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June 25, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

July 9, 2002 (11:53AM)

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2

Docket # 72-26
Independent Spent Fuel
Storage Installation

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**PETITIONERS' MOTION FOR STAY OF
LICENSING PROCEEDING**

Pursuant to 10 C.F.R. § 2.718, Petitioners San Luis Obispo Mothers for Peace, Avila Valley Advisory Council, Peg Pinard, Central Coast Peace and Environmental Council, Environmental Center Of San Luis Obispo, Nuclear Age Peace Foundation, San Luis Obispo Chapter of Grandmothers For Peace International, San Luis Obispo Cancer Action Now, Santa Lucia Chapter of the Sierra Club, Santa Margarita Area Residents Together, Cambria Legal Foundation, and Ventura County Chapter of the Surfrider Foundation, hereby request the Atomic Safety and Licensing Board ("ASLB") to stay this proceeding for the licensing of an Independent Spent Fuel Storage Installation ("ISFSI") at Pacific Gas & Electric Company's ("PG&E's") Diablo Canyon Nuclear Power plant.

PG&E is now embroiled in a contested federal bankruptcy proceeding and related litigation in the state courts of California. As a result, fundamental factual issues bearing on PG&E's compliance with NRC safety and environmental licensing requirements have been thrown into doubt, such as: (a) whether the Diablo Canyon nuclear power plant will be a viable enterprise; (b) whether if it is viable, PG&E or some other company will be the licensee of Diablo Canyon and thereby hold the license for the ISFSI; (c) whether the

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licensee and plant owner will be one and the same entity or different entities; (d) what will be the corporate and financial relationship between the owner and the licensee if they are different; (e) how the licensee will obtain funds to finance operation and decommissioning of the ISFSI; (e) what will be the technical competence of the licensee; and (f) what will be the assets and financial health of the licensee. Given these many and significant uncertainties about the future of the Diablo Canyon license, to go ahead with a hearing on the ISFSI application now would be premature, and waste the parties' limited resources. The proceeding should be held in abeyance pending resolution of the bankruptcy proceeding, the state court proceedings, and the license transfer proceeding now pending before the agency.¹

Factual Background

On December 21, 2001, PG&E filed a license application with the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") for the construction and operation of an ISFSI at the Diablo Canyon plant. License Application for Diablo Canyon Independent Fuel Storage Installation ("License Application"). In the application, PG&E sets out information purporting to demonstrate its compliance with all relevant NRC ISFSI licensing requirements in 10 C.F.R. Parts 72 and 51, including requirements for financial qualifications, technical qualifications, decommissioning funding, and analysis of environmental impacts. In the past fifteen months, however, several events have

¹ As discussed below, the Petitioners agree with San Luis Obispo County that the license transfer proceeding also should be stayed pending resolution of the bankruptcy case.

occurred which fatally undermine the ability of any party to evaluate whether these requirements can and will be met satisfactorily.

1. PG&E Bankruptcy Petition and Reorganization Plan. On April 6, 2001, PG&E filed a voluntary petition for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. License Application at 5. On September 20, 2001, PG&E filed a plan of reorganization with Bankruptcy Court, which included a “complete restructuring of PG&E’s businesses and operations.” *Id.* PG&E’s plan of reorganization would separate PG&E into four separate companies: GTrans, Trans, Gen, and PG&E. PG&E’s generating assets, including the plant at Diablo Canyon and the proposed ISFSI, would be transferred to the new company called Electric Generation LLC (“Gen”), a subsidiary of PG&E Corp. (presently PG&E’s parent corporation), and PG&E would be separated from PG&E Corp. License Application at 5. The plan is intended to restore PG&E “to financial health.” *Id.*

As stated in a contemporaneous independent auditors’ report, however, the issues raised in the bankruptcy petition “raise substantial doubt about Pacific Gas and Electric Company’s ability to continue as a going concern.” Independent Auditors’ Report by Deloitte and Touche LLP, Attachment A to License Application at 91. PG&E recognized the uncertainty of its Plan of Reorganization when it filed a Cautionary Statement to the Security Exchange Commission (SEC) stating that some of the factors that could affect the outcome of the reorganization “materially” include:

the pace of the Bankruptcy Court proceedings; the extent to which the plan is amended or modified; legislative and regulatory initiatives regarding deregulation and restructuring of the electric and natural gas industries in the United States,

particularly in California; whether the Utility is able to obtain timely regulatory approvals or whether the Utility is able to obtain regulatory approvals at all; risks relating to the issuance of new debt securities by each of the disaggregated entities, including higher interest rates than are assumed in the financial projections which could affect the amount of cash raised to satisfy allowed claims, and the inability to successfully market the debt securities due to, among other reasons, an adverse change in market conditions or in the condition of the disaggregated entities before completion of the offerings; whether the Bankruptcy Court exercises its authority to pre-empt relevant non-bankruptcy law and if so, whether and the extent to which such assertion of jurisdiction is successfully challenged; whether a favorable tax ruling or opinion is obtained regarding the tax-free nature of the Internal Restructurings and Spin Off; and the ability of the Utility to successfully disaggregate its businesses.²

2. Objections to Reorganization Plan. On December 4, 2001, on behalf of an array of state agencies, the California Attorney General Bill Lockyer filed a formal challenge to PG&E's Reorganization Plan before the Bankruptcy Court.³ The Attorney General sought an adversary proceeding in order to challenge the PG&E Plan, on the ground that it would:

completely change the State of California's regulatory scheme governing energy generation, procurement and delivery and thwart State and local governments respective exercise of their police and regulatory powers with respect to the Plan proponents.⁴

3. State's Claims of Fraud Against PG&E's Parent Corporation. In January 2002, Attorney General Lockyer sued PG&E's parent, Pacific Gas & Electric Corporation

² PG&E, Form 8-K, filed with Securities and Exchange Commission on September 20, 2001. A copy of PG&E's Form 8-K is attached as Exhibit 1, and can also be found at: <http://investor.pgecorp.com/visitors/edgar-get.cfm?document=75488/0001004980-01-500050&CompanyID=PCG>.

³ Adversary Objection and Memorandum of Points and Authorities of the People of the State of California in Support Thereof to Compel Proponents to Initiate an Adversary Proceeding to Obtain Declaratory and Injunctive Relief Requested in Proposed Plan of Reorganization. Relevant excerpts from the Adversary Objection are attached as Exhibit 2.

⁴ *Id.* at 1.

("PG&E Corp."), for the return of up to \$4 billion that he alleged had been fraudulently transferred by PG&E to PG&E Corp. before PG&E filed for bankruptcy.⁵ The Attorney General elaborated on the concern behind the lawsuit when he filed a second round of state agency claims against PG&E in Federal Bankruptcy Court on October 3, 2001: "PG&E owes the money to more than a dozen state agencies for such things as unpaid taxes and environmental cleanup costs."⁶

On June 14, 2002, the Bankruptcy Court ruled that the Attorney General's claims regarding violations of state law could be tried in the state courts. *See* Memorandum and Decision. These claims include allegations that the corporation, in exchange for deregulation, promised the State that it would protect the utility's financial health, but instead fraudulently stripped it of revenues and assets. *Id.* at 5. The Bankruptcy Court also decided that it would reserve for itself the resolution of claims by the Attorney General that PG&E was using the bankruptcy process to circumvent state laws and regulations. Memorandum and Decision at 27.

3. CPUC Reorganization Plan. On April 15, 2002, the California Public Utilities Commission ("CPUC") filed an alternate reorganization plan with the Bankruptcy Court.⁷ The CPUC's alternate plan does not include any transfer of

⁵ *See* U.S. Bankruptcy Court, Memorandum and Decision on Motions to Remand at 5 (June 14, 2002) ("Memorandum and Decision"). A copy is attached as Exhibit 3, and can also be found at: <http://www.canb.uscourts.gov/canb/Documents.nsf/4fa6cc9d77741519882569e50004dce6/5af0e0251bff3de888256a400073f921>.

⁶ Press Release, Office of the Attorney General: Attorney General Lockyer Files State Agency Claims in PG&E Bankruptcy (October 3, 2001). A copy of the press release can be found at: <http://caag.state.ca.us/newsalerts/2001/01-097.htm>.

⁷ CPUC's Plan for Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas & Electric ("CPUC Plan."). The CPUC Plan and related documents can be found on the CPUC's

ownership of the Diablo Canyon plant. On May 15, 2002, the Bankruptcy Court approved the CPUC Plan and set forth a schedule for the creditor vote solicitation process.⁸ According to PG&E, the Bankruptcy Court has confirmed that the solicitation process for both plans will begin in June, and voting ballots will be due August 12, 2002.⁹

3. PG&E License Transfer Application. On November 30, 2001 PG&E applied to the NRC for permission to transfer the licenses for the Diablo Canyon nuclear power plant to Electric Generation, LLC (“Gen”), and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC (“Nuclear”), which would hold title to Diablo Canyon and lease it to Gen.¹⁰ These changes would make the ownership and licensing of Diablo Canyon consistent with PG&E’s proposed reorganization plan. *Id.*

On learning that the Bankruptcy Court had ordered consideration of the CPUC Alternate Plan, San Luis Obispo County filed a late intervention petition and hearing request. The County challenged the financial qualifications of Gen and Nuclear to operate the plant. It also requested that the NRC stay the license transfer pending

homepage at:

<http://www.cpuc.ca.gov/static/announcements/announcements+archive/cpuc+files+plan+for+pge+reorganization.htm>.

⁸ Order Terminating Exclusivity with Respect to the California Public Utilities Commission and Authorization the California Public Utilities Commission to File and Alternate Plan of Reorganization, Case No. 01-30923DM. The Order Terminating Exclusivity is included as an attachment to San Luis Obispo County’s hearing request and intervention petition in the pending license transfer case. Petition of the County of San Luis Obispo for Leave to Intervene and Request for Hearing (May 10, 2002) (NRC Acc. # ML0215502140).

⁹ Answer of Pacific Gas & Electric Company to the Late-Filed Petition of the County of San Luis Obispo for Leave to Intervene and Request for Hearing at 7 note 4 (May 20, 2002) (NRC Acc. # ML021690099).

¹⁰ See Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing, 67 Fed. Reg. 2,455 (January 17, 2002).

resolution of the bankruptcy court, including selection between the competing reorganization plans.¹¹ The hearing request is pending before the Commission.

ARGUMENT

Pursuant to 10 C.F.R. § 2.718(a), the Presiding Officer has the authority to “[r]egulate the course of the hearing” over which it presides. As the Commission has explained in a Statement of Policy on the Conduct of Licensing Proceedings:

The Commission’s Rules of Practice provide the [licensing] board with substantial authority to regulate hearing procedures. In the final analysis, the actions, consistent with applicable rules, which may be taken to conduct an efficient hearing are limited primarily by the good sense, judgment, and managerial skills of a presiding board which is dedicated to seeing that the process moves along at an expeditious pace, consistent with the demands of fairness.

CLI-81-8, 13 NRC 452, 453 (1981). The ASLB’s authority necessarily encompasses the establishment of a fair and efficient hearing schedule.

In this case, it would violate basic common sense to go ahead now with a hearing on PG&E’s application for an ISFSI license. The identity, corporate structure and relationships, structure and experience, and financial health of a license applicant are crucial in an ISFSI licensing case, because the application must demonstrate financial and technical qualifications, as well as the ability to secure sufficient decommissioning funding. In addition, the environmental impacts considered in the review required under the National Environmental Policy Act necessarily include the risk that the applicant will not have sufficient resources to operate the facility safely and clean it up when its useful life has ended. Here, there is no means for evaluating the applicant’s compliance with

¹¹ See note 8 for a citation.

those licensing requirements. In fact, PG&E has openly acknowledged that it has no intention of being the licensee of the proposed ISFSI. The entity that PG&E has proposed to take over the Diablo Canyon plant does not even exist, nor is its approval by the Bankruptcy Court a sure thing. As PG&E itself recognized in its Form 8-K, there are many hurdles ahead before PG&E can obtain the Court's approval of its reorganization plan. The License Application's projections of "revenues and income of GEN... once the license transfer is approved by the NRC and the reorganization plan is implemented" [*Id.* at 5-6], amount to empty rhetoric that has no relationship with reality.

As the Commission warned in *North Atlantic Energy Service Corporation* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999), a license applicant may not "rely on assumptions seriously at odds with governing reality." Here, the governing reality is in flux, and thus any representations by PG&E about issues related to financial qualifications or technical competence are without any basis in reality. It is simply not possible to evaluate PG&E's license application without the provision of fundamental information about the identity of the applicant, its corporate relationships, its technical experience and abilities, its assets, and its ability to raise funds.

These issues cannot be resolved until several events have come to pass. First, the Bankruptcy Court must issue a decision approving a plan of reorganization for PG&E. At this point, there is no way to tell whether PG&E's plan, the CPUC Plan, or some compromise will be approved. Second, the state courts must resolve the Attorney General's claim that billions of dollars have been illegally transferred from PG&E to its parent corporation, and whether that money is owed to other entities. This decision could

have a major impact on the financial situation of both PG&E and its parent. Third, if the bankruptcy proceeding results in a decision to transfer the PG&E license to Gen and Nuclear, the license transfer proceeding must be concluded before the ISFSI application is considered. To consider an ISFSI application by an entity that has declared it does not intend to be the licensee is nonsensical.¹²

Petitioners submit that it is not possible to conduct a hearing in a fair, efficient or otherwise reasonable manner under the current circumstances. While intervenors in nuclear licensing hearings are generally required to adjust their aim periodically as they challenge the elements of an ever-changing license application, in this case it is clear from the start that in fundamental respects, the license application has no relationship to reality. Where the applicant itself concedes that it is not the entity that will hold the license, and the new entity does not even exist, it is time to stop the proceeding and await an application that bears some conformance to reality. Otherwise, the resources of the petitioners will be exhausted in a meaningless charade.

Petitioners anticipate that in response to this stay motion, PG&E will argue that to stay this proceeding will jeopardize PG&E's ability to continue operating the Diablo Canyon nuclear power plant, which is expected to run out of spent fuel storage capacity in 2006. This issue is discussed in the cover letter to the License Application, DIL-01-002

¹² The petitioners also agree with San Luis Obispo County that it makes no sense to conduct the license transfer proceeding until the bankruptcy proceeding is concluded. Of course, because this matter is before the Commission it is not within the jurisdiction of the ASLB. Petitioners suggest that, in order to issue a cohesive decision on the timing of the license transfer proceeding and the ISFSI proceeding, it may be appropriate to refer this motion to the Commission.

(December 21, 2001). In response, Petitioners would point out that PG&E has built in an extra year for contingencies, and expects to be able to operate the ISFSI by 2005. *See* DIL-01-002 at 7. It is reasonable to expect that the bankruptcy proceeding will be resolved in another year.¹³ In any event, the public interest in common sense, efficiency, and conservation of resources favors postponement of this proceeding until it is clear what entity will actually hold the licensee of the proposed ISFSI.

Conclusion

For the foregoing reasons, the ASLB should stay this proceeding pending resolution of the bankruptcy proceeding, the state court proceedings, and the license transfer proceeding now pending before the NRC. Petitioners request that if for any reason the ASLB determines that it lacks the authority to act on this motion, it immediately certify the motion to the Commissioners. If the ASLB does not make a decision by July 26, 2002, Petitioners will interpret the ASLB's silence as a denial of this motion, and will bring it before the Commission.

Respectfully submitted,

¹³ Moreover, it is far from certain that, as PG&E claims, "[a]ny interruption in the availability of this capacity would almost certainly have a negative impact on the domestic sector power supply in California." DIL-01-002 at 3. While peak summer demand continues to pose challenges, the massive energy conservation measures instituted as a result of last summer's energy crisis have resulted in significant overall energy savings, such that in December of 2001, an energy glut was reported. *See* Lynda Gledhill, "Crisis Dims, But Davis' Powers Linger", San Francisco Chronical (December 3, 2001). A copy is attached as Exhibit 4. The article can also be found at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2001/12/03/MN152354.DTL>. In addition, 11 new power plants have been built. Reuters, California Governor Unveils Energy Conservation Plan" (May 8, 2002). A copy is attached as Exhibit 5, and can also be found at: http://www.enn.com/news/wire-stories/2002/05/05082002/reu_47151.asp. Even if opening of the ISFSI were delayed beyond 2006, if PG&E scaled back energy production to 50 to 60% during nonpeak hours, this would slow the generation of spent fuel and would not necessarily cause power shortages in the State.



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June 25, 2002

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: September 20, 2001

Commission Employer File Identification Number ----- -----	Exact Name of Registrant as specified in its charter ----- -----	State or other Jurisdiction of Incorporation ----- -----	IRS Number ----- -----
1-12609	PG&E Corporation	California	94-3234914
1-2348 0742640	Pacific Gas and Electric Company	California	94-

Pacific Gas and Electric Company
77 Beale Street, P.O. Box 770000
2400
San Francisco, California 94177

PG&E Corporation
One Market, Spear Tower, Suite
San Francisco, California 94105

(Address of principal executive offices) (Zip Code)

Pacific Gas and Electric Company
(415) 973-7000

PG&E Corporation
(415) 267-7000

(Registrant's telephone number, including area code)

Item 5. Other Events.

On September 20, 2001, Pacific Gas and Electric Company (Utility) and its parent company, PG&E Corporation, jointly filed with the U.S. Bankruptcy Court for the Northern District of California a proposed plan of reorganization (Plan) of the Utility under Chapter 11 of the U.S. Bankruptcy Code and their proposed disclosure statement describing the Plan. Following the filing of the proposed Plan and disclosure statement, the Utility and PG&E Corporation will seek an order of the Bankruptcy Court (1) approving the disclosure statement, (2) setting the date, time and place for a hearing to consider confirmation of the Plan, and (3) setting the voting deadline with respect to the Plan. The proposed disclosure statement, together with the following exhibits to the disclosure statement: the proposed Plan (Exhibit A), Projected Financial Information (Exhibit C), and Summary of Long-Term Debt (Exhibit D), is attached to this report as Exhibit 99. (Exhibit B to the disclosure statement, the Bankruptcy Court order approving the disclosure statement, does not yet exist and therefore has been omitted.)

To approve the form of disclosure statement, the Bankruptcy Court must determine that the disclosure statement contains adequate information of a kind and in sufficient detail to enable hypothetical reasonable investors typical of the holders of claims against and equity interests in the Utility to make an informed judgment in voting to accept or reject the Plan. It is anticipated that the Bankruptcy Court shortly will set a date for the hearing to consider the adequacy of the disclosure statement. Upon Bankruptcy Court approval, the disclosure statement will be sent to holders of claims against and equity interests in the Utility in connection with the solicitation of acceptances of the Plan. Bankruptcy Court approval of the disclosure statement does not constitute a determination by the Bankruptcy Court as to the merits of the Plan or an indication that the Bankruptcy Court will confirm the Plan.

Although there is no date by which the Bankruptcy Court must approve the form of disclosure statement, the court may approve the form of disclosure statement by the end of 2001, which would allow solicitation for approval of the Plan and the confirmation process to occur possibly as early as the spring of 2002. Among the requirements for confirmation of a plan are that the plan is (1) accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the plan "does not discriminate unfairly" and is "fair and equitable" as to such class, (2) feasible, and (3) in the "best interests" of creditors and shareholders that are impaired under the plan.

The Proposed Restructuring and Spin Off of the Reorganized Utility

The proposed Plan provides for a disaggregation and restructuring of the Utility's business into four lines of business: gas and electric distribution, electric transmission, gas transmission, and electric generation. PG&E Corporation and the Utility believe that the Plan will enable the Utility to successfully reorganize its business and accomplish the objectives of Chapter 11 of the Bankruptcy Code, and

that acceptance of the Plan is in the best interests of the Utility, its creditors and all parties in interest. Throughout the process of developing the Plan, PG&E Corporation and the Utility have been working closely with the Official Committee of Unsecured Creditors (Committee) and the Committee has endorsed the Plan.

Pursuant to the Plan the Utility would create three new California limited liability companies and separate its operations into four lines of business: retail gas and electric distribution; electric transmission; interstate gas transmission; and electric generation. The companies are referred to herein as the reorganized Utility, ETrans, GTrans and Gen, respectively. Under the Plan, the majority of the assets and liabilities associated with the Utility's electric transmission business would be transferred to ETrans or its subsidiaries or affiliates, the majority of the assets and liabilities associated with the Utility's gas transmission business would be transferred to GTrans or its subsidiaries or affiliates, and the majority of the assets and liabilities associated with the Utility's generation business (including the conventional hydroelectric generating plants, the Helms Pumped Storage Plant, the Diablo Canyon nuclear power plant, beneficial interests in the Diablo Canyon Nuclear Facilities Decommissioning Master Trust, and the irrigation district power purchase contracts) would be transferred to Gen or its subsidiaries or affiliates. The Plan further contemplates that the Utility would create a separate holding corporation (Newco) to hold the membership interests of each of ETrans, GTrans and Gen, and that the Utility would be the sole shareholder of Newco. After the transfer of Utility assets to the newly-formed entities or their subsidiaries or affiliates, the Utility would distribute the outstanding common stock of Newco to PG&E Corporation, and each of ETrans, GTrans and Gen would thereafter be an indirect wholly-owned subsidiary of PG&E Corporation. These transactions are referred to as the Internal Restructurings.

The Plan contemplates that on or as soon as practicable after the date on which the Plan becomes effective (Effective Date), PG&E Corporation will distribute the shares of the reorganized Utility's common stock it holds to the holders of PG&E Corporation common stock on a pro rata basis (hereinafter referred to as the Spin Off). The reorganized Utility would thereafter operate as a stand alone electric and gas distribution business, would continue to own the majority of Utility assets, and would continue to provide electric and gas distribution services to customers. Pursuant to the Plan, the Utility's currently outstanding preferred stock would remain in place as shares of preferred stock of the reorganized Utility. It is contemplated that holders of preferred stock would receive on the Effective Date in cash any dividends unpaid and sinking fund payments accrued in respect of such preferred stock through the last scheduled payment date before the Effective Date. The common stock of the reorganized Utility would be registered pursuant to the Securities Exchange Act of 1934, and would generally be freely tradable by the recipients on the Effective Date or as soon as practicable thereafter. The reorganized Utility would apply to list the common stock of the reorganized Utility on the New York Stock Exchange.

Procurement of Wholesale Electric Power

In January 2001, following the downgrade of the Utility's credit ratings to below investment grade the Utility was unable to continue procuring power in the electricity market on behalf of its retail customers. Thereafter, the California Department of Water Resources (DWR) began to purchase power to meet the amount of power needed by the Utility's retail electric customers that cannot be met by Utility-owned generation or power under contract to the Utility. Pursuant to the Plan, the reorganized Utility would seek a Bankruptcy Court order prohibiting the Utility from reassuming the responsibility to purchase power to meet the net open position not already provided through the DWR's power purchase contracts, until such time as (1) the reorganized Utility establishes an investment grade credit rating from Standard & Poor's (S&P) and Moody's Investor Services, Inc. (Moody's), (2) the reorganized Utility receives assurances from S&P and Moody's that the reorganized Utility's credit rating will not be downgraded as a result of the reassumption of the obligation to meet the net open position, (3) there is an objective retail rate recovery mechanism in place pursuant to which the reorganized Utility is able to fully recover in a timely manner its wholesale costs of purchasing electricity to meet the net open position, (4) there are objective standards in place regarding pre-approval of procurement transactions, and (5) after reassumption of the obligation to meet the net open position, the conditions in clauses (3) and (4) remain in effect. The Utility also would seek a Bankruptcy Court order prohibiting the reorganized Utility from accepting the assignment, directly or indirectly, of wholesale electric power procurement contracts executed by the DWR.

Pursuant to the Plan, Gen and the reorganized Utility would enter into a 12-year bilateral power sales agreement, subject to approval of the Federal Energy Regulatory Commission (FERC), under which the reorganized Utility would purchase output generated by Gen's facilities and procured under its power purchase agreements. The agreement would ensure that output from the facilities and power purchase contracts transferred on the Effective Date would be under contract to the reorganized Utility to use to serve its retail customers. The amount of output available to the reorganized Utility would phase out in years nine through twelve of the contract term and as the irrigation district power purchase contracts expire. Upon termination of this agreement, the reorganized Utility and Gen would have an opportunity to renegotiate or extend the agreement but would have no obligation to do so.

Proposed Treatment of Allowed Claims

Pursuant to the Plan, the Utility would satisfy allowed claims representing the principal amounts of its existing debt (other than allowed claims representing the various pollution control bond-related obligations, including the first mortgage bonds securing certain of the pollution control bond-related obligations, environmental claims and certain tort claims) either (1) in cash; (2) with a combination of cash and long-term notes issued by each of ETrans, GTrans and Gen, and in the case of certain claims, long-term notes issued by each of the reorganized Utility, ETrans, GTrans, and Gen; or (3) with long-term subordinated notes issued by each of ETrans, GTrans and Gen. Accrued and unpaid interest due on all allowed claims would be paid in cash, other than for allowed claims representing the various pollution control bond-related obligations. To maintain the tax-free nature of

certain pollution control bond-related obligations, holders of allowed claims representing such obligations would receive payment of their allowed claims through a combination of cash, the reinstatement of all or a portion of the Utility's obligations under various reimbursement agreements and other pollution control bond documents, all subject to certain modifications, and the assumption by ETrans, GTrans and Gen of certain of the Utility's obligations thereunder.

The Utility intends to satisfy any such cash requirements through its current cash reserves, proceeds of the sale of certain assets, and proceeds raised through new debt financings consummated by each of the reorganized Utility, ETrans, GTrans and Gen as of the Effective Date. The debt securities issued by each of the reorganized Utility, ETrans, GTrans and Gen would be several and independent and would not be cross-collateralized with the corresponding debt securities of any of the other operating companies. In total, the Plan would provide creditors with approximately \$9.1 billion in cash and \$4.1 billion in notes.

PG&E Corporation and the Utility believe that (1) through the Plan, holders of allowed claims and equity interests would obtain a greater recovery from the estate of the Utility than the recovery they would receive if the assets of the Utility were liquidated under chapter 7 of the Bankruptcy Code, and (2) the Plan represents the best method for the holders of allowed claims and equity interests to be paid in full for such allowed claims and equity interests.

Proposed Treatment of Filed Rate Case

As previously disclosed, on August 6, 2001, the Utility refiled its lawsuit against the California Public Utilities Commissioners in the United States District Court for the Northern District of California, asking the court for declaratory and injunctive relief compelling the State to recognize the Utility's right to recover in retail rates the power purchase costs which it has been required to bear in the wholesale market (the Rate Recovery Litigation). Under the proposed Plan, before the Spin-Off, the Utility would assign to Newco or a subsidiary of Newco the rights to 95% of the net after-tax proceeds from any successful resolution of the Rate Recovery Litigation and resulting CPUC rate order requiring collection in rates. The reorganized Utility would retain the rights to 5% of such proceeds.

Regulatory Approvals

FERC: To implement the Plan, the Utility will request that the FERC approve, among other matters, (1) the transfer of the Utility's electric transmission assets to ETrans or its subsidiaries or affiliates, (2) the transfer to Gen and its subsidiaries of the Utility's contracts for the sale of power for resale and certain limited transmission facilities associated with generation, (3) the transfer of the hydroelectric licenses to Gen or ETrans or their subsidiaries, (4) the transfer of the Utility's gas transmission assets to GTrans or its subsidiaries or affiliates and the establishment of new rate tariffs, and (5) the Utility's declaration and payment of the dividend of the outstanding common stock of Newco to PG&E Corporation. In addition, the Utility and PG&E Corporation will request FERC approval of the dividend of the common stock of the reorganized Utility to the public shareholders of PG&E Corporation and the securities

issuances and debt financings contemplated by the Plan. Gen will seek FERC approval to sell power to the reorganized Utility pursuant to the bilateral power sales agreement. It is anticipated that the FERC approvals will be obtained within eight months after the date the applications are filed with the FERC, if there is no evidentiary hearing on the applications. The Utility currently intends to submit such applications on or before November 30, 2001.

Securities and Exchange Commission (SEC): PG&E Corporation is a holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). As PG&E Corporation would own two public utilities (ETrans and Gen) after the Utility distributes the shares of Newco to PG&E Corporation, PG&E Corporation would request SEC approval for the indirect acquisition of the ETrans and Gen membership interests. It is anticipated that SEC approval will be obtained within one to three months after all other regulatory approvals have been obtained, assuming there is no evidentiary hearing on the application.

California Public Utilities Commission (CPUC): If the Utility were not subject to the jurisdiction of the Bankruptcy Court, under the California Public Utilities Code the approval of the CPUC would be required to transfer many of the Utility's assets to ETrans, GTrans, Gen, or their subsidiaries or affiliates, and CPUC approval could be required to effect the Spin Off. In connection with the confirmation of the Plan, however, the Debtor will seek an affirmative ruling from the Bankruptcy Court that any approvals or actions pursuant to these statutes are not required because section 1123 of the Bankruptcy Code preempts such state law.

Nuclear Regulatory Commission (NRC): The Utility will request the approval of the NRC in connection with the transfer of the licenses related to the Diablo Canyon nuclear power plant to Gen and its subsidiaries. The Utility anticipates that the NRC approval will be obtained within nine months to a year after the date the applications are filed with the NRC. The NRC may issue its approval before completion of any NRC public hearing that may be held. In such event, the approval may be subject to further conditions developed through the hearing process. The Utility currently intends to submit such applications on or before November 30, 2001.

Other Federal Agencies: The Utility, ETrans, GTrans, and Gen and their subsidiaries will seek approval of various federal agencies for the transfer of federal permits, rights-of-way and other authorizations as required.

There can be no assurance that the regulatory approvals will be obtained in a timely manner or at all. If any of the required approvals are not obtained, the Utility will be compelled to consider alternatives and the Plan, as currently contemplated, would not be consummated.

Post-Restructuring Regulation

Upon consummation of the Plan, the operations of ETrans, GTrans, Gen, and the reorganized Utility would be subject to the jurisdiction of the following governmental agencies:

FERC: The FERC will continue to have jurisdiction over ETrans's rates, terms and conditions for all transmission and transmission-related services, including, but not limited to, conditions of transmission access and interconnection. In addition, the FERC will have jurisdiction over ETrans's participation in the California Independent System Operator (ISO) or any future Western Regional Transmission Organization (RTO) which will have operating control over the transmission assets pursuant to FERC tariffs. ETrans would join a FERC-approved Western RTO at such time as one is established and approved by FERC. If the FERC certifies the ISO as a RTO, ETrans may decide to remain with the ISO.

The FERC will have jurisdiction over the rates, terms and conditions of service established by GTrans. The FERC will have license and operating jurisdiction over the hydroelectric facilities and rate jurisdiction over the sale of the output of the entire portfolio of Gen and its subsidiaries. The portion of the decommissioning funds in the nuclear facilities decommissioning trusts related to the Diablo Canyon nuclear power plant will also be subject to FERC jurisdiction and oversight. The funds in the decommissioning trusts related to the Humboldt Bay Power Plant Unit 3 would continue to be subject to CPUC oversight.

NRC: The NRC will continue to have jurisdiction over the operations of the Diablo Canyon nuclear power plant without modification. The NRC will continue to have jurisdiction over the maintenance and decommissioning of the shutdown nuclear generating unit at Humboldt Bay Power Plant Unit 3 (proposed to be retained by the reorganized Utility as decommissioning of this facility has already begun) without modification.

CPUC: The CPUC will continue to have jurisdiction over the electric and gas distribution operations and rates of the reorganized Utility. The CPUC will retain some jurisdiction over siting of transmission, construction and certain non-rate aspects of ETrans' operations, such as safety.

Other Federal, State and Local Agencies: The ongoing operations of ETrans, GTrans, Gen and their subsidiaries or affiliates, and the reorganized Utility will continue to be subject to a variety of other federal, state and local agencies following consummation of the Plan.

Tax Ruling Request

The Internal Restructurings are intended to qualify as tax-free reorganizations and the Spin Off is intended to qualify as a tax-free spin off. PG&E Corporation and the Utility will seek a private letter ruling from the Internal Revenue Service (IRS) confirming the tax-free treatment of these transactions. It is anticipated that the ruling process may take up to one year, or longer, due to the complexity of the issues involved. If a ruling cannot be obtained, PG&E Corporation and the Utility may choose to proceed without a ruling and instead obtain certain opinions of its tax advisors with respect to such transactions. If the Internal Restructurings and the Spin Off were determined to be taxable, the resulting tax liability could be substantial and PG&E Corporation and the Utility would have to assess

the continued financial feasibility of the Internal Restructurings and the Spin Off. Pursuant to the Plan, PG&E Corporation and the Utility retain the flexibility to adjust the nature or terms of the consideration to be received by holders of claims if such changes are necessary to obtain the desired tax treatment.

Conditions Precedent to Confirmation of the Plan

The Plan provides that it may not be confirmed by the Bankruptcy Court unless and until the Bankruptcy Court has entered an order or orders, which may be the confirmation order, (1) approving the Plan documents, authorizing the Utility to execute, enter into and deliver the Plan documents and to execute, implement and take all actions necessary or appropriate to give effect to the transactions contemplated by the Plan and the Plan documents, (2) determining that the Utility, PG&E Corporation and their affiliates are not liable or responsible for any DWR power contracts or purchases of power by the DWR, and any liabilities associated therewith, (3) prohibiting the reorganized Utility from accepting an assignment of the DWR contracts, (4) prohibiting the reorganized Utility from reassuming the net open position unless the conditions discussed above are satisfied, (5) approving the execution of the proposed power sales contract between Gen and the reorganized Utility and a proposed gas transmission and storage contract between GTrans and the reorganized Utility, (6) prohibiting the CPUC and the State of California from taking any action related to the allocation or other treatment of any "gain on sale" related to assets transferred or disposed of under the Plan that would adversely impact the value or utility of any assets of the reorganized Utility, (7) finding that the CPUC affiliate transaction rules are not applicable to the restructuring transactions, (8) finding that the approval of state and local agencies of California, including, but not limited to, the CPUC, shall not be required in connection with the restructuring transactions because section 1123 of the Bankruptcy Code preempts such state and local laws, (9) finding that neither PG&E Corporation nor the Utility are required to comply with certain provisions of the California Corporations Code relating to corporate distributions and the sale of substantially all of a corporation's assets because section 1123 of the Bankruptcy Code preempts such state law, and (10) approving the commitment of ETrans to join a FERC-approved RTO and authorizing ETrans to join such FERC-approved RTO at such time as it is operational. In addition, the confirmation order must be, in form and substance, acceptable to PG&E Corporation and the Utility. Any of these conditions may be waived by PG&E Corporation and the Utility.

Conditions Precedent to Effectiveness of the Plan

The Plan provides that it will not become effective unless and until the following conditions shall have been satisfied or waived: (1) the confirmation order, in form and substance acceptable to PG&E Corporation and the Utility, shall have been signed by the Bankruptcy Court on or before June 30, 2002, and shall have become a final order, (2) the Effective Date shall have occurred on or before January 1, 2003, (3) all actions, documents and agreements necessary to implement the Plan shall have been effected or executed, (4) PG&E Corporation and the Utility shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or

documents that are determined by PG&E Corporation and the Utility to be necessary to implement the Plan, (5) S&P and Moody's shall have established credit ratings for each of the securities to be issued by the reorganized Utility, ETrans, GTrans, and Gen that are acceptable to PG&E Corporation and the Utility, (6) the Plan shall not have been modified in a material way since the confirmation date, and (7) the disaggregated entities shall have consummated each of the debt offerings contemplated by the Plan.

If one or more of the conditions to the Effective Date described above have not occurred or been waived by January 1, 2003, (1) the confirmation order shall be vacated, (2) no distributions under the Plan shall be made, (3) the Utility and all holders of claims and equity interests shall be restored to the status quo ante as of the day immediately preceding the confirmation date as though the confirmation date never occurred, and (4) the Utility's obligations with respect to claims and equity interests shall remain unchanged.

Cautionary Statement Regarding Forward Looking Statements

This report and the exhibits hereto contain forward looking statements about the proposed Plan, projected financial information relating to the disaggregated entities and the various assumptions underlying such projections, and a summary of the proposed terms of long-term debt that would be issued pursuant to the Plan by each of the disaggregated entities. These statements, financial projections and underlying assumptions, and summary of proposed terms of long-term debt, are necessarily subject to various risks and uncertainties that could cause actual results to differ materially from those contemplated by the forward looking statements, financial projections, and summary of proposed terms of long-term debt. Although PG&E Corporation and the Utility are not able to predict all of the factors that may affect whether the Plan will be confirmed, or whether, if confirmed, it will become effective, some of the factors that could affect the outcome materially include: the pace of the Bankruptcy Court proceedings; the extent to which the Plan is amended or modified; legislative and regulatory initiatives regarding deregulation and restructuring of the electric and natural gas industries in the United States, particularly in California; whether the Utility is able to obtain timely regulatory approvals or whether the Utility is able to obtain regulatory approvals at all; risks relating to the issuance of new debt securities by each of the disaggregated entities, including higher interest rates than are assumed in the financial projections which could affect the amount of cash raised to satisfy allowed claims, and the inability to successfully market the debt securities due to, among other reasons, an adverse change in market conditions or in the condition of the disaggregated entities before completion of the offerings; whether the Bankruptcy Court exercises its authority to pre-empt relevant non-bankruptcy law and if so, whether and the extent to which such assertion of jurisdiction is successfully challenged; whether a favorable tax ruling or opinion is obtained regarding the tax-free nature of the Internal Restructurings and the Spin Off; and the ability of the Utility to successfully disaggregate its businesses.

In particular, the financial projections, attached as Exhibit C

to the proposed disclosure statement, have been prepared based upon certain assumptions that the Utility believes to be reasonable under the circumstances, taking into account the purpose for which they were prepared. Those assumptions considered to be significant are described in the financial projections, which are also included in Exhibit C. However, the financial projections were not prepared with a view toward compliance with the published guidelines of the SEC or the American Institute of Certified Public Accountants regarding projections or forecasts. In addition, the financial projections have not been examined or compiled by the independent accountants of the Utility or PG&E Corporation. Neither the Utility nor PG&E Corporation makes any representation as to the accuracy of the projections or the ability of the disaggregated entities to achieve the projected results. Many of the assumptions on which the projections are based are subject to significant uncertainties. Inevitably, some assumptions will not materialize and unanticipated events and circumstances may affect the actual financial results. Therefore, the actual results achieved may vary from the projected results and the variations may be material.

Item 7. Financial Statements, Pro Forma Financial Information, and Exhibits

Exhibit 99 - Proposed form of disclosure statement filed by PG&E Corporation and Pacific Gas and Electric Company, together with Exhibit A (Proposed plan of reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company), Exhibit C (Projected Financial Information and Underlying Assumptions), and Exhibit D (Summary of Terms of Long-Term Debt).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned thereunto duly authorized.

PG&E CORPORATION

By: CHRISTOPHER P. JOHNS

CHRISTOPHER P. JOHNS
Vice President and Controller

PACIFIC GAS AND ELECTRIC COMPANY

By: DINYAR B. MISTRY

DINYAR B. MISTRY
Vice President and Controller

Dated: September 20, 2001

EXHIBIT INDEX

Exhibit No.	Description of Exhibit
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11 Attorneys for the People of the State of California, Ex Rel.
 California Department of Toxic Substances Control, Central
 12 Coast Regional Water Quality Control Board, Colorado River
 Basin Regional Water Quality Control Board, State Water
 13 Resources Control Board, Lahontan Regional Water Quality
 Control Board, Central Valley Regional Water Quality
 14 Control Board, San Francisco Bay Regional Water Quality
 Control Board, North Coast Regional Water Quality Control
 15 Board, California Department of Fish and Game, California
 Department of Forestry and Fire Protection, and California
 16 Department of Water Resources

17 UNITED STATES BANKRUPTCY COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

19 In re:
 20 PACIFIC GAS AND ELECTRIC
 COMPANY, a California corporation,

21 Debtor.

22 Federal I.D. No. 94-0742640
 23
 24
 25

Case No. 01-30923 DM

Chapter 11 Case

**ADVERSARY OBJECTION AND
 MEMORANDUM OF POINTS AND
 AUTHORITIES OF THE PEOPLE OF THE
 STATE OF CALIFORNIA IN SUPPORT
 THEREOF TO COMPEL PLAN
 PROPONENTS TO INITIATE AN
 ADVERSARY PROCEEDING TO OBTAIN
 DECLARATORY AND INJUNCTIVE
 RELIEF REQUESTED IN PROPOSED PLAN
 OF REORGANIZATION**

Date: December 4, 2001

Time: 1:00 p.m.

Place: 235 Pine St., 22nd Floor
 San Francisco, California

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**I.
INTRODUCTION**

The People of the State of California, ex. rel. California Department of Toxic Substances Control, Central Coast Regional Water Quality Control Board, Colorado River Basin Regional Water Quality Control Board, State Water Resources Control Board, Lahontan Regional Water Quality Control Board, Central Valley Regional Water Quality Control Board, San Francisco Bay Regional Water Quality Control Board, North Coast Regional Water Quality Control Board, California Department of Fish and Game, California Department of Forestry and Fire Protection, and California Department of Water Resources (hereafter, "the People" or the "State"),¹ hereby file this Adversary Objection and Memorandum of Points and Authorities in Support Thereof to Compel Plan Proponents to Initiate an Adversary Proceeding to Obtain Declaratory and Injunctive Relief Requested in the Proposed Plan of Reorganization (the "State Adversary Objection") as follows.²

The Plan of Reorganization, docket no. 2235 (the " Proposed Plan"), filed by Debtor Pacific Gas and Electric Company ("PG&E") and its parent (collectively, the "Plan Proponents") seeks to have this Court grant sweeping injunctive and declaratory relief through the plan confirmation process that would, inter alia, completely change the State of California's regulatory scheme governing energy generation, procurement and delivery and thwart State and local governments respective exercise of their police and regulatory powers with respect to the Plan Proponents. The State respectfully seeks an order from this Court requiring that the Plan Proponents file an adversary proceeding so that: (a) the State's right to due process is protected; and (b) the Court can determine through a more informed proceeding whether or not the sweeping

¹ Unlike the federal government, the State of California is not a unitary government. Thus, notice must be given to each agency affected by the relief sought by debtor. Other State agencies are likely to oppose the Plan Proponents' attempts to preempt state law to the extent the Proposed Plan attempts to affect their jurisdiction and regulatory authority. However, given the lack of any meaningful description of the scope of preemption the Plan Proponents seek, such agencies have not been given adequate notice of this proceeding.

² By filing this State Adversary Objection, the State does not waive its immunity under the Eleventh Amendment and expressly reserves all rights to assert its sovereign immunity in defense to all relief sought by the Plan Proponents.

1 preemption of State and local laws, regulations, licenses and permits sought in the Proposed Plan
2 is permissible as a matter of law. These most important issues of constitutional import must be
3 decided in a manner that affords due process protection to the affected parties.

4 **A. The Proposed Plan Seeks Relief To Nullify Applicable State Regulatory Laws.**

5 PG&E is engaged in highly regulated businesses. PG&E is regulated, not only by the
6 federal government, but also by numerous state and local authorities, each with independent
7 authority and duties to enforce public welfare laws. The Plan Proponents seek through the
8 Proposed Plan to improperly manipulate the bankruptcy laws to have this Court issue
9 unprecedented injunctive and declaratory relief to thwart state and local regulators' authority
10 solely to benefit the economic position of the Plan Proponents. Without the due process
11 protections of an adversary proceeding, the Plan Proponents fail to give this Court, as well as the
12 affected state and local authorities, proper notice of the myriad of state and local laws that would
13 be adversely impacted by the Proposed Plan. The transparency of the Plan Proponents attempt to
14 "deregulate" the Debtor from the jurisdiction the California Public Utilities Commission
15 ("CPUC") is but one of the many impacts to the State's police and regulatory powers. The
16 Proposed Plan, if confirmed, would allow the Plan Proponents to nullify the State and local
17 authorities jurisdiction to enforce public health, safety and welfare laws—a consequence not
18 intended by Congress in enacting the Bankruptcy Code.

19 The Plan Proponents base their request for broad and far reaching declaratory and
20 injunctive relief on the erroneous assertion that provisions in the Bankruptcy Code can be
21 manipulated to preempt numerous state and local laws and regulations the Plan Proponents find
22 cumbersome or objectionable to their self-serving interests. The Proposed Plan attempts to
23 transfer, under the auspices of this Court, three of PG&E's four lines of business to new entities
24 to be owned by PG&E Corp., in order to eliminate the jurisdiction of the CPUC and without the
25 required approval of the CPUC and other State and local authorities. To accomplish this, the Plan
26 Proponents seek declaratory and injunctive relief by requesting an "affirmative ruling of the
27 Bankruptcy Court . . . , that, pursuant to section 1123 of the Bankruptcy Code, the approval of
28 California's state and local governmental agencies, . . . shall not be required, . . . , in order to

1 transfer or operate [the businesses] . . . , for the transfer and use of various permits, licenses, leases
2 and other entitlements . . . , to issue securities, . . . or to otherwise effectuate the Restructuring
3 Transactions.” See Proposed Plan, Article VII, Sections 7.1(l)(ii), 7.2(j)(ii), 7.3(j)(ii), and
4 7.5(n)(iii). Further, the Disclosure Statement states that PG&E will “seek a Bankruptcy Court
5 ruling whereby the Reorganized Debtor will be prohibited from reassuming the net open position
6 of its electric customers until [certain] conditions are met, . . .” and that PG&E will seek a ruling
7 prohibiting the Reorganized Debtor “from accepting, directly or indirectly, an assignment of the
8 DWR contracts.” Disclosure Statement to Proposed Plan, Article VI(G). These requests for
9 affirmative declaratory and injunctive relief are also conditions precedent to confirmation. See
10 Proposed Plan, Article VIII, Sections 8.1(b), (c), (d), (i), and (j).

11 **B. The Proposed Plan Requires Preemption Of A Host Of State And Local Laws.**

12 For these Proposed Plan provisions to take effect, the Plan Proponents will need this Court
13 to declare: that all state and local laws applicable to the Restructuring Transactions (as defined in
14 the Proposed Plan), are preempted, regardless of their purpose and objective and whether or not
15 such purposes and objectives are contrary to the Bankruptcy Code; that all state and local laws
16 regulating PG&E’s statutory duty to serve all of its customers enacted for the health and safety of
17 their citizens are preempted; and that all state and local laws currently in effect or enacted in the
18 future regarding the California Department of Water Resources’ (“DWR”) role in providing
19 energy to the citizens of the State of California for their health, safety and welfare are or will be
20 preempted. In fact, if confirmed, the Proposed Plan may leave PG&E completely unregulated in
21 areas where the State has been delegated the authority to enforce federal laws. Such wholesale
22 preemption of a State’s regulatory scheme is not authorized under the Bankruptcy Code.³

23 **C. Due Process And Adequate Notice Must Be Met By An Adversary Proceeding.**

24 The requirements of due process of law and the Federal Rules of Bankruptcy Procedure
25 (“Fed.R.Bankr.P.”) compel the Plan Proponents to carry their burden of establishing that
26

27 ³ The State reserves the right to make any and all objections to confirmation of the Plan at the
28 confirmation hearing. This brief focuses only on the requirement of an adversary proceeding as
the proper procedural vehicle to obtain the declaratory and injunctive relief regarding preemption
the Plan Proponents seek in the Plan.

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Bankruptcy Case
	)	No. 01-30923DM
PACIFIC GAS & ELECTRIC COMPANY,)	
	)	Chapter 11
Debtor.)	
)		
PEOPLE OF THE STATE OF CALIFORNIA,	)	Adversary Proceeding
ET AL.,	)	No. 02-3026DM
)	
Plaintiffs,)	
)	
v.)	
)	
PG&E CORPORATION; ET AL.,)	
)	
Defendants.)	
)		
CITY AND COUNTY OF SAN FRANCISCO,	)	Adversary Proceeding
ET AL.,	)	No. 02-3040DM
)	
Plaintiffs,)	
)	
v.)	
)	
PG&E CORPORATION, ET AL.,)	
)	
Defendants.)	
)		
CYNTHIA BEHR,	)	Adversary Proceeding
	)	No. 02-3042DM
)	
Plaintiff,)	
	)	Consolidated For
v.	)	Motions To Remand and
	)	Motions To Dismiss
PG&E CORPORATION, ET AL.,)	
)	
Defendants.)	
)		

MEMORANDUM DECISION ON MOTIONS TO REMAND

I. INTRODUCTION

On April 23, 2002, the court heard arguments on three

1 motions to remand to the state court three complaints filed
2 against PG&E Corporation ("Corporation")¹, and in two
3 instances, against several individuals who are directors of
4 Corporation or of debtor, Pacific Gas and Electric Company
5 ("Debtor"). After considering the motions, the oppositions,
6 including Debtor's Position Regarding Motions To Remand and The
7 Automatic Stay, and the arguments of counsel, the court will
8 remand portions of all three removed actions, for the reasons
9 set forth below.

10 II. FACTS AND PROCEDURAL HISTORY²

11 On January 10, 2002, Bill Lockyer, Attorney General of the
12 State of California (the "AG"), filed a Complaint For
13 Restitution, Civil Penalties, Injunction, Appointment Of
14 Receiver, And Other Equitable And Ancillary Relief (the "AG
15 Complaint") in the Superior Court of the State of California
16 for the County of San Francisco (People of the State of
17 California, ex rel. Bill Lockyer, Attorney General of the State
18 of California v. PG&E Corporation, et al.; Case No. CGC-02-
19 403289; Adversary Proceeding No. 02-3026) (the "AG Action").
20 On February 2, 2002, Corporation removed the AG Action to this
21 court by filing its Notice Of Removal Of Action.

22 On February 11, 2002, the City and County of San Francisco
23 ("CCSF") and the People of the State of California, by and
24

25
26 ¹ Corporation is not a debtor in this court; rather,
27 Corporation is the parent corporation of the debtor.

28 ² For purposes of the court's consideration of the three
motions to remand, all of the allegations of all three
complaints are deemed to be true.

1 through San Francisco City Attorney Dennis J. Herrera, filed a
2 Complaint For Restitution, Civil Penalties, Injunction,
3 Appointment Of Receiver, And Other Ancillary Relief
4 (Conversion; Unjust Enrichment; Cal. Bus. & Prof. Code § 17200
5 - Unlawful, Unfair & Fraudulent Business Practices) in the
6 Superior Court of the State of California for the County of San
7 Francisco (the "CCSF Complaint") (City and County of San
8 Francisco; People of the State of California v. PG&E
9 Corporation; Does 1-150; Case No. CGC-02-404453; Adversary
10 Proceeding No. 02-3040) (the "CCSF Action"). On March 4, 2002,
11 Corporation removed the CCSF Action to this court by filing its
12 Notice Of Removal Of Action.

13 On February 14, 2002, Cynthia Behr ("Behr") filed a
14 Complaint For Recovery Of Claim, Set Aside Fraudulent Transfer,
15 Conspiracy, Attachment, And/Or Levy Executed Against Assets,
16 Damages, Restitution, Injunction, Appointment Of Receiver, And
17 Other And Equitable And Ancillary Relief (Cal. Bus. & Prof.
18 Code § 17200 - Unlawful, Unfair & Fraudulent Business
19 Practices; Cal. Civ. Code § 3439 - Uniform Fraudulent Transfer
20 Act; Cal. Comm. Code § 6107 - Sales Act) (the "Behr Complaint")
21 in the Superior Court of the State of California in and for the
22 County of Santa Clara (Cynthia Behr v. PG&E Corporation, et
23 al.; Case No. CV-805274; Adversary Proceeding No. 02-3042) (the
24 "Behr Action"). On March 8, 2002, Corporation removed the Behr
25 Action to this court by filing its Notice Of Removal Of

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1 Action.³

2 Despite its lengthy title, the AG Complaint purports to
3 assert one cause of action, viz. violation of the Unfair
4 Competition Act, section 17200 of the California Business and
5 Professions Code ("Section"). For the most part the AG
6 Complaint alleges numerous events that occurred prior to April
7 6, 2001 (the "Petition Date"), the date the Debtor commenced
8 its present Chapter 11 case in this court. Reducing a complex
9 history and dozens of allegations to the simplest, the thrust
10 of the Section 17200 theory is that Corporation has engaged in
11 a series of events amounting to unlawful, unfair and fraudulent
12 business acts or practices including (1) agreeing to the so-
13 called First Priority Condition⁴ while never intending to abide
14 by it and other conditions; (2) subordinating the interests of
15 Debtor and Debtor's ratepayers to Corporation's own interest;
16 (3) failing to disclose to the California Public Utilities
17 Commission (the "CPUC") its true intentions during the so-

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22 ³ Corporation should have removed the Behr Action to the
23 San Jose Division of this court. Fed. R. Bankr. P. 9027(a)(1).
24 It is highly likely that removal to that division would have
25 resulted in an intra-district transfer to this division. In
26 any event, Behr did not object to the removal directly to this
27 division and the court thus considers the issue waived.

28 ⁴ The AG alleges that in order to obtain CPUC's approval of
Debtor's application to reorganize into a holding company
structure (see footnote 5 below), Corporation and its directors
agreed that they would give "first priority" to the capital
needs of Debtor as determined to be necessary and prudent to
meet its obligations to serve or operate Debtor in a prudent
and efficient manner. AG Complaint at ¶ 44(g).

1 called Holding Company Proceedings;⁵ (4) transferring
2 ratepayer-funded assets from Debtor to Corporation for the
3 benefit of Corporation and its affiliates, even while Debtor
4 was experiencing financial distress, and without intent to
5 infuse capital into Debtor when it needed capital to operate,
6 in violation of the First Priority Condition and other
7 conditions; (5) appropriating over \$4 billion from revenues
8 that Debtor had received from high frozen rates paid by
9 ratepayers; (6) implementing "ring-fencing" transactions to
10 protect the assets of other affiliates of Corporation from
11 bankruptcy or credit down-grading, insuring that it would be
12 impossible for Debtor to access such excess and impairing
13 Corporation's ability to provide cash to Debtor, again in
14 violation of the First Priority Condition. While the
15 allegations go beyond those summarized by the court, for
16 convenience they will be referred to herein as the "First
17 Priority Claims."

18 The AG Complaint also alleges some events that occurred
19 after the Petition Date. It alleges that Corporation is co-
20 proponent of a Plan of Reorganization (the "Plan") in this court
21 whereby Debtor will transfer assets of its electricity
22 transmission business, its gas transmission business and its
23 electricity generation business to entities outside of the
24

25
26 ⁵ On October 20, 1995, Debtor filed an application with the
27 CPUC for approval to reorganize under a holding company
28 structure. It proposed to implement the restructuring through
a reverse triangular merger. As a result of the merger, Debtor
would become the wholly owned subsidiary of Corporation. AG
Complaint at ¶ 37.

1 control of the CPUC. It charges Corporation with utilizing the
2 Plan (1) to restructure Debtor's operations without CPUC
3 approval; (2) to remove those current operations and activities
4 from the CPUC's jurisdiction; (3) to transfer hydro-electric
5 generation assets for an amount far below their fair market
6 value, without any revenue sharing mechanism which would entitle
7 ratepayers to any credit for profits realized in violation of
8 California law; (4) to burden Debtor with many of the
9 liabilities with which it entered bankruptcy; (5) to change the
10 ownership structure of Debtor without CPUC approval; (6) to
11 evade compliance with the CPUC's Affiliates Rules;⁶ (7) to
12 prohibit CPUC and the State of California from taking action
13 related to the allocation or other treatment of "gain on sale"
14 related to assets transferred or disposed under the Plan, and
15 (8) to prohibit Debtor from reassuming the "net open position"
16 of its customers unless certain conditions are met. More
17 specifically, the AG Complaint alleges that Corporation's use of
18 Debtor's Chapter 11 bankruptcy to approve restructuring
19 transactions and transfer assets is "unfair" (AG Complaint, ¶
20 105); that through Debtor's Chapter 11 bankruptcy case,
21 Corporation and the other individual defendants are "...
22 continuing to engage in unlawful, unfair and fraudulent business
23 practices ..." (AG Complaint, ¶ 113); and that "[Corporation's
24 and the individual defendants'] continuing wrongful conduct ...

25

26
27 ⁶ In Decision D-97-12-088, the CPUC adopted affiliate
28 transaction rules governing the relationship between
California's energy utilities and their affiliates. AG
Complaint at ¶ 46.

1 will further cause great and irreparable harm to ratepayers."
2 (AG Complaint, ¶ 115.) While the allegations go beyond those
3 summarized by the court, for convenience they will be referred
4 to herein as the "Plan Claims."

5 The CCSF Complaint sets forth three separate causes of
6 action. The first alleges conversion, the second alleges unjust
7 enrichment, and the third alleges violation of Section 17200.
8 The factual allegations are similar to, but nowhere near as
9 comprehensive as, those in the AG Complaint. For purposes of
10 this Memorandum Decision, CCSF's Section 17200 claims are also
11 identified as "First Priority Claims." They do not allege any
12 events after the Petition Date.

13 The conversion claim is somewhat confusing. CCSF alleges
14 that "Corporation took at least \$5.2 billion from [Debtor]
15 between 1997 and 2000" and that, as a result, Debtor requested
16 and was granted rate increases to cover shortfalls. CCSF
17 Complaint, ¶ 43 (emphasis added). The CCSF Complaint thus
18 concedes that the purportedly converted funds were owned and
19 possessed by Debtor at the time of the alleged conversions. The
20 CCSF Complaint does not allege that CCSF, citizens of San
21 Francisco or of California, or Debtor's ratepayers (as opposed
22 to Debtor) owned or had an immediate right of possession to the
23 money at the time of the alleged conversion.

24 The unjust enrichment claim of CCSF also alleges that
25 Corporation unlawfully took money from Debtor, leaving it with
26 insufficient money to provide safe and reliable electric
27 service. This resulted in CCSF and ratepayers being forced to
28 advance additional money to Debtor in the form of rate

1 increases. In order to avoid Corporation's unjust enrichment,
2 CCSF asks for the imposition of a constructive trust upon money
3 wrongfully taken by Corporation. Regardless of the different
4 drafting approach, this claim resembles the conversion claim.
5 It does not allege anyone other than Debtor owned the allegedly
6 wrongfully withdrawn money.

7 The Behr Complaint appears to be almost a verbatim
8 duplication of the AG Complaint, although it states four causes
9 of action: (1) a claim under Section 17200; (2) a claim under
10 Cal. Civ. Code § 3439, the Uniform Fraudulent Transfer Act
11 ("Fraudulent Transfer Claim"); (3) a claim of conspiracy; and
12 (4) a claim under California Commercial Code § 6107, the
13 California Bulk Sales Law ("Bulk Sales Claim"). As to the last
14 three causes of action, no new facts have been pleaded. With
15 respect to Behr's Section 17200 claims, those based on pre-
16 petition conduct are also identified as "First Priority Claims"
17 and those based on post-petition, Plan-related conduct are
18 identified as "Plan Claims".

19 On March 1, 2002, the AG moved to remand the AG Action to
20 Superior Court; in the alternative he moved for abstention. On
21 March 22, 2002, CCSF made a similar motion; on April 1, 2002,
22 Behr made a similar motion. Corporation opposed all three
23 motions to remand and filed motions to dismiss the three
24 complaints under Fed. R. Civ. P. 12(b)(6), or in the
25 alternative, sought a stay of the respective actions until the
26 Effective Date of Debtor's Plan. Rather than consider those
27 motions to dismiss, the court directed the parties to respond to
28 the motions to remand. The court deferred action on the motions

1 to dismiss until resolution of the motions to remand.

2 III. ISSUES

- 3 A. Does sovereign immunity prevent the AG Action and the
4 CCSF Action from being removed to the bankruptcy
5 court?
- 6 B. Do the portions of the AG Action and the Behr Action
7 raising the Plan Claims fall within the exclusive
8 jurisdiction of the bankruptcy court?
- 9 C. Are the First Priority Claims asserted in the AG
10 Action and the CCSF Action exempt from removal under
11 28 U.S.C. § 1452(a) ("Section 1452(a)")?
- 12 D. Should Behr's First priority Claims be equitably
13 remanded under 28 U.S.C. § 1452(b) ("Section
14 1452(b)")?
- 15 E. May Behr prosecute her Fraudulent Transfer Claim and
16 her Bulk Sales Claim in state court?
- 17 F. May CCSF prosecute its conversion claim in state
18 court?

19 IV. DISCUSSION

20 A. Sovereign Immunity Is Inapplicable
21 Citing People v. Steelcase, Inc., 792 F.Supp. 84, 86 (C.D.
22 Cal. 1992), AG and CCSF argue that the Eleventh Amendment bars
23 removal of the actions initiated by each of them. The court
24 disagrees. Steelcase is inconsistent with the weight of
25 authority, including that of the Supreme Court and the Northern
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1 District of California,⁷ and has been rejected in many
2 subsequent decisions from other courts. See In re Rezulin
3 Products Liability Litigation, 133 F.Supp.2d 272, 297 (S.D.N.Y.
4 2001) ("the heavy weight of authority holds that the Eleventh
5 Amendment does not bar removal"); Regents of the Univ. of Minn.
6 v. Glaxo Wellcome, Inc., 58 F.Supp.2d 1036, 1039 (D. Minn. 1999)
7 (same, citing numerous cases).⁸ This court believes that the
8 reasoning of the majority of the cases is more persuasive, and
9 concludes that the Eleventh Amendment does not preclude removal
10 of the AG action or the CCSF Action to the bankruptcy court.

11 B. Plan Claims are Preempted and Removable

12 In their respective complaints, AG and Behr allege that
13 Corporation has manipulated the bankruptcy process in a manner
14 constituting "unlawful, unfair and fraudulent business
15 practices." These allegations, which this court has identified
16 as the "Plan Claims," cannot be heard by the state court and
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18 ⁷ See Illinois v. City of Milwaukee, 406 U.S. 91, 100
19 (1972) (where state is plaintiff in suit involving federal
20 rights, "those suits may be brought in or removed to the
21 [federal] courts without regard to the character of the
22 parties"), citing Ames v. Kansas, 111 U.S. 449, 470 (1884).
23 See also People v. Acme Fill Corp., 1997 WL 685254 (N.D. Cal.
24 1997) (Walker, J.) ("California brought suit against Acme of
its own accord to recover civil penalties. As a plaintiff, it
cannot now assert immunity from suit under the Eleventh
Amendment."); cf. Lapides v. Board of Regents of the Univ.
System of Ga., ___ U.S. ___, 122 S.Ct. 1640 (2002) (state's
removal of suit to federal court constituted waiver of its
Eleventh Amendment immunity).

25 ⁸ In criticizing the Steelcase decision, the Regents court
26 stated: "It is noteworthy that the court in Steelcase did not
27 cite any authority for this proposition, nor did it attempt to
distinguish the other cases, cited above, which found the
Eleventh Amendment was not a bar to removal of a state court
28 action in which a state was the plaintiff." 58 F.Supp.2d at
1040.

1 thus will not be remanded.

2 The Bankruptcy Code preempts virtually all claims relating
3 to alleged misconduct in the bankruptcy courts. See Holloway v.
4 Household Auto. Fin. Corp., 227 B.R. 501, 507 (N.D. Ill. 1998)
5 (finding claim under Illinois Consumer Fraud and Deceptive
6 Practices Act preempted by Bankruptcy Code), citing MSR
7 Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910 (9th Cir.
8 1996) (finding claim for malicious prosecution was preempted by
9 Bankruptcy Code).⁹ "The Bankruptcy Code provides a
10 comprehensive scheme reflecting a 'balance, completeness and
11 structural integrity that suggests remedial exclusivity.'" Shape, Inc.,
12 135 B.R. at 708, quoting Periera, 92 B.R. at 908.
13 "Since this federal statute is applicable here, and has its own
14 enforcement scheme and separate adjudicative framework, it must
15 supercede any state law remedies." Shape, Inc., 135 B.R. at
16 708.¹⁰

18
19 ⁹ See also Gonzales v. Parks, 830 F.2d 1033 (9th Cir. 1987)
20 (malicious prosecution claim preempted by the Bankruptcy Code);
21 Pereira v. First N. Am. Nat'l Bank, 223 B.R. 28 (N.D. Ga.
22 1998) (finding state law claims for an accounting and unjust
23 enrichment preempted by Bankruptcy Code); Brandt v.
24 Swisstronics, Inc. (In re Shape, Inc.), 135 B.R. 707, 708
25 (Bankr. D. Me. 1992) (Bankruptcy Code preempts Massachusetts
26 Consumer Protection Act with respect to conduct arising out of
27 or relating to the bankruptcy case).

28 ¹⁰ In Shape, Inc., the debtor sued a creditor alleging
that various violations of the automatic stay constituted an
unfair and deceptive business practice. Id. The court noted
that the Bankruptcy Code contains the remedy for such
violations and thus "supercede[d]" the state law. Here, as in
Shape, Inc., remedies are provided under the Bankruptcy Code to
any party who successfully contests the ability of a debtor to
reorganize or the good faith of a plan proponent, including
denial of confirmation. See 11 U.S.C. §§ 1112(b) and 1129(a).
Such remedies should be pursued exclusively in this court.

1 The Ninth Circuit recognized this proposition in MSR
2 Exploration, where it observed:

3 [A] mere browse through the complex, detailed, and
4 comprehensive provisions of the lengthy Bankruptcy
5 Code . . . demonstrates Congress's intent to create a
6 whole system under federal control which is designed
7 to bring together and adjust all the rights and duties
8 of creditors and embarrassed debtors alike. While it
9 is true that bankruptcy law makes reference to state
10 law at many points, the adjustment of rights and
11 duties within the bankruptcy process itself is
12 uniquely and exclusively federal.

13 MSR Exploration, 74 F.3d at 913-14 (emphasis added) (noting that
14 preemption with respect to state law remedies for bankruptcy
15 activities must be applied broadly; otherwise "the opportunities
16 for asserting malicious prosecution claims would only be limited
17 by the fertility of the pleader's mind and by the laws of the
18 state in which the proceeding took place.") (citations omitted).

19 AG and Behr have cited no reported decision in which a
20 creditor, government agency, or other party has attempted, by
21 resort to state court, to enjoin (or extract restitution or
22 damages from) a plan proponent for prosecuting a plan of
23 reorganization or any aspect thereof. Rather, courts (including
24 the Ninth Circuit) have held that similar collateral attacks on
25 bankruptcy proceedings and the bankruptcy process should not be
26 heard by state courts. For example, in Gonzales, the debtor
27 (Gonzales) defaulted on an obligation prior to commencing his
28 chapter 11 case. See Gonzales, 830 F.2d at 1033. A creditor
(Parks) sought to foreclose a deed of trust she held on a house
owned by Gonzales. Id. Shortly before the scheduled state law
trustee sale, Gonzales filed a bankruptcy petition and the
trustee halted the sale. Id. Parks subsequently filed a
statutory tort action against Gonzales in California state

1 court, claiming that the bankruptcy filing constituted an abuse
2 of process. Id. at 1033-34. Gonzales did not answer the
3 complaint, and the state court entered a default judgment
4 against him. Id. at 1034.

5 Gonzales later filed an adversary proceeding in the
6 bankruptcy court against Parks, seeking relief from the state
7 court judgment. Id. The bankruptcy court granted Gonzales'
8 motion for summary judgment, declaring the state court judgment
9 void at its inception as violating the automatic stay. Id. The
10 bankruptcy court then vacated the state court judgment. Id.
11 The district court affirmed. Id.

12 On appeal to the Ninth Circuit, the court agreed with Parks
13 that the filing of the abuse of process claim did not
14 necessarily violate the automatic stay, as the automatic stay is
15 "primarily intended to apply to claims based on prior [i.e.,
16 prepetition] debts and obligations[,] and is "not applicable to
17 debts or obligations that accrue after the filing of the
18 bankruptcy petition." See id. at 1035. The court then noted
19 that "the effect the [automatic stay] would have on a
20 theoretical third category of debts and obligations, those that
21 might accrue at the moment of the filing or by virtue of the
22 filing, is far from clear - and that is the category involved in
23 the case before us." Id. Instead, the Ninth Circuit affirmed
24 the bankruptcy court's decision on other grounds: that is, state
25 courts are without subject matter jurisdiction to hear a claim
26 that the filing of a bankruptcy petition constitutes an abuse of
27 process. See id.

28 In reaching its conclusion, the Ninth Circuit found:

1 Filings of bankruptcy petitions are a matter of
2 exclusive federal jurisdiction. State courts are not
3 authorized to determine whether a person's claim for
4 relief under federal law, in a federal court, and
5 within that court's exclusive jurisdiction, is an
6 appropriate one. Such an exercise of authority would
7 be inconsistent with and subvert the exclusive
8 jurisdiction of the federal courts by allowing state
9 courts to create their own standards as to when
10 persons may properly seek relief in cases Congress has
11 specifically precluded those courts from adjudicating.
12 The ability collaterally to attack bankruptcy
13 petitions in the state courts would also threaten the
14 uniformity of federal bankruptcy law, a uniformity
15 required by the Constitution.

9 * * *

10 That Congress' grant to the federal courts of
11 exclusive jurisdiction over bankruptcy petitions
12 precludes collateral attacks on such petitions in
13 state courts is supported by the fact that remedies
14 have been made available in the federal courts to
15 creditors who believe that a filing is frivolous.
16 Debtors filing bankruptcy petitions are subject to a
17 requirement of good faith, and violations of that
18 requirement can result in the imposition of sanctions.
19 Congress' authorization of certain sanctions for the
20 filing of frivolous bankruptcy petitions should be
21 read as an implicit rejection of other penalties . . .
22 In any event, it is for Congress and the federal
23 courts, not the state courts, to decide what
24 incentives and penalties are appropriate for use in
25 connection with the bankruptcy process and when those
26 incentives or penalties shall be utilized.

18 Id. at 1035-36 (emphasis added) (citations omitted).¹¹

19 Of particular significance in Gonzales is the Ninth
20 Circuit's refusal to rely upon the automatic stay provisions of

22 ¹¹ Cf. State Street Bank & Trust Co. v. Park (In re Si Yeon
23 Park, Ltd.), 198 B.R. 956, 962 (Bankr. C.D. Cal. 1996)
24 (bankruptcy trustee cannot be required to obtain permission
25 from a state court to file a bankruptcy adversary proceeding;
26 giving state courts veto power over federal actions would
27 violate federal supremacy and interfere with the administration
28 of bankruptcy cases. "Moreover, the bankruptcy court has
exclusive jurisdiction to determine whether a case or adversary
proceeding has been improperly filed in the bankruptcy court.
The exercise of that jurisdiction is particularly important
when the matter involves fundamental questions of bankruptcy
law[.]").

1 the Bankruptcy Code in reaching its holding. Instead, the court
2 looked to the jurisdictional provisions of the Bankruptcy Code
3 and held that state courts simply are without power to act in
4 connection with those matters exclusively within the purview of
5 bankruptcy court jurisdiction. For the same reason the Gonzales
6 court also kept within the bankruptcy court the action against
7 Gonzales' attorney, who was not in bankruptcy.

8 Gonzales is analogous to the instant case.¹² Like the filing
9 of a bankruptcy petition generally, matters concerning
10 confirmation of a plan of reorganization in a chapter 11 case go
11 to the very essence of a bankruptcy court's "original and
12 exclusive jurisdiction of all cases under title 11" (see 28
13 U.S.C. § 1334(a)), and, as a core proceeding under 28 U.S.C.
14 § 157(b)(2)(L), plan confirmation is within the protected sphere
15 of matters that the Ninth Circuit has held to be free from
16 second-guessing by state courts. See Gruntz v. County of Los
17 Angeles (In re Gruntz), 202 F.3d 1074, 1083 (9th Cir. 2000)
18 ("[E]ven assuming that the states had concurrent jurisdiction,
19 their judgment would have to defer to the plenary power vested
20 in the federal courts over bankruptcy proceedings. . . . The
21 States cannot, in the exercise of control over local laws and
22 practice, vest State courts with power to violate the supreme
23 law of the land.") (cites and internal quotation marks

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26 ¹² Just as a creditor cannot prosecute an abuse of process
27 claim in state court against a bankruptcy debtor and his
28 attorney for seeking protection of the bankruptcy court, a
creditor similarly cannot sue a plan proponent in state court
upon an allegation of abusive use of the bankruptcy laws.

1 omitted).¹³ Other courts, both state and federal, have reached
2 the same conclusion. See, e.g., Saks v. Parilla, Hubbard &
3 Militzok, 67 Cal. App. 4th 567, 573-74 (1998) ("Parties may not
4 avail themselves of state court tort remedies to circumvent
5 federal remedies for their opponents' alleged misuse of the
6 bankruptcy process."); Idell v. Goodman, 224 Cal. App. 3d 262,
7 271 (1990) (finding that sanctions contained in Bankruptcy Code
8 preempted state action based on allegations that creditor filed
9 adversary proceeding in bad faith); Gene R. Smith Corp. v.
10 Terry's Tractor, Inc., 209 Cal. App. 3d 951, 954 (1989) (holding
11 that specific remedial provisions in Bankruptcy Code preempted
12 debtor's state action for abuse of process and malicious
13 prosecution based on creditors' allegedly malicious filing of
14 involuntary bankruptcy petition); see also Gonzales, 830 F.2d at
15 1036 ("A Congressional grant of exclusive jurisdiction to
16 federal courts includes the implied power to protect that grant
17 . . . A state court judgment entered in a case that falls
18 within the federal courts' exclusive jurisdiction is subject to
19 collateral attack in the federal courts.") (citations omitted).
20 Because the true gravamen of the Plan Claims are federal

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¹³ See also Contractors' State License Board v. Dunbar, 245 F
1058, 1063 (9th Cir. 2001) (to extent licensing board erred in
concluding that proceedings before it came within "police or
regulatory power" exception to the automatic stay in licensee's
Chapter 13 case, such administrative proceedings were void ab init
and bankruptcy court was under no obligation to extend full faith
credit to board's determination).

1 bankruptcy issues, these claims are pre-empted and shall not be
2 remanded.¹⁴

3 C. First Priority Claims Are Not Removable

4 Section 1452(a) provides that a "party may remove any claim
5 or cause of action in a civil action, other than a proceeding
6 before the United States Tax Court or a civil action by a
7 governmental unit to enforce such governmental unit's police or
8 regulatory power . . ." 28 U.S.C. § 1452(a) (emphasis added).

9 For the reasons stated below, the court concludes that the First
10 Priority Claims asserted by AG and CCSF constitute "police and
11 regulatory power" claims which are non-removable under Section
12 1452(a) and which are not exclusively "property of the estate."

13 AG and CCSF assert their First Priority Claims pursuant to
14 Section 17200. The California Supreme Court has determined that
15 an action for civil penalties and an injunction brought by a
16

17 ¹⁴ AG and CCSF contend that their respective actions must
18 be remanded because Section 1452(a) prohibits removal of "civil
19 actions by a governmental unit to enforce such governmental
20 unit's police or regulatory powers." As discussed later in
21 this memorandum decision, the First Priority Claims do
22 constitute claims for enforcement of the police and regulatory
23 powers of the AG and CCSF and are thus not removable. The Plan
24 Claims asserted by AG, on the other hand, are not police or
25 regulatory claims and are therefore subject to remand.

26 A police or regulatory action arises when a governmental
27 body enforces a statute, law or regulation which is effective
28 whether or not a bankruptcy exists and which is not preempted
by bankruptcy law. If, however, a governmental body is
attempting to claim that the bankruptcy process has been
abused, such a claim falls within the exclusive jurisdiction of
the bankruptcy court. Such claims relating to the plan or the
plan process are not subject to a state's police or regulatory
power, but instead fall within the bankruptcy court's authority
to regulate activities occurring in the context of a case
pending before it. The AG's Plan Claims are such claims and,
consequently, Section 1452(a) does not protect them from
removal.

1 governmental agency under Section 17200 "is fundamentally a law
2 enforcement action designed to protect the public and not to
3 benefit private parties." People v. Pacific Land Research Co.,
4 20 Cal.3d 10, 17, 141 Cal.Rptr. 20, 24 (1977); see also
5 Massachusetts v. First Alliance Mortg. Co. (In re First Alliance
6 Mortg. Co.), 263 B.R. 99, 108 (9th Cir. BAP 2001) ("it is well-
7 established that consumer protection is a valid exercise of the
8 police and regulatory power . . ."). Therefore, the portions of
9 the AG Action and the CCSF Action¹⁵ asserting First Priority
10 Claims¹⁶ are "police or regulatory power" actions and cannot be
11 removed. 28 U.S.C. § 1452(a).

12 Corporation asserts that the AG Action and the CCSF Action
13 are not police power actions because they would not satisfy the
14 "pecuniary purpose" and "public policy" tests established to
15 determine if an action is exempt from the automatic stay
16 pursuant to 11 U.S.C. § 362(b)(4). Section 362(b)(4) is
17 inapplicable to the issues before it. The court is not dealing
18 with questions about exceptions to the automatic stay found in
19 11 U.S.C. § 352(b)(4). Rather, it must construe provisions in
20 Section 1452 which describe what actions may not be removed.
21 The pertinent language of the two sections is nearly identical,

22 _____
23 ¹⁵ Behr's First Priority Claims are not subject to the removal
24 exception of Section 1452(a) since Behr is not a "governmental uni
25 Nevertheless, as discussed in Section IV(D), those particular clai
should be equitably remanded.

26 ¹⁶ As discussed previously at footnote 14, the Plan Claims
27 are not claims seeking to enforce the police or regulatory
28 powers of the AG and CCSF, since conduct occurring in the
context of proposing and confirming a plan of reorganization is
not subject to a state's regulatory power.

1 but the cases considering the pecuniary purpose and public
2 policy issues have focused on whether as a matter of policy
3 there should or should not be an exception to the automatic
4 stay. Where the government acts like a creditor, it is stayed
5 just like other creditors. When it is enforcing law, dealing
6 with regulatory and law enforcement matters, the automatic stay
7 does not stand in the way. But whether the automatic stay does
8 or does not apply has little to do with whether actions --
9 stayed or not -- may be removed to the bankruptcy court.

10 Nothing suggests that automatic stay considerations should
11 inform the court's decision under Section 1452.¹⁷

12 Corporation also contends that 28 U.S.C. § 1441 ("Section
13 1441") -- a statute governing removals generally without a
14 police or regulatory power exception -- is available as an
15 alternative means to remove the AG Action and the CCSF Action to
16 the bankruptcy court, citing Things Remembered, Inc. v.
17 Petrarca, 516 U.S. 124 (1995). The court disagrees for several
18 reasons. First, and most importantly, Section 1441 states that
19 "[e]xcept as otherwise expressly provided by Act of Congress,"
20 any civil action over which federal district courts have

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22 ¹⁷ In any event, as noted previously, the California
23 Supreme Court has determined that a governmental unit's action
24 to enforce Section 17200 does serve public policy. Moreover,
25 in United States v. Klein (In re Chapman), 264 B.R. 565, 571
26 (9th Cir. BAP 2001), BAP noted that -- under the 1998 revisions
27 to 11 U.S.C. § 362 -- a governmental action to obtain a money
28 judgment is not stayed, but that any action to enforce the
"pecuniary interest" test may have lost some of its relevance.
Nonetheless, to the extent AG and CCSF seek to punish
Corporation for purported violations and to deter similar
conduct in the future, their actions satisfy the "pecuniary
interest" test. Id. at 570; First Alliance, 263 B.R. at 108-
09.

1 original jurisdiction may be removed to federal district court.
2 Section 1452(a) "otherwise expressly provide[s]" that state
3 police power actions related to a bankruptcy case are not
4 removable. Under the express exception of Section 1441, then,
5 the First Priority Claims are not removable.

6 Second, Section 1452 is more specific than the general
7 provisions of Section 1441. As such, Section 1452 takes
8 precedence over Section 1441. Neary v. Padilla (In re Padilla),
9 222 F.3d 1184, 1192 (9th Cir. 2000) ("Statutory construction
10 canons require that '[w]here both a specific and a general
11 statute address the same subject matter, the specific one takes
12 precedence regardless of the sequence of the enactment, and must
13 be applied first.'"). Third, Things Remembered is
14 distinguishable because it does not address the specific
15 provision of Section 1452(a) excepting police power actions from
16 removal; rather, it deals with the applicability of a statute
17 limiting appellate review to remand orders made in suits removed
18 under Section 1452 and Section 1441.

19 Corporation also contends that the First Priority Claims
20 are removable because only Debtor has standing to prosecute such
21 claims. The court disagrees. The First Priority Claims fall
22 within the ambit of Section 17200. Under the express terms of
23 Cal. Bus & Prof. Code § 17204, civil actions to enforce the
24 Unfair Business Practices Act (e.g., Section 17200) may be
25 brought by "any person acting for the interests of itself, its
26 members, or the general public"). Therefore, the Section 17200
27
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1 claims do not belong exclusively to Debtor or its creditors, and
2 may be remanded.¹⁸

3 Corporation further asserts that this court should retain
4 the First Priority Claims because they are related to the
5 bankruptcy case and because the court has supplemental
6 jurisdiction over them under 28 U.S.C. § 1367 and 1441(c). The
7 court dismisses Corporation's "related to" jurisdiction
8 arguments as irrelevant. Assuming arguendo that the First
9 Priority Claims are related to the bankruptcy case (however
10 tangentially, inasmuch as Debtor is not asserting the claims and
11 the claims are not being asserted against Debtor), such claims
12 cannot be removed here under Section 1452(a).¹⁹ Congress did not
13 create an exception (for related matters) to the exception to
14 the bankruptcy removal statute discussed, supra.

15 In addition, the court will not exercise supplemental
16 jurisdiction over the First Priority Claims even though it is
17 retaining jurisdiction over the Plan Claims and (as discussed
18 below) over CCSF's conversion and unjust enrichment claims and
19 Behr's Fraudulent Transfer Claim and Bulk Sales Claim. Pursuant
20 to 28 U.S.C. § 1367 ("Section 1367"), in any civil action where
21 a district has original jurisdiction, "except . . . as expressly
22 provided by Federal statute" the district court "shall have
23 supplemental jurisdiction over all other claims that are so

24
25 ¹⁸ This court expresses no opinion on whether Debtor could
26 prosecute a Section 17200 action against Corporation or its
27 officers and directors.

28 ¹⁹ If AG had brought these claims here initially, the court m
have had "related to" jurisdiction to the extent any funds recover
by AG would flow to the estate. AG brought the First Priority Cla
in state court and to the extent they are "police power" claims, t
simply cannot be removed to this court.

1 related to claims in the action within such original
2 jurisdiction that they form part of the same case or controversy
3 . . ." 28 U.S.C. § 1367(a). Section 1367(c) notes, however,
4 that the court may decline to exercise supplemental jurisdiction
5 over a claim if "the claim substantially predominates over the
6 claim" over which the court has original jurisdiction or if "in
7 exceptional circumstances, there are other compelling reasons
8 for declining jurisdiction." 28 U.S.C. § 1367(c)(2) and (4).

9 In this case, supplemental jurisdiction is not required
10 under Section 1367(a) because Section 1452(a) "expressly
11 provide[s] otherwise" by preventing removal of the First
12 Priority Claims. See Estate of Tabas, 879 F.Supp. 464, 467
13 (E.D. Penn. 1995) (Section 1367 "does not allow a party to
14 remove an otherwise unremovable action to federal court for
15 consolidation with a related federal claim"). In addition,
16 Section 1367(a) is inapplicable because the Plan Claims and the
17 First Priority Claims do not form the same case or controversy;
18 they do not arise from a common factual nucleus. Instead, they
19 are claims based on distinct and easily divisible pre-petition
20 and post-petition conduct.

21 Nonetheless, even if Section 1367(a) were applicable, the
22 court would decline to exercise jurisdiction because the First
23 Priority Claims predominate over the Plan Claims in the AG
24 Complaint and the Behr Complaint.²⁰ More importantly, another

25
26 ²⁰ In the Behr Action the First Priority Claims also predominate
27 over the Fraudulent Transfer Claim and Bulk Sales Claim (which, as
28 discussed later, Behr does not have standing to prosecute). The F
Priority Claims also predominate over CCSF's conversion and unjust
enrichment claims.

1 compelling reason exists for this court to decline supplemental
2 jurisdiction: the First Priority Claims constitute non-removable
3 police power claims and Section 1367 should not be used to
4 bootstrap nonremovable claims to related federal claims. Tabas,
5 879 F.Supp. at 467.

6
7 D. Behr's Section 17200 Claims Should Be Remanded Under
8 28 U.S.C. Section 1452(a)

9 As a private citizen, Behr cannot assert the "police power"
10 exception to removal available to "governmental units" under
11 Section 1452(a). Nonetheless, her "First Priority Claims"
12 asserted under Section 17200 are virtually identical to the
13 Section 17200 First Priority Claims of AG and CCSF. The latter
14 claims, which involve identical factual issues and similar legal
15 issues as Behr's First Priority Claims, are being remanded under
16 Section 1452(a). Therefore, under the doctrine of equitable
17 remand set forth in Section 1452(b), grounds exist to remand
18 Behr's First Priority Claims. Such a remand avoids similar
19 litigation in multiple fora²¹ and promotes the goals of judicial
20 efficiency.

21 E. Behr's Fraudulent Transfer Claim And Bulk Sales Claim
22 Belong To Estate And Should Not Be Remanded
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25 ²¹ Behr's First Priority Claims will be remanded back to
26 the Superior Court of the County of Santa Clara, while the
27 First Priority Claims of AG and CCSF will be remanded back to
28 the Superior Court of the County of San Francisco. Upon
remand, to facilitate the interests of judicial economy,
consolidation of these actions appears appropriate but that is
for the state courts to consider.

1 Because (as discussed below), Behr lacks standing to assert
2 her Fraudulent Transfer Claim and her Bulk Sales Claim, those
3 particular claims should not be remanded. Such claims belong to
4 the estate of Debtor and fall within this court's core
5 jurisdiction.

6 Absent court approval, only a trustee or debtor in
7 possession has standing to assert a fraudulent transfer action.
8 American National Bank of Austin v. MortgageAmerica Corp. (In re
9 MortgageAmerica Corp.), 714 F.2d 1266 (5th Cir. 1983)
10 (creditor's cause of action under the Texas Fraudulent Transfers
11 Act passed to trustee, who is charged with prosecuting on behalf
12 of all creditors and shareholders); AP Industries, Inc. v. SN
13 Phelps & Co. (In re AP Industries, Inc.), 117 B.R. 789, 800
14 (Bankr. S.D.N.Y. 1990) (holding that initiation of state law
15 fraudulent transfer action violated the automatic stay; court
16 sanctioned creditor) ("intercession of a bankruptcy petition
17 vests standing in a trustee or debtor-in-possession to prosecute
18 an action for recovery of a fraudulent conveyance ... 'It is
19 axiomatic that a duly qualified trustee in bankruptcy represents
20 the estate and is the only proper party to maintain any action
21 under Code § 544(b) ... and that the creditors of the estate
22 have no right to proceed independently in their own names
23 ...'").

24 The Fifth Circuit explained why a trustee or debtor-in-
25 possession has the sole standing to pursue fraudulent transfer
26 actions:

27 The "strong arm" provision of the current Code, 11
28 U.S.C. § 544, allows the bankruptcy trustee to step
into the shoes of a creditor for the purpose of

1 asserting causes of action under state fraudulent
2 conveyance acts for the benefit of all creditors, not
3 just those who win a race to judgment. [Citation
4 omitted.] A trustee acting under section 544 "acts as
5 a representative of creditors," [citation omitted] and
6 any property recovered is returned to "the estate for
7 the eventual benefit of all creditors." [Citations
8 omitted.] The Supreme Court has, in fact, expressly
9 noted that section "541(a)(1) is intended to include
10 in the estate any property made available to the
11 estate by other provisions of the Bankruptcy Code,"
12 which would include property made available through
13 section 544. [Citation omitted.] Actions for the
14 recovery of the debtor's property by individual
15 creditors under state fraudulent conveyance laws would
16 interfere with this estate and with the equitable
17 distribution scheme dependent upon it, and are
18 therefore appropriately stayed under section
19 362(a)(3). Any other result would produce near
20 anarchy where the only discernible organizing
21 principle would be first-come-first-served. Even
22 without the Bankruptcy Code and the policies that
23 support it, we would be reluctant to elevate such a
24 principle to a rule of law.

25 MortgageAmerica, 714 F.2d at 1275-76 (emphasis added).

26 Similarly, the creditors of Debtor who had standing to prosecute
27 claims under any bulk sales law prior to the petition date no longer
28 enjoy such standing. AP Industries, 117 B.R. at 800 (bankruptcy trustee
power to prosecute such claims on trustee or debtor in possession;
after bankruptcy, judgment creditor's "status, as a party with standing
to void transfers as fraudulent conveyances or as defective bulk sales
was impaired by the superseding bankruptcy cases.") (citations and
quotations omitted).

California Commercial Code Section 6107 entitles "claimants" to
sue for violation of the Bulk Sales Law. The transferor (here Debtor
according to Behr) has no such right. See Cal. Comm. Code § 6107(a)
and (b) and UCC Comment, ¶ 1. Under 11 U.S.C. § 544(b), the debtor
in possession would have such a right in place of aggrieved creditors.

1 Since the estate is the only party with standing to assert
2 the Fraudulent Transfer Claim and the Bulk Sales Claim, Behr
3 cannot pursue these claims. By initiating such actions Behr
4 violated the automatic stay. Moreover, since these claims
5 belong to the estate, they fall within this court's core
6 jurisdiction under 28 U.S.C. § 157(H) and (F). Consequently,
7 the court will not remand these claims.

8 F. CCSF's Conversion And Unjust Enrichment Claims Belong
9 To Estate And Should Not Be Remanded

10 As noted previously, CCSF's Complaint indicates that at the
11 time of the purported conversions, the money being converted was
12 owned and held by Debtor. As such, the claim of conversion
13 belongs to Debtor's estate and CCSF lacks standing to assert it.
14 Kremen v. Cohen, 99 F.Supp.2d 1168, 1172 (N.D. Cal. 2000)
15 (elements of conversion require plaintiff to have "ownership or
16 right to possession of the property at the time of the
17 conversion"); Jenkins v. Homer (In re Homer), 45 B.R. 15, 25
18 (debtors' claim for conversion became property of estate and
19 assertable only by trustee). CCSF's unjust enrichment claim is
20 too similar to be treated any differently. For the same reasons
21 that Behr lacks standing to pursue her Fraudulent Transfer Claim
22 and her Bulk Transfer Claim, CCSF lacks standing to pursue the
23 conversion claim and the unjust enrichment claim, which belong
24 to the estate. Therefore, those claims fall within this court's
25 core jurisdiction and will not be remanded.

26 V. CONCLUSION
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28

1 An order remanding the third cause of action of the CCSF
2 Complaint is being issued concurrently with this Memorandum
3 Decision.

4 In order to avoid confusion in both this court and in the
5 state courts, no later than July 14, 2002, AG and Behr should
6 file and serve amended complaints, either deleting their Plan
7 Claims or separating the Plan Claims and the First Priority
8 Claims into distinct causes of action.²²

9 The court will hold a status conference on July 22, 2002,
10 at 9:30 a.m. with respect to the non-remanded claims and
11 Corporation's pending motions to dismiss. At that conference
12 the court will set a briefing schedule for those motions;
13 nothing pertaining to them should be filed earlier. The court
14 will also discuss with counsel whether the Plan Claims should be
15 consolidated with any objections to confirmation of the Plan to
16 be filed by AG, CCSF or Behr.

17 At the same conference the court will determine whether the
18 AG Complaint and the Behr Complaint have been properly amended
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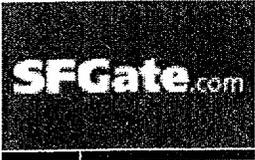
25 ²² In other words, the AG's Plan Claims set forth in paragra
26 99-107 and 113-115 of the AG Complaint should either be deleted or
27 placed into a separate cause of action alleging post-petition even
28 that purportedly violate Section 17200. Similarly, Behr's Plan Cl
set forth in paragraph 121 of Behr's Complaint should either be
deleted or be placed into a separate cause of action alleging post
petition events that purportedly violate Section 17200.

1 consistent with this Memorandum Decision. If so, the court will
2 then issue remand orders in the AG Action and the Behr Action.
3 Counsel for Corporation should be prepared to comment on the
4 amended complaints at the status conference.

5 Dated: June 14, 2002

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7 Dennis Montali
United States Bankruptcy Judge

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Crisis dims, but Davis' powers linger

Legislators, environmentalists say broad authority invites abuse

Lynda Gledhill, Chronicle Sacramento Bureau

Sacramento -- California now has so much power that it sometimes gives it away. Power grid grinchers say light up those Christmas displays. And the governor is taking campaign money from energy providers again.

The energy crisis may seem like a distant memory to some, but California remains under a declared state of emergency, and Gov. Gray Davis is rejecting calls to give up the sweeping executive powers he gave himself on Jan. 17.

The state of emergency gives the Democratic governor the authority to waive laws or regulations in the interest of solving the crisis.

Some lawmakers believe that the time has long passed for the official emergency to be over so that the executive branch does not have unilateral authority.

"We should only want to suspend the constitutional checks and balances for as short a time as absolutely necessary," said Sen. Debra Bowen, D-Marina del Ray.

Environmentalists also point out that most waivers of the rules increased the amount of emissions allowed by power plants.

"I'm outraged at what has been allowed to happen in the name of the emergency," said V. John White, executive director of the Center for Energy Efficiency and Renewable Technologies. "The environment suffered a great deal."

ROLE DURING EMERGENCY

A state of emergency allows the governor to start programs, waive environmental rules and spend money without approval by the Legislature. He cannot, however, make any new law permanent.

While the governor has the power to declare the energy emergency over, he does not believe it is appropriate to do so, said Davis spokesman Steve

Monday, December 3, 2001
San Francisco Chronicle
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Maviglio.

"It gives the governor the ability to take rapid action in the event of energy shortages, which we are still vulnerable to," Maviglio said.

Davis cited the waning of the energy crisis as one of the reasons he accepted \$50,000 in campaign contributions from two energy companies.

"First of all, the worst of the energy crisis is behind us," Davis said. "My concern was in not taking money from people who were actively selling us power during the difficult early months of 2001."

UNUSUAL STATEWIDE ACTION

While states of emergencies are often called for regional problems, such as a local flood or freeze, it is unusual to have a statewide emergency declared. To date, Davis has issued 22 executive orders under the energy emergency.

Davis has seized power contracts from the now-defunct Power Exchange, ordered rebates for consumers who conserve energy, authorized a media campaign to promote conservation, and ordered auto malls and shopping centers to reduce their outdoor lighting.

The state's energy outlook has improved dramatically since rolling blackouts swept the Golden State last winter.

ENERGY REPORT OPTIMISTIC

A recent California Energy Commission report said the state will make it through next summer without rolling blackouts if conservation trends hold and state power purchasers occasionally have to sell or even give away small amounts of surplus energy.

Bowen said it is time to call an end to the energy crisis.

"The statute says the state of emergency should be ended at the earliest possible opportunity," Bowen said. "There is a difference between a legal state of emergency and continuing to have a problem."

Bowen and others criticize a recent decision by the state Energy Commission to change the rules for so-called peaker plants, which run for a short period of time when extra electricity is necessary.

The Legislature required companies that wanted to

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build peakers to adhere to stringent environmental rules, but the commission used a Davis executive order to waive that requirement.

STANDARDS SUSPENDED

"We need to recognize one thing the emergency did was allow them to suspend due process," White said. "We don't want an ongoing process in which regulatory standards are not going to be met."

Lawmakers attempted to end the state of emergency before they adjourned for the year. The Senate approved the resolution, which Davis opposed, but the Assembly never took it up.

If both chambers approve a resolution ending the state of emergency, it is officially over. The governor, however, always has the power to declare another emergency.

Sen. James L. Brulte, R-Rancho Cucamonga, said he was opposed to lawmakers ending the governor's emergency powers while they were out of town.

"I think it was the worst thing to do," he said. "I think it ought to be a collaborative effort. The decision to start the emergency was collaborative, and it ought to be that way to terminate it."

Brulte said he might feel differently about having the emergency order in place once lawmakers are back in session in January.

E-mail Lynda Gledhill at lgledhill@sfchronicle.com.



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California governor unveils energy conservation plan

Wednesday, May 08, 2002

By Reuters

REUTERS

SACRAMENTO, Calif. — Fearing a repeat of the rolling blackouts that crippled California last year, Gov. Gray Davis unveiled a conservation plan Tuesday aimed at keeping the lights on in the nation's most populous state this summer.

Davis said the state would renew a popular advertising campaign aimed at encouraging conservation and expand a program of consumer rebates on energy-efficient appliances to help save electricity in months when demand for power typically soars as residents crank up their air conditioners.

The governor, who also warned Californians not to get complacent in their conservation efforts, announced his plan as power demand is slowly creeping back up after a record level of energy savings last summer helped ward off rolling blackouts.

"California's energy challenge is not over," Davis said in a statement. "The energy market is not yet stabilized, the West's growth is putting more strain on our regional power grid, and there's always the chance it will be an unusually hot summer."

The state's energy crisis was caused by a flawed attempt to deregulate its power industry and a shortage of power supplies to meet rising demand from a booming economy and growing population. The result brought six days of rolling blackouts, pushed California's largest utility into bankruptcy protection, and sent state officials scrambling to scrape up enough power supplies to make it through the summer.

In the end Californians avoided more outages in part by saving up to 5,570 megawatts of electricity during the summer — enough to power about 5 million homes.

Now Davis, a Democrat up for reelection, again sees conservation as crucial for the world's fifth biggest economy until the state can build up an electricity surplus from newly built power plants. "In addition to the construction of 11 new power plants, caps on the price of wholesale power, and long-term contracts, conservation was largely responsible for getting through last summer without a single blackout," Davis said.

The governor added the state would spend \$35 million on its "Flex Your Power" media campaign aimed at reminding residents of the need to conserve and work with retailers to promote energy efficient appliances through rebates.

California will also focus on the commercial and industrial sectors, responsible for 57 percent of peak demand in summer months, with an incentive program to reduce usage during times when power supplies run thin.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY OF THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2
Independent Spent Fuel Storage Installation

Docket # 72-26

**NOTICE OF APPEARANCE ON BEHALF OF
AVILA VALLEY ADVISORY COUNCIL**

Pursuant to 10 C.F.R. § 2.713, Diane Curran hereby enters an appearance in this proceeding as duly authorized legal counsel for the Avila Valley Advisory Council, P.O. Box 58, Avila Beach, CA 93424. Undersigned counsel is a member in good standing of the bars of the District of Columbia, the State of Maryland, the U.S. District Court for the District of Columbia, and the U.S. Courts of Appeals for the D.C. and First Circuits.

Respectfully submitted,



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June 25, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY OF THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2
Independent Spent Fuel Storage Installation

Docket # 72-26

NOTICE OF APPEARANCE ON BEHALF OF PEG PINARD

Pursuant to 10 C.F.R. § 2.713, Diane Curran hereby enters an appearance in this proceeding as duly authorized legal counsel for Peg Pinard, 714 Buchanan Street San Luis Obispo, CA 93401. Undersigned counsel is a member in good standing of the bars of the District of Columbia, the State of Maryland, the U.S. District Court for the District of Columbia, and the U.S. Courts of Appeals for the D.C. and First Circuits.

Respectfully submitted,



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June 25, 2002

CERTIFICATE OF SERVICE

I certify that on June 25, 2002, copies of the foregoing Petitioners' Motion for Stay of Licensing Proceeding, Notice of Appearance on Behalf of Avila Valley Advisory Council, and Notice of Appearance on Behalf of Peg Pinard, were served on the following by first-class mail and/or e-mail, as indicated below:

<p>Administrative Judge G. Paul Bollwerk, III, Chair Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail: gpb@nrc.gov</p>	<p>Stephen H. Lewis, Esq. Angela B. Coggins, Esq. Office of General Counsel Mail Stop – 0-15 D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: shl@nrc.gov, abcl@nrc.gov</p>
<p>Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: jrk2@nrc.gov</p>	<p>Lorraine Kitman P.O. Box 1026 Grover Beach CA 93483</p>
<p>Administrative Judge Peter S. Lam Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: psl@nrc.gov</p>	<p>Peg Pinard 714 Buchanan Street San Luis Obispo, CA 93401</p>
<p>Seamus M. Slattery, Chairman Avila Valley Advisory Council P.O. Box 58 Avila Beach, CA 93424 By e-mail to: jslat@aol.com</p>	<p>David A. Repka, Esq. Brooke D. Poole, Esq. Winston & Strawn 1400 L Street N.W. Washington, D.C. 20005-3502 By e-mail to: drepka@winston.com, Bpoole@winston.com</p>
<p>Richard F. Locke, Esq. Pacific Gas & Electric Company 77 Beale Street B30A San Francisco, CA 94105</p>	<p>Klaus Schumann Mary Jane Adams 26 Hillcrest Drive Paso Robles, CA 93446</p>

<p>Rochelle Becker San Luis Obispo Mothers for Peace 1037 Ritchie Grover Beach, CA 93433 By e-mail to: beckers@thegrid.net</p>	<p>Secretary of the Commission Attention: Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: hearingdocket@nrc.gov</p>
<p>Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001</p>	
<p>Jill ZamEk San Luis Obispo Mothers for Peace 1123 Flora Road Arroyo Grande, CA 93420 By e-mail to: Jzk@charter.net</p>	



Diane Curran