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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF**UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION**

In the Matter of	)	Docket No. 50-275- <i>LT</i>
Pacific Gas and Electric Company,	)	Facility Operating License
	)	No. DPR-80
	)	
Diablo Canyon Nuclear Power Plant	)	Docket No. 50-323- <i>LT</i>
Unit Nos. 1 and 2	)	Facility Operating License
	)	No. DPR-82

**PETITION TO INTERVENE  
OF THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS OF PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to the "Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing," issued by the Nuclear Regulatory Commission ("Commission") on January 10, 2002,<sup>1</sup> the Official Committee of Unsecured Creditors ("Committee") of Pacific Gas and Electric Company ("PG&E") hereby files this Petition to Intervene in response to the November 30, 2001, Application of PG&E seeking authorization under Section 184 of the Atomic Energy Act of 1954, as amended ("AEA"), and 10 C.F.R. 50.80, for the transfer of operating licenses and conforming license amendments for the Diablo Canyon Power Plants, Units 1 and 2 ("DCPP"). In support hereof, the Committee states the following:

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<sup>1</sup> 67 Fed. Reg. 2455 (January 17, 2002).

## I.

### COMMUNICATIONS

The Committee respectfully requests that the following be added to the official service list in this proceeding:

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## II.

### INTERVENTION

The Application seeks authorization for the transfer of operating licenses and conforming license amendments for DCPD in connection with implementation of the Plan of Reorganization ("Plan") of PG&E filed on September 20, 2001, as subsequently amended, pursuant to Chapter 11 of the United States Bankruptcy Code. In particular, the Application seeks Commission consent for the transfer of operating authority for DCPD to a new generating company named Electric Generation LLC ("Gen") and the assignment of ownership of DCPD to Diablo Canyon LLC ("Nuclear"), a subsidiary of Gen. Gen would become the licensee authorized to possess, use and operate DCPD and Nuclear would be licensed only to possess (own) DCPD. The

Application explains that no physical or operational changes to DCPD are being proposed. The authorization requested is necessary in order for PG&E to implement the Plan as proposed to the Bankruptcy Court.

PG&E filed its voluntary petition to reorganize under Chapter 11 of the Bankruptcy Code on April 6, 2001. On April 10, 2001, the Office of the United States Trustee, a division of the U.S. Department of Justice, appointed the members of the Committee in order to advance and protect the interests of the unsecured creditors of PG&E. The Committee members currently are Bank of America, N.A., Morgan Guaranty, Merrill Lynch, Pacific Investment Management Company, LLC, the City of Palo Alto, the State of Tennessee, Reliant Energy Services, Inc., Dynegy Power Marketing, Inc., The Davey Tree Surgery Company, P-E Berkeley, Inc., and GWF Power Systems LP.<sup>2</sup> The Committee is the only official committee of creditors appointed in the case. The Committee represents the interests of the approximately 12,000 unsecured creditors of PG&E with total claims of approximately \$8.5 billion. The Committee has entered into a Support Agreement with PG&E in which it committed to support the Plan with the goal that the Plan become effective as soon as practicable. The Plan accomplishes a number of important financial objectives. The value realized by the Plan will provide cash and increased debt capacity to enable PG&E to repay the valid claims of its creditors in full (in cash or through a combination of cash and long-term notes), restructure its debts, and emerge from a reorganization under Chapter 11 of the U.S. Bankruptcy Code as a viable, ongoing business

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<sup>2</sup> The Committee that was appointed by the U.S. Trustee on April 10, 2001, was reconstituted on April 13, 2001, April 20, 2001, August 8, 2001, and most recently on November 9, 2001. This petition to intervene represents the position of the Committee as a whole. Individual Committee members may intervene separately or otherwise participate in this proceeding and take positions on certain issues that differ from the position of the Committee as a whole.

concern. The Plan will also create strong and sustainable businesses that are financially sound on a going forward basis.

The Committee has direct, material and substantial interests that may be affected by the outcome of this proceeding. As the representative of the collective interests of PG&E's unsecured creditors, the Committee has an interest in ensuring that DCP's operating licenses are transferred to a financially capable licensee that has all the necessary qualifications to continue to operate DCP in a safe, reliable and efficient manner, particularly in light of the fact that approximately 40% of the consideration to be received (after payment of pre-petition interest) by unsecured creditors under the Plan will be in the form of long-term notes of at least 10 years in duration (including long-term notes in Gen). The Committee submits that it is entitled to intervene in this proceeding as a matter of right because its interests in ensuring the financial capability of the transferee could be directly impacted if the license transfers adversely affect health and safety. As such, the Committee asserts that its interests are within the "zone of interests" protected by the AEA and are akin to AEA-protected property interests that the Commission has previously found sufficient to confer standing in license proceedings.<sup>3</sup>

In the alternative, if the Commission finds that the Committee lacks standing to intervene as a matter of right in this proceeding, it respectfully requests that the Commission exercise its discretion to allow the Committee's intervention. The Commission has recognized that even if an entity cannot satisfy the standards for intervention as a matter of right, it may grant discretionary intervention based on all the facts and circumstances of the particular case.<sup>4</sup> In determining whether to grant discretionary intervention, the Commission will weigh such factors

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<sup>3</sup> See *North Atlantic Energy Service Corp. (Seabrook Station, Unit 1)*, 49 NRC 201 (1999); see also *Gulf States Util. Co. (River Bend Station, Unit 1)*, 40 NRC 43 (1994).

<sup>4</sup> See *Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2)*, 4 NRC 610 (1976).

as: (1) whether the petitioner's participation may reasonably be expected to assist in developing a sound record; (2) the nature and extent of the petitioner's interest in the proceeding; (3) the possible effect of any order which may be entered in this proceeding on the petitioner's interest; (4) the availability of other means whereby the petitioner's interests will be protected; (5) the extent that the petitioner's interests will otherwise be represented in the proceeding, and (6) the extent to which the petitioner's participation will inappropriately broaden or delay the proceeding.

The Committee submits that its intervention is appropriate given the circumstances of this proceeding. This proceeding is an outgrowth of the Chapter 11 bankruptcy proceeding filed by PG&E, one of the largest and most complex Chapter 11 reorganizations ever. In order for PG&E to implement the Plan, Commission approval of the Application must be granted. As the representative of the collective interests of PG&E's unsecured creditors, the Committee has unique interests that must be represented in this proceeding.

Because of its unique interests in representing approximately 12,000 creditors with claims of approximately \$8.5 billion, the Committee's participation may reasonably be expected to assist in developing a sound record in this proceeding. As stated above, PG&E's unsecured creditors have an interest in the continued safe, reliable and efficient operation of DCP, particularly in light of the fact that approximately 40% of the consideration to be received by unsecured creditors under the Plan will be in the form of long-term notes of at least 10 years in duration (including long-term notes in Gen). The Committee's long-term interests in the safe, reliable and efficient operation of DCP are within the "zone of interests" protected by the AEA. Moreover, the Committee, and only the Committee, can adequately represent the unique interests

of PG&E's unsecured creditors and there are no other means by which the Committee's interests can be protected.

The Commission's order that will be entered in this proceeding could have a direct and material impact on the Committee's interests. Given that Commission approval of the Application is necessary in order to implement the Plan, the Committee's interests could be adversely affected if the Commission denies the Application and PG&E is unable to implement the Plan.

Finally, the Committee's participation will not delay or otherwise disrupt this proceeding. The Committee does not seek to broaden the scope of issues that will be considered in this proceeding and no party will be prejudiced by its participation.

For all of the above reasons, the Committee respectfully requests that, in these circumstances, it be permitted to intervene in this proceeding with the full rights of a party thereto.

### **III.**

#### **CONCLUSION**

The Committee strongly supports PG&E's Application and requests that the Commission grant approval of the Application by July 31, 2002, as requested by PG&E, without commencement of a hearing. PG&E has proposed a Plan Effective Date of December 31, 2002. The Committee supports this target date which it believes is achievable if all regulatory approvals are granted within the timeframe requested by PG&E. Prompt Commission approval of the Application will facilitate PG&E's emergence from bankruptcy and thereby improve the financial strength of PG&E's businesses. PG&E's emergence from bankruptcy will go a long

way toward helping to restore the health of California energy markets, which will benefit energy consumers as well as PG&E and its customers.

WHEREFORE, for the foregoing reasons, the Committee respectfully requests that it be permitted to intervene in this proceeding with the full rights of a party thereto, including the right to participate in any hearing held herein, that the Commission grant timely approval of the Application without a hearing, and that the Commission grant such other relief that it deems appropriate consistent with the Application.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Edwin F. Feo", is written over a horizontal line.

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Attorneys for the Official Committee  
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Dated: February 6, 2002

**Certificate of Service**

I hereby certify that I have this day served the foregoing document upon:

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Dated at Washington, D.C., this 6th day of February, 2002.

  
Steven M. Kramer