

RAS 4006

STATE OF CALIFORNIA

GRAY DAVIS, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



DOCKETED  
USNRC

March 1, 2002

March 4, 2002 (3:30PM)

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Rulemakings and Adjudication Staff

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Re: **In the Matter of Pacific Gas and Electric Company Application for License Transfers and Conforming Administrative License Amendments for Diablo Canyon Power Plant, Units 1 and 2, Docket Nos. 50-275, 50-323**

To Whom It May Concern:

Enclosed for filing in the above-docketed case, please find an electronic version of a document entitled **"REPLY OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION ("CPUC") TO THE ANSWER OF PACIFIC GAS & ELECTRIC COMPANY TO THE CPUC'S RENEWED MOTION TO DISMISS APPLICATION."**

The original, signed version of this filing, plus an additional hard copy is being sent to you via Federal Express this afternoon. Thank you for your cooperation in this matter.

Sincerely,

Laurence G. Chaset  
Staff Counsel

Enclosure

Template = SECY-041

SECY-02

**UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION**

In the Matter of  
Pacific Gas and Electric Company  
Application for License Transfers and  
Conforming Administrative License  
Amendments for Diablo Canyon Power  
Plant, Units 1 and 2

Docket Nos. 50-275, 50-323

**REPLY OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION (“CPUC”)  
TO THE ANSWER OF PACIFIC GAS & ELECTRIC COMPANY TO THE  
CPUC’S RENEWED MOTION TO DISMISS APPLICATION**

Pursuant to 10 CFR §§2.1307(b), the Public Utilities Commission of the State of California (“CPUC”), hereby replies to the Answer of Pacific Gas and Electric Company to California Public Utilities Commission Renewed Motion to Dismiss Application, or in the Alternative, to Hold Applications in Abeyance (“Answer to Renewed Motion to Dismiss”), that was filed in this matter on February 25, 2002. In this filing, PG&E erroneously asserts that the CPUC’s Renewed Motion to Dismiss, filed in this matter on February 11, 2002, fails to “provide a basis in law or fact for the requested relief.” However, as did its previous Answer that was filed in this matter on February 15, 2002, PG&E’s Answer to Renewed Motion to Dismiss continues to grossly mischaracterize the circumstances that PG&E faces in its Bankruptcy Court proceeding. Indeed, PG&E is

playing a misguided and deceptive game in its continued urging that the Nuclear Regulatory Commission ("Commission") act precipitously on an Application that the Commission should by all rights dismiss, or, at the very least, set aside until the crucial legal and public policy issues that are currently being addressed in the PG&E Bankruptcy proceeding have been resolved.

As the CPUC pointed out in its Renewed Motion to Dismiss Application that was filed in this matter on February 11, 2002, the Bankruptcy Court, in its Preemption Decision of February 7, 2002, has determined that PG&E's Plan is not lawful and may not move forward as it is currently designed. Although Judge Montali did provide PG&E with an opportunity to amend its plan, which PG&E apparently intends to do on or before March 6, 2002, the fact is that on February 7, the Bankruptcy Court rejected PG&E's plan, which, in order to be confirmed, would require a wholesale preemption of state authority, and sent PG&E back to come up with better solutions.

However, an additional, materially significant event in PG&E's bankruptcy case has occurred since February 7, 2002. Specifically, on February 27, 2002, after a hearing in his court regarding the Term Sheet<sup>1</sup> setting forth the principal terms of CPUC's alternate plan of reorganization ("Alternate Plan"), a copy of which was attached to the

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<sup>1</sup> In its Answer to Renewed Motion to Dismiss, PG&E purports to make light of the fact that the CPUC is now very much a key player in the ultimate determination of how PG&E will move out of bankruptcy by relegating its comments on the CPUC's rights to propose an alternative plan of reorganization to a footnote, in which PG&E asserts, without support, that the CPUC's Term Sheets do "not set forth the parameters of a feasible plan." (See, PG&E's Answer to Renewed Motion to Dismiss, at 3, fn 3). Of course, whether or not the CPUC's Alternate Plan is or is not feasible will ultimately be up to Judge Montali, not PG&E. More to the point, however, the fact that on February 27, Judge Montali affirmatively authorized the CPUC to move forward to present a full fledged, competing Alternate Plan by April 15, 2002 highlights the very real possibility that PG&E's own plan of reorganization may not be approved.

CPUC's February 20 Reply filing in this matter, Judge Montali terminated PG&E's exclusive right to present a plan of reorganization, and gave the CPUC the green light to file its Alternate Plan by April 15, 2002. A further status conference in the PG&E Bankruptcy case is scheduled for March 26, 2002.

Moreover, at the hearing on February 27, 2002, the Bankruptcy Court emphasized the fatal effect of its February 7 ruling on PG&E's plan of reorganization, noting that unless and until PG&E files another amended plan, there is no plan for the court to consider. Judge Montali's actual words in this regard were reported in a newspaper article the next day:

"...Montali this month raised serious doubts about the constitutionality of a key aspect of the PG&E plan -- pre-emption of 37 state laws on utility regulation and environmental protection."

" 'At the moment,' Montali said Wednesday in refusing to foreclose the PUC plan, 'there is no plan.' "

Claire Cooper, "PG&E Talks Set for March," *The Sacramento Bee*, February 28, 2002.

Given that the current version of PG&E's bankruptcy reorganization plan is effectively dead, it would be extremely bad public policy, and it would be counterproductive, for this Commission to unfairly and unreasonably throw its weight behind that plan by granting PG&E's request to transfer ownership of the Diablo Canyon Power Plant ("DCPP"), even on a conditional basis. PG&E's insistence that this Commission act now on its license transfer application is nothing more than a ploy in its larger strategy to unfairly have its way in the Bankruptcy Court. However, there is

simply no need for this Commission to act now, because the core question raised in this proceeding may soon be moot.

Under the CPUC's Alternate Plan, PG&E would retain ownership of DCPD. No license transfer would be required. No Commission approvals would be required. This Commission's jurisdiction would not be invoked. It makes no practical or common sense for the Commission to move forward on PG&E's Application in this matter until the fundamental threshold issue of whether DCPD even requires a license transfer at all is conclusively resolved.

In a footnote, PG&E cites Commission precedent to the effect that "the pendency of parallel proceedings before other forums is not adequate grounds to stay an NRC license transfer adjudication." (See, PG&E's Answer to Renewed Motion to Dismiss, at 4, fn 4). However, none of those decisions are apposite here. None of the cited cases dealt with proposed license transfer involving a bankruptcy, much less a contested bankruptcy; none of the cases involved "parallel proceedings before other forums" in which fundamental constitutional questions dealing with the wholesale preemption of state law were at issue; none of the cases cited involved such major and overwhelming legal obstacles to the effectuation of the proposed transfer as are at issue in the proposed transfer of the DCPD license.

Thus, contrary to PG&E's assertions, the CPUC has demonstrated a basis for the denial of PG&E's Application in this matter. The Bankruptcy Court has rejected outright the preemption strategy upon which PG&E's Plan and its associated Application herein depends, and has expressly authorized the CPUC to file its own Alternate Plan under

which no transfer of DCP's license would be required. These facts, by themselves, give the lie to PG&E's assertion that "nothing in the ongoing Bankruptcy Court proceedings warrants delay in the NRC's consideration of the DCP license transfer application."

(See, PG&E's Answer to Renewed Motion to Dismiss, at 2.)

The Commission should accordingly dismiss forthwith PG&E's Application on file in this matter. At a minimum, the Commission should hold any proceedings in this matter in abeyance until there is a viable Plan pending before the Bankruptcy Court.

March 1, 2002

Respectfully submitted,

A handwritten signature in black ink, reading "Laurence G. Chaset". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

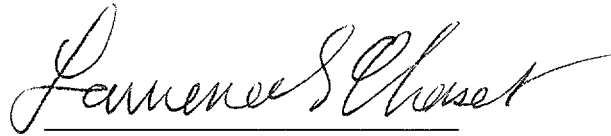
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Public Utilities Commission of the State of  
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Attorneys for the Public Utilities Commission of  
the State of California

## **CERTIFICATE OF SERVICE**

I hereby certify that in accordance with the Commission's regulation at 10 CFR 2.1313, I have this day caused the foregoing document be served upon the parties by mailing by first-class mail a copy thereof properly addressed to each such party:

Dated at San Francisco, California, this 1st day of March, 2002.

A handwritten signature in cursive script, reading "Laurence G. Chaset", written over a horizontal line.

Laurence G. Chaset