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14 UNITED STATES BANKRUPTCY COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 (San Francisco Division)

17 In re )  
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Debtor. )

CASE NO. 01-30923 DM  
CHAPTER 11  
Date: November 18, 2002  
Time: 9:30 a.m.  
UNITED STATES' COUNTER  
FINDINGS OF FACT IN  
OPPOSITION TO CPUC'S PLAN OF  
REORGANIZATION

25 The United States of America, on behalf of its various  
26 agencies, files its Counter Findings of Fact in Opposition to the  
27 Plan of Reorganization propounded by the California Public  
28 Utilities Commission ("CPUC") and the Official Committee of  
Unsecured Creditors, (the "CPUC Plan").

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1           Counter Proposals

2           93-97. Disputed. The United States further adopts the  
3 proposed alternate findings proposed by PG&E at paragraphs 98 and  
4 203-211.

5           The United States further proposes the following additional  
6 findings of fact.

7           244. In Southern California Edison Co. v. Lynch, 307 F.3d  
8 794 (9th Cir. 2002), the Ninth Circuit considered a settlement  
9 agreement between Southern California Edison and the CPUC in the  
10 form a stipulated judgment setting rates at an amount sufficient  
11 to allow Edison to recover substantially all of its past  
12 procurement costs.

13           245. In considering that settlement, which is substantially  
14 similar to the settlement at issue here, the Ninth Circuit found  
15 that serious questions existed as to whether it violated state  
16 law, both in substance and the procedure by which the CPUC agreed  
17 to it.

18           246. The Ninth Circuit further held that if the CPUC lacked  
19 capacity to consent to the Stipulated Judgment, it would be  
20 required to vacate it as void. Id. at 809.

21           247. Recognizing that the issue presented a question of  
22 state, as opposed to federal law, the Ninth Circuit certified the  
23 question of whether the stipulated judgment violated state law to  
24 the California Supreme Court.

25           248. If the California Supreme Court agrees with the  
26 reasoning of the Ninth Circuit, the settlement proposed in CPUC's  
27

28 United States' Counter Finding of Fact in Opposition to CPUC's Plan of Reorganization


1 Plan would be void and the \$2.75 billion of headroom would no  
2 longer be available for payment to PG&E's creditors but would  
3 instead be recoverable by ratepayers.

4  
5 Respectfully submitted,

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28 November 14, 2002

United States' Counter Finding of Fact in Opposition to CPUC's Plan of Reorganization