



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 28, 2004

Mark J. Langer, Clerk  
U. S. Court of Appeals  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Ave., N.W.  
Washington, D.C. 20001

RE: NCPA v. NRC, No. 03-1038

Dear Mr. Langer:

Enclosed you will find an original and one copy of the second 90-day Status Report in the above-reference case. Please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid, at your convenience.

Respectfully submitted,

Grace H. Kim  
Senior Attorney  
Office of the General Counsel

Enclosure: As stated

cc: service list

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

Northern California Power Agency

Petitioner,

v.

U.S. Nuclear Regulatory Commission  
and United States of America,


Respondents.

No. 03-1038

STATUS REPORT

This status report is filed pursuant to this Court's Order dated August 1, 2003, which granted Petitioner's motion to suspend the briefing schedule and hold proceedings in this case in abeyance, pending resolution of the proposed settlement in Intervenor Pacific Gas and Electric Company's ("PG&E") Chapter 11 bankruptcy case, and directed Respondent Nuclear Regulatory Commission ("NRC") to file status reports at 90-day intervals beginning 90 days from the date of the Order. The attached letter from PG&E's counsel details the current status of the proposed settlement agreement in PG&E's bankruptcy case.

Respectfully submitted,



Grace H. Kim  
Senior Attorney  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
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January 23, 2004

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## BY E-MAIL AND FEDERAL EXPRESS

John F. Cordes, Jr.  
Solicitor  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15D21  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

Re: NCPA v. NRC, D.C. Circuit Case Nos. 03-1038 and 03-1184

Dear Mr. Cordes:

As you know, the U.S. Court of Appeals for the District of Columbia Circuit has held in abeyance the referenced proceedings, pending the approval of a Settlement Agreement in Pacific Gas and Electric Company's ("PG&E") bankruptcy proceeding, which could obviate the need to litigate these appeals. In a pair of Orders dated August 1, 2003, the Court directed that the Nuclear Regulatory Commission ("NRC") file status reports at 90-day intervals. The NRC filed the first status report on October 29, 2003. In view of the upcoming second status report, PG&E herein provides an update as to the bankruptcy settlement.

On December 24, 2003, PG&E notified the Commission that the California Public Utilities Commission ("CPUC") had approved the Settlement Agreement with certain minor modifications and clarifications, that the Settlement Agreement had been executed, and that the Bankruptcy Court had subsequently approved the associated plan of reorganization ("Settlement Plan"). Our letter to the Commission is attached for your information.

In the December 24, 2003 letter, PG&E requested that the NRC continue to hold its license transfer administrative proceeding in abeyance, notwithstanding approval and execution of the Settlement Agreement, in light of the fact that, among other things, the Bankruptcy Court order confirming the Settlement Plan remained subject to appeal. Indeed, since that time, appeals of the Bankruptcy Court order have been filed by the City of Palo Alto and two CPUC Commissioners. In addition, several parties in the CPUC proceeding have filed applications for rehearing by the Commission with respect to the approval of the Settlement Agreement by the CPUC.

John F. Cordes, Jr.  
January 23, 2004  
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As before, PG&E sees no reason to reactive or terminate the NRC proceeding at this time. Likewise, in our view, the stays of the two matters in the Court of Appeals for the D.C. Circuit remain appropriate, pending further developments with respect to implementation of the Settlement Plan.

Please contact me if you have further questions regarding the status of the bankruptcy Settlement Plan.

Sincerely,

A handwritten signature in black ink that reads "David A. Repka". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

David A. Repka  
Counsel for Pacific Gas & Electric Company

Enclosure

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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).

Commissioners  
December 24, 2003  
Page 3

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 fluid and cursive, with a long horizontal line extending from the end of the name.

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

cc: Service List

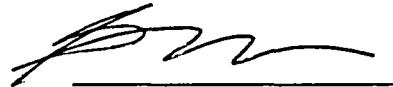
### CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2004, copies of the foregoing Status Report were served by mail, postage prepaid, upon the following counsel:

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