to be a further hearing date on the  
Pacific Gas & Electric disclosure statement, but we probably  
will later today set another date prior to April 24th.

MR. LOPES: Do we call it final hearing, Your Honor?

THE COURT: Well, I don't know. I mean it -- you  
know, who knows. Okay. So taking them in sequence,  
April 15th, the Commission files its plan; April 24th at 9:30,  
status conference on the Commission's disclosure statement and  
a further hearing on the PG&E disclosure statement; May 3rd is  
the -- oh, excuse me -- April 15th, the Commission gives notice  
to all creditors of the hearing on the disclosure statement.

The hearing on the disclosure statement will be

- 1 May 9th at 9:30, and the deadline for objections will be  
2 May 3rd.

Now, I'm going to impose one other rule. The game plan at the moment is to have both disclosure statements approved assuming the Commission's gets approved and the solicitation and so on begin on or about the 17th of June.

I'm not going to authorize that until I've been told that the mediation has occurred. Maybe it's already occurred.

No one's reported back to me, but it's going to have to be over with before I'm going to start the voting process. That's all I need.

MR. HERMANN: Voting would be on the 17th?

THE COURT: Pardon?

MR. HERMANN: What did you say the -- I'm sorry.

THE COURT: Well, the solicitation will begin. I mean we haven't scheduled any other dates at this point. That's just a targeted start date.

MR. HERMANN: The first I show would begin on the 17th.

THE COURT: Pardon?

MR. HERMANN: The solicitation would begin on the 17th?

THE COURT: It's a target. I mean if it turns out it's the 18th, it's not the end of the world. It's a target date, and with -- that means that the expectation would be

1 there would be orders, plural, approving both disclosure  
2 statements -- each disclosure statement rather and setting the  
deadline for voting and ballots and confirmation objections and  
so on.

But we're not going to -- I'm not going to schedule  
things beyond that.

Okay? Any further questions on scheduling?

MR. HERMANN: Your Honor, Brian Hermann, one  
question. What is the -- I'm confused as to the need for the  
two hearings on PG&E's disclosure statement.

THE COURT: The first hearing which I've set for the  
24th is just to figure out where we're going and for the  
company at least and the creditors' committee to give me a  
preliminary idea of what they anticipate by way of challenges  
if any to the Commission's disclosure statement.

MR. HERMANN: Right.

THE COURT: And as Mr. Lopes said, just to talk  
mechanics, but equally importantly it'll be an opportunity to  
get the major players who might be taking positions in the  
courtroom.

MR. HERMANN: Right.

THE COURT: And I'm not ordering other parties to  
attend, but if someone who is here, if any of the participants  
or the parties who have been active in this case show up, I'll  
ask them if they anticipate objections, and I will encourage

1 your representatives and their representatives to see if you  
2 can resolve disputes before they --

MR. HERMANN: Right.

THE COURT: -- before the May 9th hearing.

MR. HERMANN: Okay. And then you said there might be an earlier hearing on PG&E's disclosure statement that you might schedule later this afternoon?

THE COURT: When we work our way through the balance of today's objections, I think it would probably be useful to have another hearing date before April 24th, but I'll see what Mr. Lafferty and his folks think about it.

I mean some of the things that we've dealt today already, we -- discussions about we'll work out the language. I probably will have -- I'll have a further hearing date to see if the language is satisfactory.

MR. HERMANN: Okay.

THE COURT: And I might say further -- we haven't discussed this specifically, but I have to think that the matters that are on calendar for tomorrow, including the matter that I continued from yesterday --

MR. HERMANN: Right.

THE COURT: -- might very well be relevant to further --

MR. LOPES: And find their way in a disclosure statement.

1 THE COURT: -- disclosures. Regardless of how I  
2 rule, I think it's going to be relevant to get into the  
disclosure statement.

MR. HERMANN: Right.

THE COURT: So my guess is that probably the week --  
sometime in the week of April 8th, we'll have a hearing, but  
I -- we'll schedule that later today.

MR. HERMANN: Okay. I was -- my only question was  
whether we could do that the 24th just to save the time and  
expense of having to come out twice, if their disclosure  
statement appears to be waiting for ours anyway.

THE COURT: Well, I suspect that you and your  
colleagues are going to be spending a lot of time out here.

MR. HERMANN: Well, that's true. But I'd like to  
spend it on the plan and not their disclosure statement if I  
can.

THE COURT: You're welcome to appear by phone just  
the way you did today.

MR. HERMANN: Okay.

THE COURT: Okay. But I mean I trust, Mr. Hermann,  
that there are going to be people here who can deal with  
counsel here who work on some of these issues that might come  
up.

MR. HERMANN: Yeah. So I'm just wondering since  
their disclosure statement appears to be waiting for ours,

1 what -- why we need to have an earlier hearing than the 24th on  
2 their --

THE COURT: Well, the short answer is that they are -- the company is entitled to get it's disclosure statement wrapped up and put to bed whether or not the Commission's disclosure statement gets approved, and I just want to get on with it.

MR. HERMANN: Okay.

THE COURT: Okay. All right. Now it's noon by the official clock, and we haven't taken a break. Mr. Lafferty, what's your pleasure?

MR. LAFFERTY: May I confer for just one moment?

(Counsel conferring)

MR. LAFFERTY: Your Honor, may I ask if we have the balance of the afternoon to work our way through these as best we can?

THE COURT: Yes.

MR. LAFFERTY: Okay. So we will -- if we take a lunch break, we can spend the rest of the day. I'm only inquiring because Mr. Kessler has to make some changes to travel plans depending on --

THE COURT: By my calculation, we've got the CPX, Robo Bank, CPUC, Attorney General, and Environmental Defense. I don't know of anybody we haven't dealt with.

MR. LAFFERTY: I think that's it.

1 THE COURT: We can take a personal convenience break  
2 now and push on for another while or we can take midday break  
if you want. I don't care what we do. What's your pleasure?

Mr. Kessler, what's your personal schedule?

MR. KESSLER: Well, Your Honor, if we cannot finish  
by 2:30, then I'm here till 10:00, so -- and I don't think it's  
practical to -- at this point to think that we will finish by  
2:30.

THE COURT: I don't think so. Not realistic.

MR. KESSLER: So therefore I -- you know, I'm open to  
the Court's --

THE COURT: Well, do you need to be here for every  
one of them? I mean we can take the --

MR. KESSLER: I don't, but the problem is that some  
of the things I need to be here for are sprinkled through every  
one of them.

So I will just bear through another red eye as I have  
many times in this case, and we shall proceed.

MR. MOORE: Your Honor, if I --

THE COURT: Mr. Moore.

MR. MOORE: Excuse me. I'm sorry, Mr. Kessler. I'm  
not sure everyone in the courtroom can't catch a plane till  
10:00, so I would prefer if we could that we take a relatively  
brief break and get back and try to accomplish as much  
particularly that Mr. Kessler needs to be involved with as

1 out to folks.

2 THE COURT: Well, here's my rule on this one.  
Everybody who objected gets to be served.

MR. LAFFERTY: That's fine.

THE COURT: Or anyone who appeared on the record  
today.

MR. LAFFERTY: That's fine.

THE COURT: Or who just asks.

MR. LAFFERTY: That's fine.

THE COURT: And -- all right, so let's -- last call,  
it's been a long day, but the sequence that I have for  
everything is the events coming up disclosure statement-wise,  
April 3rd next draft of the debtor's plan; April 11th, next  
hearing on the debtor's plan -- plan and disclosure statement,  
excuse me.

April 11th at 10:00 next hearing on the adequacy of  
the debtor's disclosure statement. April 15th, the Commission  
plan gets filed, and -- the Commission disclosure statement and  
it gives notice.

April 24th at 9:30 is the hopefully final hearing on  
PG&E's disclosure statement and the first hearing, which is in  
the nature of a status conference on the Commission's  
disclosure statement.

May 3rd, deadline for Commission disclosure statement  
objections. May 9th, 9:30 hearing on the Commission's

1 disclosure statement. And then everything keyed to a June 17th  
2 commencement of solicitation.

MR. LAFFERTY: Right.

THE COURT: Thank you all for your hard work.

MR. ESTERKIN: Your Honor?

THE COURT: Yes, Mr. Esterkin?

MR. ESTERKIN: Could we ask for electronic service of the amended disclosure statement so that we get it the same day that it's filed?

THE COURT: Okay. Has that been a problem for you?

MR. ESTERKIN: Yeah, it's -- yes. It will also allow us to transmit it more easily to clients and --

MR. LAFFERTY: It may be -- I'll warn counsel, it may be after hours because we have to go through some machinations with the document to be able to e-mail it.

THE COURT: There's no closing hour in cyberspace, Mr. Lafferty.

MR. LAFFERTY: That's what I'm warning him about.

MR. ESTERKIN: That's fine. If it's there in the morning, the --

MR. LAFFERTY: Yeah. It will be after 5:00.

THE COURT: Get used to electronic filing, we're headed there.

MR. LAFFERTY: Right.

THE COURT: All right. Thank you all for your hard

1 work, and time.

2 ALL COUNSEL: Thank you very much.

THE COURT: I'll see some of you tomorrow.

MR. BAKER: Your Honor, thank you for accommodating  
my schedule.

THE COURT: Sure. Have a nice vacation.

(Whereupon the hearing in the above-entitled matter was  
adjourned at 4:32 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the above-  
entitled matter.

\_\_\_\_\_  
April 1, 2002

Mary Clark, Transcriber

AAERT CET\*\*00214

\_\_\_\_\_  
April 1, 2002

Patricia A. Petrilla, Transcriber

AAERT CERT\*00113

**ATTACHMENT D**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE DENNIS MONTALI, JUDGE

In Re: ) Case No. 01-30923 DM  
          ) Chapter 11  
          )  
PACIFIC GAS and ELECTRIC COMPANY, )  
a California corporation, )  
          )  
          )  
          ) Debtor. ) DEBTOR'S REVISED DISCLOSURE  
                                  ) STATEMENT  
                                  ) Thursday, April 11, 2002  
                                  ) San Francisco, California

Appearances:

For the Debtor:           Howard, Rice, Nemerovski, Canady,  
                          Falk & Rabkin  
                          By: William J. Lafferty and  
                          James L. Lopes, Attorneys at Law  
                          Three Embarcadero Center, Seventh  
                          Floor San Francisco, California  
                          94111-4065

Also for the Debtor: Mr. Warner, Attorney at Law

                          Michael Kessler, Attorney at Law

From The Utility       Robert Finkelstein, Attorney at Law  
Reform Network (TURN):    (appearing for Randolph L. Wu)  
                          711 Van Ness Avenue, Suite 350  
                          San Francisco, California 94102

For State Agencies,     Felderstein, Fitzgerald,  
Willoughby &  
Co-Counsel with the     Pascuzzi, LLP  
California Attorney     By: Paul J. Pascuzzi, Attorney at Law  
General (via             400 Capitol Mall, Suite 1450  
telephone):             Sacramento, California 95814-4434

For MBIA:               Buchalter, Nemer, Fields &  
Younger  
                          By: Aron M. Oliner, Attorney  
                          at Law 333 Market Street, 29th  
                          Floor  
                          San Francisco, California 94105

Appearances continued on next page.

THE COURT: Well, I understand. And I'm not - I'm not saying you can't. And I'm approaching this on the assumption that there will be two plans ready to go out to vote by mid-June. Yours is ready to go, virtually. And by your own concession you're waiting to mid-June.

If the Commission catches up on that timetable, fine. If they don't, I'll decide at some other point what to do about it. So I'm just - I'm thinking back to the 73 objections we got to this disclosure statement, and now we're down to zero. That's great progress.

MR. LAFFERTY: Yes.

THE COURT: It's like 73 home runs for Barry Bonds, but -

MR. LAFFERTY: Right.

THE COURT: - I don't know if they're going to be major objections, minor objections. And I think that's why we're going to sort of talk about it.

MR. LAFFERTY: Right.

THE COURT: So I'll put a question back to you, Mr. Lopes, and I haven't thought this through: Why do you even have to file a motion? Why don't I say that on May 9th we will have sort of a status conference, that the key players being the debtor, the Committee and the Commission - I'm not excluding anyone else - and we're going to talk about how to - how to do the balloting and what's to be done; and give everybody - and