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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

September 23, 2002 (8:33AM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of:

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

ADDITIONAL COMMENTS OF PETITIONERS  
TRANSMISSION AGENCY OF NORTHERN CALIFORNIA,  
M-S-R PUBLIC POWER AGENCY, MODESTO IRRIGATION DISTRICT,  
AND THE CALIFORNIA CITIES OF  
SANTA CLARA, REDDING, AND PALO ALTO

The Transmission Agency of Northern California ("TANC"), the M-S-R Public Power Agency ("M-S-R"), the Modesto Irrigation District ("MID"), and the California Cities of Santa Clara ("Santa Clara" or "SVP"), Redding ("Redding"), and Palo Alto ("Palo Alto") (collectively "Petitioners"), by and through counsel, Wallace L. Duncan, James D. Pembroke, Michael Postar, Lisa S. Gast, Sean M. Neal, Peter J. Scanlon and Derek A. Dyson, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully tender these additional comments and answer in accordance with the Nuclear Regulatory Commission's ("Commission" or "NRC") Rules and Regulations, 10 C.F.R. §§ 2.1305 and 2.1307 (2002).

I. INTRODUCTION AND BACKGROUND

1. The Petitioners recognize that the Commission's Rules and Regulations may not expressly authorize intervenors to submit answers to comments by

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an applicant in a license transfer proceeding. If such is the case, the Petitioners respectfully request that the Commission permit the filing of this answer as it will assist the Commission in its determination respecting antitrust conditions. Furthermore, this answer should be allowed into record to address the sudden reversal of position posed on August 22, 2002 by Pacific Gas and Electric Corporation ("PG&E") in its Comments to the Commission ("August Comments"). From the inception of this proceeding PG&E has proposed that the Stanislaus Commitments be transferred with the licenses for the Diablo Canyon Power Plant Units 1 and 2 ("Diablo Canyon"). All pleadings submitted by intervenors in this proceeding have been based upon PG&E's assertion that the Stanislaus Commitments should be transferred with the Diablo Canyon licenses. As discussed herein, PG&E's August Comments put forth, for the first time in this proceeding, that PG&E supports a transfer of the Diablo Canyon licenses without the Stanislaus Commitments. The Commission must allow Petitioners to address PG&E's change in position, as well as to alert the Commission to the significance, as respects PG&E's change in position, of a related partial settlement stipulation entered into among PG&E, the Northern California Power Agency ("NCPA") and Palo Alto, and approved by the PG&E Bankruptcy Court by its order dated April 26, 2002.<sup>1/</sup>

2.     **Background.** On November 30, 2001, PG&E filed its  
Application for License Transfers and Conforming Administrative License Amendments

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<sup>1/</sup>     *In re Pacific Gas and Electric Co.*, No. 01 30923 DM (Bankr. N.D.Calif. 2002). Order Granting Debtor's Motion for Order Approving Stipulation Resolving Objections by City of Palo Alto and Northern California Power Agency to Debtor's Disclosure Statement (Apr. 26, 2002) ("Bankruptcy Settlement") (attached herein as "Attachment A").

("PG&E Application") with the Commission, in which PG&E seeks the Commission's consent to transfer the operating licenses for Diablo Canyon. If the transfer is approved, as initially proposed, there would be four licensees with varying degrees of authority and responsibility, ranging from the right to use, possess and operate the plant, to the obligation to comply jointly with the antitrust license conditions presently in place for Diablo Canyon.

3.     **Reorganization.** The proposed transfer is part of PG&E's proposed bankruptcy Plan of Reorganization ("POR"). In its POR, PG&E proposes to divide PG&E, an investor-owned gas and electric utility, into four primary entities. Most of the generating assets, including Diablo Canyon, would be transferred to Electric Generation LLC ("Gen"), or its subsidiaries (*e.g.*, Diablo Canyon LLC). The electric and gas backbone transmission assets would be transferred to ETrans LLC ("ETrans") and Gas Trans LLC, respectively. PG&E would be limited to owning and operating its residual assets, including the local distribution systems for gas and electricity.

4.     Gen and ETrans will become direct subsidiaries of PG&E Corporation ("Corp"), the current parent company of PG&E. Corp will distribute the common stock of PG&E through a dividend to Corp's shareholders. Although it will not remain under the same corporate parent, PG&E will retain substantial affiliations with Gen and ETrans through long-term agreements for the purchase and transmission of PG&E's electric energy requirements. Further, the disaggregated PG&E affiliates all are composed of officers and employees of their common predecessor.

5. PG&E's Application before this Commission seeks the approval of the transfer of the Diablo Canyon operating license to Gen and Gen's wholly owned subsidiary, Diablo Canyon LLC. Gen's license would authorize it to possess, use and operate Diablo Canyon, while Diablo Canyon LLC would be authorized only to possess Diablo Canyon. Recognizing the need to preserve the antitrust conditions, PG&E's Application initially requested the Commission to retain PG&E as a licensee, and to add ETrans as a licensee, each for the "purpose of retaining responsibility of the existing antitrust license conditions." PG&E Application, p. 4, n.4.

6. **Antitrust Conditions/Stanslaus Commitments.** A significant issue for determination in this proceeding is the appropriate treatment of the existing antitrust license conditions. The antitrust conditions incorporated into the Diablo Canyon license are commonly referred to as the "Stanislaus Commitments."<sup>2/</sup> The Federal Energy Regulatory Commission ("FERC"), recently described the Stanislaus Commitments as:

originally a contractual agreement between the  
Department of Justice, Antitrust Division and PG&E,  
[which] were included in the Nuclear Regulatory

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<sup>2/</sup> See 41 Fed. Reg. 20,225-20,228 (1976), as supplemented by the 1991 Settlement Agreement between NCPA and PG&E in an NRC proceeding. See also generally, *In re Pacific Gas and Electric Co., (Diablo Canyon Nuclear Plant, Units 1 and 2)*, 31 N.R.C. 595, 1990 NRC LEXIS 53, at \*4-5 (1990) (discussing the history of the conditions in the context of an enforcement action order). The Stanislaus Commitments derive their name from PG&E's original effort to secure licensing for both the Stanislaus Nuclear Project and the Diablo Canyon Nuclear Project. While the Stanislaus Nuclear Project was never constructed, the Stanislaus Commitments were included as part of the NRC license for PG&E's Diablo Canyon Nuclear Project.

Commission construction permits and operating licenses of the Diablo Canyon Nuclear Plants and have been held by the United States District Court of Northern California to be a contract of which NCPA was and is a third party beneficiary under California law. *United States v. Pacific Gas and Electric Company*, 714 F. Supp. 1039 (N.D. Cal. 1989), appeals dismissed per stipulation, No. 91-16011 (9th Cir. Mar. 20, 1992). NCPA is entitled to enforce the terms of that contract. *Id.* at 1048-1051. The Commitments are also embodied in a 1991 contract of settlement between NCPA and PG&E which extended the effectiveness of those Commitments, as to NCPA, through the year 2050. The Commission has determined that the transmission portions of the Stanislaus Commitments were jurisdictional and PG&E was required to file them with the Commission. *Pacific Gas and Electric Company*, 11 FERC ¶ 61,246 (1980), aff'd without opinion, 679 F.2d 262 (1982).

*Pacific Gas and Electric Company*, 100 FERC ¶ 61,233 at P. 22 n.7 (Aug. 30, 2002)

("FERC August 2002 Order").<sup>3/</sup> The Bankruptcy Settlement provides a similar definition of the Stanislaus Commitments. *See Bankruptcy Settlement*, Paragraph 4(h).

7. In the Stanislaus Commitments, PG&E agreed to provide the following services, among others:

- A. The requirement that interconnection agreements provide for reserve coordination in which each of the parties maintains adequate reserves for its estimated peak firm load, and specifying that (except in specified circumstances which are not relevant) a Neighboring Entity shall not be required to carry reserves higher than

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<sup>3/</sup> The notation "P" in FERC Orders refers to the new FERC citation format of citing to paragraph rather than page numbers. The FERC August 2002 Order sets for hearing a dispute caused by PG&E's repudiation of certain obligations under the Stanislaus Commitments, specifically confirmation of PG&E's commitment to provide to NCPA firm transmission service without congestion charges.

those of PG&E, and PG&E is obligated to sell capacity to a Neighboring Entity for use as reserves if the capacity is available. See Stanislaus Commitments, §§ III (A), (B) and (C).

- B. The requirement that PG&E offer to coordinate maintenance schedules with a Neighboring Entity, and to exchange or sell maintenance capacity and energy when available. See id., § III (E).
- C. The requirement that PG&E sell emergency power to a Neighboring Entity if that Neighboring Entity maintains the level of minimum reserves agreed to (and vice-versa). See id., § IV.
- D. The requirement that (when it has adequate generation available) PG&E offer to sell firm, full or partial requirements power to Neighboring Distribution Systems or Neighboring Entities. See id., § VI.
- E. The requirement that PG&E transmit power pursuant to interconnection agreements for a Neighboring Entity and/or a Neighboring Distribution System, and/or others dealing in bulk power supply. See id., § VII(A).
- F. The requirement that PG&E shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission capacity as may be required by a Neighboring Entity. See id. § VII(B).
- G. The requirement that all rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them. See id., § IX(A).

Initially, the Stanislaus Commitments were set forth in an April 30, 1976 letter and related attachments from John F. Bonner (then President of PG&E) to the Assistant Attorney General, Antitrust Division, United States Department of Justice ("DOJ"). PG&E's letter to the DOJ made clear PG&E's obligation to provide transmission

service, power sales services and related services to Neighboring Distribution Systems and Neighboring Entities. They were supplemented by a 1991 Settlement Agreement between NCPA and PG&E. *See, e.g.*, January 13, 1992 Letter from NRC Director, Office of Nuclear Reactor Regulation, to Counsel for NCPA, acknowledging the import of the 1991 Settlement to disputes before the NRC (attached herein as "Attachment B"). As noted in the FERC August 2002 Order, the Stanislaus Commitments are in effect through at least January 1, 2050, and PG&E, in its current structure, retains the obligations briefly described above.

8. MID, SVP, Redding, and Palo Alto are "Neighboring Distribution Systems" and/or "Neighboring Entities"<sup>4/</sup> as those terms are defined in the Stanislaus Commitments, and each has a direct interest in the preservation and enforcement of the Diablo Canyon license conditions including, in particular, the Stanislaus Commitments. The U.S. District Court for the Northern District of California expressly determined several of Petitioners' standing as third-party beneficiaries, and implicitly others, either in their own capacity, or as a representative organization for such beneficiaries, under the Stanislaus Commitments<sup>5/</sup>

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<sup>4/</sup> *See generally Pacific Gas & Electric Co.*, 31 N.R.C. 595, 1990 NRC LEXIS 53, at \*4-5 (1990) (discussing the history of the conditions in the context of an enforcement action order). This NRC Order led to the 1991 Settlement Agreement. *Se*, January 13, 1992 Letter from NRC Director, Office of Nuclear Reactor Regulation, to Counsel for NCPA, acknowledging the import of the 1991 Settlement to disputes before the NRC (Attachment B).

<sup>5/</sup> *United States v. Pacific Gas and Electric Co.*, 714 F. Supp. 1039, 1051 (N.D. Cal. 1989).

9. The Stanislaus Commitments shield NCPA and third-party beneficiaries from the adverse effects of having no alternative but to rely upon PG&E's transmission facilities to transmit remote generation resources, both purchased and owned, to those entities' customers. Such adverse effects include the payment of higher congestion costs by these entities, which accrue whenever PG&E is deficient in maintaining its transmission infrastructure. The Stanislaus Commitments protect these entities from being dependent on PG&E's transmission infrastructure.

10. **PG&E's Request To Amend Application.** The Commission's Memorandum and Order issued on August 1, 2002 ("Order") requested parties to submit briefs and to further assist the Commission in determining whether the transfer of the above described antitrust conditions is appropriate, and to address the various petitioners' requests for deferral. The Commission directed the Applicant, Petitioners and participants to submit briefs on the following issue:

Whether the Commission has statutory authority to retain or impose antitrust conditions for commercial nuclear power plants licensed under Section 104(b) of the Atomic Energy Act?

11. PG&E in its Brief addressing the Commission's antitrust authority regarding the Diablo Canyon licenses, has requested that the Commission issue the Diablo Canyon licenses without the Stanislaus Commitments. PG&E in its Brief stated:

Should the Commission conclude that it lacks the requisite authority, however, it should — without the need for any further evidentiary hearings — promptly authorize the transfer of the DCPD licenses without the antitrust license conditions.



PG&E Brief at 12. In taking this position, PG&E has altered its application, which recognized that the Stanislaus Commitments should be transferred with the Diablo Canyon licenses, without defining the impacts of such a change upon the license transfer, other aspects of the POR, or upon those parties for which the Stanislaus Commitments were meant to protect.

## II. SUMMARY OF DISCUSSION

12. The Diablo Canyon licenses must continue to include the Stanislaus Commitments. Impairment of the Stanislaus Commitments would alter the POR and detrimentally impact the intervenors rights in this proceeding, as well as in bankruptcy proceedings before the Bankruptcy Court, the FERC<sup>6/</sup>, and the Securities and Exchange Commission (“SEC”). Moreover, the 1991 Settlement Agreement and subsequent confirmations of the Stanislaus Commitments, e.g., the Bankruptcy Settlement, are part of a regulatory compact designed to protect public power from abuse of PG&E’s market power over transmission in central and northern California, and that, if performed by PG&E, protects PG&E from antitrust liability. PG&E must not be allowed to amend the Diablo Canyon licenses by deleting the Stanislaus Commitments as these obligations are part of a contract between DOJ and PG&E which was meant to address DOJ’s concerns over antitrust violations by PG&E. The Stanislaus Commitments, even if this Commission determines it does not have the authority to enforce them, have been recognized by courts as license obligations that must and can

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<sup>6/</sup> See also *Pacific Gas and Electric Co.* 100 FERC ¶ 61,233 (2002) (FERC set for hearing PG&E’s obligations under the Stanislaus Commitments with regard to transmission service rights and congestion charges).

continue with the operation of Diablo Canyon. The Stanislaus Commitments must not be impaired or removed from the Diablo Canyon licenses without a hearing to allow all interested parties, including the DOJ, to address the impact of the removal of the Stanislaus Commitments. Any change to, or impairment of, the Diablo Canyon licenses would constitute an amendment to the Diablo Canyon licenses, and therefore a hearing on the amendment would be necessary to determine if the amendment would be in the public interest. *See* 10 C.F.R. §2.105 (2002).

### **III. DISCUSSION**

#### **A. PG&E's Change in Position Ignores the Fact that the Commission Has the Authority to Retain, Impose and Enforce Antitrust Conditions Upon Applicants**

13. The Diablo Canyon licenses must not be amended to remove or impair the Stanislaus Commitments. As more fully addressed in Petitioners' August 22, 2002 Comments in response to the Commission's Order, the Commission has the authority to retain, impose and enforce antitrust conditions upon the applicants in this license transfer proceeding, and nothing in Chapter 23 of the Atomic Energy Act ("AEA")<sup>7/</sup> prohibits enforcement of the Stanislaus Commitments. As described in detail below, PG&E's request that the Diablo Canyon licenses be approved without the Stanislaus Commitments would not be in the public interest, and increases the potential for more antitrust litigation and disputes at the FERC, in the PG&E bankruptcy and in the courts. PG&E's request to have the Commission authorize the transfer of the Diablo Canyon licenses without the antitrust license conditions should not be granted under any

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<sup>7/</sup> 42 U.S.C. §§ 2011-2297h (2000).

circumstance. PG&E's obligations before this Commission to third party beneficiaries of the Stanislaus Commitments should not be evaded or negated because of PG&E's change in corporate structure, and the Stanislaus Commitments should not be removed from the Diablo Canyon licenses or in any way impaired. The Commission can and should transfer the Diablo Canyon licenses with the Stanislaus Commitments.

14. The Commission's December 6, 1978 "Issuance of Amendment to Construction Permits" in the Diablo Canyon licensing proceeding indicates that the Diablo Canyon licenses were amended to "provide for the addition of certain antitrust conditions," which PG&E and the DOJ had negotiated in 1976.<sup>8/</sup> The Stanislaus Commitments were established to "moot questions of anticompetitive conduct by PG&E" which had come to the attention of DOJ.<sup>9/</sup> PG&E, in a letter to the Commission, dated September 19, 1978, stated that it had no objection to including the Stanislaus Commitments in the Diablo Canyon licenses.<sup>10/</sup> The Commission further indicated that the "amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations."<sup>11/</sup> The Commission has further recognized that the Stanislaus Commitments are part of a contract between PG&E and the DOJ, and are an integral part of the Diablo Canyon license conditions.<sup>12/</sup>

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<sup>8/</sup> 43 Fed. Reg. 59, 933, 59,934 (1978).

<sup>9/</sup> Receipt of Attorney General's Advice, 41 Fed. Reg. 20,226 (1976).

<sup>10/</sup> 43 Fed. Reg. at 59,934.

<sup>11/</sup> *Id.*

<sup>12/</sup> *See Pacific Gas and Electric Co. (Diablo Canyon)*, 31 NRC 595, 1990  
(continued...)

Further, PG&E recognized the need to include the Stanislaus Commitments in the transferred license.<sup>13/</sup>

15. In *United States v. PG&E*, the court determined that the Stanislaus Commitments were part of a contract entered into by PG&E and DOJ, and that third party beneficiary claims could be filed before the court.<sup>14/</sup> Many entities, including some of the parties to this proceeding, have relied upon the efficacy of that contract and its efflorescence in the Diablo Canyon licenses.<sup>15/</sup> Moreover, historical reliance on the Stanislaus Commitments by California municipal utilities have also been described and confirmed in *United States v. PG&E*, both as a license condition to the Diablo Canyon licenses and as a contract, including as follows:

In addition to being NRC license conditions, the Stanislaus Commitments are part of a contract between PG&E and the Department of Justice under which the DOJ dropped its antitrust investigation of PG&E in return for PG&E's agreement to include the Commitments as part of its Diablo Canyon license. See 41 Fed. Reg. 20,276 (1976). WAPA, NCPA and the Cities are entitled to sue as third party beneficiaries. . . .

*Id.* at 1051 (The "Cities" referred to include the California cities of Redding, Santa Clara and Palo Alto). The Commission must take into consideration that the Stanislaus

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<sup>12/</sup> (...continued)  
NRC Lexis 53, \*10-11(1990).

<sup>13/</sup> *See* PG&E Application p. 4 n. 4.

<sup>14/</sup> 714 F. Supp. at 1051.

<sup>15/</sup> *See also, supra*, discussion on the Bankruptcy Settlement among the Northern California Power Agency, Palo Alto and PG&E

Commitments are part of a contract between the DOJ and PG&E, as well as the 1991 Settlement Agreement, which benefit the Petitioners as third parties. Amending the Diablo Canyon licenses by eliminating the Stanislaus Commitments would arguably diminish the contract, including the prior antitrust settlement and the judgment in *United States v. PG&E*, by altering the resolution of the antitrust issues achieved by DOJ in 1976 in the form of the Stanislaus Commitments. Those Commitments were incorporated into the licenses in 1978,<sup>16/</sup> and are part of the 1991 Settlement Agreement, and have been relied upon by numerous third party beneficiaries and the public ever since. *See, e.g.*, January 13, 1992 Letter acknowledging the import of the 1991 Settlement, Attachment B. Moreover, California municipal utilities, including the Petitioners, have invested billions of dollars in reliance upon the Stanislaus Commitments and upon the ability of the courts and agencies, including this Commission, to enforce these antitrust license conditions.

16. Inasmuch as the Commission has previously upheld petitions for the enforcement of the Stanislaus Commitments as antitrust license conditions to the Diablo Canyon licenses and found that the license conditions are applicable to the Diablo Canyon nuclear plant, and since numerous parties would be detrimentally affected if the Stanislaus Commitments were not transferred, the Commission must maintain the Stanislaus Commitments as Diablo Canyon license conditions upon license transfer. PG&E's obligations under Stanislaus Commitments, the ability of this Commission to

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<sup>16/</sup> 1990 NRC Lexis 53, \*13 (recognizing that the Stanislaus Commitments are conditions "attached to [PG&E's] Diablo Canyon nuclear plant").

enforce the Commitments, and the California municipal utilities' rights as third party beneficiaries to the Stanislaus Commitments, are essential to California municipal utilities' public power and municipal functions and to their protection from PG&E's anti-competitive and predatory trade practices.

17. Under no circumstance should the Commission alter the licenses as the third party beneficiaries to those conditions would be adversely affected by such action. PG&E has previously committed to this Commission that it was not opposed to the Commission upholding and enforcing the Stanislaus Commitments within the Diablo Canyon licenses.<sup>17/</sup> PG&E has represented throughout the various reorganization proceedings before courts, federal and state agencies that the Stanislaus Commitments should be transferred with the Diablo Canyon licenses. *See also, infra*, discussion respecting PG&E's obligations under the Bankruptcy Settlement. PG&E must be held to these assertions and commitments. Furthermore, this Commission has recognized that the Stanislaus Commitments are not only conditions of the Diablo Canyon licenses, but also that the Stanislaus Commitments are a part of a contract between PG&E and DOJ.

18. Neighboring Entities and/or Neighboring Distribution Systems have a direct interest in how the Diablo Canyon licenses is transferred. As the Stanislaus Commitments are meant to resolve issues related to interconnection, transmission and power sales, removal or impairment of the conditions would leave unresolved or cloud the matter of how these issues would be treated before this Commission upon transfer.

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<sup>17/</sup> See PG&E Application p.4, n.4.

In *United States v. PG&E*, the District Court determined that third party beneficiary rights attach to the antitrust obligations under the Diablo Canyon licenses. An amendment to remove the Stanislaus Commitments would eliminate this Commission as a forum to enforce Petitioners' rights and unfairly obviate the Petitioners' reliance on the prior statements of PG&E and the Commission in support of the antitrust conditions.

19. The Commission should follow the doctrine of collateral estoppel, equitable estoppel and judicial estoppel and maintain the Stanislaus Commitments as part of the Diablo Canyon licenses. The Commission must recognize that the intent of Congress with respect to the AEA, i.e., the prevention of delays in licensing nuclear facilities, but not at the expense of antitrust considerations.<sup>18/</sup> The Commission has consistently held that the Stanislaus Commitments are conditions of the Diablo Canyon licenses. The Commission can only accomplish both administrative regularity and fairness only by maintaining the Stanislaus Commitments as conditions of the Diablo Canyon licenses.

20. Petitioners' interest in maintaining the Stanislaus Commitments within the Diablo Canyon licenses upon transfer represents only a small portion of the public interest that would adversely affected. The issue of whether the Stanislaus Commitments should or should not be transferred with the Diablo Canyon license is highly charged and requires a hearing. The significant adverse affects on the public interest that would result from the transfer of the Diablo Canyon licenses without the

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<sup>18/</sup> See *In re Toledo Edison Co., et al.*, 3 N.R.C. 331, 1976 NRC Lexis 96, \*32 (citing H.R. Rep. No. 91-1470, at 15-16 (1970)).

unimpaired Stanislaus Commitments are as important as any other significant hazard to be found by the Commission in relation to license a transfer. The economic hazards of anti-competitive and predatory trade practices can gravely impact California citizens with unstable market conditions for the supply of energy. The Petitioners have requested that the Commission set the license transfer for hearing and have specifically asserted that any amendment to the license as a result of that transfer should also be part of the hearing inasmuch as it is a disputed issue raised in this proceeding.

**B. PG&E's Change in Position Blatantly Ignores Its Obligations Under the Bankruptcy Settlement**

21. PG&E's change in position directly conflicts with its obligations under a settlement agreement in PG&E's bankruptcy proceeding. As PG&E's position before the Commission thus far has not conflicted with this Bankruptcy Settlement, the Petitioners had not focused on Bankruptcy Settlement. PG&E's change in position requires that the Commission be alerted to this Bankruptcy Settlement now.

22. On April 26, 2002, the U.S. Bankruptcy Court responsible for the PG&E Chapter 11 case entered its Order<sup>19/</sup> approving the Stipulation of the City of Palo Alto, Northern California Power Agency and Pacific Gas and Electric Company Regarding the Stanislaus Commitments. The Bankruptcy Settlement states in part:

NCPA and its members shall have no lesser standing, rights, powers, interests, claims, remedies, obligations, defenses and excuses under the Settlement and Stanislaus Commitments with respect to [Reorganized PG&E, ETrans LLC, Electric Generation LLC],

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<sup>19/</sup> *In re Pacific Gas and Electric Co.*, No. 01 30923 DM (Bankr. N.D.Calif. 2002).



including their assets, jointly and severally, than NCPA and its members [including Palo Alto] would have had with respect to PG&E if there had been no bankruptcy, disaggregation, Plan or Plan Confirmation Order. . . .

Settlement, Paragraph 3(a). In essence, the Bankruptcy Settlement provides that, while other rights, claims, defenses and disputes are reserved, NCPA and Palo Alto will tolerate PG&E's proposed disaggregation as long as their rights, claims and defenses are not prejudiced by the disaggregation, i.e., as long as NCPA and Palo Alto have no less rights, claims and defenses against PG&E's disaggregated successors than NCPA and Palo Alto believe that they have against PG&E.

23. Moreover, while PG&E did not warrant that the Commission would approve the transfer of the Stanislaus Commitments in the Bankruptcy Settlement, that settlement makes the Commission decision on this issue a major variable in the PG&E reorganization effort, since, as explained below, an "NRC Adverse Ruling" creates an opportunity for objections that could be fatal to the disaggregation at the heart of PG&E's POR. Specifically, the Bankruptcy Settlement states:

PG&E has proposed in filings at the NRC that the Reorganized Debtor, ETrans LLC, and Electric Generation LLC shall be jointly and severally liable under the License Conditions<sup>20/</sup> ("the Joint and Several Filings"), although PG&E makes no representations or warranties as to whether the NRC will accept such proposal without modification. If the NRC fails for any reason to grant, authorize and approve the Joint and Several Filings, or any of them ("the NRC Adverse

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<sup>20/</sup> The Bankruptcy Settlement defines "License Conditions" as: "The antitrust license conditions included in the Diablo Canyon Nuclear Power Plant Nuclear Regulatory Commission ("NRC") licenses, as such conditions may be modified by the NRC." Settlement, Paragraph 4(d).

Ruling”),<sup>21/</sup> this Stipulation shall not affect the rights of any Party to take any action to assure the benefits of the License Conditions to the same extent as such benefits existed prior to PG&E’s bankruptcy. Such actions include, without limitation, appeal of the NRC Adverse Ruling and taking such actions in available forums to mitigate the adverse effects of the NRC Adverse Ruling and to impose the same or substantially similar obligations to the License Conditions on the Reorganized Debtor,, ETrans LLC and Electric Generation LLC and otherwise to protect their interests, rights and remedies form the NRC Adverse Ruling. The provisions of that certain Stipulation of City of Palo Alto, Northern California Power Agency and Pacific Gas and Electric Company Regarding the Settlement and Stanislaus Commitments, dated as of February 6, 2002, are incorporated herein.

Settlement, Paragraph 2. Thus, if the Commission declines to grant the transfer of the Stanislaus Commitments without the licenses, one or more obstacles will arise under the PG&E POR.

24. Last, PG&E expressly warranted in the Bankruptcy Settlement that it would continue to be capable of satisfying its obligations under the Stanislaus Commitments:

PG&E warrants and assures Palo Alto, NCPA and its other members that, following the Effective Date, Reorganized Debtor, ETrans LLC and Electric

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<sup>21/</sup> The Bankruptcy Settlement defines “NRC Adverse Ruling” as: “PG&E has proposed in filings at the NRC that the Reorganized Debtor, ETrans LLC, and Electric Generation LLC shall be jointly and severally liable under the License Conditions (“the Joint and Several Filings”), although PG&E makes no representations or warranties as to whether the NRC will accept such a proposal without modification. If the NRC fails for any reason to grant, authorize and approve the Joint and Several Filings, or any of them, such determination shall be referred to for purposes of this Stipulation as the ‘NRC Adverse Ruling.’” Settlement, Paragraph 4(f).

Generation LLC shall be as capable as PG&E was prior to its disaggregation under the Plan of satisfying all obligations under the Settlement and Stanislaus Commitments. . . . Nothing in this Stipulation, however, shall be construed to diminish or alter the ability of NCPA and Palo Alto in any forum to pursue all rights, powers, interests, claims, remedies, defenses and excuses and exercise all available legal and equitable means to assure realization of the full benefits of the Settlement and Stanislaus Commitments and to assure that any Plan proposed or supported by PG&E provides such assurance.

Settlement, Paragraph 8. Accordingly, PG&E has warranted that it shall be as capable as before disaggregation of satisfying its obligations under the Stanislaus Commitments. PG&E's change in position that the license conditions should not be transferred breaches PG&E's warranty under the Bankruptcy Settlement. As PG&E's opposition to the transfer of the Stanislaus Commitments directly conflicts with its obligations under the Bankruptcy Settlement, this Commission should reject PG&E's arguments and transfer the license conditions.

#### IV. CONCLUSION

25. For the foregoing reasons, the Petitioners respectfully submit that

the Commission must not transfer the licenses for Diablo Canyon Nuclear Power Plant Units 1 and 2 without the Stanislaus Commitments, as suggested by PG&E.

Dated: September 20, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wallace L. Duncan", written in a cursive style.

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## Attachment A

FILED

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U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CA.  
SAN FRANCISCO, CA.

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PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

No. 01 30923 DM  
Chapter 11 Case  
Date: April 25, 2002  
Time: 9:30 a.m.  
Place: 235 Pine Street, 22nd Floor  
San Francisco, California

[PROPOSED] ORDER GRANTING DEBTOR'S MOTION FOR ORDER  
APPROVING STIPULATION RESOLVING OBJECTIONS BY CITY OF PALO  
ALTO AND NORTHERN CALIFORNIA POWER AGENCY TO DEBTOR'S  
DISCLOSURE STATEMENT

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

1 The Court, having considered the Motion of Pacific Gas and Electric Company  
2 ("PG&E" or the "Debtor") for an Order Approving a Stipulation Resolving Objections by  
3 the City of Palo Alto ("Palo Alto") and Northern California power Agency ("NCPA") to the  
4 Debtor's Disclosure Statement ("Motion") and Memorandum of Points and Authorities in  
5 Support Thereof filed herein by PG&E; the Declaration of William V. Manheim and  
6 Request for Judicial Notice filed in support thereof; having further considered the Response  
7 to the Motion filed by Palo Alto, the Joinder filed thereto by NCPA and the Statement in  
8 Support of the Motion filed by the Official Committee of Unsecured Creditors; and finding  
9 that the Stipulation, a true and correct copy of which is attached hereto as Exhibit A, is fair,  
10 reasonable, and in the best interests of PG&E's Chapter 11 estate; and good cause appearing  
11 therefor,

12 **IT IS HEREBY ORDERED** that:

13 1. The Motion is granted.

14 2. PG&E is authorized to enter into the Stipulation, a copy of which is attached  
15 hereto as Exhibit A, and the Stipulation is hereby approved;

16 3. PG&E, the City of Palo Alto, and the Northern California Power Agency shall  
17 be bound by all of the terms of the Stipulation and all terms and conditions stated therein;

18 4. PG&E and the City of Palo Alto and the Northern California Power Agency  
19 are authorized and directed to take such actions as are reasonably necessary to perform their  
20 respective obligations under the Stipulation.

21 Dated: 26 April, 2002.

DENNIS MONTALI

HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

**Stipulation of City of Palo Alto, Northern California Power Agency and  
Pacific Gas and Electric Company Regarding the Stanislaus Commitments**

This Stipulation is entered into as of February 6, 2002, by and between the City of Palo Alto, California ("Palo Alto"), Northern California Power Agency ("NCPA") and Pacific Gas and Electric Company ("PG&E") (individually "Party" and collectively, "Parties").

**Recitals**

The Parties intend this Stipulation to resolve (except as reserved below) the objections filed by NCPA and Palo Alto (except that as to Palo Alto and without PG&E admitting the meritorious nature of the objections, certain objections as to natural gas and GTrans issues are reserved) to the Disclosure Statement accompanying the Plan of Reorganization filed September 20, 2001, as amended December 19, 2001, by PG&E in its bankruptcy proceeding, Case No. 01-30923 DM 11 (N.D. Cal.).

Furthermore, the Parties intend to resolve through this Stipulation that the bankruptcy has no adverse effect on the Settlement and Stanislaus Commitments (as defined below) and that the rights of NCPA and Palo Alto under the Settlement and Stanislaus Commitments are unimpaired and pass through the bankruptcy unaffected. The Parties disagree concerning, among other things, the scope of the obligations and the extent of rights under the Settlement and Stanislaus Commitments and intend to reserve such disputes and disagreements for future resolution in a forum other than the Bankruptcy Court (except as reserved below).

**Agreement**

Now, therefore, the Parties agree that the following fully resolves NCPA's and Palo Alto's objections to the Disclosure Statement as to the Settlement and Stanislaus Commitments, but not as to Palo Alto's Disclosure Statement objections pertaining to natural gas and GTrans issues:

1. This Stipulation shall be effective as of the date filed in the Bankruptcy Court, but subject to approval by the Bankruptcy Court as a settlement, which shall be requested by PG&E. This Stipulation shall terminate and be of no further force or effect, unless extended by agreement of the Parties, if either of these events occurs: (x) the Bankruptcy Court does not confirm the Plan or (y) there is a failure of one or more conditions to the effectiveness of the Plan that has not been waived by PG&E on or before January 1, 2003, as specified in Section 8.3 of the Plan.

2. The following language shall be included in PG&E's First Amended Disclosure Statement (together with any subsequently amended or restated version, "Disclosure Statement") and First Amended Plan of Reorganization (together with any subsequently amended or restated version, "Plan"):

"The obligations under (1) the 1991 Settlement Agreement between NCPA and PG&E in



a Nuclear Regulatory Commission ("NRC") proceeding, implementing the Statement of Commitments accompanying the letter from PG&E to the U.S. Department of Justice of April 30, 1976 ("1991 Settlement Agreement"), (2) the letter from PG&E to the U.S. Department of Justice of April 30, 1976, to the extent that it represents obligations, a position disputed by PG&E (the "1976 Letter") and (3) the antitrust license conditions included in the Diablo Canyon Nuclear Power Plant NRC licenses ("License Conditions") (collectively, the 1991 Settlement Agreement, the 1976 Letter and the License Conditions are referred to as the "Settlement and Stanislaus Commitments") shall be assigned to each of the Reorganized Debtor, ETrans LLC, and Electric Generation LLC, such that each such entity or, if determined by any court or governmental regulatory agency or authority of competent jurisdiction, such entity and any of its subsidiaries, is jointly and severally obligated for the full performance, and liable for the nonperformance of the Settlement and Stanislaus Commitments. Under the Plan, PG&E shall assume and assign the 1991 Settlement Agreement with the written consent of NCPA to the Reorganized Debtor, ETrans LLC, and Electric Generation LLC. PG&E has proposed in filings at the NRC that the Reorganized Debtor, ETrans LLC, and Electric Generation LLC shall be jointly and severally liable under the License Conditions ("the Joint and Several Filings"), although PG&E makes no representations or warranties as to whether the NRC will accept such proposal without modification. If the NRC fails for any reason to grant, authorize and approve the Joint and Several Filings, or any of them ("the NRC Adverse Ruling"), this Stipulation shall not affect the rights of any Party to take any action to assure the benefits of the License Conditions to the same extent as such benefits existed prior to PG&E's bankruptcy. Such actions include, without limitation, appeal of the NRC Adverse Ruling and taking such actions in available forums to mitigate the adverse effects of the NRC Adverse Ruling and to impose the same or substantially similar obligations to the License Conditions on the Reorganized Debtor, ETrans LLC and Electric Generation LLC and otherwise to protect their interests, rights and remedies from the NRC Adverse Ruling. The provisions of that certain Stipulation of City of Palo Alto, Northern California Power Agency and Pacific Gas and Electric Company Regarding the Settlement and Stanislaus Commitments, dated as of February 6, 2002, are incorporated herein."

3. With respect to the Settlement and Stanislaus Commitments and notwithstanding (i) the Plan, (ii) the Plan Confirmation Order, (iii) the filing of any document by or involving any Transmission Party (as defined below) or Party with any court or any governmental regulatory agency or authority, including to remedy or mitigate any NRC Adverse Ruling or (iv) any interpretive dispute between PG&E, a Transmission Party and NCPA or any of its members about the Settlement and Stanislaus Commitments:

(a) NCPA and its members shall have no lesser standing, rights, powers, interests, claims, remedies, obligations, defenses and excuses under the Settlement and Stanislaus Commitments with respect to the Transmission Parties, including their assets, jointly and severally, than NCPA and its members would have had with respect to PG&E if there had been no bankruptcy, disaggregation, Plan or Plan Confirmation Order;

(b) None of the Transmission Parties, including their assets, shall have any greater standing, obligations, rights, powers, interests, claims, remedies, defenses and excuses under the Settlement and Stanislaus Commitments than PG&E would have had if there had been no bankruptcy, disaggregation, Plan or Plan Confirmation Order;

(c) The Transmission Parties will not assert that the Plan or the Plan Confirmation Order provides a basis for adversely affecting any of the asserted or unasserted rights, powers, interests, claims, remedies, defenses or excuses that NCPA or its members may have against any Transmission Party or all Transmission Parties under the Settlement and Stanislaus Commitments;

(d) The assurances of Section 3(a), (b) and (c) apply notwithstanding existing differences in interpretation of the Settlement and Stanislaus Commitments and without admitting the correctness of any interpretation, but in order to confirm the full scope of such assurance as being sufficiently broad as to even apply in the case where the interpretations of the parties other than PG&E were to prevail;

(e) The assurances of Section 3(a), (b) and (c) are not intended to address or relate to changes in the financial condition of PG&E as it existed prior to bankruptcy as compared to the financial condition of the Transmission Parties after the bankruptcy; and

(f) PG&E makes no warranties or representations as to any actions the NRC may take which may affect, directly or indirectly, the standing, obligations, rights, powers, interests, claims, remedies, defenses and excuses of the Parties under the License Conditions. Other than as provided in Section 8, this Stipulation in no way limits the positions or actions that the Parties or the Transmission Parties may take at the NRC.

4. The following words and phrases in this Stipulation have the meanings indicated:

(a) "Transmission Parties": Reorganized Debtor, ETrans LLC, Electric Generation LLC, and each of their other respective subsidiaries existing at the time of the Effective Date or thereafter created, whether pursuant to or as contemplated by the Plan or otherwise in order to: (i) provide electric transmission service, whether now existing or hereafter arising in those functions or businesses, including, without limitation, maintenance, upgrades, repairs, siting, planning, and construction; (ii) acquire, lease, license, own, hold, or use any facility, equipment or other tangible asset of any Transmission Party that is directly or indirectly used to provide transmission service; or (iii) do anything else required by the Settlement and Stanislaus Commitments. Transmission Parties also include the successors and assignees of each such party. The foregoing definition of Transmission Parties had been drafted broadly in order to assure application to all Reorganized Debtor, ETrans LLC, Electric Generation LLC subsidiaries that may be necessary for performance under the Settlement and Stanislaus Commitments. Nothing in the foregoing definition of Transmission Parties or other provisions of this Stipulation shall be deemed or construed to expand, modify, interpret, define or otherwise change any obligation of a Transmission Party under the Settlement

and Stanislaus Commitments.

(b) "Transmission Party": Any one of the Transmission Parties.

(c) "1991 Settlement Agreement": The 1991 Settlement Agreement between NCPA and PG&E in an NRC proceeding, implementing the Statement of Commitments accompanying the letter from PG&E to the U.S. Department of Justice of April 30, 1976.

(d) "License Conditions": The antitrust license conditions included in the Diablo Canyon Nuclear Power Plant Nuclear Regulatory Commission ("NRC") licenses, as such conditions may be modified by the NRC.

(e) "1976 Letter": The letter from PG&E to the U.S. Department of Justice dated April 30, 1976, to the extent that it represents obligations, a position disputed by PG&E.

(f) "Adverse NRC Ruling": PG&E has proposed in filings at the NRC that the Reorganized Debtor, ETrans LLC, and Electric Generation LLC shall be jointly and severally liable under the License Conditions ("the Joint and Several Filings"), although PG&E makes no representations or warranties as to whether the NRC will accept such proposal without modification. If the NRC fails for any reason to grant, authorize and approve the Joint and Several Filings, or any of them, such determination shall be referred to for purposes of this Stipulation as the "NRC Adverse Ruling".

(g) "Neighboring Entities": As defined in the Settlement and Stanislaus Commitments.

(h) "Settlement and Stanislaus Commitments": The 1991 Settlement Agreement, the 1976 Letter and License Conditions, collectively, subject to Section 3(f) of this Stipulation.

5. The provisions of this Stipulation shall be incorporated by reference in the Plan and Plan Confirmation Order as one aspect of the implementation of the Plan and, as such, shall be deemed a court approved, enforceable obligation of each Party and Transmission Party, and not an executory contract that can be rejected pursuant to 11 U.S.C. § 365 or otherwise in this bankruptcy by any Party or Transmission Party.

6. The standing, rights, powers, interests, claims, remedies, obligations, defenses or excuses of Palo Alto, NCPA and its other members, the Transmission Parties and Neighboring Entities under the Settlement and Stanislaus Commitments shall be unimpaired by the Plan and the Plan Confirmation Order, unaffected by any Plan discharge and otherwise not adversely affected by the bankruptcy, the Plan or Plan Confirmation Order, except that assumption and assignment of the 1991 Settlement Agreement to the Transmission Parties jointly and severally shall be accomplished in the Plan Confirmation Order. Without limiting the foregoing, the bankruptcy, the Plan, the

Plan Confirmation Order, the discharge and disaggregation shall not adversely affect the standing, rights, powers, interests, claims, remedies, obligations, defenses or excuses of Palo Alto, NCPA and its other members under the Settlement and Stanislaus Commitments against or with respect to any Party or Transmission Party. Furthermore, and without limiting the foregoing, the Parties and the Transmission Parties shall not be deemed to have cured, or to be excused from, any or all defaults existing as of the Effective Date, and shall not be deemed, as a consequence of assumption and assignment under 11 U.S.C. § 365 (including section 365(k)) or otherwise, to be in full and complete compliance with the 1991 Settlement Agreement as a result of either the assumption and assignment of the 1991 Settlement Agreement or the Plan Confirmation Order or implementation of the Plan, but rather all Parties shall retain all standing, rights, powers, interests, claims, remedies, obligations, defenses or excuses as if there had been no bankruptcy, disaggregation, Plan or Plan Confirmation Order.

- - 7.-The Bankruptcy Court shall not retain jurisdiction over any disputes regarding the Settlement and Stanislaus Commitments after the Effective Date; provided, however, that the Bankruptcy Court has and retains jurisdiction (i) that is found to exist independent of the Plan's or Plan Confirmation Order's retained jurisdiction provisions; (ii) that concerns any disputes regarding implementation and interpretation of the Stipulation; and (iii) that concerns any claim or administrative expense asserted by NCPA or any of its members, including Palo Alto, in the PG&E bankruptcy case.

8. PG&E warrants and assures Palo Alto, NCPA and its other members that, following the Effective Date, Reorganized Debtor, ETrans LLC and Electric Generation LLC shall be as capable as PG&E was prior to its disaggregation under the Plan of satisfying all obligations under the Settlement and Stanislaus Commitments. NCPA and Palo Alto will not assert in any court or governmental regulatory agency or authority, except as to NRC Adverse Ruling, that such disaggregation by itself will impair or adversely affect the ability of Reorganized Debtor, ETrans LLC or Electric Generation LLC to perform under the Settlement and Stanislaus Commitments. The foregoing is without prejudice to the rights, claims, defenses, excuses, powers and standing of Palo Alto, NCPA and its other members to continue to object to any nonperformance under the Settlement and Stanislaus Commitments or other wrongs by PG&E, Reorganized Debtor, ETrans LLC or Electric Generation LLC by any means and in any applicable forums (the "Reserved Claims"). The Reserved Claims include, without limitation, the rights, claims, defenses, excuses, powers and standing of Palo Alto, NCPA and its other members concerning the expiration of the interconnection agreement between NCPA and PG&E and NCPA's allegation that PG&E has proposed to cease to provide transmission services by interconnection agreements referenced in the Settlement and Stanislaus Commitments. NCPA and Palo Alto will not submit objections to Plan confirmation alleging such disaggregation under the Plan by itself will impair or adversely affect the ability of PG&E, Reorganized Debtor, ETrans LLC or Electric Generation LLC to perform under the Settlement and Stanislaus Commitments, except as to NRC Adverse Ruling or, if applicable, the Reserved Claims. In regard to this limitation on the right to object to confirmation, NCPA and Palo Alto will not argue, for example, that after disaggregation obtaining electric transmission service under the Settlement and

Stanislaus Commitments will be more burdensome, complex, costly, inconvenient, time-consuming or unreliable. Nothing in this Stipulation, however, shall be construed to diminish or alter the ability of NCPA and Palo Alto in any forum to pursue all rights, powers, interests, claims, remedies, defenses and exercise all available legal and equitable means to assure realization of the full benefits of the Settlement and Stanislaus Commitments and to assure that any Plan proposed or supported by PG&E provides such assurance. Furthermore, nothing in this Stipulation shall be construed to diminish or alter the ability of PG&E or the Transmission Parties to contest the scope, length and extent of its obligations under the Settlement and Stanislaus Commitments or in any forum to pursue all rights, powers, interests, claims, remedies, defenses and exercise all available legal and equitable means in connection with its performance or obligations under the Settlement and Stanislaus Commitments.

9. PG&E confirms and agrees to the following:

(a) PG&E intends to assume the Interconnection Agreement between PG&E and NCPA and assign it to ETrans LLC. This assumption and assignment will be specified in PG&E's February 1, 2002, Plan Supplement ("Plan Supplement"). Without limiting Section 6, and consistent therewith, this assumption and assignment will not seek or require the determination of any default or the calculation of any cure and will be without prejudice to any rights of NCPA and Palo Alto on account of any alleged breaches of the Settlement and Stanislaus Commitments.

(b) PG&E does not intend to reject in bankruptcy the 1991 Settlement Agreement and the disposition of the 1991 Settlement Agreement will be addressed in the Plan Supplement as provided in this Stipulation.

(c) PG&E does not seek nor intend to invoke or assert preemption under the Bankruptcy Code to alter, amend or modify existing contracts with NCPA or Palo Alto.

(d) PG&E agrees to provide advance notice to NCPA and Palo Alto as to any modification to the Plan that may adversely impact the rights, powers, interests, claims, remedies, defenses or excuses of NCPA or Palo Alto in connection with this Stipulation or the Settlement and Stanislaus Commitments. NCPA and Palo Alto fully reserve the right to object and otherwise respond to any such adverse modification.

10. This Stipulation represents the complete and final agreement of the Parties as to its subject matter and supersedes all prior communications, offers and agreements as to that subject matter. This Stipulation is made in and subject to the laws of the State of California, except to the extent federal law may preempt such laws.

11. Each person signing below warrants that he or she has complete authority to enter into this Stipulation on behalf of the Party for which he or she signs. This Stipulation may be signed in counterpart originals and is effective as of the last date entered with a signature below.

12. NCPA and Palo Alto hereby consent to the assignment of the 1991 Settlement Agreement from PG&E to Reorganized Debtor, ETrans LLC, and Electric Generation LLC as described in this Stipulation.

13. This Stipulation shall not be deemed or construed to alter, amend, modify, enhance, expand or limit any of the rights and obligations of the Parties, the Transmission Parties or any third parties under the Settlement and Stanislaus Commitments. The Parties hereby agree that they will not make assertions, representations or statements before any court, regulatory agency or other adjudicatory body that are inconsistent with this Section 13.

14. PG&E represents and warrants that by no later than the Effective Date it shall cause Reorganized Debtor, ETrans LLC, and Electric Generation LLC to assume liability for and divide functional responsibility for arranging services under the Settlement and Stanislaus Commitments as follows (such division of functional responsibility shall not affect the joint and several liability of each of Reorganized Debtor, ETrans LLC, and Electric Generation LLC under the Settlement and Stanislaus Commitments):

(a) Reorganized Debtor shall be principally responsible for implementation of the following services under the Settlement and Stanislaus Commitments: (i) interconnection, where the voltage is less than 60kV; (ii) reserve coordination; (iii) emergency power – first 11 years (consistent with Electric Generation LLC –Reorganized Debtor power sales agreement term); (iv) power exchange – first 11 years (consistent with Electric Generation LLC –Reorganized Debtor power sales agreement term); and (v) wholesale power sales – first 11 years (consistent with Electric Generation LLC –Reorganized Debtor power sales agreement term).

(b) ETrans LLC shall be principally responsible for implementation of the following services under the Settlement and Stanislaus Commitments: (i) interconnection, where the voltage is 60 kV or greater and (ii) transmission service.

(c) Electric Generation LLC shall be principally responsible for implementation of the following services under the Settlement and Stanislaus Commitments: (i) Emergency Power after year 11 (consistent with Electric Generation LLC -Reorganized Debtor power sales agreement term); (ii) Power Exchange after year 11 (consistent with Electric Generation LLC -Reorganized Debtor power sales agreement term); (iii) Wholesale Power Sales after year 11 (consistent with Electric Generation LLC -Reorganized Debtor power sales agreement term); and (iv) Participation in new nuclear plants (to the extent applicable).

In Witness Whereof, the Parties have executed this Stipulation to be effective as of the date first above written.

**PACIFIC GAS AND ELECTRIC  
COMPANY**

By: \_\_\_\_\_  
Name: Roger J. Peters  
Title: Senior Vice President and General  
Counsel

**NORTHERN CALIFORNIA POWER  
AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

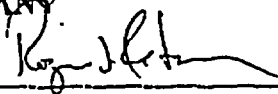
**THE CITY OF PALO ALTO**

By: Victor Ojakian  
Name: VICTOR OJAKIAN  
Title: MAYOR

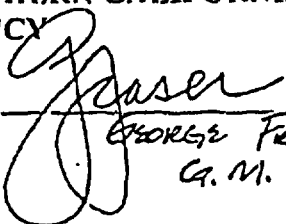
(c) Electric Generation LLC shall be principally responsible for implementation of the following services under the Settlement and Stanislaus Commitments: (i) Emergency Power after year 11 (consistent with Electric Generation LLC -Reorganized Debtor power sales agreement term); (ii) Power Exchange after year 11 (consistent with Electric Generation LLC -Reorganized Debtor power sales agreement term); (iii) Wholesale Power Sales after year 11 (consistent with Electric Generation LLC -Reorganized Debtor power sales agreement term); and (iv) Participation in new nuclear plants (to the extent applicable).

In Witness Whereof, the Parties have executed this Stipulation to be effective as of the date first above written.

**PACIFIC GAS AND ELECTRIC  
COMPANY**

By:   
Name: Roger J. Peters  
Title: Senior Vice President and General  
Counsel

**NORTHERN CALIFORNIA POWER  
AGENCY**

By:   
Name: GEORGE FRASER  
Title: G. M.

**THE CITY OF PALO ALTO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Attachment B



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 13, 1992

Robert C. McDiarmid  
Spiegel & McDiarmid  
1350 New York Avenue, N.W.  
Washington, D.C. 20005-4798

Dear Mr. McDiarmid:

SUBJECT: Pacific Gas & Electric Company (Diablo Canyon Nuclear Power  
Plant, Units 1 and 2), Docket Nos. 50-275A, 50-323A

In a petition of November 19, 1990, on behalf of the Northern California Power Agency (NCPA), you requested that, in accordance with Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206) the Director of the Office of Nuclear Reactor Regulation issue an order enforcing the Diablo Canyon antitrust license conditions. You asserted that the Pacific Gas & Electric Company (PG&E) was violating antitrust license conditions (6), (7)a, and (7)d by refusing to sell, transmit, and tariff partial requirements power to six NCPA member systems and was also violating antitrust license condition (9)a by imposing "as-filed" conditions in agreements, schedules, and tariffs for service and by refusing to provide service to NCPA member systems except as required by an executed contract. You requested that the Commission modify, suspend, or revoke the Diablo Canyon licenses or take other appropriate action.

While the U.S. Nuclear Regulatory Commission (NRC) was considering your allegations, NCPA and PG&E began settlement negotiations, reaching a final settlement of the matters raised in NCPA's § 2.206 Petition on November 20, 1991. The settlement agreement provides that upon the NRC's acceptance of the Settlement Agreement, NCPA shall withdraw its Petition.

In a letter of November 15, 1991, PG&E requested that the NRC clarify its June 14, 1990, Notice of Violation (NOV) and Director's Decision (DD-90-3) regarding the violation of antitrust license condition (6). The Director's Decision explicitly found that PG&E violated antitrust license condition (6) by refusing to sell partial requirements power to the NCPA member systems of Healdsburg, Lompoc, and Santa Clara. The NOV cited PG&E for violating that


Robert C. McDiarmid

- 2 -

license condition because PG&E refused to sell partial requirements power to NCPA and Healdsburg. The NOV merely repeated the finding of DD-90-3 and was intended to neither expand nor reduce the scope of the violation stated by DD-90-3.

The NRC staff has reviewed the settlement agreement and finds that it resolves Petitioner's allegations and provides a satisfactory response to the June 14, 1990, Notice of Violation and Director's Decision. Because the public interest appears to be satisfied by the final settlement and NCPA's commitment to withdraw its Petition, no further action will be taken by the staff in this matter.

Sincerely,

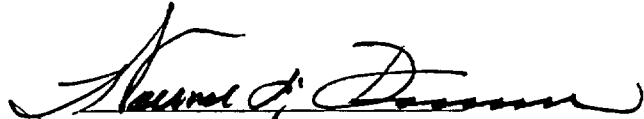
  
Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

cc:

Gregory M. Rueger  
Senior Vice President and General Manager  
Nuclear Power Generation  
Pacific Gas & Electric Company  
77 Beale Street  
San Francisco, California 94106

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the U.S. Nuclear Regulatory Commission in this proceeding by U.S. Mail. Dated at Washington, D.C., this 20th day of September, 2002.

A handwritten signature in black ink, appearing to read "Wallace L. Duncan", written over a horizontal line.

Wallace L. Duncan  
DUNCAN, WEINBERG, GENZER  
& PEMBROKE, P.C.  
1615 M Street, N.W.  
Suite 800  
Washington, DC 20036  
(202) 467-6370