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December 24, 2003

## BY E-MAIL AND U.S. MAIL, FIRST CLASS

Nils J. Diaz, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Edward McGaffigan, Jr., Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Jeffrey S. Merrifield, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Re: **Pacific Gas & Elec. Co. (Diablo Canyon Power Plant, Units 1 & 2)**  
**Docket Nos. 50-275-LT, 50-323-LT**

Dear Commissioners:

In CLI-03-10, the Commission ordered that the captioned license transfer proceeding be held in abeyance in light of a then-tentative settlement of the related Pacific Gas and Electric Company's ("PG&E") bankruptcy proceeding. The effect of the order was to hold in abeyance any decision on a pending application to stay the effect of the NRC Staff license transfer order of May 27, 2003. In CLI-03-10, the Commission directed that PG&E notify the Commission immediately upon final approval or rejection of the tentative settlement agreement.

Pursuant to settlement procedures implemented by the Bankruptcy Court, PG&E, PG&E Corporation and the CPUC staff announced, on June 20, 2003, a proposed settlement of the PG&E bankruptcy case (the "Settlement Agreement"), involving a plan of reorganization ("Settlement Plan") in place of the plans previously advocated by PG&E and the CPUC. Under the provisions of the Settlement Plan, PG&E would emerge from Chapter 11 protection as a vertically integrated utility, subject to the traditional ratemaking jurisdiction of the CPUC. Implementation of the Settlement Plan would eliminate the need for the NRC license transfers at issue in this matter.

Pursuant to the Settlement Agreement, in July 2003, PG&E and the Official Committee of Unsecured Creditors ("OCC") jointly filed the Settlement Plan for confirmation by the Bankruptcy Court. The Bankruptcy Court conducted trial on confirmation of the Plan in November 2003. Thereafter, on December 12, 2003, Judge Montali issued a Memorandum

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Decision approving the Settlement Agreement.<sup>1</sup> In this decision, Judge Montali stated that the court would enter a separate Confirmation Order confirming the Settlement Plan, provided the CPUC subsequently approved the Settlement Agreement.

The CPUC considered the Settlement Agreement in parallel with the Bankruptcy Court proceeding. On December 18, 2003, the CPUC approved the proposed Settlement Agreement with certain minor modifications and clarifications ("Modified Settlement Agreement").<sup>2</sup> PG&E, PG&E Corporation, and the CPUC thereafter signed the Modified Settlement Agreement on December 19, 2003. The Modified Settlement Agreement preserves the fundamental elements of the Settlement Agreement. Under the Modified Settlement Agreement, PG&E will remain a vertically integrated utility subject to the plenary regulatory jurisdiction of the CPUC – obviating the NRC license transfer order.

Thereafter, Judge Montali held a status conference on December 22, 2003. At that time, he signed an order confirming the Settlement Plan, as modified in accordance with the Modified Settlement Agreement.<sup>3</sup>

The Bankruptcy Court order remains subject to appeal. In addition, prior to implementation of the Settlement Plan, certain conditions must be satisfied by PG&E, including completion of financing and achievement of investment grade bond ratings. PG&E, however, expects to implement the Settlement Plan and emerge from bankruptcy by the end of the first quarter of 2004. At that time, PG&E would notify the Commission that the license transfers are no longer necessary. In the meantime, PG&E sees no reason for the Commission to reactivate its consideration of the stay application.

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<sup>1</sup> *In re Pacific Gas & Elec. Co.*, No. 01-30923DM (N.D. Cal. Dec. 12, 2003) (Memorandum Decision Approving Settlement Agreement and Overruling Objections to Confirmation of Reorganization Plan).

<sup>2</sup> *In re Pacific Gas & Elec. Co.*, No. 02-04-026, Decision 03-12-035 (Cal. Pub. Util. Comm'n Dec. 18, 2003) (Opinion Modifying the Proposed Settlement Agreement of Pacific Gas & Electric Company, PG&E Corporation, and the Commission Staff, and Approving the Modified Settlement Agreement).

<sup>3</sup> *In re Pacific Gas & Elec. Co.*, No. 01-30923DM (N.D. Cal. Dec. 22, 2003) (Order Confirming Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company Proposed by Pacific Gas and Electric Company, PG&E Corporation and the Official Committee of Unsecured Creditors Dated July 31, 2003, as Modified).

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In light of the approval of the Settlement Plan, as modified, by both the Bankruptcy Court and the CPUC, PG&E respectfully requests that this proceeding continue to be held in abeyance.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a long horizontal line extending to the right.

David A. Repka  
Counsel for Pacific Gas & Electric Co.

cc: Service List