

April 11, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

PACIFIC GAS & ELECTRIC CO. )

(Diablo Canyon ISFSI) )

) Docket No. 72-26-ISFSI

) ASLBP No. 02-801-01-ISFSI  
)

NRC STAFF BRIEF AND SUMMARY OF RELEVANT FACTS,  
DATA AND ARGUMENT UPON WHICH THE STAFF PROPOSES  
TO RELY AT ORAL ARGUMENT ON TECHNICAL CONTENTION 2

INTRODUCTION

Pursuant to 10 C.F.R. § 2.1113, the U.S. Nuclear Regulatory Commission staff ("Staff") hereby submits its written presentation summarizing all the facts, data and arguments of which the Staff is aware and on which the Staff intends to rely at oral argument, scheduled for May 19, 2003. For the reasons set forth below, the Staff submits that there is no genuine and substantial dispute of fact or law relating to the San Luis Obispo Mothers for Peace, et al ("SLOMFP" or "Intervenors") Technical Contention 2 the resolution of which would require the introduction of evidence in an adjudicatory proceeding. This written summary is supported by the affidavit of Michael A. Dusaniwskyj and exhibits to the affidavit, filed with this written summary.

BACKGROUND

On December 21, 2001, Pacific Gas and Electric ("PG&E" or "Applicant") applied for a license, pursuant to 10 C.F.R. Part 72, to possess spent fuel and other radioactive materials associated with spent fuel in an independent spent fuel storage installation ("ISFSI"), to be constructed and operated at the applicant's Diablo Canyon Power Plant ("DCPP") site. Responding to an April 2002, notice of opportunity for a hearing regarding the ISFSI application, a number of

timely requests for hearings and petitions to intervene were received, the majority of which were filed with the SLOMFP acting as lead Intervenor for a variety of individuals and organizations.<sup>1</sup> See 67 Fed. Reg. 19,600 (April 22, 2002). In addition to the SLOMFP intervention challenge, various state and local organizations filed requests to participate as interested governmental entities under 10 C.F.R. § 2.715(c).<sup>2</sup>

In the LBP-02-023, 56 NRC 413 (2002) ("Contention Order") the Atomic Safety and Licensing Board ("Board"), the Board granted intervention to some of the organizations represented by SLOMFP, et al. Over a series of Board orders, various organizations seeking to participate as interested governmental entities were admitted under 10 C.F.R. § 2.715(c).<sup>3</sup> The Board determined that, in addition to satisfying the standing requirement, SLOMFP, et. al also raised one admissible contention, SLOMFP's Technical Contention 2, ("TC2"), which asserted that the Applicant failed to demonstrate that it has satisfied the financial qualification requirements of

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<sup>1</sup> See "Supplemental Request for Hearing and Petition to Intervene by San Luis Obispo Mothers for Peace, Avila Valley Advisory Council, Peg Pinard, Cambria Legal Defense Fund, 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 Margarita Area Residents Together, Santa Lucia Chapter of the Sierra Club, and Ventura County Chapter of the Surfrider Foundation" dated July 18, 2002.

<sup>2</sup> See "San Luis Obispo County's Request to Participate as of Right under 2.715(c)", filed June 20, 2002; "Request of Port San Luis Harbor District to Participate as of Right under 2.715(c)", filed July 19, 2002 (Notice of Withdrawal filed January 6, 2003); "California Energy Commission's Request to Participate as of Right under 10 C.F.R. 2.715(c)", filed August 16, 2002; "Diablo Canyon Independent Safety Committee Request to Participate as of Right under 10 C.F.R. 2.715(c)", filed August 20, 2002; Avila Beach Community Services District request to participate as interested governmental entity, filed August 14, 2002, as supplemented on September 17, 2002 and October 7, 2002; and the "Request of the California Public Utilities Commission to Participate as of Right Under 2.715(c)", filed January, 28, 2003.

<sup>3</sup> In LBP-02-023, the Board admitted SLOMFP, Sant Lucia Chapter of the Sierra Club, San Luis Obispo Cancer Action Now, Peg Pinard, the Avila Valley Advisory Council, and Cental Coast Peace and Environmental Council as section 2.714 participants; and all governmental entities seeking section 2.715(c) status were admitted with the exception of the Diablo Canyon Independent Safety Committee.

10 C.F.R. § 72.22(e) to construct, operate, and decommission the proposed ISFSI in light of PG&E's ongoing petition for reorganization under Chapter 11 of the Bankruptcy Code.

After receiving requests from both the applicant, (PG&E) and the NRC Staff to conduct this hearing pursuant to 10 C.F.R. Part 2, Subpart K, in LBP-02-25, 56 NRC 467 (2002), ("Scheduling Order") the Board granted the requests and oral argument has since been scheduled for May 19 (and May 20, as necessary), 2003 in San Luis Obispo, California. In accordance with 10 C.F.R. § 2.1113 and the Board's Scheduling Order, the NRC Staff now submits its written summary and supporting information upon which the Staff intends to rely at the oral argument.

#### STATEMENT OF FACTS

On December 21, 2001, Pacific Gas & Electric Co. ("PG&E" or "Applicant") filed an application requesting a license for an Independent Spent Fuel Storage Installation (ISFSI) at the Diablo Canyon Power Plant (DCPP). Affidavit at ¶ 2. An ISFSI at Diablo Canyon is part of PG&E's plan to provide storage capacity for spent fuel generated by the DCPP through the remainder of the term of the respective NRC operating licenses (DPR 80 and DPR 82) because a permanent repository is not yet available and is not expected to be available on a schedule to meet DCPP operational needs. *Id.* at ¶ 9.

In order to satisfy the elements of 10 C.F.R. § 72.22, the general and financial information required to be included in an ISFSI application, PG&E provided estimates of the construction, operating, and decommissioning costs of the facility. *Id.* at ¶ 10. According to PG&E estimates, the estimated construction costs are approximately \$63 million, estimated operating costs for the facility from 2006 to 2040 are \$176 million, and the decommissioning costs are estimated to be between \$12.5 and \$13.9 million. *Id.* The application states that "both capital expenditures and operation and maintenance costs will be covered by revenues derived from electric rates." *Id.* at ¶ 11.

THE REGULATORY FRAMEWORK

A. Subpart K, 10 C.F.R. § 2.1101, et seq.

Pursuant to LBP-02-025, this proceeding is governed by the hybrid hearing procedures of 10 C.F.R. § 2.1101, et seq. (Subpart K). Subpart K provides that its procedures may be used, at the request of any party, in contested proceedings concerning, *inter alia*, applications for a license amendment "to expand the spent fuel capacity at the site of a civilian nuclear power plant, through the use of [ ] the construction of additional [ ] dry storage capacity..." 10 C.F.R. § 2.1103. The procedures include a 90 day discovery period, followed by submittal of a detailed written summary, and fifteen days thereafter, oral argument. 10 C.F.R. §§ 2.1111, 2.1113. The detailed written summary must contain all the facts, data, and arguments known to the party and on which the party intends to rely at oral argument to support or refute the existence of a genuine and substantial dispute of fact. 10 C.F.R. § 2.1113(a). All supporting facts and data must be submitted in the form of sworn written testimony or other sworn written submissions. *Id.* The written submittals are to be simultaneously served on all other parties. *Id.*

After considering the submittals and the oral arguments, the Board will issue an order 1) designating any disputed issues of fact and law for hearing, and 2) disposing of any issues of fact or law not designated for hearing. 10 C.F.R. § 2.1115(a). In designating issues for hearing, the Board "shall identify the specific facts that are in genuine dispute, the reason why the decision of the Commission is likely to depend on the resolution of that dispute, and the reason why an adjudicatory hearing is likely to resolve the dispute." *Id.* As for the issues not designated for hearing, only a brief statement of the reasons for the disposition is required. *Id.*

Subpart K provides for a form of summary disposition procedure. 50 Fed. Reg. 41662, 41664 (1985). There are several differences between the provisions of Subpart K and traditional NRC summary disposition practice, including: simultaneous filing of pleadings; mandatory oral argument; and placing the burden of demonstrating the *existence* of a genuine and substantial

issue of material fact is on the party requesting adjudication. *Id.* at 41667. Compare *Georgia Power Co.* (Vogtle Generating Plant, Units 1 and 2), ALAB-872, 26 NRC 127 (1987).

In promulgating Suppart K, the Commission discussed the criteria for designating an issue for hearing, stating that:

Not only must there be a genuine and substantial dispute of fact, but the dispute must be material: *i.e.*, the decision must be likely to depend on resolution of the dispute. In addition, the dispute must be one that can be resolved with sufficient accuracy only by the introduction of evidence in an adjudicatory proceeding.

50 Fed. Reg. 41666-67.

B. Technical Contention 2 -Financial Qualifications (TC2)

In Contention TC2, the Intervenor asserts that "PG&E has failed to demonstrate that it meets the financial qualifications requirements of 10 C.F.R. § 72.22(e)." "Supplemental Request for Hearing and Petition to Intervene" ("SLOMFP Hearing Request"), filed by SLOMFP, et. al, filed July 19, 2002, at 11. The Intervenor proffered various bases for its contention that PG&E failed to satisfy the Commission's financial qualification and decommissioning financial assurance regulation, including that PG&E is currently in a contested bankruptcy; that PG&E's claim that since it is a regulated utility the NRC should assume financial qualifications is incorrect and disingenuous; that PG&E's current financial condition is dubious; and because PG&E is currently in litigation with the California Attorney General's office for allegations of fraud. *Id.* at 12.

In the Application, as supplemented, PG&E provided figures for the estimated costs of construction, operation and decommissioning. In response to a Staff request, the Applicant provided additional information, and specifically, in response to 10 C.F.R. § 72.22(e), the Applicant stated:

PG&E will have the financial qualifications to construct and operate the Diablo Canyon ISFSI. PG&E is an electric utility presently subject to rates established by the California Public Utilities Commission. The funds necessary to cover the construction and operating costs will be derived from electric rates and from electric operating revenues. The costs for decommissioning will be derived from the DCCP Decommissioning Fund.

"Supplemental General and Financial Information - 10 C.F.R. 72.22", June 7, 2002, Enclosure 1, Sheet 3. Affidavit, ¶ 6. The Applicant, in a footnote, referenced the fact that its Plan of Reorganization is pending and noted that the basis for financial qualifications will change if the PG&E Plan is confirmed. See "Supplemental General and Financial Information - 10 C.F.R. 72.22".

In considering whether this information satisfied Staff's needs, the Staff looked to 10 C.F.R. § 72.22, which governs the financial information requirements of an ISFSI application. Specifically, section 72.22(e) provides that the applicant must state:

(e) Except for DOE, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the license is sought. The information must state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds, or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

- 1) Estimated construction costs;
- 2) Estimated operating costs over the planned life of the ISFSI; and
- 3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance before licensing, that decommissioning will be carried out after the removal of spent fuel, high-level radioactive waste, and/or reactor-related GTCC waste from storage.

10 C.F.R. § 72.22(e); Affidavit ¶ 5.

#### THE ADMITTED CONTENTION

In its December 2, 2002 Contention Order, the Board admitted one technical contention for litigation in this proceeding. The admitted contention states that "PG&E has failed to demonstrate that it meets the financial qualifications requirements of 10 C.F.R. § 72.22(e)." SLOMFP Hearing Request at 11.

The Board admitted the contention with two bases, stating that "notwithstanding PG&E's financial qualifications to conduct day-to-day DCP operations, in its bases two and three SLOMFP has raised relevant and material concerns regarding the impact of PG&E's bankruptcy on its continuing ability to undertake the new activity of constructing, operating, and decommissioning an ISFSI by reason of its access to continued funding as a regulated entity or through credit markets." Contention Order at 35. The Board, in admitting the contention, added the caveat that neither the unresolved California Attorney General's lawsuit against PG&E Corporation for alleged fraud, nor the financial qualifications of any entities that may in the future construct or operate the ISFSI, are litigable matters under this contention. *Id.*; Affidavit ¶ 3.

#### ARGUMENT

#### The Board Should Rule on Contention TC2 Since Intervenors' Fail to Reveal a Genuine and Substantial Dispute in TC2 with Respect to a Material Issue that can Only be Resolved with Sufficient Accuracy by the Introduction of Evidence in an Adjudicatory Proceeding

The Staff contends that there is no genuine and substantial dispute in Contention TC2 with respect to a material issue that can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory proceeding. *See* 10 C.F.R. § 2.1115(b); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 386 (2001). Instead, the Staff respectfully submits that contention TC2 can be resolved by the Board at this abbreviated hearing stage. *Id.* Staff contends that the Intervenors have provided only general allegations that the Applicant has failed to satisfy section 72.22(e) rather than any specific factual disputes regarding the admitted contention, and that such general allegations are insufficient to trigger an evidentiary hearing. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22, 27 (2001).

As indicated in the Application, PG&E is the applicant for the Part 72 license. Affidavit ¶ 4. PG&E is an electric utility subject to economic regulation by the CPUC, with revenues based

upon traditional cost-of-service rates. *Id.* ¶ 8. As also indicated in the Application, as long as PG&E remains the applicant, ISFSI costs will be recovered by revenues derived from electric rates. *Id.* Information on these costs as required to meet 10 C.F.R. § 72.22(e) is provided in the Application and its supplement, and the Staff has determined that the financial information provided by the Applicant provides reasonable assurance that the Applicant will be able to obtain the funds necessary for construction, operation, and decommissioning of the ISFSI facility. However, should access to external financing for the ISFSI be needed, there is strong indication that such financing would be permitted through the bankruptcy proceeding. *Id.* Intervenors have presented no continuing dispute regarding the financial information presented in the application that would require the introduction of evidence in an adjudicatory procedure in order to resolve with sufficient accuracy.

Instead of offering any genuine dispute regarding the reasonableness of PG&E's cost estimates, Intervenors attempt to second-guess the Staff's finding of reasonable assurance. The determination of whether there is reasonable assurance that the Applicant will have the necessary financial resources to cover the estimated construction and operating costs requires the exercise of judgment by economists in the NRC staff. *Id.*, ¶ 12. The requirements outlined in 10 C.F.R. § 72.22(e) are clearly stated and simply do not include any specific financial minimums or certainty as Intervenors wish to read into this regulation. *Id.* Instead, the determination of whether or not the Applicant has satisfied the reasonable assurance standard in 10 C.F.R. § 72.22(e) is made by the Staff experts who apply their educational training and work-related experience to the information provided by the Applicant. *Id.* In this instance, Staff did exactly that and determined that Applicant's December 21, 2001, request combined with the subsequent June 7, 2002, submittal contained all the financial information required by 10 C.F.R. § 72.22(e) to support the application for a site-specific license for an ISFSI at Diablo Canyon. *Id.*, ¶ 10.

The Staff made this determination while completely aware of PG&E's ongoing Chapter 11 Reorganization proceeding. *Id.* ¶¶ 4, 8, 11. The NRC does not regulate commerce, and thus, does not regulate how PG&E conducts its finances. *Id.* ¶ 12. Instead, the NRC, through its regulations, seeks to protect the public health and safety. *Id.* In doing so, 10 C.F.R. § 72.22(e) ensures that the NRC has reasonable assurance that the licensee will have the financial resources to construct, operate and decommission the facility safely. *Id.* ¶ 11. While Intervenors express concern in Contention TC-2 that PG&E would not have access to credit markets due to the ongoing bankruptcy proceeding, PG&E does not rely upon its ability to obtain credit to fund the construction, operation, or decommissioning of the ISFSI in its Application and supplements. *Id.* Instead, as previously noted, PG&E states that the funds will be derived from electric rates. *Id.*

Additionally, Intervenors' concern that PG&E's status as a rate-regulated utility is in question because of the ongoing bankruptcy proceeding also fails to affect the NRC Staff's review of the PG&E's financial information in this instance. *Id.* ¶ 7. As long as PG&E is the Applicant for the ISFSI license the Staff's analysis, finding reasonable assurance based upon PG&E's ability to recover costs through electric generation and rate recovery, is sound. *Id.* As recognized by PG&E, "the basis for financial qualifications will change if the [Reorganization] Plan is implemented and the 10 C.F.R. 72 applicant is amended." Supplement, Enclosure 1, Sheet 3. Accordingly, until the time the applicant or licensee for the ISFSI license is amended, the Staff's expert evaluation of PG&E's financial information and the conclusion that the Staff finds reasonable assurance that PG&E will be able to obtain the necessary funds for construction, operation and decommissioning, has not been effectively challenged. *Id.* ¶¶ 4, 7, 11.

In sum, Staff submits that there is no genuine or substantial dispute that can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory proceeding. Staff is aware of the ongoing bankruptcy proceeding and the potential implications created thereby, and thus, concerns of such raised by Intervenors present no new or disputed information from that

presented in the application. Instead, Intervenors appear to simply express their displeasure with Staff making the determination required by section 72.22(e), in light of what Intervenors perceive to be a lack of specificity or certainty in the Commission's regulation. Such concerns, however, are more appropriately addressed in a Petition for Rulemaking, and could not be adequately addressed in an adjudicatory proceeding as the relief requested, that of a more detailed financial information regulation, could not be granted in that setting.

Moreover, as the Commission has previously explained, an "Applicant can not be required to prove that uncertain future events could never happen." *Northeast Nuclear Energy Company* (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22, 27 (2001). Therefore, Intervenors assertion that future events may change the financial information presented in PG&E's ISFSI Application is neither new information of which the Staff was not previously aware, nor is the Applicant required by the Commission to provide for such certainty.

Accordingly, the Staff's reliance on the Applicant's information is sound, and Staff's conclusion that information in the application provides reasonable assurance that PG&E will be able to obtain the necessary funds for construction, operation, and decommissioning has not been disputed. Moreover, Intervenors have failed to present any reason why the introduction of evidence in an adjudicatory hearing would be necessary in order to resolve this issue.

CONCLUSION

Based upon the foregoing, the Staff submits that there is no genuine and substantial dispute of material fact that can be resolved with sufficient accuracy only by the introduction of evidence in an adjudicatory proceeding as to any aspect of Contention 2.

Respectfully submitted,

*Angela B. Coggins / by AH2*

Angela B. Coggins  
Counsel for NRC Staff

*Stephen H. Lewis*

Stephen H. Lewis  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 11<sup>th</sup> day of April, 2003

April 11, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS & ELECTRIC CO.	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation	)	ASLBP No. 02-801-01-ISFSI
	)	

AFFIDAVIT OF MICHAEL A. DUSANIWSKYJ

I, Michael A. Dusaniwskyj, being duly sworn, hereby state as follows:

1. I am employed by the U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Reactor Regulation, as an economist. A statement of my professional qualifications is Exhibit 1 to this affidavit. As part of my responsibilities, I review the financial qualifications of applicants and licensees to construct and operate, and the financial assurance to decommission, Independent Spent Fuel Storage Installations (ISFSIs). I performed this review for the ISFSI proposed by Pacific Gas & Electric Company (PG&E) for the storage of spent fuel from its Diablo Canyon Power Plant (DCPP). My business address and telephone number are:

U.S. Nuclear Regulatory Commission  
Office of Nuclear Reactor Regulation  
Division of Regulatory Improvement Programs  
Reactor Policy and Rulemaking Program  
Financial Regulatory Analysis Section  
Washington, DC 20005  
(301) 415-1260

2. On December 21, 2001, the NRC received an application from PG&E, sworn to by Mr. Lawrence F. Womack, Vice President, Nuclear Services of PG&E, requesting a license for an ISFSI at the DCPP. PG&E is seeking to build an ISFSI at DCPP as part of its plan to provide storage capacity for spent fuel generated by DCPP through the remainder of the term of the respective NRC operating licenses for DCPP, Units 1 and 2. As part of the application, PG&E

submitted information as generally needed to support NRC review of PG&E's financial qualifications to construct and operate, and its provision of financial assurance to decommission, the ISFSI.

3. I have been asked to address Contention TC-2, "Financial Qualifications Not Demonstrated," submitted by the San Luis Obispo Mothers for Peace (SLOMFP) and other organizations and persons represented by SLOMFP. Contention TC-2 states: "PG&E has failed to demonstrate that it meets the financial qualifications requirements of 10 C.F.R. § 72.22(e)." SLOMFP asserted five bases for the contention, but the Atomic Safety and Licensing Board (Board) only admitted the contention "...relative to the SLOMFP concerns about PG&E's access to credit and its ability to recover costs through rates."<sup>1</sup> The Board also ruled that:

...neither the unresolved California Attorney General's lawsuit against PG&E Corporation for alleged fraud<sup>2</sup> nor the financial qualifications of any entities that may in the future construct or operate the ISFSI are litigable matters under this contention as irrelevant to and/or outside the scope of this proceeding. 56 NRC at 443.

4. On April 6, 2001, PG&E filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. The Board's reference to "the financial qualifications of any entities that may in the future construct or operate the ISFSI" arises from the significant potential that a new entity (or entities) may come into existence as a result of the Chapter 11 reorganization. The Board was presumably also influenced by the pendency before the NRC at this time of an application by PG&E for the NRC's consent to the transfer of the DCPD licenses to two of the entities envisioned under PG&E's Plan of Reorganization, as amended, filed in the bankruptcy proceeding. Those entities would be Electric Generation LLC (GEN) and Diablo Canyon LLC. See, ISFSI Application,

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<sup>1</sup> Pacific Gas and Electric Company (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, pp. 441-443 (2002).

<sup>2</sup> People of the State of California v. PG&E Corporation, *et al.*, Superior Court of the State of California for the County of San Francisco, Case No. CGC-02-403289.

Section 1.0, "General and Financial Information," p. 5. In this proceeding, however, the Applicant is PG&E as it currently exists. PG&E has briefly described in its application (Section 1.5) its voluntary petition for reorganization and the entities it proposes to become the DCPD licensees, including for the ISFSI, in its Plan of Reorganization, as amended. The information in this proceeding on the proposed successor corporations is clearly insufficient for me to have formed any judgment as to their financial qualifications and capability to provide decommissioning financial assurance for the ISFSI. Further, there are decisions and developments in other forums that have to come to completion before it is clear what the results of the reorganization proceeding will be. Those developments would be reflected in subsequent NRC actions.

5. The NRC regulatory standard for financial qualifications and decommissioning financial assurance of an ISFSI is set forth in 10 C.F.R. § 72.22(e), which requires:

Except for DOE, information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter [10 C.F.R. Chapter I], the activities for which the license is sought. The information must state the place at which the activity is to be performed, the general plan for carrying out the activity, and the period of time for which the license is requested. The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds; or that by a combination of the two, the applicant will have the necessary funds available to cover the following:

- 1) Estimated construction costs;
- 2) Estimated operating costs over the planned life of the ISFSI; and
- 3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance before licensing, that decommissioning will be carried out after the removal of spent fuel, high-level radioactive waste, and/or reactor-related GTCC [Greater Than Class C waste, as defined in 10 C.F.R. § 61.55] waste from storage.

6. Additional financial and general information was requested of PG&E in order to clearly address the required information in 10 C.F.R. § 72.22. A supplement to the December 21, 2001 application, dated June 7, 2002, outlined PG&E's answers to 10 C.F.R. § 72.22's information

requirements in a line by line chart. The June 7, 2002 supplement supported the narrative of the December 21, 2001 application. In the ISFSI application, as supplemented, PG&E has stated:

**PG&E will have the financial qualifications to construct and operate the Diablo Canyon ISFSI. PG&E is an electric utility presently subject to rates established by the California Public Utilities Commission. The funds necessary to cover the construction and operating costs will be derived from electric rates and from electric operating revenues. The costs of decommissioning will be derived from the DCPD Decommissioning Fund. June 7, 2002, Supplemental General and Financial Information, Enclosure 1, PG&E response regarding section 72.22(e), footnote omitted.**

7. I have reviewed excerpts related to spent fuel storage from "Pacific Gas and Electric Company 2003 Test Year: Retained Generation Results of Operations" (Exhibit 2) and noted that PG&E seeks rate recovery for those expenses related to the planned ISFSI that it has, or will, incur in Years 2003 and 2004. I have not been closely following the CPUC proceeding and do not purport to have overall knowledge of that proceeding. However, the information I have reviewed indicates to me that, at this time, PG&E continues to be regulated by the California Public Utility Commission (CPUC) in a manner similar to any other electric utility, and that there is reasonable assurance that PG&E will receive the rate relief necessary to support its current and near-term expenditures related to the ISFSI.

8. PG&E states in the ISFSI application (Section 1.0, p. 5) that as a result of its bankruptcy filing, PG&E's contracts are currently under the jurisdiction of the Bankruptcy Court. I have been provided for review PG&E's "Application for Order Approving Assumption of Executory Contract and Entering into New Contract for Licensed Used Nuclear Fuel Storage System," filed October 3, 2001, and the Order granting that application. (Exhibit 3). As with the CPUC proceeding, I have not been closely following the bankruptcy proceeding and do not purport to have overall knowledge of that proceeding. However, on the basis of my review of this action by the Bankruptcy Court, I conclude that there is reasonable assurance that the Court may grant such

applications related to ISFSI contracts as is necessary to enable PG&E to move forward with planning activities.

9. An ISFSI at Diablo Canyon is part of PG&E's plan to provide storage capacity for spent fuel generated by the Diablo Canyon Power Plant (DCPP) through the remainder of the term of the respective NRC operating licenses (DPR 80 and DPR 82). A permanent repository is not yet available and is not expected to be available on a schedule to meet DCPP operational needs. The ISFSI that is the subject of this application is required beginning in 2006.

10. The December 21, 2001, application and June 7, 2002 supplement, contained all the information required of 10 C.F.R. 72.22, including, but not limited to, the names, addresses, and citizenship of PG&E's directors and principal officers, estimated construction costs, estimated operating costs over the life of the ISFSI, and the estimated decommissioning costs and necessary financial arrangements to provide reasonable financial assurance. PG&E states that estimated construction costs for the facility are to be approximately \$63 million. PG&E also states that estimated operating costs for the facility from 2006 to 2040, when the last movement of fuel from the spent fuel pools to the ISFSI would take place under the current reactor licenses, are \$176 million. PG&E further states that the estimated decommissioning costs for the facility are to be between \$12.5 million and \$13.9 million. These estimates include the procurement of storage casks and canisters, and assume 50 storage casks are loaded to maintain capacity in the spent fuel pool for full offload capability until the end of the DCPP license terms. The costs to completely offload the spent fuel pools, an additional 88 storage casks, and to operate the ISFSI from 2026 to 2040, are included in the estimates.

11. The application states that "both capital expenditures and operation and maintenance costs will be covered by revenues derived from electric rates and electric doperating revenues." The staff finds that the December 21, 2001, request combined with the subsequent

June 7, 2002, submittal contains all the financial information required by 10 C.F.R. § 72.22 to support the application for a site-specific license for an ISFSI at Diablo Canyon. From my review of this information it does not appear to me that PG&E will require access to credit markets to cover the costs of the ISFSI. However, based upon my understanding of the bankruptcy process, if interim external financing were required, that need would be address in the bankruptcy proceeding.

12. Determination of whether there is reasonable assurance that the applicant will have the necessary financial resources to cover the estimated construction and operating costs requires the exercise of judgment by economists in the NRC staff. With very few exceptions, the NRC does not have regulations, especially in support of 10 C.F.R. § 72.22, that place any financial standards, ratios, or minimums that define reasonable financial assurance. Therefore, the determination of reasonable assurance is conducted in consultation with other members of the NRC staff, use of professional knowledge, and specific information provided in the narrative of the application. Although PG&E is seeking an ISFSI license while undergoing reorganization in bankruptcy, I found the information provided in the ISFSI application with respect to financial qualifications and decommissioning financial assurance to be reasonable and sufficient to satisfy the applicable regulator. The NRC does not regulate commerce, therefore, the financial data provided in the application only needs to support the technical and engineering requirements of building and operating the ISFSI to NRC safety standards and providing reasonable assurance that it either has, or will have, the funds necessary to decommission the ISFSI to NRC Standards.

13. I have concluded, for the reasons set forth in this affidavit, that PG&E has reasonable assurance that it will be granted rate recovery adequate to enable it to proceed with its near-term ISFSI activities. I have also concluded that it is unlikely that PG&E will have need for access to external credit for ISFSI costs, but that a mechanism exists (the bankruptcy proceeding) by which it can attain such interim credit, should that become necessary. Consequently, I do not

find in Contention TC-2 information that would prevent me from finding that PG&E has provided reasonable assurance that it can fund the construction, operation, and decommissioning of the planned ISFSI facility.

*Michael A. Dusaniwskyj*  
Michael A. Dusaniwskyj

Subscribed and sworn to before me  
this 11 day of April, 2003

*Circe E. Martin*  
Notary Public



My commission expires: March 1, 2007

CIRCE E. MARTIN  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires March 1, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS & ELECTRIC CO.	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	)	ASLBP No. 02-801-01-ISFSI
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF BRIEF AND SUMMARY OF RELEVANT FACTS, DATA AND ARGUMENT UPON WHICH THE STAFF PROPOSES TO RELY AT ORAL ARGUMENT ON TECHNICAL CONTENTION 2, AND AFFIDAVIT OF MICHAEL A. DUSANIWSKYJ" have been served upon the following persons by United States mail, first class, or through the Nuclear Regulatory Commission's internal mail distribution as indicated by an asterisk (\*); and by electronic mail as indicated by a double asterisk (\*\*) on this 11<sup>th</sup> day of April, 2003.

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---

Stephen H. Lewis  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 11<sup>th</sup> day of April, 2003

**EXHIBIT 1**

# MICHAEL A. DUSANIWSKYJ

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Olney, Maryland

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## SUMMARY

Extensive international and domestic experience managing economic research and financial risk evaluation for corporate strategic planning, investment in energy projects and government policy assessments. Experienced Economic Advisor and Financial Consultant; Instructor of Engineering Economics; Adjunct Professor of Economics; Fluent in Ukrainian.

## PROFESSIONAL EXPERIENCE

**UNITED STATES NUCLEAR REGULATORY COMMISSION, Washington, DC** **Current**  
Office of Nuclear Reactor Regulation, *Senior Economist*

Conduct reviews and make policy recommendations, prepare rules, regulations and principal correspondence. Conduct investigations on licensees' financial qualifications and decommissioning funding assurances to determine compliance with NRC regulations for review by Commissioners. Prepare Safety Evaluations on license amendment applications. Support United States initiative to assist Ukrainian and Russian nuclear regulatory authorities through professional contacts with government ministries and agencies. Detailed as Project Manager for AP600 certification. Provides economic consultations for AEOD and NMSS.

**UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, Kyiv, Ukraine** **1996**  
Economic Restructuring, *Energy Advisor*

Formulate policies, procedures and programs supporting United States Strategic Objectives for Ukrainian Economic Restructuring in Energy for the Ukrainian Government by managing the objectives, goals and work assignments of American consultants while teaching free market economics to Ukrainian counterparts. Participate in senior level discussions relating to energy programs, policies and future directions. Provide guidance on USAID regulations and procedures.

**COMMUNITY ENERGY ALTERNATIVES, INC., Ridgewood, New Jersey** **1994 to 1995**  
(A subsidiary of Public Service Energy Group)  
Project Finance/International Investment Development, *Senior Project Analyst*

Evaluate cogeneration, independent power projects, acquisitions and privatization options by performing extensive economic research, financial studies and risk assessment. Judge international currency and political risks. Support, advise and participate in high-level negotiations for project investment and development.

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**PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Newark, New Jersey** 1986 to 1994  
(A subsidiary of Public Service Energy Group)  
**Electric Business Development, *Engineering Economist***

Authored and updated latest version of PSE&G's Engineering Economics Manual, standardizing both financial and economic analyses and studies by writing, reviewing and maintaining updated computer programs required for engineering economic analyses and strategic financial planning. Initiated standards and practices in performing economic analyses by conducting educational and training programs in engineering economics to over 380 engineers and senior managers.

Developed, coordinated, and executed sophisticated economic and financial studies for maximizing and maintaining the electric system through Least Cost Planning, with the goal of reducing tariffs. Determined economic viability of various marketing and Demand Side Management programs, resulting in the adaptation of appliance control program. Review Company budgets for Senior Management.

**PEPSI-COLA BOTTLING GROUP, Moonachie, New Jersey** 1984 to 1986  
**Financial Planning and Analysis, *Senior Financial Analyst***

**READER'S DIGEST ASSOCIATION, Pleasantville, New York** 1981 to 1984  
**Circulation/Direct Marketing Analysis Department, *Financial Analyst***

### EDUCATION

**COLUMBIA UNIVERSITY SCHOOL OF CONTINUING EDUCATION**  
Certificate December 1981  
Post-MBA in Structure COBOL Programming and Application Design

**FORDHAM UNIVERSITY GRADUATE SCHOOL OF BUSINESS ADMINISTRATION**  
MBA July 1980  
Finance & International Business

**FORDHAM UNIVERSITY - COLLEGE AT LINCOLN CENTER**  
BA February 1978  
Philosophy & Economics with Business Administration (Dual Major)

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Strayer University  
Washington, DC

**INSTRUCTOR OF ENGINEERING ECONOMICS**

The Center for Professional Advancement  
East Brunswick, New Jersey

**ADJUNCT PROFESSOR OF ECONOMICS**

Essex County College  
Newark, New Jersey

**ADJUNCT PROFESSOR OF ECONOMICS**

Mercy College  
Dobbs Ferry, New York

## EXHIBIT 2

(U 39 M)

Application No.: \_\_\_\_\_

Exhibit No.: (PG&E-10)

Date: \_\_\_\_\_

Witness: Various

**PACIFIC GAS AND ELECTRIC COMPANY**

**2003 TEST YEAR**

**RETAINED GENERATION RESULTS OF OPERATIONS**



1                   **PACIFIC GAS AND ELECTRIC COMPANY**  
2                                   **CHAPTER 4**  
3                   **NUCLEAR GENERATION PROGRAM**

4   **A. Introduction**

5       **1. Scope and Purpose**

6           The purpose of this chapter is to demonstrate that Pacific Gas and  
7   Electric Company's (PG&E or the Company) expense and capital  
8   expenditure forecasts for the management of its Diablo Canyon Power Plant  
9   (Diablo Canyon or DCPP) Nuclear Generation Program are reasonable and  
10   should be adopted by the California Public Utilities Commission (CPUC or  
11   Commission). PG&E proposes to record the Diablo Canyon revenue  
12   requirement in the balancing accounts in effect at the time PG&E's 2003  
13   General Rate Case (GRC) is implemented, with modifications to reflect the  
14   changeover from recorded to forecasted cost recovery for nuclear  
15   capital-related revenue requirements and non-fuel expense-related revenue  
16   requirements.

17           In addition, PG&E requests that the Diablo Canyon Independent Safety  
18   Committee (Section F.11.) be phased out consistent with the treatment of  
19   San Onofre Nuclear Generation Station (SONGS) and Palo Verde. The  
20   employees at Diablo Canyon place the safety and reliability of the nuclear  
21   generating facility at the pinnacle of importance. This is demonstrated by  
22   the continued industry recognition of DCPP as a top performer.

23       **2. Summary of Forecast**

24           PG&E requests that the Commission adopt its 2003 forecast of  
25   \$246 million for Operations and Maintenance (O&M) expenses and  
26   \$91 million for fuel expenses for the nuclear program. PG&E further  
27   requests that the Commission adopt its capital expenditure amounts of  
28   \$15.1 million for 2001, \$16.0 million for 2002 and \$45.4 million for 2003  
29   (Table 4-1) for nuclear generation to replace obsolete and/or end-of-life  
30   equipment, implement modifications to meet Nuclear Regulatory

1 the outside of the tube. Based on the results of PG&E's tube inspection  
2 program and predictions of crack growth rates, it will be necessary to  
3 chemically remove these deposits, to arrest outside tube diameter  
4 cracking. Without this one-time maintenance work, there would be a  
5 need to install protective sleeves on the steam generator tubes to  
6 extend their lives until the time projected for steam generator  
7 replacement. Tube sleeves are very expensive, result in extensive  
8 inspection requirements and extended refueling outages.

9 • **Interim Spent Fuel Storage Installation (ISFSI)**

10 Diablo Canyon's spent fuel pools are approaching their storage  
11 capacity. The original plan was for spent fuel to be disposed of at a  
12 federal repository, or recycled at a fuel reprocessing plant. Neither of  
13 these options is available, nor will they be in the foreseeable future. To  
14 allow Diablo Canyon to continue to operate past 2006, PG&E is  
15 permitting and building an interim spent fuel storage facility scheduled to  
16 be completed in 2005. The spent fuel can then be stored dry in an inert  
17 environment, within a shielded cask on a newly constructed cask  
18 storage pad. This facility will be sized to allow Diablo Canyon to run  
19 through its current licensed life. The forecast costs include support for  
20 license hearings, support for the NRC process and the early stages of  
21 design completion.

22 • **Intake Structure**

23 Ongoing concrete repairs are required because the intake structure  
24 concrete is experiencing an acceleration in corrosion damage,  
25 particularly for the existing delaminated concrete areas. From corrosion  
26 experience at the intake structure, the increased repair costs are  
27 expected to range from 10 to 15 percent per year. Due to the  
28 continuing loss of reinforcing steel and reduction of the bond strength  
29 between the concrete and the steel there will be further adverse impacts  
30 on structural capacities of degraded concrete elements. This may affect  
31 the structure's design and licensing bases and could effect operation of  
32 the plant.

33 • **Refuel Water Purification Project**

**Table 4-13  
Pacific Gas and Electric Company  
Diablo Canyon  
One Time O&M Forecast Adjustments  
2001 \$000**

Line No.	FERC Act.	Process	Project Description	Basis Of Estimate*	Recorded 2001	2002	2003	2004	2005
1	519	Manage DCPP Plant Assets	Refuel Water Purification Project	1			1,000		
2	524	Manage Business & Information Management	Software Infrastructure	1		1,000	1,000		1,000
3	524	Manage Engineering Assets & Maintain License & Used Fuel Storage	Interim Spnt Fuel Storage Installation	2	8,900	(3,000)	(1,000)	0	12,000
4	524	Manage DCPP Plant Assets	Outage Bonus(Labor)	3	500	(500)	(500)	(500)	(500)
5	524	Manage Business & Information Management	INPO/NEI fees not paid in 2001	4		1,500	1,500	1,500	1,500
6	524	Loss Prevention	Emergency Planning Fund	4	2,000	(1,000)	(1,000)	(1,000)	(1,000)
7	524	Loss Prevention	Security Enhancements resulting from 9/11(Labor)	3		2,000	2,000	2,000	2,000
8			Subtotal(Act. 524)			0	2,000	2,000	15,000
9	529	Manage DCPP Plant Assets	Intake Structure				500	500	
10	530	Manage DCPP Plant Assets	Unit 2 Internal Upflow Modification	1			1,000	1,000	1,000
11	530	Manage DCPP Plant Assets	Reactor Head Penetration Inspection	1				1,000	
12	530	Manage DCPP Plant Assets	Replace Reactor Split PINS	3				3,000	
13			Subtotal(Act. 530)			0	1,000	5,000	1,000
14	531	Manage DCPP Plant Assets	Turbine Rotor Repairs		11,500	6,700	(1,500)	(5,500)	(6,500)
15	531	Manage DCPP Plant Assets	Steam Generator Chemical Cleaning	5			10,000	9,000	1,000
16	531	Manage DCPP Plant Assets	Additional Outage (2 outage year) Labor	3				10,188	
17	531	Manage DCPP Plant Assets	Additional Outage (2 outage year) Non - Labor	3				22,000	
18			Subtotal(Act 531)			6,700	8,500	35,888	(5,500)
19			Total			6,700	13,000	43,188	10,500

\*Basis Of Estimate:  
 1 Engineering Estimate  
 2 Contract  
 3 Historic cost  
 4 Actual Invoice  
 5 Vendor Proposal

**EXHIBIT 3**

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2 JANET A. NEXON (No. 104747)  
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9 Facsimile: 415/217-5910

**FILED**  
OCT - 9 2001  
UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

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

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 In re  
16 PACIFIC GAS AND ELECTRIC  
17 COMPANY, a California corporation,  
18 Debtor.

19 Case No. 01-30923 DM  
20 Chapter 11 Case  
21 [No Hearing Requested]

22 Federal I.D. No. 94-0742640

23 APPLICATION FOR ORDER APPROVING  
24 ASSUMPTION OF EXECUTORY CONTRACT AND ENTERING INTO NEW  
25 CONTRACT FOR LICENSED USED NUCLEAR FUEL STORAGE SYSTEM

26 INTRODUCTION

27 Pacific Gas and Electric Company, the debtor and debtor in possession herein  
28 ("PG&E"), hereby seeks an order of this Court approving (i) the assumption of an executory  
contract consisting of a letter agreement between PG&E and Holtec International ("Holtec"),  
dated August 31, 2000, as amended (the "Letter Agreement") for engineering and licensing  
support work related to a used fuel storage system for the storage of nuclear waste, a copy of  
which is attached as Exhibit A to the Declaration of Lawrence F. Womack filed herewith  
(the "Womack Declaration"), and (ii) the execution, delivery and performance of a new  
contract with Holtec for the development and completion of the storage system (the "Storage

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HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
RABKIN

1 Contract").<sup>1</sup> The Creditors' Committee has approved this Application, as shown by the  
2 signature of its counsel below, and Holtec has consented to the assumption of the Letter  
3 Agreement and PG&E's entering into the Storage Contract, as evidenced by its signature  
4 below.

5  
6 I.  
FACTUAL BACKGROUND<sup>2</sup>

7 PG&E commenced this Chapter 11 case by filing a voluntary petition on April 6,  
8 2001. PG&E continues to manage and operate its property as a debtor in possession  
9 pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

10 PG&E is the owner and operator of the Diablo Canyon Nuclear Power Plant  
11 ("DCPP"), which is located in San Luis Obispo County near the town of Avila Beach,  
12 California. As an operator of a nuclear power plant, PG&E must have the ability to store  
13 nuclear wastes generated by such operations to satisfy its obligations under federal and state  
14 law and regulations, and to safeguard the health and safety of its power plant workers and  
15 the community at large. The federal government has been working for approximately thirty  
16 years on plans to build a permanent national storage facility to handle used fuel from the  
17 nation's nuclear power plants. However, the opening of such a used fuel storage facility still  
18 appears to be a decade or more away. Existing used fuel storage pools at DCPD will be  
19 filled to their useable capacity by 2006-2007. Therefore, to ensure continued operation of  
20 DCPD, PG&E must now plan for needed on-site storage of its used nuclear fuel.

21 On or about August 31, 2000, PG&E and Holtec entered into the Letter  
22 Agreement for preliminary licensing support and design work related to a used fuel storage  
23

24  
25 <sup>1</sup>The Storage Contract is described in detail in Exhibit B attached to the Womack  
26 Declaration. Because of the voluminous nature and commercial sensitivity of some of the  
27 terms of the Storage Contract, it is not attached as an exhibit thereto; however, a copy of the  
28 Storage Contract has been provided to the Creditors' Committee, and will be made available  
to the Court if the Court believes that review of the actual Storage Contract is required.

<sup>2</sup>The evidentiary basis and support for the facts set forth in this Motion are contained in  
the Womack Declaration.

HOWARD  
E.C.  
MEMORANDUM  
CANYON  
FILE  
WACON

1 system to be licensed for DCP. A true and correct copy of the Letter Agreement is attached.  
2 to the Womack Declaration as Exhibit A. PG&E and Holtec have now completed  
3 negotiations for the Storage Contract for the development and completion of the storage  
4 system which was the subject of the Letter Agreement. The Storage Contract was executed,  
5 subject to Bankruptcy Court approval, on July 19, 2001.

6 Preliminary design and licensing work for the storage system was begun in  
7 September, 2000 under the Letter Agreement and is still in progress, pending this Court's  
8 approval of the Storage Contract. The Storage Contract provides that the work done under  
9 the Letter Agreement will be expressly subject to all the terms and conditions of the Storage  
10 Contract. The Storage Contract and Letter Agreement (collectively, the "Holtec Contracts")  
11 ensure that PG&E will have the technology and equipment to store used nuclear fuel and  
12 that the requisite licensing for such storage will be obtained.

13 PG&E's storage system must be designed for DCP site conditions and approved  
14 by the Nuclear Regulatory Commission ("NRC") under a "Site-Specific License," in  
15 addition to other required NRC approvals. The Holtec Contracts provide for the design,  
16 engineering, licensing, and fabrication of casks and canisters and related equipment by  
17 Holtec for the on-site storage of used fuel assemblies at DCP. Pursuant to the Storage  
18 Contract, Holtec is required to complete the design and licensing work, and fabricate and  
19 deliver eight casks and canisters and related equipment, by March, 2005. For this work,  
20 PG&E will pay Holtec a fixed price of approximately \$16.4 million,<sup>3</sup> plus additional  
21 compensation for certain services and equipment.

22 During the next 24 years of plant operations at DCP, PG&E expects to order  
23 additional batches of the NRC-approved casks and canisters every three to four years as used  
24 fuel is accumulated in the used fuel storage pools. At the end of PG&E's operating license  
25 for the plant,<sup>4</sup> PG&E plans to purchase additional casks and canisters for plant

26 <sup>3</sup>The fixed price under the Storage Agreement includes costs under the Letter  
27 Agreement.

28 <sup>4</sup>DCP is a two-unit facility. PG&E is licensed to operate Unit 1 until 2021 and Unit 2  
(continued...)

EDWARD  
LEE  
NEVINS  
CANNON  
BANK  
MGRY

1 decommissioning. Based on current pricing, which will be adjusted under a formula for the  
2 effects of inflation, the total cost of all of the orders under the Storage Contract could be as  
3 much as \$125 million. Pursuant to its terms, the Storage Contract will remain in effect until  
4 the United States Department of Energy (or its equivalent) takes possession of and  
5 responsibility for used fuel at DCP. However, under the terms of the Storage Contract,  
6 PG&E may terminate the contract at any time. Because the Storage Contract is a non-  
7 exclusive contract, PG&E also may purchase similar equipment from other vendors.

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## II. DISCUSSION

By this Application, PG&E asks the Court to enter an order pursuant to Section 365, authorizing PG&E to assume the Letter Agreement. Further, although entering into the Storage Contract arguably is permitted as a transaction in the ordinary course of PG&E's business pursuant to Section 363(c) of the Bankruptcy Code, PG&E is seeking this Court's authorization under Section 363(b) of the Bankruptcy Code to enter into the Storage Contract to eliminate any uncertainty with respect to this transaction.

A. Assumption of the Letter Agreement Should Be Permitted Under the Business Judgment Test

The widely accepted test for determining whether a debtor in possession should be authorized to assume or reject an executory contract is the business judgment test. See, e.g., Robertson v. Pierce (In re Chi-Feng Huan), 23 B.R. 798, 800 (B.A.P. 9th Cir. 1982)(citations omitted). PG&E's determination to assume the Letter Agreement represents a sound business decision, as described herein.

As discussed above, the Holtec Contracts are critical to the continued long-term operation of DCP. The storage system will provide needed on-site storage of used nuclear fuel during the remaining life of the plant as well as during decommissioning of the plant. Because of the long-term importance of this contract, PG&E undertook considerable efforts

(... continued)  
until 2025.

1 to develop, bid and negotiate the contract for the storage system. The contract was  
2 competitively bid to four suppliers providing used fuel storage systems. Holtec was awarded  
3 the contract as the lowest overall qualified bidder. Holtec is a leader in the nuclear used fuel  
4 storage industry and is responsible for numerous storage projects in the United States.

5 Assumption of the Letter Agreement (and the concurrent entry into the Storage  
6 Contract) will assure PG&E the ability to store used nuclear fuel for many years to come, at  
7 a predictable and reasonable cost. Accordingly, PG&E's assumption of the Letter  
8 Agreement is based on a sound business decision and will facilitate PG&E's successful  
9 reorganization.

10 B. PG&E Should be Authorized to Enter into the Storage Contract Pursuant to  
11 Section 363 of the Bankruptcy Code.

12 As an operator of a nuclear power plant, arranging for the storage of used nuclear  
13 fuel is in the ordinary course of business for PG&E. As described above, the Storage  
14 Contract involves the design, development and fabrication of casks and canisters for on-site  
15 storage of used fuel assemblies for use at DCP. Accordingly, the transaction should be  
16 permissible without the necessity of a court order, pursuant to Section 363(c)(1) of the  
17 Bankruptcy Code.

18 Nevertheless, in light of the magnitude of the consideration payable to Holtec  
19 under the Storage Contract and the long-term nature of the agreement, to eliminate any  
20 doubt as to whether the transaction is permitted, PG&E is also seeking this Court's approval  
21 under Section 363(b)(1) of the Bankruptcy Code.

22 In determining whether to authorize the use, sale or lease of property of the estate  
23 under Section 363(b)(1), courts require a debtor to show that a sound business purpose  
24 justifies such actions, applying essentially the same "business judgment" test that is used in  
25 determining whether to approve the assumption or rejection of an executory contract. See,  
26 e.g., Stephens Indus. Inc. v. McClung, 789 F.2d 386, 389-90 (6th Cir. 1986); Committee of  
27 Equity Sec. v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1062-64 (2d Cir. 1983); 3  
28

1 Lawrence P. King, Collier on Bankruptcy §363.02[1][g] (15th ed. rev. 1998).

2 The burden of establishing a valid business purpose for the use of property of the  
3 estate outside the ordinary course of business falls upon the debtor. See In re Lionel Corp.,  
4 722 F.2d at 1070-71. Once the debtor has articulated a rational business justification,  
5 however, a presumption attaches that the decision was made on an informed basis, in good  
6 faith and in the honest belief that the action was in the best interest of the debtor. See, e.g.,  
7 Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res.  
8 Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858, 872  
9 (Del. 1985).

10 As discussed in detail above, sound business justifications exist for entering into  
11 the Storage Contract. PG&E believes the terms of the Storage Contract are highly favorable,  
12 and that Holtec is a reputable provider who is highly experienced in the area of used fuel  
13 storage systems. Further, the equipment and services provided pursuant to the Storage  
14 Contract are essential to ensuring the continued future operation of DCPFP.

15 C. PG&E Has the Ability to Cure Arrearages Under the Contract  
16 And Provide Adequate Assurance of Future Performance In  
17 Compliance with Section 365(b) of the Bankruptcy Code.

18 Section 365(b)(1) of the Bankruptcy Code provides that, in order to assume an  
19 executory contract, the debtor in possession must provide adequate assurance that it will cure  
20 any defaults and that the contract will be performed in the future. 11 U.S.C. §365(b)(1)(A)-  
21 (C). PG&E owes Holtec approximately \$124,000 for pre-petition design and licensing work  
22 under the Letter Agreement. Pursuant to this Application, PG&E intends promptly to cure  
23 all pre-petition arrearages owed to Holtec as a condition of assuming the Letter Agreement  
24 and entering into the Storage Contract. As previously disclosed to this Court, PG&E has  
25 substantial cash reserves. It is clearly capable of curing arrearages under the Letter  
26 Agreement.

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CONCLUSION

WHEREFORE, PG&E respectfully requests that this Court enter its Order granting this Application, and approving PG&E's assumption of the Letter Agreement and execution, delivery and performance of the Storage Contract.

DATED: September 28, 2001

HOWARD, RICE, NEMEROVSKI, CANADY,  
FALK & RABKIN  
A Professional Corporation

By: Janet A. Nexon  
JANET A. NEXON

Attorneys for Debtor and Debtor In Possession  
PACIFIC GAS AND ELECTRIC COMPANY

APPROVED BY CREDITORS' COMMITTEE:

MILBANK, TWEED, HADLEY & McCLOY

By: \_\_\_\_\_

Attorneys for Official Creditors' Committee

APPROVED BY HOLTEC INTERNATIONAL:

By: \_\_\_\_\_

Its: \_\_\_\_\_

WD 092501/1-1418909/120/936628/AJA

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CONCLUSION

WHEREFORE, PG&E respectfully requests that this Court enter its Order granting this Application, and approving PG&E's assumption of the Letter Agreement and execution, delivery and performance of the Storage Contract.

DATED: September \_\_, 2001

HOWARD, RICE, NEMEROVSKI, CANADY,  
FALK & RABKIN  
A Professional Corporation

By: \_\_\_\_\_  
JANET A. NEXON

Attorneys for Debtor and Debtor In Possession  
PACIFIC GAS AND ELECTRIC COMPANY

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By: \_\_\_\_\_  


Attorneys for Official Creditors' Committee

APPROVED BY HOLTEC INTERNATIONAL:

By: \_\_\_\_\_

Its: \_\_\_\_\_

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CONCLUSION

WHEREFORE, PG&E respectfully requests that this Court enter its Order granting this Application, and approving PG&E's assumption of the Letter Agreement, execution, delivery and performance of the Storage Contract.

DATED: September \_\_, 2001

HOWARD, RICE, NEMEROVSKI, CANAD  
FALK & RABKIN  
A Professional Corporation

By: \_\_\_\_\_  
IANET A. NEXON

Attorneys for Debtor and Debtor In Possession  
PACIFIC GAS AND ELECTRIC COMPANY

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APPROVED BY CREDITORS' COMMITTEE:

MILBANK, TWEED, HADLEY & McCLOY

By: \_\_\_\_\_

Attorneys for Official Creditors' Committee

APPROVED BY HOLTEC INTERNATIONAL:

By: IX P Singh PRINTED NAME  
K.P. SINGH  
As: PRESIDENT

WD 092501/1-1418902/120/1316028/3A

1 JAMES L. LOPES (No. 63678)  
2 JANET A. NEXON (No. 104747)  
3 HOWARD, RICE, NEMEROVSKI, CANADY,  
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8 Telephone: 415/434-1600  
9 Facsimile: 415/217-5910

**FILED**  
OCT - 9 2001  
UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

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

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 In re	No. 01-30923 DM
16 PACIFIC GAS AND ELECTRIC	Chapter 11 Case
17 COMPANY, a California corporation,	[No Hearing Set]
18 Debtor.	

19 Federal I.D. No. 94-0742640

20 **DECLARATION OF LAWRENCE F. WOMACK IN SUPPORT OF**  
21 **APPLICATION FOR ORDER APPROVING ASSUMPTION OF EXECUTORY**  
22 **CONTRACT AND ENTERING INTO NEW CONTRACT**  
23 **FOR LICENSED USED NUCLEAR FUEL STORAGE SYSTEM**

24 I, Lawrence F. Womack, declare as follows:

25 1. I am Vice President, Nuclear Services, of Pacific Gas and Electric Company  
26 ("Debtor" or "PG&E"), a position I have held since January 1, 1995. I have been an  
27 employee of PG&E since 1978 and have held various management positions in nuclear and  
28 non-nuclear engineering, operations, and support services. I make this declaration in support  
of PG&E's Application for Order Approving Assumption of Executory Contract and Entering  
Into New Contract for Licensed Used Nuclear Fuel Storage System. This declaration is based  
on my personal knowledge of PG&E's nuclear operations and its financial position. If called  
as a witness, I could and would testify competently to the facts stated herein.

DECL. OF LAWRENCE F. WOMACK ISO APPLICATION RE USED NUCLEAR FUEL STORAGE

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN

2/28/01

1 2. PG&E is the owner and operator of Diablo Canyon Nuclear Power Plant  
2 ("DCPP"), which is located in San Luis Obispo County near the town of Avila Beach,  
3 California. As an operator of a nuclear power plant, PG&E must have the ability to store  
4 nuclear wastes generated by such operations to satisfy its obligations under federal and state  
5 law and regulations, and to safeguard the health and safety of its power plant workers and the  
6 community at large.

7 3. The federal government has been working for thirty years on plans to build a  
8 permanent national storage facility to handle fuel from the nation's nuclear power plants.  
9 However, the opening of such a storage facility still appears to be a decade or more away.  
10 Existing used fuel storage pools at DCPD will be filled to their useable capacity by 2006-  
11 2007. Therefore, to ensure continued operation of DCPD, PG&E must now plan for needed  
12 on-site storage of its nuclear fuel.

13 4. PG&E and Holtec International ("Holtec") entered into a letter agreement  
14 dated as of August 31, 2000, as amended (the "Letter Agreement") for licensing support and  
15 engineering work related to a used fuel storage system to be licensed for DCPD. A true and  
16 correct copy of the Letter Agreement is attached hereto as Exhibit A. From time to time as  
17 work progressed, PG&E authorized increased expenditures under the Letter Agreement.

18 5. PG&E and Holtec have completed negotiations for a new contract for the  
19 development and completion of the storage system which was the subject of the Letter  
20 Agreement (the "Storage Contract"). The Storage Contract was executed, subject to  
21 Bankruptcy Court approval, on July 19, 2001. A detailed description of the Storage Contract  
22 is attached hereto as Exhibit B. Design and licensing work for the storage system was begun  
23 in September, 2000 under the Letter Agreement and is still in progress. The Storage Contract  
24 provides that the work done under the Letter Agreement will be expressly subject to all the  
25 terms and conditions of the Storage Contract.

26 6. The Storage Contract and Letter Agreement (collectively referred to as the  
27 "Holtec Contracts") ensure that PG&E will have the technology and equipment to store used  
28 nuclear fuel and that the requisite licensing for such storage will be obtained.

1 7. PG&E's storage system must be designed for DCPD site conditions and  
2 approved by the Nuclear Regulatory Commission ("NRC") under a "Site-Specific License,"  
3 in addition to other required NRC approvals. The Holtec Contracts provide for the design,  
4 engineering, licensing, and fabrication of casks and canisters and related equipment by Holtec  
5 for the on-site storage of used fuel assemblies at DCPD. Pursuant to the Storage Contract,  
6 Holtec is required to complete the design and licensing work, and fabricate and deliver eight  
7 casks and canisters and related equipment, by March of 2005. For this work, PG&E will pay  
8 Holtec a fixed price of approximately \$16.4 million, plus additional compensation for certain  
9 services and equipment. The fixed price under the Storage Agreement includes costs under  
10 the Letter Agreement.

11 8. During the next 24 years of plant operations at DCPD, PG&E expects to order  
12 additional batches of the NRC-approved casks and canisters every three to four years as used  
13 fuel is accumulated in the used fuel storage pools. PG&E is licensed to operate Unit 1 of  
14 DCPD's two units until 2021, and to operate Unit 2 until 2025. At the end of PG&E's  
15 operating license for the plant, PG&E plans to purchase additional casks and canisters for  
16 plant decommissioning. Based on current pricing, which will be adjusted under a formula for  
17 the effects of inflation, the total cost of all of the orders under the Storage Contract could be  
18 as much as \$125 million. The Storage Contract will remain in effect until the Department of  
19 Energy (or its equivalent) takes possession of and responsibility for used fuel at DCPD.  
20 However, under the terms of the contract, PG&E may terminate the contract at any time.  
21 Because the Storage Contract is a non-exclusive contract, PG&E also may purchase similar  
22 equipment from other vendors.

23 9. The Storage Contract is critical to continued long term operation of DCPD.  
24 The storage system will provide needed on-site storage of used nuclear fuel during the  
25 remaining life of the plant as well as during decommissioning of the plant. Because of the  
26 long-term importance of this contract, PG&E undertook considerable efforts to develop, bid  
27 and negotiate the Storage Contract. The contract was competitively bid to four suppliers  
28 providing used fuel storage systems. Holtec was awarded the contract as the lowest overall

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qualified bidder. Holtec is a leader in the nuclear used fuel storage industry and is responsible for numerous storage projects in the United States.

10. PG&E owes Holtec approximately \$124,000 for pre-petition design and licensing work under the Letter Agreement. PG&E intends to cure promptly all pre-petition arrearages owed to Holtec. PG&E has substantial cash reserves, and is clearly capable of curing arrearages under the Letter Agreement. Assumption of the Letter Agreement and entering into the Storage Contract will assure PG&E the ability to store its used nuclear fuel for many years to come, at a predictable and reasonable cost.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed this 27<sup>th</sup> day of September, 2001, at San Luis Obispo, California.



LAWRENCE F. WOMACK

HOWARD  
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MEMORANDUM  
CANDY  
BUC  
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**EXHIBIT B**  
**CONTRACT DESCRIPTION—KEY PROVISIONS**

**Base Scope of Work:**

PG&E's initial order under the Storage Contract is termed the "Base Scope of Work." Under the Base Scope of Work, Holtec will perform work required to allow PG&E to transfer approximately 256 existing used fuel assemblies from the used fuel pool to the storage system. ("First Loading Campaign"). Currently, there are approximately 1656 used fuel assemblies in the used fuel pools. The First Loading Campaign is currently scheduled to begin in April of 2005.

Under the Base Scope of Work, Holtec will design and engineer the storage system for the DCPD site specific conditions and other requirements of PG&E's specification. Holtec obligations include: development of a high seismic design; support for PG&E's Site Specific licensing proceedings before the NRC; obtaining NRC approvals of amendments to Holtec's license; compliance with code, regulatory, and quality assurance requirements; training; and fabrication, testing, and delivery a fully operational used fuel storage system in compliance with the requirements of the Storage Contract.

Equipment to be provided under the Base Scope of Work consists of 8 casks and canisters and related on-site transportation and ancillary equipment. Each cask and canister will weigh approximately 180 tons loaded. Equipment for start up testing is scheduled for delivery by January of 2005 and the remainder of the equipment is scheduled for delivery by March of 2005.

**Pricing for the Base Scope of Work**

The Fixed Price for the Base Scope of Work<sup>1</sup> is approximately \$16,400,000, to be adjusted over time under an escalation formula to account for inflation. In addition, PG&E anticipates some further expenditures for equipment modifications and certain services. As the project progresses, Holtec also will be compensated for changes that may be required by PG&E.

Progress payments will be made by PG&E over the next four years based on milestones achieved by Holtec. As a cost control measure, Holtec will be required to obtain authorization from PG&E to incur expenditures for major milestone activities under the Base Scope fixed price work.

**Base Scope Licensing and Bonus**

As part of its licensing obligations, Holtec is required to provide complete and timely evaluations demonstrating that the storage system is designed to accommodate the Diablo

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<sup>1</sup>The fixed price under the Storage Contract includes costs under the August 31, 2000 Letter Agreement.

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Canyon site conditions and complies with other licensing requirements. Holtec will receive a \$180,000 bonus for timely completion of these evaluations. If the evaluations are delayed by Holtec, liquidated damages of \$180,000 will be assessed against Holtec. Substantial delays by Holtec will constitute grounds for cancellation for cause of the Storage Contract.

#### Letter Agreement Dated August 31, 2000

The Storage Contract provides that prior work performed under the Letter Agreement shall be subject to the terms and conditions of the Storage Contract.

#### Future Orders

Throughout the life of the contract, at PG&E's request, Holtec will be obligated to provide services, canisters, casks and other equipment to store and transport remaining used fuel assemblies including those containing damaged fuel. Future improvements to Holtec's system must be offered to PG&E and will be subject to the terms and conditions of the Storage Contract, including certain most favored nations pricing provisions. As discussed above, PG&E expects to order batches of casks and canisters every three to four years as additional fuel assemblies are used at the plant, as well as casks and canisters for plant decommissioning. PG&E estimates a total order of up to 134 casks and canisters.

In addition, Holtec will be obligated to obtain licensing approvals for future orders of equipment including changes to the storage system. At PG&E's request, Holtec will provide additional licensing support to PG&E throughout the life of the contract.

#### Estimated Price for Future Work

Total costs to PG&E during the estimated 30 year life of this contract will depend upon a number of factors, including future costs incurred by Holtec to produce the equipment as well as pricing under the favored nations provision. Based on current pricing, PG&E estimates total costs in the range of \$125 million, that will be adjusted under a formula in the contract for the effects of inflation.

#### Termination

PG&E has the right to terminate the Storage Contract at any time for any reason. Under the Storage Contract, PG&E must compensate Holtec for work satisfactorily performed and materials purchased which, for fixed price work, is not to exceed the amount authorized under the milestone payment schedule. In addition, Holtec will be entitled to costs incurred by Holtec to terminate the work. The Storage Contract provides that PG&E will not be responsible for lost profits or overhead on uncompleted work in the event of termination.

### Contract Period

The Storage Contract will remain in effect until such time as the Department of Energy takes possession of and responsibility for the used fuel at DCPD unless PG&E chooses to terminate the Storage Contract at an earlier date.

### Non-exclusive contract

The Storage Contract provides that PG&E is free to purchase used nuclear fuel storage system equipment from other suppliers. There is no guarantee to Holtec of any volume of orders. However, if PG&E chooses to purchase from other suppliers, the Storage Contract provides that PG&E will forfeit the benefit of its most favored nations pricing provision.

### Technical Specification

PG&E's technical specification, which is part of the Storage Contract, contains detailed information regarding seismic and other site specific design requirements as well quality control requirements.

### Humboldt Bay Power Plant Common Costs

Under the Storage Contract, Holtec agreed to an overall savings of approximately \$2 million in the event Holtec is awarded a contract for storage of used nuclear fuel at PG&E's Humboldt Bay Nuclear Power Plant (HBPP). This assumes that certain equipment, engineering, and licensing identified in the Storage Contract are used also for HBPP. The single largest savings would result from use of the same transporter for both facilities.

### Fabrication rights

A key provision under the Storage Contract is PG&E's right to continued access to the storage system technology regardless of the future state of Holtec's business. This is important because Holtec's technology will be specifically licensed by the NRC for use at the DCPD. The storage system is based on Holtec's existing technology supplemented by Holtec's modifications for high seismic design.

For this reason, the Storage Contract provides certain rights to PG&E to fabricate the storage system equipment in the event that Holtec becomes insolvent, unable or unwilling to perform, or has been terminated for cause.

PG&E signed a back-up agreement with U. S. Tool and Die (the fabricator of the canister and the storage casks) for fabrication in the event PG&E's fabrication rights are triggered under the Storage Contract and conditions of the U.S. Tool and Die agreement are met.

### Compliance with Regulations, Codes, Standards, and Guidance Documents

Holtec's fixed price includes compliance with regulations, codes, standards, and guidance documents required by the NRC to license the Storage System. Holtec will be compensated for costs resulting from changes in regulations, codes, standards, and guidance documents that occur after the storage system is licensed by the NRC.

In the event of a conflict between PG&E's specification and the applicable regulations, codes, standards, and guidance documents, the latter shall apply. Varying degrees of stringency will not be considered conflicts and the more stringent standard shall apply.

### Quality Assurance

Quality Assurance requirements for Holtec, its fabricators and other subcontractors are set forth in detail in the specification. PG&E required that Holtec maintain a Quality Assurance Program that meets the requirements of 10 CFR Part 71, Subpart H, 10 CFR Part 72, Subpart G, 10 CFR 50, Appendix B, and ASME NQA-1. In addition, PG&E required that the canister cask be fabricated with an NPT stamp.

### Tests and Acceptance

The Base Scope equipment will not be accepted by PG&E until specified testing has been successfully completed and the equipment complies with the specification and warranties. Start-up testing will include a full test of the system.

### Warranty

Holtec agreed to provide extended warranties for storage system equipment. The extended warranties may be purchased at the option of PG&E. Warranty periods differ depending on the type of equipment.

### Training, Maintenance and Operation

Prior to startup testing, Holtec will provide a training program consistent with PG&E's systematic approach to training. The program will be turned over to PG&E after the First Loading Campaign. Holtec will provide equipment manuals and procedures for operation, maintenance, and routine surveillance. The procedures will be used by PG&E to develop plant procedures which will then be reviewed by Holtec.

Holtec shall provide technical direction on a time and materials basis for startup testing and the First Loading Campaign, if requested by PG&E.

Letter of Credit, Professional Liability Insurance

Holtec must obtain a letter of credit (LOC) with a bank approved by PG&E. PG&E will have unconditional draw down rights in the event Holtec defaults on its obligations under the Storage Contract. Holtec will be obligated to keep a LOC in place until one year after PG&E accepts the Base Scope of Work (estimated at April 2006). Holtec will obtain project specific Professional Liability Insurance.

Confidentiality

The contract terms are generally confidential, with certain exceptions.

Authorizations To Proceed

As a cost control measure, PG&E's signed release is required before Holtec may begin procurement, fabrication, shipment or other significant project expenditures. As of the July 19, 2001 date of execution of the Storage Contract, PG&E had authorized engineering and licensing activities for the Base Scope of Work under the Letter Agreement, as amended.

WD 092591/1-1419903/120/941355A/3



**Pacific Gas and  
Electric Company**

Market Services

Diablo Canyon Power Plant  
P.O. Box 55  
Artes, Calif., CA 93421

805.545.8200  
Fax 805.545.4721

August 31, 2000

**CONFIDENTIAL**

Dr. K. P. Singh  
Holtec International  
555 Lincoln Drive West  
Marion, NJ 08053

**SUBJECT: Letter of Authorization  
Contract No. 4500813919  
Diablo Canyon Power Plant Dry Cask Storage System**

Dear Dr. Singh:

As you know, over the last several months PG&E and Holtec have been negotiating a contract (Contract) under which Holtec will provide a licensed spent fuel storage system for PG&E's Diablo Canyon Nuclear Power Plant (Storage System). Holtec was selected as the preferred bidder for this work under RFP F 001-00BRP. Contract negotiations are still underway and a contract is expected to be signed in September of 2000.

The schedule for completion of Holtec's licensing support activities under the Contract is critical. Holtec and PG&E have agreed that no later than February 28, 2001, Holtec will complete its work for PG&E's Site Specific License Application and its evaluations in support of PG&E's 10CFR50 Licensing Amendment Request. In addition, for certain licensing support work described under the attachment entitled "Expedited Deliverables", Holtec and PG&E have agreed that Holtec will complete its work no later than November 30, 2000. In order to meet these schedule commitments, PG&E is hereby authorizing Holtec to start work on the licensing support as of the date this letter is signed by Holtec.

Under this letter, Holtec and PG&E agree as follows:

1. Holtec's work shall be performed in strict accordance with the attached technical and quality requirements of Specification 10012-N-NPG, Revision 0, dated 9/1/00 (Specification). Specifically, the requirements of the following sections from the Specification shall be applicable to this work:

Specific Conditions- Sections 2, 3, 5, 6, 10, 11, 13, 18 and 27  
Appendices- A, B, D, E, F, G, H and J  
General Conditions- Sections 15.2 and 46.1

2. These services shall comply with the Quality Assurance requirements specified in Section 10.0 of the Specification.

In the event Holtec provides any information to the Nuclear Regulatory Commission as a result of these requirements, this information shall be provided immediately to:

PG&E  
Manager, NQAL  
Diablo Canyon Power Plant  
P.O. Box 56  
Avila Beach, CA 93424

3. Holtec's Quality Assurance Program shall comply with the provisions specified in the Specification Section 10.0 as implemented by the Holtec's Quality Assurance Manual, Revision 11 dated 2/1/99 or latest revision, that has been approved by PG&E for technical services.

PG&E shall have the right of immediate access to Holtec's facilities to witness inspection/test activities and/or to conduct surveillances, assessments or quality assurance audits. This right shall extend to all Subcontractors and shall be coordinated through the Supplier.

4. The work performed pursuant to this authorization and prior to the execution of the Contract shall be performed in accordance with, and subject to, the provisions of the Contract. The work performed under this authorization shall be subsumed under the scope of work of the Contract.

5. Compensation for this work shall be in accordance with the rates in Holtec's bid proposal. Work performed under this authorization shall not exceed \$150,000 without the approval of PG&E.

6. In the event that PG&E elects not to enter into the Contract, PG&E will provide Holtec a written notice to terminate the work authorized under this letter. PG&E will compensate Holtec only for the work performed pursuant to this authorization prior to receipt of the notice of termination. No other compensation shall be owed Holtec. Compensation shall be pursuant to the rates set forth in Holtec's bid proposal.

7. Both PG&E and Holtec agree to work diligently to finalize the Contract by September 15, 2000.

PG&E looks forward to a very successful endeavor with Holtec on this project.

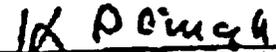
Sincerely,

  
L. F. Womack

LFW:

cc: BHParton  
Procurement Services

104/4  
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Accepted by: Dr. K. P. Singh  
Holtec International

1 JAMES L. LOPES (No. 63678)  
2 JANET A. NEXON (No. 104747)  
3 HOWARD, RICE, NEMEROVSKI, CANADY,  
4 FALK & RABKIN  
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9 Facsimile: 415/217-5910

**FILED**  
01 OCT -9 AM 10:18  
U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CA.  
SAN FRANCISCO, CA.

6 Attorneys for Debtor and Debtor in Possession  
7 **PACIFIC GAS AND ELECTRIC COMPANY**

8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

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

Case No. 01-30923 DM  
Chapter 11  
[No Hearing Requested]

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN

17 **ORDER RE DEBTOR'S APPLICATION FOR ORDER APPROVING**  
18 **ASSUMPTION OF EXECUTORY CONTRACT AND ENTERING INTO NEW**  
19 **CONTRACT FOR LICENSED USED NUCLEAR FUEL STORAGE SYSTEM**

20 The Court, having considered the Application For Order Approving Assumption  
21 Of Executory Contract and Entering into New Contract for Licensed Used Nuclear Fuel  
22 Storage System (the "Application") submitted by Pacific Gas and Electric Company, the  
23 debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E"), and the  
24 Declaration of Lawrence F. Womack filed in support thereof, and good cause having been  
25 shown,

25 **IT IS HEREBY ORDERED** that the Application is granted.

26 DATED: OCT - 6 2001

27 **DENNIS MONTALI**  
28 **HONORABLE DENNIS MONTALI**  
**UNITED STATES BANKRUPTCY JUDGE**

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