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November 8, 2002

BY FEDERAL EXPRESS

Cathy A. Catterson, Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: ***California Public Utilities Commission et al. v. Nuclear Regulatory Commission*, Case No. 02-72735**

Dear Ms. Catterson:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, and Circuit Rule 27-1 of the United States Court of Appeals for the Ninth Circuit, please find enclosed for filing an original and four (4) copies of the "Opposition of Pacific Gas and Electric Company to Motion of California Public Utilities Commission and County of San Luis Obispo for Extension of Time for Briefing" in Case No. 02-72735.

Please also find enclosed a duplicate copy of Pacific Gas and Electric Company's filing. Please date-stamp this copy and return it in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter.

Respectfully submitted,

David A. Repka

Counsel for Intervenor
Pacific Gas and Electric Company

Enclosures

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November 8, 2002

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

California Public Utilities Commission and County of San Luis Obispo, Petitioners, v. U.S. Nuclear Regulatory Commission, Respondent, and Pacific Gas and Electric Company, et al., Intervenors.	No. 02-72735

OPPOSITION OF PACIFIC GAS AND ELECTRIC COMPANY TO MOTION OF CALIFORNIA PUBLIC UTILITIES COMMISSION AND COUNTY OF SAN LUIS OBISPO FOR EXTENSION OF TIME FOR BRIEFING

INTRODUCTION

On November 7, 2002, the County of San Luis Obispo ("County") and the California Public Utilities Commission ("CPUC") — the Petitioners in this matter — requested an extension of the briefing schedule previously established. Pacific Gas and Electric Company ("PG&E") — an Intervenor — herein objects to

the requested extension. The request lacks good cause and will serve only to delay resolution of the appeal.

BACKGROUND

PG&E is a utility providing gas and electric services to more than 4.5 million customers in Central and Northern California. On April 6, 2001, following months of skyrocketing wholesale electric costs and inadequate rate relief from state regulators, PG&E filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California. It is one of the largest bankruptcies in United States history.

On September 20, 2001, PG&E, together with its parent PG&E Corporation, filed a proposed Plan of Reorganization ("Plan") and accompanying Disclosure Statement. (The Plan and Disclosure Statement have been subsequently amended on several occasions.) The proposed Plan is designed to enable PG&E to emerge from bankruptcy as a strong and sustainable enterprise. The Plan is currently pending before the Bankruptcy Court, with confirmation hearings scheduled to begin this month on the Plan and a CPUC competing plan.

The proposed Plan involves a disaggregation and restructuring of PG&E into several entities. As specifically relevant here, the Plan involves the transfer of the Diablo Canyon Power Plant — a nuclear generating station located in San Luis Obispo County — from the current utility PG&E to a new subsidiary

of PG&E Corporation, which would be renamed. This transfer of ownership and operational responsibility for the nuclear generating asset requires the approval of the United States Nuclear Regulatory Commission ("NRC"). PG&E filed an application for the necessary NRC approval on November 30, 2001. The NRC license transfer consent is one of several federal regulatory approvals necessary for consummation and implementation of PG&E's proposed Plan.

The County and CPUC Petition for Review here at issue concerns one NRC order — issued on June 25, 2002 — related to PG&E's license transfer application for the Diablo Canyon Power Plant. The NRC order denied the County's and the CPUC's requests for a hearing on the application. As of this date, the NRC has not yet issued its license transfer consent. However, a reversal and remand by this Court of the NRC order denying the hearing request could nonetheless significantly affect the timing of an NRC final decision related to PG&E's license transfer application.[1]

ARGUMENT

PG&E opposes the County and CPUC request for an extension of the briefing schedule. Any extension of schedule or delay in the resolution of this

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[1] Notwithstanding a request for hearing, or even a pending hearing, NRC rules do empower the agency staff to issue a transfer approval upon completion and issuance of the NRC's safety evaluation related to the proposed transfer. *See* 10 C.F.R. §§ 2.1316, 2.1327. No such approval has yet been issued.

matter may lead to a delay in implementation of PG&E's proposed Plan and its emergence from bankruptcy. There is no good cause for an extension in the present case, given that the briefing schedule has been established since the Court scheduling order of August 26, 2002. Under these circumstances, PG&E contends that it would be prejudicial and unfair to invoke the notice extension of time provided in Ninth Circuit Rule 28-4.

The interests of PG&E, its customers and ratepayers, and its creditors are all in PG&E's prompt emergence from bankruptcy. It has been recognized that speed is essential to a debtor's effective reorganization. *See, e.g., Katchen v. Landy,* 382 U.S. 323, 328 (1966) ("this Court has long recognized that a chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period'") (citation omitted); *Acequia, Inc. v. Clinton (In re Acequia, Inc.),* 34 F.3d 800, 808 (9th Cir. 1994) (acknowledging "Bankruptcy Code's goal of quick and equitable reorganization"). By contrast, delaying the implementation of a viable plan of reorganization is virtually never in the best interests of the estate or its creditors in a Chapter 11 context.[2]

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[2] Indeed, for this reason circuit courts on many occasions have expedited their review of bankruptcy appeals. *See, e.g., Gilchrist v. General Elec. Capital Corp.,* 262 F.3d 295, 299 (4th Cir. 2001) (expedited appeal from district court's ruling that receivership proceedings were not subject to the automatic stay imposed by the Bankruptcy Code); *In re Nextwave Personal*

Any delay in resolution of this matter may delay the NRC approval required to implement the proposed Plan, may frustrate PG&E in obtaining the financing necessary to implement the proposed Plan, may ultimately delay payments to creditors, and will certainly increase the expenses of the debtor PG&E related to the reorganization. In short, PG&E as well as other affected stakeholders have a strong interest in swift resolution of this appeal. Indeed, the CPUC has recognized the need for prompt and certain resolution of the PG&E bankruptcy in joining with PG&E in requesting that this Court expedite resolution of the CPUC's appeal from the District Court decision regarding express preemption. *In re Pacific Gas & Elec. Co.,* CA No. 02-16990 (9th Cir.).

In addition, the CPUC has challenged the confirmability of the PG&E Plan, *inter alia,* on the ground that the Plan is not regulatorily feasible, as required under Section 1123(a)(5) of the Bankruptcy Code. 11 U.S.C. § 1123(a)(5). The CPUC argues that federal regulatory approvals needed to implement the Plan, including the NRC approval of the transfer application at issue here, are uncertain, both in terms of timing and the likelihood of ultimate success. Thus, at the

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Communications, Inc., 200 F.3d 43, 50 (2d Cir. 1999) (expedited appeal from district court decision affirming bankruptcy court's ruling that avoided, on fraudulent transfer grounds, debtor's obligation to pay roughly 75% of the $4.74 billion it had bid for FCC wireless communication radio spectrum licenses); *Financial Assocs. v. Loeffler (In re Equity Funding Corp. of America),* 492 F.2d 793, 793 (9th Cir. 1974) (expedited appeal from order permitting sale of debtor's assets).

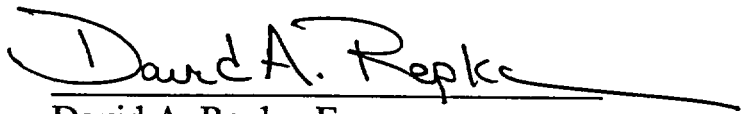
upcoming confirmation hearing on PG&E's Plan, the CPUC likely will seek to use this extension tactically to enhance its arguments regarding the purported uncertainty of regulatory approvals. The CPUC should not, however, be permitted to enhance its litigation position before the Bankruptcy Court by dragging out this proceeding and the federal regulatory approval process.

Against the vital interests of PG&E and its creditors, the County and CPUC offer no good cause. They merely invoke Ninth Circuit Rule 28-4 by which they maintain that they are entitled to a 21-day extension of the filing deadline because they will file a joint brief. Under the circumstances, invocation of the rule appears to be little more than an eleventh-hour gambit for delay. The County and the CPUC filed a *joint* Petition for Review in this case on August 23, 2002. The Court's scheduling order of August 26, 2002 — based on a joint Petition for Review — clearly contemplated a filing of the appellant/petitioner's opening brief (singular) on November 16, 2002. The County and the CPUC have been coordinating since that time through a Court-mandated mediation process. This, quite simply, does not appear to be a case in which multiple briefs were ever contemplated and therefore is not a case which would fall within the purpose of Ninth Circuit Rule 28-4. The purpose of the local rule, increased judicial

efficiency, would not be served. Instead, the requested extension would involve only delay and prejudice to PG&E and other stakeholders.[3]

Accordingly, the Motion for an extension of time should be denied.

Respectfully submitted,



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ATTORNEYS FOR INTERVENOR
PACIFIC GAS & ELECTRIC COMPANY

Dated in Washington, District of Columbia
this 8th day of November 2002

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[3] Ninth Circuit Rule 28-4 recognizes that the need for expedited consideration of an appeal militates against an extension under Rule 28-4. *See* 9th Cir. R. 28-4 (permitting extension only where the case has not been expedited). Although this case has not formally been expedited, the need for prompt resolution of this matter provides ample justification for denying the requested extension. Moreover, PG&E may in the near term file a request for expedited hearing of this matter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

California Public Utilities Commission and County of San Luis Obispo, Petitioners, v. U.S. Nuclear Regulatory Commission, Respondent, and Pacific Gas and Electric Company, et al., Intervenors.	No. 02-72735

CERTIFICATE OF SERVICE

I hereby certify that copies of "OPPOSITION OF PACIFIC GAS AND ELECTRIC COMPANY TO MOTION OF CALIFORNIA PUBLIC UTILITIES COMMISSION AND COUNTY OF SAN LUIS OBISPO FOR EXTENSION OF TIME FOR BRIEFING" in the captioned proceeding have been served as shown below by United States mail, first class, this 8th day of November 2002.

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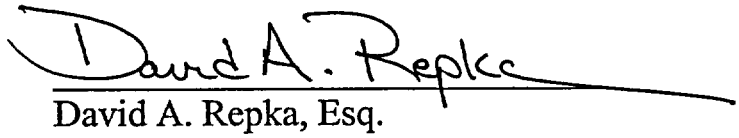

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