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 8 Bill Lockyer, Attorney General of the State of California,

9
 10 UNITED STATES BANKRUPTCY COURT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 In re

13 PACIFIC GAS AND ELECTRIC
 14 COMPANY, a California corporation,

15 Debtor,

16 Federal I.D. No. 94-0742640

17 PEOPLE OF THE STATE OF
 18 CALIFORNIA EX REL. BILL
 LOCKYER, ATTORNEY GENERAL OF
 THE STATE OF CALIFORNIA,

19 Plaintiffs,

20 v.

21 PG& E CORPORATION; ROBERT
 22 GLYNN JR.; GORDON SMITH; DAVID
 A. COULTER; MARY S. METZ; C. LEE
 23 COX; CARL E. REICHARDT;
 WILLIAM S. DAVILA; BARRY
 24 LAWSON WILLIAMS; DAVID M.
 LAWRENCE, M.D.; AND DAVID R.
 ANDREWS,

25 Defendants.

Adv. Proc. No. 02-3026 DM

NOTICE OF COMPLIANCE WITH
 COURT'S JUNE 14, 2002
 MEMORANDUM DECISION ON
 MOTIONS TO REMAND RE:
 AMENDED COMPLAINT

1 Pursuant to the Court's June 14, 2002 Memorandum Decision on Motions to Remand,
2 the People of the State of California ex rel. Bill Lockyer, submit the attached Amended
3 Complaint in preparation for discussion at the status conference on July 22, 2002 at 9:30 a.m. A
4 copy of the Amended Complaint has been served on counsel for Defendants.

5 Dated: July 12, 2002.

Respectfully submitted,

6 BILL LOCKYER
7 Attorney General

8 RICHARD FRANK
9 Chief Assistant Attorney General

10 KEN ALEX
11 Acting Assistant Attorney General

12 By _____
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ex rel. Bill Lockyer, Attorney General of the
State of California
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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO
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16 **PEOPLE OF THE STATE OF**
17 **CALIFORNIA ex rel. BILL LOCKYER,**
18 **ATTORNEY GENERAL OF THE**
STATE OF CALIFORNIA,

19 Plaintiffs,
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21 v.
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23 **PG&E CORPORATION; ROBERT**
24 **GLYNN, JR.; GORDON SMITH; DAVID**
25 **A. COULTER; MARY S. METZ; C. LEE**
26 **COX; CARL E. REICHARDT;**
27 **WILLIAM S. DAVILA; BARRY**
28 **LAWSON WILLIAMS; DAVID M.**
LAWRENCE, M.D.; DAVID R.
ANDREWS; AND DOES 1-150,

Defendants.

Case No. CGC-02-403289

**AMENDED COMPLAINT FOR
RESTITUTION, CIVIL PENALTIES,
INJUNCTION, APPOINTMENT OF
RECEIVER, AND OTHER EQUITABLE
AND ANCILLARY RELIEF**

(Cal. Bus. & Prof. Code § 17200 - Unlawful,
Unfair & Fraudulent Business Practices)

1 The People of the State of California, by and through Bill Lockyer, Attorney General of
2 the State of California, allege on information and belief as follows:

3 **PARTIES**

4 1. Plaintiff Bill Lockyer is the Attorney General of the State of California and is the
5 chief law officer of the State (Cal. Const., art. 5, § 13). He is authorized by California Business
6 and Professions Code section 17204 to prosecute any unlawful, unfair or fraudulent business act
7 or practice which is prohibited by California Business and Professions Code section 17200 in a
8 court of competent jurisdiction. For any such violation, he is also authorized to seek injunctive
9 relief, civil penalties not to exceed two thousand five hundred dollars (\$2,500) for each violation,
10 and any orders or judgments, including the appointment of receivers, as may be necessary to
11 prevent the use or employment by any person of any unlawful, unfair or fraudulent business
12 practices which constitute unfair competition.

13 2. PG&E Corporation is a national energy-based holding company with its headquarters
14 located in San Francisco, California. Pacific Gas & Electric Company ("PG&E") is a wholly
15 owned subsidiary of PG&E Corporation. At all relevant times herein, PG&E Corporation's
16 strategy has been, and continues to be, to become one of the largest unregulated generating
17 companies in the United States.

18 3. PG&E is an electric and gas public utility that serves approximately 4.5 million
19 electric customers and 3.7 million gas customers in northern and central California. PG&E is
20 currently regulated by the California Public Utilities Commission ("CPUC") and the Federal
21 Energy Regulatory Commission ("FERC").

22 4. Defendant Robert Glynn, Jr. is the President, Chief Executive Officer, and Chairman
23 of the Board of Directors of both PG&E and PG&E Corporation. He is now and has been a
24 director of PG&E since June 1995. He is now and has been a director of PG&E Corporation
25 since December 1996.

26 5. Defendant Gordon Smith is the President and Chief Executive Officer of PG&E. He
27 is now and has been a director of PG&E since June 1997.

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1 6. Defendant David A. Coulter is now and has been a director of PG&E since May 1996.
2 He is now and has been a director of PG&E Corporation since December 1996.

3 7. Defendant Mary S. Metz is now and has been a director of PG&E since March 1986.
4 She is now and has been a director of PG&E Corporation since December 1996.

5 8. Defendant C. Lee Cox is now and has been a director of PG&E since February 1996.
6 He is now and has been a director of PG&E Corporation since December 1996.

7 9. Defendant Carl E. Reichardt is now and has been a director of PG&E since February
8 1985. He is now and has been a director of PG&E Corporation since December 1996.

9 10. Defendant William S. Davila is now and has been a director of PG&E since February
10 1992, and a director of PG&E Corporation since December 1996.

11 11. Defendant Barry Lawson Williams is now and has been a director of PG&E since
12 September 1990, and has been a director of PG&E Corporation since December 1996.

13 12. Defendant David M. Lawrence, M.D. is now and has been a director of PG&E since
14 January 1995, and has been a director of PG&E Corporation since December 1996.

15 13. Defendant David R. Andrews is now and has been a director of PG&E Corporation
16 since August 2000.

17 14. The true names and capacities of defendants sued in this Complaint under the
18 fictitious names of Does 1 through 150, inclusive, are unknown to plaintiff, who sues such
19 defendants by such fictitious names. Each of the fictitiously named defendants is responsible in
20 some manner for acts, occurrences, or omissions which caused the violations alleged herein.

21 15. At all relevant times herein, defendants Glynn, Coulter, Metz, Cox, Reichardt,
22 Davila, Williams and Lawrence were directors of both PG&E and PG&E Corporation. At all
23 relevant times herein, defendant Smith was an executive officer and director of PG&E and
24 defendant Andrews was a director of PG&E Corporation. Said defendants are sued in their
25 individual capacities and in their capacities as officers and/or directors of PG&E and PG&E
26 Corporation.

27 16. The PG&E Corporation Board of Directors has five committees of the Board of
28 Directors. They are the Executive, Audit, Finance, Nominating and Compensation, and Public

1 Policy Committees. The PG&E Board of Directors has three committees. They are the
2 Executive Committee, Audit Committee and the Capital Contributions Committee. The
3 respective Executive Committees each may exercise, to the full extent permitted by law, all of
4 the powers and perform all of the duties of their full boards.

5 17. Unless otherwise alleged, whenever reference is made in this Complaint to any act
6 of defendants, such allegation shall mean that each defendant acted individually and jointly with
7 the other defendants named in the Complaint.

8 18. Unless otherwise alleged, whenever reference is made in this Complaint to any act of
9 any corporate or other business defendant, such allegation shall mean that such corporation or
10 other business did the acts alleged in this Complaint through its officers, directors, employees,
11 agents and/or representatives while they were acting within the actual or ostensible scope of their
12 authority.

13 19. At all relevant times alleged in this Complaint, each of the defendants has acted as an
14 agent, representative, or employee of each of the other defendants and has acted within the
15 course and scope of said agency or representation.

16 20. At all relevant times alleged in this Complaint, defendants Glynn, Smith, Coulter,
17 Metz, Cox, Reichardt, Davila, Williams, Lawrence, Andrews and Does 1-150 conspired, aided
18 and abetted, or acted in concert with each other, in causing PG&E Corporation, to use ratepayer
19 funds and other assets of PG&E to cross-subsidize PG&E Corporation and its other subsidiaries
20 and affiliates and subordinate the interests of PG&E to PG&E Corporation and its other
21 subsidiaries and affiliates, as part of a common plan or design to evade the CPUC's regulatory
22 authority and further its plan to make PG&E Corporation one of the largest unregulated
23 generating companies in the United States. Through their acts alleged herein, said defendants
24 acted with knowledge of such conspiracy, common plan or design, and with the intent of
25 carrying out such conspiracy, common plan or design, to the detriment of ratepayers.

26 JURISDICTION

27 21. This Court has jurisdiction to hear the claims alleged in this Complaint and is a
28 court of competent jurisdiction to grant the relief requested.

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1 27. With the passage of AB 1890, California utilities, including PG&E, projected
2 billions of dollars in "stranded costs." Stranded costs are those costs which the utilities might not
3 be able to recover in the normal course of business in the newly competitive market.

4 28. AB 1890 was designed, in part, to give the utilities a reasonable opportunity to
5 recover these stranded costs, as well as other costs, including distribution costs, transmission
6 costs, and the cost of power that they would have to purchase, by freezing retail electric rates at
7 the level in effect on June 10, 1996, until the end of the "transition period" on December 31,
8 2001.

9 29. During the transition period, because the frozen rates were higher than the utilities'
10 then-current or projected operating costs, California utilities were expected to recover their
11 stranded costs by purchasing power at prices below the rate they, including PG&E, could charge
12 their customers for electric power.

13 30. During the first years of the transition period, PG&E passed on to PG&E
14 Corporation primarily through stock dividends and stock repurchases, billions of dollars in
15 revenues generated from ratepayers through the high frozen rates, and other provisions of AB
16 1890. PG&E received \$2.9 billion in up-front cash proceeds from rate reduction bonds and over
17 \$9 billion in "headroom" and other transition cost revenues. Headroom is the difference between
18 frozen rates and the authorized costs of providing service (i.e. revenue requirements and CPUC-
19 approved costs and obligations).

20 **Affiliates of PG&E Corporation**

21 31. PG&E Corporation also wholly owns PG&E National Energy Group ("NEG"), a
22 Maryland corporation that builds, acquires, and operates independent electric generating
23 facilities in various parts of the country. NEG was formed in 1999 to integrate PG&E
24 Corporation's unregulated business units. NEG develops, constructs, operates, owns, and
25 manages independent power generation facilities that serve wholesale and industrial customers
26 through PG&E Generating Company, LLC ("PG&E Gen.") and its subsidiaries. NEG also owns
27 and operates natural gas pipelines, natural gas storage facilities, and natural gas processing
28 plants, primarily in the Pacific Northwest, through PG&E Gas Transmission Northwest ("PG&E

1 GT"). NEG also purchases and sells energy commodities and provides risk management
2 services to customers in major North American markets, including the other NEG non-utility
3 businesses, unaffiliated utilities, marketers, municipalities, and large end-use customers through
4 PG&E Energy Trading - Power, L.P. and their affiliates (collectively, "PG&E Energy Trading"
5 or "PG&E ET").

6 32. Seven members of the Board of Directors of NEG are also executive officers of
7 PG&E Corporation. As early as June 2000, NEG intended to increase PG&E Corporation's
8 national market presence through acquisition and development of energy assets and businesses
9 and projected that its ability to anticipate and capture profitable business opportunities created by
10 restructuring would have a significant impact on PG&E Corporation's future operating results.

11 33. PG&E Gen participates in the development, construction, operation, ownership and
12 management of non-utility electric generating facilities that compete in the United States power
13 generation market. PG&E Gen owns operating power plants in the eastern United States and
14 and Northwest Pacific.

15 34. PG&E ET is a FERC-authorized power marketer that is active in all North American
16 Electric Reliability Council regions. PG&E ET buys and resells electric power in the wholesale
17 electric market through its marketing and trading group. PG&E ET transports, schedules, and
18 settles delivery of electric power on its own behalf. PG&E ET also provides risk management
19 services to NEG and its customers. Estimated California power and gas revenues of PG&E ET
20 in 2000 were \$677.7 million, or 4.4 percent of its total revenues in the U.S. and Canada.
21 Estimated net income of PG&E ET in 2000 attributable to California was \$18.8 million.

22 35. PG&E GT owns and operates transmission pipelines and associated facilities that
23 extend over 612 miles from the Canada-U.S. border to the Oregon-California border. PG&E GT
24 provides firm and interruptible transportation services to third party shippers on an open-access
25 basis. Its customers are principally retail gas distribution utilities, electric utilities that use
26 natural gas to generate electricity, natural gas marketing companies, natural gas producers, and
27 industrial consumers.

28 36. Approximately 68 percent of PG&E GT's natural gas volume is delivered to the

1 California border. The amount of PG&E GT revenues and earnings, before income taxes and
2 PG&E Corporation allocations, attributable to the California energy market is estimated at
3 \$152.8 million and \$66.9 million, respectively, for the year ending December 31, 2000.

4 **Conditional CPUC Approval of PG&E's Holding Company Formation**

5 37. On October 20, 1995, PG&E filed an application with the CPUC pursuant to Public
6 Utilities Code § 818, for approval to reorganize under a holding company structure ("the Holding
7 Company Proceedings"). PG&E proposed to implement this restructuring through a reverse
8 triangular merger. As a result of the merger, PG&E would become the wholly owned subsidiary
9 of PG&E Corporation. The CPUC conducted the Holding Company Proceedings in two phases
10 ("Phase I" and "Phase II").

11 38. In determining whether to approve the application, the CPUC applied a "ratepayer
12 indifference" standard. Under this standard, a utility seeking to reorganize under a holding
13 company structure must demonstrate that: (1) a valid business purpose exists; and (2) the
14 reorganization may be accomplished and future operations conducted will be pursuant to
15 conditions that will be adequate to protect the public interest. The CPUC's primary concern is
16 that non-utility activities do not detrimentally affect consumer rates or quality of service. The
17 CPUC also seeks to ensure the financial health of the utility's operations and that changes in the
18 form of organization and ownership do not impair the discharge of the utility's duties.

19 39. The formation of a holding company structure presents four basic risks for
20 ratepayers:

- 21 (a) The risk that financial losses incurred by affiliates will impair the utility's access
22 to capital on reasonable terms;
- 23 (b) The risk that the parent company will subordinate the interests of the utility to the
24 interests of other affiliates;
- 25 (c) The risk that the parent company will use the holding company to reduce CPUC
26 authority over utility operations and costs; and
- 27 (d) The risk that the parent company will use the utility's exclusive service territory
28 franchise and ratepayer funded resources to provide affiliates with an unfair

1 competitive advantage in non-regulated business activities.

2 40. During the Holding Company Proceedings, PG&E, on behalf of itself and PG&E
3 Corporation, represented to the CPUC that the purpose for seeking the holding company
4 structure was to enable it to respond to what PG&E considered to be a changing business
5 environment in the electric and gas utility industries, including the possible onset of competition
6 within markets that PG&E had historically served as a regulated monopoly. PG&E, on behalf of
7 itself and PG&E Corporation, claimed that the holding company structure would provide a
8 corporate framework for the separate ownership of unregulated businesses and would help to
9 insulate the credit of PG&E from the risks of ownership of such businesses.

10 41. In order to get the application approved, PG&E, on behalf of itself and PG&E
11 Corporation, provided assurances to the CPUC that the holding company would act as a safety
12 net should the utility experience internal financial distress, in that PG&E Corporation would
13 have the capability to infuse capital into PG&E, and would have the means to provide capital to
14 PG&E should PG&E's internal cash generation be insufficient.

15 42. PG&E, on behalf of itself and PG&E Corporation, also represented to the CPUC in
16 the Holding Company Proceedings that ratepayers would be protected because it intended to
17 preserve PG&E's financial integrity and access to capital in order to satisfy PG&E's obligation
18 to serve the public. PG&E, on behalf of itself and PG&E Corporation, further represented to the
19 CPUC that to the extent that PG&E's affiliates would compete with it for scarce capital, the
20 "First Priority Condition" would protect ratepayers by requiring the directors of PG&E and
21 PG&E Corporation to place top priority on PG&E's obligation to serve its customers. The First
22 Priority Condition is defined more specifically below, in paragraph 44, subsection (g), below.

23 43. On November 6, 1996, based on the representations made and evidence presented by
24 PG&E, on behalf of itself and PG&E Corporation, in Phase I of the Holding Company
25 Proceedings, the CPUC issued an Interim Opinion ("Interim Opinion"), in which it conditionally
26 approved PG&E's reorganization into a holding company structure, subject to twenty two
27 conditions ("the Conditions") which the CPUC determined were necessary to protect the
28 public's interest and maintain ratepayer indifference. (Decision No. 96-11-017, 69 CPUC 2d

1 167, 173 P.U.R. 4th 358).

2 44. The Conditions imposed by the CPUC in Ordering Paragraphs 2 through 23 of the
3 Interim Opinion, include:

- 4 (a) The CPUC would have access to books and records of the holding company and
5 each of its affiliates and their joint ventures;
- 6 (b) PG&E, its holding company, and its subsidiaries, and joint ventures of the
7 holding company or its subsidiaries would use accounting and other controls
8 related to cost allocations and transfer pricing to ensure and facilitate full review
9 by the CPUC and to protect against cross-subsidization of non-utility activities by
10 PG&E's customers ("the Cross-Subsidization Condition");
- 11 (c) PG&E would submit quarterly and annual financial statements of its parent
12 holding company (including consolidated workpapers of the holding company
13 and its subsidiaries, balance sheets and income statements of the non-consolidated
14 subsidiaries of the holding company);
- 15 (d) PG&E would report the sale or transfer of any tangible assets to or from affiliated
16 entities;
- 17 (e) PG&E's dividend policy would be established by PG&E's board of directors as
18 though PG&E were a comparable stand-alone utility company ("the Stand-Alone
19 Condition");
- 20 (f) PG&E would not guarantee the notes, debentures, debt obligations, or other
21 securities of its parent holding company or any of its subsidiaries without first
22 obtaining CPUC's written consent.
- 23 (g) The capital requirements of PG&E, as determined to be necessary and prudent to
24 meet its obligations to serve or to operate the utility in a prudent and efficient
25 manner, would be given "first priority" by the Board of Directors of PG&E's
26 parent holding company and PG&E ("the First Priority Condition"). The First
27 Priority Condition required PG&E Corporation to infuse the utility with all types
28 of capital, including working capital or operating capital, necessary for the utility

1 to fulfill its obligation to serve.

2 45. As part of the Interim Opinion, the CPUC also reserved the right to impose further
3 conditions pending the outcome of an audit requested by Division of Ratepayer Advocates (the
4 predecessor of the Office of Ratepayer Advocates ["ORA"]). ORA is the division of the CPUC
5 that is responsible for representing the interests of a public utility's ratepayers in CPUC
6 proceedings. The purpose of the audit was to review all significant utility/affiliate transactions
7 from the 1994 reporting period through the date the audit was ordered. The audit was conducted
8 by Overland Consulting for ORA ("the Overland Audit").

9 46. Pending completion of the Overland Audit and the CPUC's review of the results, the
10 CPUC adopted affiliate transaction rules ("the Affiliate Rules"). (Decision D-97-12-088). These
11 rules govern the relationship between California's energy utilities and their affiliates relating to
12 non-discrimination, disclosure and information, and separation standards. The Affiliate Rules
13 also require that, except as provided for in the rules, new products and services shall be offered
14 through affiliates. The Affiliate Rules imposed conditions on utilities that propose to provide a
15 new product or service without tariff in a competitive or potentially competitive market.
16 Appropriate conditions imposed by the CPUC in approving utility holding company formations,
17 such as those imposed in the Holding Company Proceedings, incorporate Affiliate Rules.

18 47. In establishing the Affiliate Rules, the CPUC found that it was in the public interest
19 to establish rules which ensure that utility affiliates do not gain unfair advantage over other
20 market players, and to ensure that utility ratepayers are not subsidizing unregulated activities.
21 The fundamental CPUC policies underlying the Affiliate Rules are to provide mechanisms that
22 will ensure ratepayer indifference, and that a utility and its ratepayers will be compensated for
23 any flow of actual resources or benefits to an affiliate of the utility. The CPUC did not intend
24 that the Affiliate Rules preclude any form of civil relief, or rights or defenses thereto, that may
25 be available under state or federal laws designed to promote and protect fair competition,
26 including California Business & Professions Code § 17500 et seq., or to detract from the
27 Attorney General's prosecution of antitrust violations. (77 CPUC2d 422; 184 P.U.R. 4th 503.)

28 48. For purposes of a combined gas and electric utility, the Affiliate Rules apply to all of

1 the transactions of the utility with its affiliates that are engaged in providing a product that uses
2 gas or electricity, or providing services that relate to the use of gas or electricity. For purposes
3 of an electricity utility, the Affiliate Rules apply to all of the transactions of the utility with its
4 affiliates that are engaged in providing a product that uses electricity or that provide services that
5 relate to the use of electricity.

6 49. The Overland Audit was completed in October 1997. It revealed significant
7 examples of subordination of PG&E's interests to the interests of its affiliates during the period
8 1993 through 1996, through underbilling by PG&E of its affiliates for rotational services of
9 PG&E employees, failing to charge its unregulated affiliates the fair market value of its services
10 and assets, and overcharging its ratepayers for unregulated services provided by its unregulated
11 affiliates. The Overland Audit also concluded that the internal controls of PG&E and its
12 affiliates were totally inadequate to ensure reasonable accountability in PG&E's dealings with its
13 affiliates. For example:

14 (a) The Overland Audit estimated that PG&E incurred \$2,177, 005 in costs to
15 develop the power quality business line it transferred to PG&E Energy Services
16 and to facilitate PG&E Energy Services' entry into the power quality business.
17 This cost estimate did not include the cost of developing the valuable utility
18 information PG&E used to develop the power quality business line. PG&E
19 charged PG&E Energy Services \$386,106 for the power quality business line and
20 related services. The remaining \$1,790,899 of costs incurred by PG&E were
21 charged to its ratepayer funded utility accounts.

22 (b) When PG&E transferred its entire power quality business line to PG&E Energy
23 Services it failed to charge PG&E Energy Services the fair market value. The
24 Overland Audit concluded that the power quality business line within PG&E's
25 service territory was an integral part of PG&E's ratepayer funded distribution
26 system so that if PG&E retained the power quality business line, the profits
27 generated by the power quality business line could have been used to reduce
28 utility rates or increase shareholder profits and, therefore, PG&E would not have

1 transferred its power quality business line to an unaffiliated entity at cost.

2 50. During Phase II of the Holding Company Proceedings, the CPUC did not adopt
3 many of the additional conditions proposed by ORA in light of the Overland Audit because it
4 believed that the Affiliate Rules, PG&E's reorganization into a holding company structure, and
5 the Conditions would resolve most of the problems found in the Overland Audit. However, the
6 CPUC did adopt further conditions relating to PG&E's internal controls. The CPUC also
7 ordered another audit to verify compliance with the conditions.

8 51. The CPUC further conditionally approved PG&E's holding company structure based
9 on an agreement by the boards of directors of PG&E and PG&E Corporation to comply with the
10 Conditions. The boards of directors of PG&E and PG&E Corporation passed resolutions ("the
11 Resolutions") agreeing to the Conditions and filed them with the CPUC. At all relevant times
12 herein, defendants Glynn, Smith, Coulter, Metz, Cox, Reichardt, Davila, Williams, Lawrence
13 and Andrews had knowledge of the Conditions, and as directors of PG&E and PG&E
14 Corporation voted to approve the Resolutions.

15 52. Prior to the formation of the holding company structure, PG&E's investments in
16 non-utility businesses were held through PG&E Enterprises, which was a wholly owned
17 subsidiary of PG&E. PG&E Enterprises' major business units and lines of business were PG&E
18 Generating Company, PG&E Properties, Inc. (which was being liquidated at the time of the
19 Holding Company Proceedings), PG&E Energy Services, PG&E Overseas, Inc., PG&E
20 Generating International and DALEN Corporation (which was subsequently sold).

21 53. With the formation of the holding company structure on January 1, 1997, PG&E
22 transferred its investments in PG&E Enterprises to PG&E Corporation. PG&E Corporation
23 formed five business lines with it as the holding company. These businesses lines were: PG&E
24 (the public utility); U.S. Generating Company (electric generation); PG&E Energy Services
25 (energy services); PG&E Trading (energy trading); and PG&E Gas Transmission (gas
26 transmission). Numerous other entities remained subsidiaries of PG&E.

27 54. After formation of the holding company structure, PG&E Corporation became the
28 parent of PG&E and PG&E's subsidiaries. At all relevant times herein, PG&E Corporation

1 exercised control over PG&E and each of PG&E's subsidiaries.

2 **Integration Between PG&E and PG&E Corporation**

3 55. On or about January 21, 1998, the Board of Directors of PG&E adopted a resolution
4 creating a new committee of the board of directors, the Capital Distributions Committee, which
5 was authorized to declare regular quarterly dividends on PG&E common and preferred stock and
6 repurchase common stock from PG&E Corporation and, within the parameters authorized by the
7 full PG&E Board of Directors, to determine the appropriate amount, pricing and timing of such
8 actions. The common stock repurchases were to be funded with PG&E cash. At all relevant
9 times herein, the only members of the Capital Distributions Committee were, and continue to
10 be, defendants Glynn, and Smith.

11 56. Unless otherwise alleged, at all relevant times alleged herein, dividends declared on
12 PG&E common and preferred stock and repurchases of common stock from PG&E Corporation
13 were authorized by resolutions of the board of directors of PG&E Corporation.

14 **Transfer of Cash Flows from PG&E to PG&E Corporation**

15 57. After the holding company structure was approved by the CPUC, cash flowed in
16 only one direction: from PG&E to PG&E Corporation and then to PG&E Corporation's
17 unregulated affiliates.

18 58. From 1997 through 1999, PG&E provided a total of \$4 billion in cash to PG&E
19 Corporation, in the form of \$1.5 billion in stock dividends and \$2.5 billion through repurchases
20 of PG&E common stock held by PG&E Corporation, representing 60 percent of the cash inflows
21 to PG&E Corporation over this period. From 1997 to 1999, PG&E Corporation invested a total
22 of \$0.8 billion in its other subsidiaries, spent \$2.7 billion to buy back its stock from the public,
23 and paid \$1.5 billion to pay dividends to its shareholders. These transactions are set forth in
24 greater detail, by year, in paragraphs 59 through 61 below.

25 59. In 1997, PG&E generated \$5 billion in cash, of which \$699 million was transferred
26 to PG&E Corporation in the form of dividends paid. In 1997, PG&E Corporation invested \$150
27 million in its subsidiaries, used \$804 million to repurchase its common stock and paid \$524
28 million in dividends to shareholders.

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2 60. In 1998, PG&E generated \$3.8 billion in cash, of which \$2 billion was transferred to
3 PG&E Corporation in the form of \$1.6 billion in PG&E common stock repurchases and \$416
4 million in paid dividends. In 1998, PG&E Corporation invested \$616 million in its subsidiaries,
5 used \$1.1 billion to repurchase its common stock and paid \$470 million in dividends to
6 shareholders.

7 61. In 1999, PG&E generated \$3.4 billion in cash, of which \$1.3 billion was transferred
8 to PG&E Corporation in the form of \$926 million for PG&E common stock repurchases and
9 \$415 million in paid dividends. In 1999, PG&E Corporation invested \$72 million in its
10 subsidiaries, used \$693 million to repurchase its common stock and paid \$465 million in
11 dividends paid.

12 62. In the summer of 2000, PG&E accumulated large amounts of debt due to dramatic
13 increases in wholesale energy prices. The higher energy prices resulted in PG&E's operating
14 costs exceeding its revenues. As a result, PG&E, and other California utilities, applied to the
15 CPUC for emergency rate increases, claiming that their financial condition threatened to impair,
16 or had impaired, its ability to serve and operate.

17 63. As early as August 2000, PG&E Corporation had already retained bankruptcy
18 counsel.

19 64. Despite the operating loss, PG&E, which in the first nine months of 2000 generated
20 \$1.8 billion in cash, transferred \$632 million to PG&E Corporation in the form of \$275 million
21 paid for PG&E common stock repurchases and paid \$357 million in dividends. During 2000,
22 NEG received \$349 million in net capital contributions from PG&E Corporation, of which \$204
23 million was received in the fourth quarter.

24 65. Notwithstanding the Conditions, after wholesale energy prices started rising in the
25 summer of 2000, while PG&E was increasingly strident in its claims to the CPUC regarding its
26 financial distress, imminent bankruptcy, and the consequent threat of its ability to fully meet its
27 obligation to serve, and while PG&E Corporation had cash reserves of approximately \$307
28 million as of December 29, 2000, at no time did PG&E Corporation provide, nor did defendants

1 Glynn, Smith, Coulter, Metz, Cox, Reichardt, Davila, Williams, Lawrence, Andrews or Does 1-
2 150 cause PG&E Corporation to provide, an infusion of capital to PG&E, in violation of the First
3 Priority Condition and the Cross-Subsidization Condition.

4 66. By causing PG&E to pay dividends to PG&E Corporation during the third and fourth
5 quarters of 2000, after PG&E was in a precarious financial condition, defendants Glynn, Smith,
6 Coulter, Metz, Cox, Reichardt, Davila, Williams, Lawrence, Andrews, Does 1-150, and PG&E
7 Corporation violated the Stand Alone Condition.

8 **Taxes**

9 67. PG&E Corporation calculates taxes for PG&E on a stand-alone basis. PG&E pays
10 the calculated amount to PG&E Corporation. PG&E Corporation then prepares a single
11 consolidated tax return for all PG&E corporate entities. From 1997 to 1999, PG&E
12 Corporation's actual taxes due on a consolidated basis was less than the amount PG&E paid to
13 PG&E Corporation. PG&E Corporation used the difference for its activities unrelated to PG&E.

14
15 68. In 1997, PG&E paid \$40 million more than its share of the income taxes. In 1998,
16 PG&E paid \$345 million more than its share of the income taxes. In 1999 alone, PG&E paid to
17 PG&E Corporation \$278 million more in cash as its share of income taxes than was actually paid
18 by PG&E Corporation in taxes in 1999 and PG&E Corporation used the difference to subsidize
19 its own activities, in violation of the Cross-Subsidization Condition.

20 **Valuation of Hydro Electric Assets**

21 69. Section 851 of the Public Utilities Code requires every public utility, such as PG&E,
22 to secure authorization from the CPUC prior to disposing of any property "necessary or useful in
23 the performance of its duties to the public." Ratepayers are entitled to a portion of any gain on
24 the disposition of any such property. The authority conferred on the CPUC in Section 851 is
25 fundamental to utility regulation because it ensures that the CPUC maintains the powers and
26 functions necessary to protect the public interest.

27 70. PG&E is one of the largest producers of hydroelectric power in California. PG&E's
28 network of hydroelectric generation assets is the largest privately-owned hydroelectric system in

1 the nation. Since 1999, PG&E has aggressively pursued transferring its hydroelectric assets to a
2 non-regulated affiliate.

3 71. PG&E made a proposal to the State Legislature in 1999 for approval of the transfer.
4 The proposal was rejected.

5 72. After its defeat before the State Legislature, PG&E applied to the CPUC on
6 September 30, 1999 for permission to sell its hydroelectric assets through an auction
7 (Application No. 99-09-053). The application was made pursuant to the provisions of California
8 law that require the CPUC to establish the market value of PG&E's hydroelectric facilities by
9 December 31, 2001.

10 73. In its application to the CPUC, PG&E proposed an auction to establish the market
11 value of its hydroelectric generating assets and to sell these assets to the highest successful
12 bidder. PG&E proposed that its non-utility affiliate, NEG, be allowed to bid on assets under the
13 same terms and conditions as any other prospective owner. In reviewing the application, the
14 CPUC considers how the project could potentially benefit or harm the public, including its
15 potential affect on utility ratepayers, and makes a decision whether divestiture would be in the
16 public interest.

17 74. On August 9, 2000, PG&E, together with other parties involved in the application
18 proceedings, filed an application with the CPUC for approval of their settlement agreement
19 which determined the market value of PG&E's hydroelectric generating assets in lieu of the
20 auction process PG&E initially proposed.

21 75. The settlement included the following provisions:

- 22 (a) a revenue-sharing mechanism that returned 90 percent of all profits from the
23 hydroelectric operations to PG&E's ratepayers; and
24 (b) established a market value of \$2.8 billion for the hydroelectric system that could
25 be used immediately to pay down ratepayer cost obligations.

26 76. PG&E withdrew its support for the settlement agreement on November 20, 2000
27 because it believed that the settlement value of \$2.8 billion vastly underestimated the market
28 value of the assets based on the market conditions at that time and, therefore, the value was far in

1 excess of \$2.8 billion. PG&E recently evaluated these same assets at approximately \$4.1 billion
2 in proceedings before the CPUC to determine whether the rate freeze imposed under AB 1890
3 had ended.

4 77. Although PG&E withdrew from the settlement agreement, its application to sell its
5 hydroelectric assets remains pending with the CPUC. However, on January 18, 2001, AB 6X
6 was enacted. This bill prohibits any California utility from disposing of its generation assets
7 prior to January 1, 2006, and requires the CPUC to ensure that public utility assets remain
8 dedicated to service for the benefit of the public. The restrictions of AB 6X apply to PG&E's
9 hydroelectric assets.

10 Ring Fencing Activities

11 78. On or about January 10, 2001, the Board of Directors of PG&E Corporation
12 authorized, approved, and consented to, the implementation of a "bankruptcy remote" structure
13 through a "ring- fencing" transaction that insulated NEG and its subsidiaries from the possible
14 bankruptcy or credit downgrade of PG&E Corporation or PG&E. PG&E Corporation had
15 retained bankruptcy counsel four months earlier.

16 79. PG&E Corporation used the ring-fencing transaction to subordinate the interests of
17 PG&E to its own interests and the interests of its other subsidiaries and affiliates by creating a
18 new special purpose entity ("SPE"), "NEG Holdings, LLC, and transferred 100 percent of the
19 issued and outstanding shares of NEG, which it owned, to NEG Holdings, LLC. The transaction
20 also entailed the appointment of an independent director with no ties to PG&E Corporation or
21 any of its subsidiaries who would be required to approve any distributions or dividends from the
22 SPE, as well as approve the filing of any voluntary petition in bankruptcy. Also no dividends or
23 loans could be paid unless certain financial tests were met.

24 80. Notwithstanding the Conditions, in order to implement the ring-fencing transaction,
25 PG&E Corporation adopted a condition that restricted NEG's ability to provide any funds to any
26 person or entity that controlled it, including PG&E Corporation or PG&E, through dividends,
27 capital distributions, or similar payment. As a result of the NEG ring-fencing transaction, the
28 assets of NEG and its subsidiaries were no longer available to assist PG&E, and PG&E

1 Corporation's available cash to directly assist PG&E was decreased, thereby impairing PG&E
2 Corporation's ability to comply with the First Priority Condition and resulting in the
3 subordination of the PG&E's interests to the interests of PG&E Corporation and its other
4 subsidiaries and affiliates.

5 81. Prior to NEG ring-fencing transaction, PG&E Corporation used ring-fencing
6 transactions which included the creation of similar bankruptcy remote entities to protect its
7 interests in PG&E Energy Trading and PG&E Gas Transmission. These transactions included
8 similar restrictions on the payment of funds similar to those in the NEG ring-fencing transaction.

9 82. Through ring-fencing transactions, PG&E Corporation subordinated the interests of
10 PG&E to the interests of PG&E Corporation and its other subsidiaries and affiliates by protecting
11 itself and its other subsidiaries and affiliates, other than PG&E, from the risks of bankruptcy, and
12 impaired its ability to provide cash to directly assist PG&E, in violation of the First Priority
13 Condition.

14 83. In a ring-fencing transaction, separate ratings of the credit quality of a parent and its
15 subsidiary are desired because Standard & Poor's ("S&P") rates a particular subsidiary by
16 assessing the credit quality of the consolidated entity of which the subsidiary is a part. In
17 assessing a particular subsidiary, S&P's general position is that the rating of an otherwise
18 financially healthy, wholly owned subsidiary is constrained by the rating of the weaker parent
19 because a weak parent has both the ability and the incentive to siphon assets out of its
20 financially healthy subsidiary and to burden it with liabilities during times of financial distress or
21 the economic incentive to filing the subsidiary into bankruptcy if the parent itself were forced
22 into bankruptcy. Ring-fencing transactions refer to structured finance techniques and methods by
23 which the credit quality of a subsidiary might be rated higher than the credit quality of the
24 consolidated entity.

25 84. S&P has developed criteria relating to ring-fencing transactions. This criteria
26 includes the creation of a special purpose entity ("SPE") and the requirements necessary for the
27 SPE to be considered bankruptcy remote. These criteria are: (1) the objects and powers of the
28 SPE must be restricted as closely as possible to the bare activities necessary to effect the

1 structured transaction and not unrelated to the securitized assets and the issuance of the rated
2 securities; (2) the SPE should be limited from issuing other debt except in circumstances that
3 are consistent with the rated issuance; (3) an independent director should be appointed to the
4 SPE, whose consent is required to seek bankruptcy for the SPE or to amend the organizational
5 documents for the SPE; (4) the bankruptcy remote status of the SPE cannot be undermined by
6 any merger or consolidation with a non-SPE or any reorganization, dissolution, liquidation or
7 asset sale; and (5) the SPE must hold itself out as an independent entity.

8 85. By creating a separate entity following the S&P criteria which are designed to
9 further separate a subsidiary from its parent and affiliates, the "ring fenced" subsidiary is able to
10 obtain or retain credit ratings for itself separate from its parent and its affiliates that are not
11 inside the "ring-fence."

12 86. PG&E Corporation initiated the NEG ring-fencing transaction because it had
13 provided almost all of the credit support necessary for NEG's energy trading business through
14 parent guarantees. PG&E Corporation's bankruptcy or credit downgrade would have triggered
15 termination rights under most of NEG's trading agreements with its counterparties, unless NEG
16 was bankruptcy remote and thereby insulated from a downgrade of the corporation. In addition,
17 PG&E Corporation had entered into capital infusion agreements with respect to several NEG
18 power plants that were under construction. Any bankruptcy by PG&E Corporation or a
19 downgrade of its credit rating would have constituted an event of default under such capital
20 infusion agreements.

21 87. Despite their knowledge and agreement, and in furtherance of their common plan or
22 design, defendants Glynn, Smith, Coulter, Metz, Cox, Reichardt, Davila, Williams, Lawrence,
23 Andrews, and Does 1-150, authorized, approved, and consented to the terms for PG&E to
24 implement the ring-fencing transactions, in violation of the First Priority Condition.

25 88. Through ring-fencing transactions, and in furtherance of their common plan or
26 design, defendants Glynn, Smith, Coulter, Metz, Cox, Reichardt, Davila, Williams, Lawrence,
27 Andrews and Does 1-150, ensured that PG&E Corporation would not have to return the
28 ratepayer generated funds that it appropriated from PG&E to subsidize its interests and that of its

1 other subsidiaries and affiliates.

2 ///

3 89. On January 16, 2001, S&P reduced the long-term corporate credit ratings of PG&E
4 Corporation and PG&E from BBB- to CC. On January 17, 2001 Moody's Investor Service
5 ("Moody's") reduced PG&E's senior unsecured debt rating from Baa3 to Caa3 and reduced its
6 short term rating for commercial paper and extendible commercial notes from Prime -3 to "Not
7 Prime." Moody's also reduced PG&E Corporation's issuer rating from Baa3 to Caa3 and its
8 short term commercial paper rating from Prime -3 to "Not Prime." These downgrade in ratings,
9 resulted in below minimum investment grade ratings for PG&E Corporation and PG&E.

10 90. The downgrade of PG&E Corporation's ratings below investment grade constituted
11 an event of default under PG&E Corporation's \$436 million short-term and \$500 million long-
12 term revolving credit facilities, entitling the lenders to accelerate approximately \$434 million of
13 debt outstanding under the \$500 million facility. As of January 17, 2001, approximately \$43
14 million out of \$501 million of PG&E Corporation's commercial paper outstanding came due and
15 PG&E Corporation failed to pay the maturing debt.

16 91. At the time of the downgrade of its ratings, PG&E Corporation was the guarantor of
17 obligations of its energy trading subsidiaries, PG&E Energy Trading Power, L.P., PG&E Energy
18 Trading-Gas Corporation and PG&E Energy Trading-Canada Corporation, in an aggregate
19 amount of \$1.9 billion. As a result of the downgrade of PG&E Corporation's long term debt
20 below investment grade, counterparties to many of the underlying trading agreements were
21 entitled to demand substitute credit support from the energy trading subsidiaries, and if the
22 support was not provided, declare a default, terminate the agreement, and make a claim under
23 the parent guarantee. If claims were made under a substantial portion of the outstanding
24 guarantees, PG&E Corporation would not have been able to timely honor the guarantees. Thus,
25 PG&E Corporation began efforts to replace these guarantees with guarantees from an alternate
26 investment-grade subsidiary of PG&E National Energy Group, Inc. in order to prevent the
27 counterparties from making claims against the guarantees.

28 92. The downgrade of PG&E Corporation's long-term debt below investment grade by

1 S&P and Moody's, and the failure by PG&E Corporation to provide an acceptable letter of credit
2 in the required amounts within the required time periods, would have also triggered PG&E's
3 infusion obligations under various capital infusion agreements in an aggregate amount of \$1
4 billion. If PG&E Corporation was unable to make such capital infusions, it would have been in
5 default under the agreements.

6 **PG&E Corporation's Refinancing of Its Debt Obligations**

7 93. On March 2, 2001, PG&E Corporation refinanced its debt obligations with \$1 billion
8 in proceeds from two term loans under a common credit agreement with General Electric Capital
9 Corporation and Lehman Commercial Paper Inc. ("Credit Agreement"). Notwithstanding its
10 assurances to the CPUC and its agreement to abide by the First Priority Condition, PG&E
11 Corporation agreed to the terms under the Credit Agreement which included a provision that
12 prohibited PG&E Corporation from taking certain actions, including a restriction against
13 declaring or paying any dividends for as long as the loans are outstanding.

14 94. PG&E Corporation's agreement to the terms of the Credit Agreement was
15 authorized, approved and consent to by its board of directors.

16 95. On June 15, 2001, NEG entered into a letter of credit facility with Chase Manhattan
17 Bank in the amount of \$550 million ("Letter of Credit"). Notwithstanding PG&E Corporation's
18 control over NEG and its agreement to abide by the First Priority Condition, NEG agreed to the
19 terms under the credit agreement which included a provision that restricted transactions between
20 PG&E Corporation and NEG, including a prohibition against any commingling of NEG assets
21 with PG&E Corporation or PG&E and restrictions on declaring or paying any dividends.

22 96. By agreeing to the terms of the Credit Agreement and Letter of Credit, PG&E
23 Corporation impaired its ability to assist PG&E, in violation of the First Priority Condition.

24 **CPUC Investigation**

25 97. On April 3, 2001, the CPUC initiated investigative proceedings regarding
26 transactions between the three major California investor-owned utilities and their respective
27 holding companies and affiliates, including PG&E and PG&E Corporation. The purpose of the
28 investigation is to determine: (1) whether these entities engaged in conduct, including but not

1 limited to the holding companies' failure to infuse capital into their respective utilities and ring
2 fencing transactions, that violated relevant statutes and CPUC decisions that allowed them to
3 establish holding company structures; and (2) whether additional rules, conditions, or other
4 changes are needed to protect ratepayers and the public from dangers of abuse of the holding
5 company structure. (I.01-04-002).

6 98. PG&E Corporation, and the holding companies of the other two California
7 utilities, filed motions, asserting that the CPUC never had jurisdiction to impose
8 conditions upon them, including the Conditions in the Holding Company Proceedings
9 because they are not utilities, and therefore the CPUC also lacked jurisdiction to enforce such
10 conditions or to investigate whether changes to the conditions are warranted to protect the
11 public interest.

12 99. On April 6, 2001, three days after the CPUC initiated its investigation proceedings
13 regarding PG&E and PG&E Corporation, PG&E filed bankruptcy pursuant to Chapter 11 of
14 Title 11 of the United States Code in the United States Bankruptcy Court for the Northern
15 District of California, Case No. 01-30928-DM ("the Bankruptcy Proceeding"). PG&E
16 Corporation is not the debtor-in-possession in the Bankruptcy Proceeding.

17 **CAUSE OF ACTION ALLEGED AGAINST ALL DEFENDANTS**

18 **Violation of the Unfair Competition Act**

19 **(Business & Professions Code § 17200)**

20 100. Plaintiff realleges and incorporates by reference paragraphs 1 through 99 inclusive
21 as if fully set forth herein.

22 101. Section 17200 of the Business & Professions Code prohibits unfair competition,
23 which includes any unlawful, unfair or fraudulent business act or practice.

24 102. The Conditions and the Affiliate Rules constitute law which is binding upon PG&E
25 and PG&E Corporation.

26 103. Defendants, and each of them, have engaged in and are still engaged in unlawful,
27 unfair and fraudulent business acts or practices, which include, but are not limited to, the
28 following:

1 ///

2 ///

3 (a) For the sole purpose of obtaining approval for the holding company structure,
4 PG&E, on behalf of itself and PG&E Corporation, represented to the CPUC under
5 oath that the First Priority Condition meant that PG&E Corporation would infuse
6 money into the PG&E, if needed, in furtherance of PG&E's duty to serve the
7 public, and PG&E Corporation, and its board of directors, purposely agreed to the
8 Conditions, but neither the PG&E Board of Directors nor PG&E management
9 ever intended to abide by the Conditions or their representations from the time
10 they were made;

11 (b) Through its board of directors, PG&E Corporation is using its ownership and
12 control over PG&E to subordinate the interests of PG&E and PG&E's ratepayers
13 to the interests of PG&E Corporation and its other affiliates, by using ratepayer
14 generated PG&E funds to: (i) subsidize its own operations and those of its other
15 affiliates; and (ii) accomplish its overall objective of evading CPUC's regulatory
16 authority over its utility operations;

17 (c) PG&E, on behalf of itself and PG&E Corporation, deliberately failed to disclose
18 its true intentions to the CPUC during the Holding Company Proceedings, thereby
19 misleading the CPUC into approving the holding company structure;

20 (d) In furtherance of this intent, and despite having agreed to the Conditions, PG&E
21 Corporation, subordinated the interests of PG&E and PG&E's ratepayers to the
22 interests of PG&E Corporation and its affiliates, other than PG&E, by transferring
23 ratepayer-funded assets, including revenues, from PG&E to PG&E Corporation,
24 for the benefit of PG&E Corporation and its affiliates, other than PG&E, even
25 when PG&E began to experience financial distress, and did so with no intent to
26 infuse capital into PG&E when it needed capital to operate, in violation of the
27 First Priority, Cross-Subsidization and Stand-Alone Conditions;

28 (e) PG&E Corporation failed to infuse capital into PG&E, as required by the First

1 Priority Condition, when it began experiencing financial distress even though
2 during the period between 1997 through 1999, it appropriated over \$4 billion
3 from revenues that PG&E received from high frozen rates paid by ratepayers and
4 it had excess cash reserves available;

5 (f) PG&E Corporation further subordinated the interests of PG&E and PG&E's
6 ratepayers to the interests of its other affiliates by implementing ring-fencing
7 transactions to protect the assets of those other affiliates from bankruptcy or
8 credit downgrading, and to ensure that it would be impossible for PG&E to access
9 such assets and to impair PG&E Corporation's ability to provide cash to PG&E,
10 in violation of the First Priority;

11 (g) PG&E, on behalf of itself and PG&E Corporation, gave assurances to the CPUC
12 that it understood that the First Priority Condition required it to provide cash to
13 PG&E if it needed it when it sought approval for the holding company structure,
14 and the boards of directors of both PG&E and PG&E Corporation approved and
15 consented to the Conditions, in an attempt to further its objective of becoming the
16 largest unregulated companies. PG&E Corporation now asserts that the CPUC
17 has no jurisdiction to enforce any of the Conditions against it and attempts to rely
18 upon an interpretation of the First Priority Condition which contradicts the
19 assurances given to the CPUC by PG&E on behalf of itself and PG&E
20 Corporation.

21 104. As a direct consequence of the acts of the defendants, and each of them, ratepayers
22 have been, and will continue to be, deprived of the benefits and protections which the CPUC
23 imposed for their benefit, including but not limited to, the prohibition against the use of
24 ratepayer funds to cross-subsidize the operations and activities of PG&E Corporation and its
25 subsidiaries and affiliates other than PG&E, and rate regulation.

26 105. Defendants' continuing wrongful conduct as alleged above, unless and until
27 restrained by an order of this Court, will further cause great and irreparable harm to ratepayers.

28 106. WHEREFORE, plaintiff prays for judgment against defendants, and each of them

1 as follows:

2 ///

3 1. For an order requiring defendants, and each of them, to show cause, if any they have,
4 why they should not be enjoined during the pendency of this action;

5 2. For a preliminary and permanent injunction, as authorized by Business & Professions
6 Code § 17203, enjoining defendants, and each of them, their successors, agents, representatives,
7 employees and all persons acting in concert with them, from engaging in unfair competition as
8 defined in Business & Professions Code § 17200, including, but not limited to the types of acts
9 or practices alleged herein;

10 3. For an order appointing a receiver;

11 4. For an order directing defendants to pay restitution in an amount according to proof;

12 5. For an order assessing civil penalties in the amount of Two Thousand Five Hundred
13 Dollars (\$2,500) against each defendant for each violation of Business & Professions Code §
14 17200, as authorized by Business & Professions Code § 17206, and that the Court assess a total
15 penalty of not less than Five Hundred Million Dollars (\$500,000,000);

16 6. For costs of suit incurred herein;

17 7. For such other and further relief as the nature of the case may require and the court
18 deems appropriate and just.

19 Dated: July 12, 2002.

20 BILL LOCKYER
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21 RICHARD FRANK
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22 KEN ALEX
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23 By _____
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November 30, 2001

PG&E Letter DCL-01-119

U.S. Nuclear Regulatory Commission
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Docket No. 50-275, OL-DPR-80

Docket No. 50-323, OL-DPR-82

Diablo Canyon Power Plant, Units 1 and 2

Application for License Transfers and Conforming Administrative License
Amendments

Dear Commissioners and Staff:

Pursuant to Section 184 of the Atomic Energy Act and 10 CFR 50.80, Pacific Gas and Electric Company (PG&E) herein requests Nuclear Regulatory Commission (NRC) consent to the transfer of the NRC operating licenses for the Diablo Canyon Power Plant, Units 1 and 2 (DCPP). PG&E is requesting these transfers in connection with a comprehensive Plan of Reorganization (Plan) for PG&E filed under Chapter 11 of the United States Bankruptcy Code.

On April 6, 2001, PG&E filed a Chapter 11 petition for relief. PG&E's goal was to halt the deterioration of its financial position, restore the company to financial health, and continue supplying electricity and gas in the normal course of business. On September 20, 2001, PG&E filed with the Bankruptcy Court the comprehensive Plan and Disclosure Statement. Under the Plan, operating authority for DCPP will be transferred to a new generating company named Electric Generation LLC (Gen) and ownership of the two-unit generating asset will be assigned to a wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear).

PG&E also requests, pursuant to 10 CFR 50.90, conforming amendments to the two facility operating licenses. Gen would become the licensee authorized to possess, use, and operate the units and Nuclear would be licensed only to possess (own) the plant. The enclosed application includes mark-ups of the facility operating licenses to reflect the conforming license amendments associated with the proposed transfers.

As discussed in this application, the Plan involves a complete restructuring of PG&E's businesses and operations. Through the proposed restructuring, PG&E anticipates that value realized will provide necessary cash and increased debt capacity to enable it to repay creditors, restructure existing debt, and emerge from the Chapter 11 bankruptcy case. PG&E anticipates that the restructuring will create new businesses, including Gen, that will be financially sound going forward.

1/17 6 Copies
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APC1



Pursuant to the Plan, PG&E will disaggregate and restructure its current businesses and divide its operations and assets among four separate operating companies. PG&E will contribute certain assets to each of the entities. The majority of the assets and liabilities associated with the current electric transmission business of PG&E will be contributed to ETrans LLC (ETrans); the majority of PG&E's gas transmission assets and liabilities will be contributed to GTrans LLC (GTrans); and the majority of the assets and liabilities associated with the current generation business of PG&E, including DCP, will be contributed to Gen or its subsidiaries. In addition, PG&E has created a separate corporation called Newco Energy Corporation (Newco) to hold the membership interests of each of ETrans, GTrans and Gen. PG&E is the sole shareholder of Newco. After the assets and liabilities are transferred to the newly-formed entities, PG&E will declare and pay a dividend of the outstanding common stock of Newco to PG&E Corporation (PG&E's parent corporation), and each of ETrans, GTrans and Gen will thereafter be an indirect wholly-owned subsidiary of PG&E Corporation, which will change its name.

PG&E has also created subsidiaries of Gen to hold specific assets and project-specific liabilities. For example, Nuclear is a subsidiary of Gen created to hold the ownership interest in DCP. In addition to DCP, PG&E will transfer to Nuclear the beneficial interest in the Nuclear Decommissioning Trust associated with DCP. Gen will lease DCP from Nuclear and operate DCP.

While certain other assets will be sold and some assets not needed in the utility businesses may be transferred to one or more special purpose entities, the remaining assets will be retained by PG&E. PG&E, as a reorganized company, will continue to conduct local electric and gas distribution operations and associated customer services. Upon consummation of the disaggregation of PG&E's businesses as described above, PG&E Corporation will declare a dividend and distribute the common stock of PG&E to its public shareholders, separating PG&E from PG&E Corporation.¹

In connection with the proposed restructuring and the transfer of the DCP assets, no physical changes will be made to DCP and there will be no significant changes to management of the nuclear station (including to the key management employees currently responsible for operation of DCP). The existing onsite nuclear organizations at DCP will be transferred to Gen and the current nuclear personnel will become employees of Gen and continue to operate the plant. Operation will continue to be in accordance with the terms and conditions of the present licenses and in accordance with the present licensing bases.

¹ Reorganized PG&E will retain ownership of and responsibility for the shutdown Humboldt Bay Power Plant, Unit 3. By separate application, PG&E is seeking NRC approval, if necessary, of an indirect transfer of the NRC license for Humboldt Bay Power Plant, Unit 3.



Additional information pertaining to the proposed license transfers and administrative license amendments is included in the enclosed application and supporting attachments. This information demonstrates that: (1) the reorganization and license transfers will not adversely impact the operation of DCPD or adversely impact the managerial or technical qualifications of the licensed operator; (2) the licensees will be financially qualified to own, operate, and maintain the units; (3) the provisions of the Plan related to transfer of the beneficial interest in the Nuclear Decommissioning Trust assure that there will be no adverse impact on the existing assurance of adequate decommissioning funding for DCPD; and (4) the license transfers will not result in foreign ownership, control, or domination over the licensee.

Additionally, under the proposed license amendments, provisions are made for continuing the existing antitrust operating license conditions such that no further antitrust review is required in connection with the proposed license transfers.

With regard to the conforming amendments to the licenses, these changes fall within the NRC's generic finding of no significant hazards considerations under 10 CFR 2.1315(a). Information supporting categorical exclusion from environmental review under 10 CFR 51.22 is also provided.

PG&E is notifying the State of California of the request for conforming license amendments by transmitting a copy of this letter and application to the designated state officials.

As explained in the attached application, pursuant to the Bankruptcy Code, the Plan must be approved by the Bankruptcy Court. A number of filings, approvals, or rulings are also required or desirable at the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and the Internal Revenue Service. PG&E will make the necessary filings and expects to obtain all the necessary approvals or rulings in order to effectuate the Plan by the end of 2002.

Accordingly, PG&E requests NRC consent to the license transfers and approval of the conforming administrative license amendments as promptly as possible, but no later than July 31, 2002. Such NRC consent should be immediately effective upon issuance and, consistent with NRC practice, should authorize the transfers occurring at any time through twelve months following the date of approval or such later date as may be permitted by the NRC. This schedule will allow sufficient time for other approvals needed prior to closing on the reorganization, for arrangement of financing and completion of administrative actions necessary to complete the transactions, and for contingencies. PG&E will keep the NRC informed if there are any significant changes in the status of the other required approvals or other developments that have an impact on the schedule.



This application includes Enclosure 8 that contains confidential commercial or financial information. PG&E requests that the information be withheld from public disclosure pursuant to 10 CFR 9.17(a)(4) and 10 CFR 2.790. The proprietary nature of this enclosure is described in the attached Affidavit. A non-proprietary version of Enclosure 8, suitable for public disclosure, is also provided with this application.

If you have any questions about this matter, please contact Terry Grebel at (805) 595-6382. Service upon the applicant of comments, hearing requests, intervention petitions, or other pleadings should be made to the undersigned, and to Richard F. Locke, Esq., Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, California 94105, and to David A. Repka, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005. Additional service should be made to Earle O'Donnell, Esq., Dewey Ballantine LLP, 1775 Pennsylvania Avenue, N.W., Washington, DC 20006.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg M. Rueger', written over the printed name.

Gregory M. Rueger
Senior Vice President -
Generation and Chief Nuclear Officer

cc: Edgar Bailey, DHS (w/o enclosures)
Ellis W. Merschoff (w/proprietary enclosures)
David L. Proulx (w/proprietary enclosures)
Girija S. Shukla (w/proprietary enclosures)
Diablo Distribution (w/o enclosures)

Enclosures

NRC LICENSE TRANSFER APPLICATION

November 30, 2001

Submitted by

Pacific Gas and Electric Company

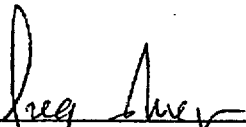
**Diablo Canyon Power Plant, Units 1 and 2
Facility Operating License Nos. DPR-80 and DPR-82
NRC Docket Nos. 50-275, 50-323**

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-275 Facility Operating License No. DPR-80
Diablo Canyon Power Plant Units 1 and 2)	Docket No. 50-323 Facility Operating License No. DPR-82

AFFIDAVIT

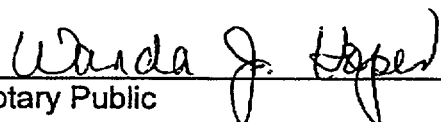
I, Gregory M. Rueger, first being duly sworn, depose and say: that I am Senior Vice President - Generation and Chief Nuclear Officer of Pacific Gas and Electric Company, the licensee herein; that I have full power and authority to sign and file this Application with the Nuclear Regulatory Commission on behalf of said company; that I am familiar with the contents thereof; and that the facts stated therein are true and correct to the best of my knowledge, information, and belief.



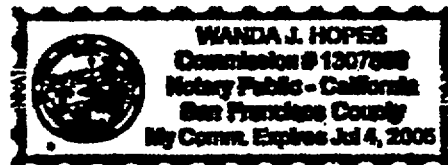
Gregory M. Rueger
Senior Vice President -
Generation and Chief Nuclear Officer

Subscribed and sworn to before me, this 2nd day of November, 2001.

State of California
County of San Francisco



Notary Public



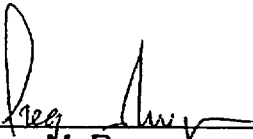
AFFIDAVIT OF GREGORY M. RUEGER

I, Gregory M. Rueger, am Senior Vice President Generation and Chief Nuclear Officer of Pacific Gas and Electric Company (PG&E), and do hereby affirm and state:

1. I am authorized to execute this affidavit on behalf of PG&E and PG&E's sole common shareholder, PG&E Corporation.
2. PG&E is providing information in support of its Application for License Transfers and Conforming Administrative License Amendments (NRC Facility Operating License Nos. DPR-80 and DPR-82) (Diablo Canyon Power Plant, Units 1 and 2). The information specifically being provided in Enclosure 8 includes financial projections related to the plan of reorganization for PG&E as filed with the United States Bankruptcy Court and related to the continued operation of Diablo Canyon Units 1 and 2. While some of the information in Enclosure 8 has been publicly disclosed in the bankruptcy proceeding, Enclosure 8 includes other proprietary commercial and financial information not previously disclosed that should be held in confidence by the NRC pursuant to the policy reflected in 10 CFR 2.790(a)(4) and 9.17(a)(4), because:
 - i. This information is and has been held in confidence by PG&E and its affiliated companies.
 - ii. This information is of a type that is held in confidence by PG&E and its affiliates, and there is a rational basis for doing so because the information contains sensitive financial information concerning assets, projected revenues and operating expenses.
 - iii. This information is being transmitted to the NRC in confidence.
 - iv. Other than the information included in the bankruptcy filing, this information is not available in public sources and could not be gathered readily from other publicly available information.
 - v. Public disclosure of this information would create substantial harm to the competitive position of PG&E and its successors by disclosing internal financial projections.

AFFIDAVIT OF GREGORY M. RUEGER (Continued)


3. Accordingly, PG&E requests, on behalf of itself, PG&E Corporation, Electric Generation LLC, and Diablo Canyon LLC, that the designated information be withheld from public disclosure pursuant to the policy reflected in 10 CFR 2.790(a)(4) and 9.17(a)(4).



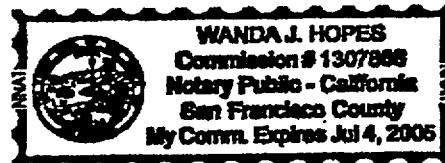
Gregory M. Rueger
Senior Vice President –
Generation and Chief Nuclear Officer

Subscribed and sworn to before me, this 2nd day of November, 2001.

State of California
County of San Francisco



Notary Public



**APPLICATION FOR CONSENT TO LICENSE TRANSFERS AND
CONFORMING LICENSE AMENDMENTS
FOR DIABLO CANYON POWER PLANT, UNITS 1 AND 2**

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Application for Consent to License Transfers and Conforming License Amendments For Diablo Canyon Power Plant, Units 1 and 2

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LIST OF ENCLOSURES

- Enclosure 1:*** Plan of Reorganization and Disclosure Statement
- Enclosure 2:*** Proposed Corporate Structure of PG&E Corporation and Principal Subsidiaries
- Enclosure 3:*** Form of Diablo Canyon Facility Lease By and Between Diablo Canyon LLC, as Lessor, and Electric Generation LLC, as Lessee
- Enclosure 4:*** Marked-up Pages of Operating License for Proposed Conforming Changes Related to DCP Unit 1
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- Enclosure 6:*** No Significant Hazards Considerations Determination
- Enclosure 7:*** Form of Bilateral Power Sales Agreement By and Between Electric Generation LLC and Reorganized PG&E
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**Application For Consent To License Transfers And Conforming License
Amendments For Diablo Canyon Power Plant, Units 1 And 2**

I. Introduction/Overview

Pacific Gas and Electric Company (PG&E) submits the following information and requests, pursuant to 10 CFR 50.80, Nuclear Regulatory Commission (NRC) consent to the transfer of the operating licenses for the Diablo Canyon Power Plant, Units 1 and 2 (DCPP). This request is being made in support of a comprehensive reorganization and restructuring of the businesses and operations of PG&E, including its nuclear and non-nuclear generation, transmission, and electricity distribution businesses, as is described further below.

On April 6, 2001, PG&E filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. PG&E's goal was to halt the deterioration of its financial position, restore the company to financial health, and continue supplying electricity and gas in the normal course of business. On September 20, 2001, PG&E and its parent corporation, PG&E Corporation, filed with the Bankruptcy Court a comprehensive Plan of Reorganization (Plan) for PG&E and a Disclosure Statement. Under the Plan, operating authority for DCPP will be transferred to a new limited liability company named Electric Generation LLC (Gen) and ownership of the two-unit generating asset will be assigned to a wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear).

This transfer request specifically relates to the transfer of the authorities to "possess, use, and operate" the facilities under the following Facility Operating Licenses:

- Diablo Canyon Unit 1 DPR- 80
- Diablo Canyon Unit 2 DPR- 82

A copy of the Plan and Disclosure Statement filed with the Bankruptcy Court is provided as Enclosure 1.² The proposed reorganization as it relates to PG&E and DCPP is summarized and illustrated in Enclosure 2.

In essence, under the Plan, the current businesses of PG&E will be disaggregated and restructured. PG&E will divide its operations and the assets of its business lines among four separate operating companies. The majority of the assets and liabilities associated with the current electric transmission business of PG&E will be contributed to ETrans LLC (ETrans); the majority of

² The Plan will likely be amended from time to time in ways that are not material to this application to the NRC and PG&E expects to file an amended Plan and Disclosure Statement with the Bankruptcy Court in the future.

PG&E's gas transmission assets and liabilities will be contributed to GTrans LLC (GTrans); and the majority of the assets and liabilities associated with the current generation business, including DCP, will be contributed to Gen or its subsidiaries. In addition, PG&E has created a separate corporation called Newco Energy Corporation (Newco) to hold the membership interests of each of ETrans, GTrans and Gen. PG&E is the sole shareholder of Newco. After the assets are transferred to the newly-formed entities, PG&E will declare and pay a dividend of the outstanding common stock of Newco to PG&E Corporation, and each of ETrans, GTrans and Gen will thereafter be an indirect wholly-owned subsidiary of PG&E Corporation. PG&E Corporation will also change its name.

PG&E, as a reorganized company, will retain most of the remaining assets and liabilities, and will continue to conduct local electric and gas distribution operations and associated customer services. (PG&E will also retain ownership of and responsibility for the shutdown Humboldt Bay Power Plant, Unit 3.) Upon consummation of the disaggregation of PG&E's businesses, PG&E Corporation will declare a dividend and distribute the common stock of PG&E to its public shareholders, separating PG&E from PG&E Corporation.

PG&E has also created subsidiaries of Gen to hold specific assets and project-specific liabilities related to Gen's line of business. Nuclear is a subsidiary of Gen created to hold the ownership in DCP. Gen will also have multiple subsidiaries formed to hold its hydroelectric assets.

Because Nuclear will hold the ownership interest in DCP, Nuclear will need to become a licensed owner. Nuclear will lease DCP to Gen under lease terms that assign to Gen the entitlement to the output and capacity of DCP and that make Gen responsible for all costs of plant operation. A copy of the form of the facility lease for DCP between Nuclear and Gen is provided as Enclosure 3.

Gen will operate DCP and will accordingly need to become the operating licensee. Gen will operate the units under the same terms and conditions included in the present licenses. No physical changes will be made to the plant as a result of the license transfers, and there will be no significant changes in the day-to-day management of, and operating procedures for, the plant.

The present onsite nuclear organizations at DCP will not change following the transfer to Gen. The onsite nuclear employees of PG&E will become employees of Gen and will continue to operate the units. Offsite corporate resources will continue to be provided, either as a result of transfers to Gen or by service agreements. The technical qualifications of Gen will be equivalent to those of PG&E presently, and specific personnel qualification requirements established in plant Technical Specifications, plant procedures, and applicable industry standards will continue to be met.

As discussed further below, the licensees will be viable businesses and have the financial qualifications to own and operate DCP. Gen will operate as an

electricity generation company, with diversified generation assets. Substantially all of Gen's output will be sold to the reorganized PG&E pursuant to a bilateral contract described below. Gen's financial projections provided in accordance with NRC regulations demonstrate that Gen will, in the aggregate, fully recover its costs by the sale of electricity generated by its generation capacity and its power purchase agreements.

As also discussed further below, decommissioning funding assurance for DCPD will be preserved. The beneficial interest in the Nuclear Decommissioning Trust associated with DCPD will be transferred to Nuclear. Although Nuclear will not be a rate-regulated electric utility, PG&E anticipates that the net cash value (after tax) of the interest transferred will meet the NRC decommissioning funding requirements established by 10 CFR 50.75(c).

Because the proposed restructuring and license transfers affect the named licensees under the NRC operating licenses, PG&E also requests, in accordance with 10 CFR 50.90, NRC approval of certain administrative amendments to conform the operating licenses. Mark-ups showing the proposed changes are provided in Enclosures 4 and 5. In the license markups, with respect to ongoing operational matters Gen succeeds and replaces PG&E as the operator of DCPD. Nuclear is identified and authorized as the facility owner. References to PG&E as the initial licensed operator are retained for certain historical license conditions. And, with respect to the existing antitrust license conditions, Gen, ETrans, and PG&E are reflected as the responsible licensees, in effect jointly and severally obligated to meet those conditions. ETrans and PG&E will be licensees solely for purposes of the antitrust conditions.³

In Enclosure 6, PG&E is providing an evaluation confirming the NRC's generic determination in 10 CFR 2.1315(a) that the proposed conforming license changes involve no significant hazards considerations.

Administrative changes to documents other than the plant operating licenses and Technical Specifications may be necessary upon completing the transfers to reflect Gen as the new operator and Nuclear as the owner. Any changes to documents such as the Updated Final Safety Analysis Report, the Physical Security Plan, the Quality Assurance Manual, and the Emergency Plan will be made in a timely fashion after the transfers during routine updates and as required by regulations such as 10 CFR 50.71(e) and 50.54. Changes to other documents such as procedures and drawings will be made, where necessary, in accordance with routine or periodic internal update processes as applicable to those documents.

³

With the exception of Diablo Canyon LLC (Nuclear), which will be the licensed owner of DCPD, the names of Gen, ETrans, and the other newly-created entities may be changed prior to implementation of the Plan. Prior to issuance of the conforming license amendments, PG&E will provide the NRC with the final names of the entities that will be licensees.

II. Statement of Purpose of the Transfers and the Nature of the Transaction Making the Transfers Desirable

As stated above, PG&E is requesting the proposed license transfers as part of a reorganization of PG&E's businesses and operations in support of the reorganization plan filed with the United States Bankruptcy Court. Through the proposed restructuring, PG&E anticipates that the value realized will provide necessary cash and increased debt capacity to enable it to repay all valid creditor claims in full, restructure existing debt, and emerge from the Chapter 11 bankruptcy case. PG&E anticipates that the restructuring will create new businesses, including Gen and Nuclear, that will be financially sound going forward.

After the transfer Gen will operate, maintain, and manage DCPD in accordance with the operating licenses and NRC requirements, and with the same regard for public and personnel safety exemplified to date by PG&E. The license transfers will not affect ongoing operational enhancements and improvement initiatives. Key managers now responsible for the safe operation of DCPD will remain responsible for its operation after the reorganization.

III. General Corporate Information Regarding Gen and Nuclear

The information required to be included in an application for the transfer of a license pursuant to 10 CFR 50.80 is set forth below. This information demonstrates that the requested transfers are consistent with the Atomic Energy Act and applicable NRC regulations.

A. Name and Address⁴

The licensed operator and the licensed owner of DCPD will be, respectively:

- Electric Generation LLC
77 Beale Street
32nd Floor
San Francisco, California 94105

⁴ In addition to Gen and Nuclear, as discussed below in Section III.G and as shown in the license mark-ups in Enclosures 4 and 5, ETrans will become a licensee, as a successor to PG&E with respect to the transmission system, and reorganized PG&E, which will be the distribution entity, will remain a licensee — each for the limited purpose of retaining responsibility for the existing antitrust license conditions. Presently, the addresses of these entities are: Pacific Gas and Electric Company, 77 Beale Street, P.O. Box 770000, San Francisco, California 94177; and ETrans LLC, 77 Beale Street, 32nd Floor, San Francisco, California 94105.

- Diablo Canyon LLC
77 Beale Street
32nd Floor
San Francisco, California 94105

B. Description of Business

Gen is a California limited liability company wholly-owned by Newco. PG&E is the sole shareholder of Newco. However, as part of implementation of the Plan, PG&E will declare and pay a dividend of the outstanding common stock of Newco to PG&E Corporation, and Gen will thereafter be an indirect wholly-owned subsidiary of PG&E Corporation, which will be renamed.

Gen will operate as a separate electricity generation company. PG&E's conventional hydroelectric generations facilities, the Helms Pumped Storage Facility, Irrigation District contracts, and DCPD all will be transferred to Gen or subsidiaries of Gen. Upon implementation of the Plan, Gen, as distinct from PG&E, will have responsibility for, and control over, operation of DCPD, including the presently proposed DCPD Independent Spent Fuel Storage Installation (ISFSI).

Nuclear is a California limited liability company and a wholly-owned subsidiary of Gen. Nuclear's business will be to own the DCPD assets and to lease these assets to Gen. PG&E's beneficial interest in the Nuclear Decommissioning Trust associated with DCPD will also be transferred to Nuclear, as described herein.

C. Organization and Management

1. Electric Generation LLC

The business of Gen will be conducted under the direction of a two person board of control (a limited liability company's equivalent to a corporation's board of directors). The members of the board of control, and their addresses, are as follows:

- Peter A. Darbee
PG&E Corporation
One Market Street
San Francisco, California 94105
- Bruce R. Worthington
PG&E Corporation
One Market Street
San Francisco, California 94105

The identity of any additional members of the board of control will be provided when available, and it is expected that all members will be citizens of the United States.

The principal officers of Gen, and their addresses, are as follows:

- Bruce R. Worthington
President and Treasurer
G&E Corporation
One Market Street
San Francisco, California 94105
- Gregory M. Rueger
Chief Nuclear Officer
Pacific Gas & Electric Company
77 Beale Street
San Francisco, California 94120
- Linda Y.H. Cheng
Corporate Secretary
PG&E Corporation
One Market Street
San Francisco, California 94105

The identity of any additional officers will be provided when available, and it is expected that all officers will be citizens of the United States.⁵

2. Diablo Canyon LLC

Nuclear will not have a board of control. The business of Nuclear will be conducted under the direction of its sole member, Gen.

Presently there are no officers of Nuclear and none are currently contemplated. The identity of any officers will be provided if appointed, and it is expected that any officers would be citizens of the United States.

D. No Foreign Ownership or Control

Neither Gen, Nuclear, nor Newco Energy Corporation, as indirect wholly-owned subsidiaries of re-named PG&E Corporation, will be owned, controlled, or dominated by foreign interests. As discussed above, all of the principal directors and officers of Gen and Nuclear are expected to be

⁵ The members of the board of directors or board of control, as appropriate, and the officers, of Newco Energy Corporation and ETrans presently are the same as for Gen, except that Mr. Rueger is an officer of Gen only.

citizens of the United States. PG&E Corporation is incorporated under the laws of the State of California. The shares of PG&E Corporation are publicly and widely held and are traded on the New York Stock Exchange.

ETrans and PG&E will be licensees only with respect to antitrust conditions. They will not own or control DCPD in any way that would implicate foreign ownership restrictions.

E. Technical Qualifications

As discussed above, Gen will lease DCPD from Nuclear and operate DCPD on its own behalf. Under the lease, Gen will have all the necessary authority and responsibility for operation of the units and for maintaining public health and safety and regulatory compliance.

The technical qualifications of Gen to carry out its operational responsibilities under the DCPD operating licenses will be equivalent to the present technical qualifications of PG&E. The management team from PG&E's present nuclear organization, from the Senior Vice President-Generation and Chief Nuclear Officer position down, will be transferred to Gen. These individuals have substantial nuclear experience and a proven record in nuclear plant operations. They will continue to meet the applicable industry qualifications standards.

The management and technical support functions will continue to conform to the pertinent provisions in the plant Technical Specifications and the DCPD Updated Final Safety Analysis Report. Concurrent with the license transfers, the current on-site organizations at DCPD will be transferred intact to Gen. The existing structure is shown in the DCPD Updated Final Safety Analysis Report, Figures 13.1-1 and 13.1-2 (Revision 14, November 2001), and will be unchanged. The existing organizational structure provides for clear lines of authority and responsibility for management of the plants.

In addition, it is expected that substantially all PG&E nuclear personnel in the existing DCPD nuclear organizations will become employees of Gen and will continue to be assigned to DCPD. These employees will take direction through the Gen management chain of command and their responsibilities will continue to be clear and unambiguous. The qualifications of the nuclear personnel generally will not change as a result of the restructuring and license transfers. The personnel qualification requirements presently defined in the respective plant Technical Specifications and DCPD Updated Final Safety Analysis Report will not be changed and will continue to be met.

Other corporate service or support functions (e.g., information technology, human resources, certain technical support functions) presently provided from PG&E's off-site corporate offices in San Francisco will be

reorganized, but will continue to be provided. It is expected that some of these functions will be transferred to Gen; others may be provided by service agreements with affiliates. The structure and mechanism for providing these support functions is currently under evaluation.

PG&E will also transfer to Gen or Nuclear all of the assets necessary for the operation of DCP. Among these assets are an extensive list of documents, including books, operating records, manuals, blue-prints, specifications, engineering design plans, procedures, etc. These documents include the official copies of records which the NRC requires a licensee to maintain. The vast majority of these documents are located at DCP; however, to the extent that other such documents are maintained at offices located elsewhere, custody and control of these documents will be assured as part of the transfer.

Further, as necessary, contracts with the Nuclear Steam Supply System supplier and other major vendors will be transferred to Gen or appropriate other contracts will be obtained in a timely manner. Other contracts and contractor relationships relating to the units will be transferred to Gen as appropriate.

In total, the technical qualifications of the Gen management, site, and support organizations will be equivalent to those of the existing PG&E nuclear organization. Sufficient qualified technical resources will be provided to support safe operation and maintenance of the units, and the plants will continue to be operated in accordance with the licenses, NRC requirements, licensing bases, and other NRC commitments.

F. Financial Qualifications

1. Operating Costs

Gen and Nuclear will have the financial qualifications to be the NRC licensees for DCP. Neither licensee will be a regulated "electric utility" as defined by the NRC, selling to traditional retail ratepayers with cost-of-service rates, but their ability to cover DCP operating, maintenance, fuel and other expenses will be established.

First, Nuclear, as the asset owner, will lease DCP to Gen under a lease agreement that will require Gen to cover all the operating and capital costs of DCP.

Second, Gen will operate as an electricity generation company that controls substantial generation assets, including DCP and hydroelectric generating stations. Pursuant to the Plan, Gen and the reorganized PG&E will enter into a long-term bilateral power sales agreement whereby Gen's output and the power produced

under its power purchase agreements will be sold at wholesale to reorganized PG&E. Pursuant to the bilateral contract, these sales will be in accordance with a rate approved by the Federal Energy Regulatory Commission (FERC) as just and reasonable. A copy of a form of the bilateral power sales agreement between Gen and reorganized PG&E is provided as Enclosure 7.⁶

Under the bilateral contract, reorganized PG&E will be entitled to purchase substantially all of the output of Gen's facilities and Gen's power purchase agreements, but electricity from DCPD and certain hydroelectric facilities will be purchased on a must-take basis. As currently contemplated, the contract will have a term of 12 years.

Under the NRC's regulations, 10 CFR 50.33(f)(2), a non-electric utility applicant for an operating license (or a transferee) must demonstrate that it has reasonable assurance of obtaining the funds necessary to cover the plant's estimated operating costs by submitting "estimates for total annual operating costs for each of the first five years of operation of the facility" as well as the "source(s) of funds to cover these costs." This showing is also referenced in the NRC's Standard Review Plan (SRP) on financial qualifications.⁷

Following the proposed restructuring and license transfers, the financing and financial reporting relevant to the generation businesses will occur at the Gen level of the organization. Gen will be a financially robust entity due to its diversified generation portfolio and the power sales contract with PG&E. The projected revenues from sales of electricity and capacity, the capitalization, and the extent and diversity of Gen's assets together provide the assurance that Gen will meet its financial obligations under the lease with Nuclear.

Enclosure 8 provides financial qualifications information at the Gen level. In accordance with 10 CFR 50.33(f)(2) and the SRP, Enclosure 8 includes a Projected Income Statement for Gen for the first five years of operation following the license transfer.⁸ The

⁶ The form of the bilateral contract provided in Enclosure 7 is subject to FERC approval and is subject to change before it is executed.

⁷ NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor License Financial Qualifications and Decommissioning Funding Assurance" (March 1999).

⁸ The financial information in Enclosure 8 represents an update of the financial information originally included in the September filing with the Bankruptcy Court in the Plan and Disclosure Statement. The information in the Plan and Disclosure Statement will be amended.

Projected Income Statement shows Gen's total annual operating costs. The source of funds to cover these costs will be operating revenues. The Projected Income Statement shows that the anticipated revenues from the sales of capacity and energy by Gen provide reasonable assurance of adequate funds to meet Gen's ongoing operating expenses. Enclosure 8 also includes certain key assumptions utilized in the Projected Income Statement, including the contract price for power under the bilateral power sales agreement and the assumed capacity factor for DCPD.

Gen's projected assets and revenue streams will also be more than sufficient to cover operating and maintenance costs that might be associated with a six-month shutdown of one of the DCPD units. Enclosure 8 includes a Projected Opening Balance Sheet demonstrating that Gen will have total assets exceeding \$2.5 billion. The total estimated operating costs attributable to DCPD are also shown in Enclosure 8. These costs include plant operations and maintenance costs, non-fuel capital additions, and nuclear fuel. The fixed operating costs of the units in the case of an extended shutdown would exclude the fuel costs, the non-fuel capital additions, as well as certain operation and maintenance costs. The projected assets of Gen, along with its substantial projected non-nuclear generation revenues, will provide reasonable assurance of Gen's financial capability to fund an extended shutdown.

Accordingly, Gen will fully meet or exceed the financial qualifications requirements of 10 CFR 50.33(f) and the guidelines of the SRP.

2. Decommissioning Funding Assurance

Decommissioning funding assurance for DCPD is presently provided by an external Nuclear Decommissioning Trust as authorized by 10 CFR 50.75(e)(1)(ii). In accordance with 10 CFR 50.75(f)(1), PG&E reported on the status of this fund on March 30, 2001.⁹

As discussed above, PG&E will transfer to Nuclear the beneficial interest in the Nuclear Decommissioning Trust associated with DCPD. The funds associated with the beneficial interest will be segregated from the licensees' assets and outside its administrative control. The trustee will continue to manage investment of the funds in accordance with a master trust

⁹ PG&E Letter DCL-01-026, HBL-01-005, from L.F. Womack, "Decommissioning Funding Reports for Diablo Canyon Power Plant Units 1 and 2 and Humboldt Bay Power Plant Unit 3" (March 30, 2001).

agreement and applicable NRC requirements and license conditions. The funds will be used only in a manner consistent with the terms of the trust agreements.

Presently, as it pertains to DCP, the Nuclear Decommissioning Trust includes a California Public Utilities Commission (CPUC) jurisdictional qualified trust and a Federal Energy Regulatory Commission (FERC) jurisdictional qualified trust. The liquidation value of the DCP component of the CPUC and FERC trusts, as of September 30, 2001, was approximately \$473.5 million for Unit 1 and \$627.5 million for Unit 2 (approximately \$1.101 billion combined). The transfer to Nuclear of PG&E's beneficial interest in the Trust associated with DCP is subject to the approval of Bankruptcy Court as part of confirmation of the Plan. The transfer of the beneficial interest is also subject to the approval of the FERC and, accordingly, PG&E will seek in its application for approvals associated with the transaction under Section 203 of the Federal Power Act the FERC's consent to the transfer of the Trust.¹⁰

PG&E also expects to seek a private letter ruling from the Internal Revenue Service (IRS) to assure that the beneficial interest in the qualified decommissioning funds can be transferred to Nuclear on a tax-free basis.

Enclosure 9 demonstrates the sufficiency of the current level of decommissioning funding for each of the two DCP units. Enclosure 9 shows that, assuming the present value of the DCP funds, plus credit for a contribution to the funds in 2002 as already approved through the CPUC ratemaking process, and no further contributions, the decommissioning trusts are adequately funded to meet the NRC-mandated decommissioning obligations. With credit for a 0.84 percent annual real rate of return through the present terms of the licenses, which is an assumed rate of return significantly less than the 2.0 percent allowed by NRC regulations, the value of the prepaid fund will provide the level of funding assurance required by 10 CFR 50.75(c), NRC Regulatory Guide 1.159, and NUREG-1307, Rev. 8.

¹⁰ The CPUC jurisdictional qualified trust and the FERC jurisdictional qualified trust also include money associated with the Humboldt Bay Power Plant, Unit 3. PG&E also maintains a CPUC jurisdictional non-qualified trust for the Humboldt Bay Power Plant, Unit 3. PG&E will retain its beneficial interests in the trusts for the purpose of decommissioning the Humboldt Bay Power Plant, Unit 3. All of the funds in the trusts associated with the Humboldt Bay Power Plant, Unit 3 will be segregated from the DCP components as part of the reorganization and separation process.

For NRC decommissioning purposes, the minimum amount as of December 31, 2001, that would need to be transferred, as a condition of the NRC license transfer, in order to meet NRC requirements, would be approximately \$347.9 million for Unit 1 and \$487.7 million for Unit 2. These amounts would satisfy NRC requirements for financial assurance for decommissioning in the form of prepayment in accordance with 10 CFR 50.75(e)(1)(i).¹¹ Additional amounts, beyond the NRC minimum and up to the total amount in the Nuclear Decommissioning Trust associated with DCPD at the time of the transfer, will be included in the beneficial interest transferred to Nuclear if and to the extent such transfer is approved by FERC and the Bankruptcy Court, as required.

3. Nuclear Insurance

Gen will, upon transfer of the assets and assumption of the licenses, assume the responsibility for providing the financial protection as required by 10 CFR Part 140, and for continuing site insurance coverage as required by Price-Anderson 10 CFR 50.54(w).¹²

Gen's obligations will include the responsibilities with respect to retrospective liability required in accordance with 10 CFR 140.21. Based upon the financial information provided in Enclosure 8, Gen will have the financial ability to meet this obligation.

G. Antitrust Considerations

The NRC has determined that antitrust reviews of post-operating license transfer applications are neither required nor authorized by the Atomic Energy Act, and therefore no antitrust information is required to be submitted with this post-operating license transfer application.¹³

¹¹ The NRC formulas in 10 CFR 50.75(c) include only those decommissioning costs incurred by licensees to remove a facility or site safely from service and reduce residual radioactivity to levels that permit: (1) release of the property for unrestricted use and termination of the license; or (2) release of the property under restricted conditions and termination of the license. The cost of dismantling or demolishing nonradiological systems and structures is not included in the NRC decommissioning cost estimates. The costs of managing and storing spent fuel on site until transfer to DOE are not included in the cost formulas. The Nuclear Decommissioning Trust for DCPD currently includes funds for non-NRC decommissioning costs.

¹² PG&E and/or Gen will in due course request modified Price-Anderson indemnity agreements and will make changes to nuclear liability and property coverages to reflect Gen as the operator and Nuclear as the owner, and each as an additional named insured.

¹³ Final Rule, Antitrust Review Authority: Clarification, 65 Fed. Reg. 44,649 (July 19, 2000); see also Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (June 18, 1999).

However, because the Plan calls for a restructuring that would split generation assets from the transmission and distribution businesses, the antitrust conditions currently included in Appendix C of the DCPD licenses would not and could not apply directly to Gen or Nuclear. The conditions also could not apply solely to PG&E.

Under the Plan, reorganized PG&E will be a local electric and gas distribution company serving retail customers in Northern and Central California. The company will have a service territory that covers 70,000 square miles. PG&E will contribute its approximately 18,500 circuit miles of electric transmission lines and cables located in California to ETrans. This will include approximately 1,300 circuit miles of 500 kV lines, 5,300 circuit miles of 230 kV lines, 6,000 circuit miles of 115kV lines and 4,000 circuit miles of 70 and 60 kV lines, and the towers, poles and underground conduit used to support the lines and cables. In addition, ETrans and its subsidiaries will receive all transmission substations, transmission control centers and associated operations systems, junctions and transmission switching stations and associated equipment necessary to support the lines and cables and all of the other land, entitlements, rights of way, access rights, personal, real and intellectual property and the business records necessary to operate the electric transmission business.

Currently, PG&E is a participating transmission owner in the California Independent System Operator (ISO), the entity that operates and controls most of the electric transmission facilities owned by the State's three major investor-owned utilities and provides open access to electric transmission services on a non-discriminatory basis. The ISO uses PG&E's transmission facilities to provide open access transmission service. As part of the restructuring, PG&E will assign to ETrans its contractual obligations as a participating transmission owner in the ISO.¹⁴

Accordingly, with respect to the existing antitrust license conditions, PG&E proposes to retain those conditions at this time. In order to preserve as nearly as possible the current antitrust obligations, PG&E proposes to retain reorganized PG&E on the license with respect to antitrust conditions and to add ETrans as a licensee for those conditions, as PG&E's successor with respect to the transmission system. PG&E and ETrans would be licensees for the limited purpose of the antitrust license

¹⁴

In December 1999, the FERC issued its final rule on Regional Transmission Organizations (RTOs) and encouraged utilities that own transmission systems to form RTOs on a voluntary basis. In several orders issued on July 12, 2001, the FERC indicated its strong preference for a single RTO that encompasses most of the Western United States, including California, and potentially Canadian provinces as well, that are interconnected in the region encompassed by the Western Systems Coordinating Council. No RTO is operational in the Western United States at this time. ETrans intends to join a FERC-approved Western RTO at such time as one is established and approved by FERC.

conditions. Along with Gen, PG&E and ETrans will be jointly and severally responsible for those conditions. This arrangement is reflected in the proposed license mark-ups provided in Enclosures 4 and 5.

H. Restricted Data

This application does not contain any Restricted Data or other classified defense information, and it is not expected that any such information will become involved. However, Gen and Nuclear will appropriately safeguard such information if any such information does become involved and will not permit any individual to have access to any such information until the Office of Personnel Management (the successor to the Civil Service Commission) shall have made an investigation and report to the NRC on the character, associations, and loyalty of such individual, and the NRC shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security of the United States.

I. No Environmental Impact

The proposed license transfers and conforming license amendments meet the categorical exclusion criteria of 10 CFR 51.22(c)(21), in that this application does no more than request the approval of a direct transfer of the NRC licenses and the associated conforming amendments to the licenses.

The proposed license transfers and conforming license amendments do not involve any changes to the physical operation of the plants and, accordingly, do not involve any increase in the amount or type of radiological effluents that may be allowed to be released offsite. The proposed transfers and license amendments also do not involve any increase in the amount or type of any non-radiological effluents that may be released offsite. Further, the proposed transfers and license amendments do not involve any increase in individual or cumulative occupational radiation exposure. In sum, the proposed actions will have no environmental impact. Accordingly, if necessary, PG&E requests that the NRC issue and publish a finding of no significant environmental impact pursuant to 10 CFR 51.32 and 51.35.

IV. Additional Information on Regulatory Issues

A. Design and Licensing Bases/Updates to FSAR

The proposed license transfers and conforming license amendments will designate Gen as the licensee authorized to possess, use, and operate the DCPN nuclear units. The transfers and amendments will not affect the physical configuration of the facilities or alter any substantive Technical Specification requirements under which the units operate. Gen will control or have access to the design and licensing basis documents to

the same extent as PG&E does now, and the proposed transfers and conforming amendments will not affect the design and licensing bases. Changes to the Updated Final Safety Analysis Report necessary to reflect the change in responsible licensee will be incorporated on a schedule that complies with 10 CFR 50.71(e) following NRC approval of the transfers.

B. Emergency Planning

Concurrent with the transfers of operating authority, Gen will assume authority and responsibility for functions necessary to fulfill the emergency planning and preparedness requirements of 10 CFR 50.47(b) and Part 50, Appendix E. No changes will be made that reduce the effectiveness of the emergency plans or that adversely impact compliance with the NRC's emergency planning requirements.

Prior to implementation of the reorganization, the emergency plans will be reviewed in detail and any needed changes to the plans or implementing procedures will be made in accordance with 10 CFR 50.54(q) and Part 50, Appendix E, Section V, as appropriate. No major substantive changes to the existing emergency plans presently implemented by PG&E are anticipated as a result of the transfer. Likewise, no substantive changes are anticipated to the existing emergency planning organization. Generally, the current emergency facilities, equipment, and organizations will be transferred to Gen or Nuclear. As necessary, ownership of off-site emergency sirens will be transferred to Gen or Nuclear and provisions will be made, as needed, for the sirens to continue to be located on poles owned by the distribution company.

As part of the transition process, PG&E will evaluate offsite corporate support for the emergency plan and will make provisions for continued offsite corporate support, if needed. Existing agreements for support from outside organizations and agencies also will be reviewed such that appropriate actions can be taken, at an appropriate time prior to the transfers, to notify the parties to such agreements of the Plan and Gen's anticipated responsibility for management and operation of DCP. Support agreements will be assigned to Gen, if necessary.

C. Offsite Power

Offsite power is currently provided to DCP over transmission facilities owned by PG&E and operated by the ISO. As a result of the disaggregation of assets, certain transmission assets will be transferred to ETrans. However, the physical facilities will not change as a result of the change in ownership of and operating authority for DCP. Independent sources of offsite power will continue to be provided to the stations in compliance with 10 CFR Part 50, Appendix A, General Design Criterion 17.

Gen will establish an interconnection agreement with ETrans and will have power for DCPD pursuant to the bilateral contract between Gen and PG&E. Additionally, certain nuclear protocols related to the operation of the transmission system are already established by agreement between PG&E and the ISO, and these nuclear protocols will remain in place. Under an agreement between Gen and ETrans, ETrans will be responsible for the relationship with the ISO. Also, the agreements with ETrans will address continued maintenance of the transmission equipment that ETrans will own.

D. Exclusion Area Control

As the current owner and plant operator of DCPD, PG&E has the authority to determine and control activities within the exclusion areas for the DCPD plant site at least to the extent required by 10 CFR Part 100. As a result of the transfer of ownership of DCPD and related assets to Nuclear, and the lease agreement between Nuclear and Gen, Gen will have the required exclusion area control. Nuclear will own, and lease to Gen, essentially the same property as PG&E presently owns and controls, with the exception of certain transmission facilities. With respect to the transmission facilities, maintenance and switchyard agreements with ETrans will provide Gen with the right to determine activities in the exclusion area to the extent necessary to meet Part 100. This authority will extend to any activities of ETrans or other authorized entity with respect to maintenance of the switchyard and transmission facilities.

With respect to other activities unrelated to plant operations that will occur within the exclusion area previously identified in the DCPD Updated Final Safety Analysis Reports, there will be no changes. Gen will assume responsibility for the emergency plans as discussed above.

E. Security

Concurrent with the transfer of ownership and operating authority, Gen will assume authority and responsibility for the functions necessary to fulfill the security requirements of 10 CFR Part 73. No material changes are expected to the existing physical security organization, guard training and qualifications, safeguards contingency plans, or equipment. Accordingly, the proposed license transfers will not impact compliance with the NRC's security requirements.

Existing agreements for support from outside organizations and agencies will be reviewed such that appropriate actions can be taken prior to the transfers to notify parties to such agreements of Gen's relationship with PG&E, the plan of reorganization, and Gen's anticipated responsibility for management and operation of DCPD. Support agreements will be assigned to Gen, if necessary.

Any changes to the security plans to reflect the transfer of responsibility will not decrease the effectiveness of the plans and will be made in accordance with 10 CFR 50.54(p).

F. Quality Assurance

The proposed transfers will not impact compliance with the quality assurance requirements of 10 CFR Part 50, Appendix B, nor will they reduce the commitments in the NRC-accepted quality assurance programs for DCP. Concurrent with the transfers of ownership and operating authority, Gen will assume authority and ultimate responsibility for present functions associated with the quality assurance programs. The transfers of the licenses to Gen will not degrade the effectiveness of these functions. Any changes to the Quality Assurance Program to reflect the transition will not reduce the commitments in the quality assurance program description and will be handled in accordance with 10 CFR 50.54(a).

G. Training

The proposed license transfer will not impact compliance with the operator re-qualification program requirements of 10 CFR Part 50.54 and related sections, nor maintenance of the Institute of Nuclear Power Operations accreditation for licensed and non-licensed personnel training. Concurrent with the license transfers, Gen will assume responsibility for implementation of the present operator training programs. Changes to the programs to reflect the transition will not decrease the scope of the approved operator requalification program and will be made in accordance with 10 CFR 50.54(i).

H. Spent Fuel Storage

Upon transfer of ownership and operating responsibility, Gen will assume responsibility for safe storage of the fuel as one of its DCP operational responsibilities. Nuclear will assume title to spent nuclear fuel located at DCP. PG&E will assign to Nuclear its rights and obligations under the Standard Contract with the Department of Energy, as well as related claims.

By separate license and amendment applications, PG&E in the near future will request a site-specific Part 72 license for the proposed DCP ISFSI and will request related amendments to the DCP Part 50 license. PG&E anticipates that, given the current anticipated schedules, the Part 72 ISFSI license will be issued after the license transfers requested herein and after the implementation of the proposed reorganization. Accordingly, PG&E anticipates that Gen will become the initial ISFSI licensee as operator of that facility.

V. Other Approvals

The Plan must be approved by the Bankruptcy Court pursuant to Section 1129 of the Bankruptcy Code, 11 USC 1129. As discussed above, PG&E has filed the Plan and Disclosure Statement. The Bankruptcy Court will hold a hearing to consider approving the Disclosure Statement. That hearing is now scheduled for December 19, 2001. The Bankruptcy Code further requires the Bankruptcy Court, after notice, to hold a confirmation hearing. PG&E expects the confirmation hearing to be held and the Plan to be confirmed in the next 6 months.

Pursuant to Section 1123 of the Bankruptcy Code, 11 USC 1123, the Bankruptcy Court has broad authority to authorize a debtor to dispose of assets in connection with implementation of a reorganization without approvals that might otherwise be required under applicable law. PG&E has requested the approval of the Bankruptcy Court to undertake the proposed transactions without further review or approval of California state and local government agencies.

In addition to the approval from the NRC, PG&E will seek the approval of the Securities and Exchange Commission (SEC) under Section 9(a)(2) of the Public Utility Holding Company Act of 1935, 15 USC 79i(a)(2) (because the transactions will result in the ownership by PG&E Corporation of more than one public utility company). PG&E will also need to make several notifications to, and file requests for approval from, the FERC, including, among other filings, a Federal Power Act (FPA) Section 203 application related to transfers of FERC jurisdictional transmission assets, an FPA Section 205 application for approval of the Gen-PG&E bilateral contract for sales of electricity and capacity, a filing under Section 205 of the FPA of generation interconnection agreements and other agreements, applications under Sections 204 and 305(a) of the FPA relating to issuance of securities for several of the businesses, and filings related to the hydroelectric stations and the gas transmission business. PG&E expects to make these filings by November 30, 2001, and to receive all of the necessary SEC and FERC approvals before the end of 2002.

As discussed above, PG&E also expects to seek a private letter ruling from the IRS related to the transfer of the beneficial interest in the qualified Nuclear Decommissioning Trust. Applications to transfer environmental permits, rights of way, and minor licenses and permits necessary for implementation of the transaction will be made to other federal, state, and local agencies, as required.

VI. Schedule

PG&E requests that the NRC consent to the proposed transfers as promptly as possible, but no later than July 31, 2002.

The NRC's consent should be made immediately effective upon issuance and, consistent with NRC practice, should authorize the transfers occurring at any time through twelve months following the date of the consent or through such later date as may be permitted by the NRC. This schedule will allow sufficient

time for other approvals needed prior to closing on the reorganization, for arrangement of financing and completion of administrative actions necessary to complete the transactions, and for contingencies.

Enclosure 1
PG&E Letter DCL-01-119

Plan of Reorganization and Disclosure Statement

Financial Qualifications Information:
Financial Statement and Related Information

GEN
PROJECTED INCOME STATEMENT
(\$ Millions)

	Year 1¹⁵	Year 2	Year 3	Year 4	Year 5
Operating Revenues					
Nuclear					
Other Generation					
Total Operating Revenues	1473	1492	1510		
Operating Expenses					
Purchased Power	76	72	62		
Fuel	96	90	94		
Operation & Maintenance	365	401	354		
Depreciation & Amortization	49	53	62		
Administrative & Other	81	82	84		
Total Operating Expenses	667	697	657		
Operating Income (Loss)	805	795	853		
Other Non-Operating Income (Deductions)	(195)	(191)	(185)		
Income Before Income Taxes	611	605	668		
Income Taxes	247	245	271		
Net Income (Loss)	363	360	397		

¹⁵ Year 1 is the first 12 month period following closing on the transaction and implementation of the license transfers.

GEN
PROJECTED OPENING BALANCE SHEET
(\$ Millions)

ASSETS		LIABILITIES	
Current Assets		Current Liabilities	
Cash and Temporary Cash Investments	0	Accounts Payable	72
Accounts Receivable	200	Other Current Liabilities	0
Inventories	66	Total Current Liabilities	72
Other Current Assets	0		
Total Current Assets	266		
Fixed Assets		Non-Current Liabilities	
Plant	874	DOE Decontamination & Decommissioning Assessment	6
Fuel	170	Funded Decommissioning Liability	1,219
Total Fixed Assets	1,044	Unfunded Decommissioning Liability	0
		Other Long Term Liabilities	16
		Total Non-Current Liabilities	1,242
Other Long Term Assets		Capitalization	
Decommissioning Funds	1,219	Debt	2,400
Goodwill	0	Equity	(1,183)
Other Long Term Assets	1	Total Capitalization	1,217
Total Other Assets	1,220		
Total Assets	2,530	Total Liabilities & Capitalization	2,530

GEN
KEY ASSUMPTIONS

	Year 1	Year 2	Year 3	Year 4	Year 5
Generation (GWh) ¹⁶					
Nuclear					
Non-Nuclear					
Purchases					
Total Supply (GWh)					
Market Sales (GWh)					
Average Market Price (\$/MWh) ¹⁷					
Total Generation Revenues (\$ Millions)					
Nuclear Capacity Factor					

¹⁶ Net of transmission line losses.

¹⁷ Average Market Price is derived from the proposed bilateral power sales agreement rather than forward market price projections. The Average Market Price is calculated as total revenue divided by total electric output.

GEN
ESTIMATED NUCLEAR COSTS

AGGREGATE: TWO DCPD UNITS

(\$ Millions)

Year	Operating and Maintenance Expenses	Fuel Capital Expenses	Additional Capital Expenses		Total ¹⁸
			Base Capital	Major Projects ¹⁹	
1					
2					
3					
4					
5					

¹⁸ These totals exclude approximately _____ per year of Administrative and General expenses attributed to DCPD.

¹⁹ Major Projects in Years 1 through 3 include _____. Major Projects in Years 4 through 5 include partial cost of _____. DCPD Independent Spent Fuel Storage Installation (dry cask storage) is reflected as an operating expense, not a capital expense.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: September 20, 2001

Commission Employer File Identification Number ----- ----	Exact Name of Registrant as specified in its charter -----	State or other Jurisdiction of Incorporation -----	IRS Number -----
1-12609	PG&E Corporation	California	94-3234914
1-2348 0742640	Pacific Gas and Electric Company	California	94-

Pacific Gas and Electric Company
 77 Beale Street, P.O. Box 770000
 2400
 San Francisco, California 94177

PG&E Corporation
 One Market, Spear Tower, Suite
 San Francisco, California 94105

(Address of principal executive offices) (Zip Code)

Pacific Gas and Electric Company
 (415) 973-7000

PG&E Corporation
 (415) 267-7000

(Registrant's telephone number, including area code)

Item 5. Other Events.

On September 20, 2001, Pacific Gas and Electric Company (Utility) and its parent company, PG&E Corporation, jointly filed with the U.S. Bankruptcy Court for the Northern District of California a proposed plan of reorganization (Plan) of the Utility under Chapter 11 of the U.S. Bankruptcy Code and their proposed disclosure statement describing the Plan. Following the filing of the proposed Plan and disclosure statement, the Utility and PG&E Corporation will seek an order of the Bankruptcy Court (1) approving the disclosure statement, (2) setting the date, time and place for a hearing to consider confirmation of the Plan, and (3) setting the voting deadline with respect to the Plan. The proposed disclosure statement, together with the following exhibits to the disclosure statement: the proposed Plan (Exhibit A), Projected Financial Information (Exhibit C), and Summary of Long-Term Debt (Exhibit D), is attached to this report as Exhibit 99. (Exhibit B to the disclosure statement, the Bankruptcy Court order approving the disclosure statement, does not yet exist and therefore has been omitted.)

To approve the form of disclosure statement, the Bankruptcy Court must determine that the disclosure statement contains adequate information of a kind and in sufficient detail to enable hypothetical reasonable investors typical of the holders of claims against and equity interests in the Utility to make an informed judgment in voting to accept or reject the Plan. It is anticipated that the Bankruptcy Court shortly will set a date for the hearing to consider the adequacy of the disclosure statement. Upon Bankruptcy Court approval, the disclosure statement will be sent to holders of claims against and equity interests in the Utility in connection with the solicitation of acceptances of the Plan. Bankruptcy Court approval of the disclosure statement does not constitute a determination by the Bankruptcy Court as to the merits of the Plan or an indication that the Bankruptcy Court will confirm the Plan.

Although there is no date by which the Bankruptcy Court must approve the form of disclosure statement, the court may approve the form of disclosure statement by the end of 2001, which would allow solicitation for approval of the Plan and the confirmation process to occur possibly as early as the spring of 2002. Among the requirements for confirmation of a plan are that the plan is (1) accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the plan "does not discriminate unfairly" and is "fair and equitable" as to such class, (2) feasible, and (3) in the "best interests" of creditors and shareholders that are impaired under the plan.

The Proposed Restructuring and Spin Off of the Reorganized Utility

The proposed Plan provides for a disaggregation and restructuring of the Utility's business into four lines of business: gas and electric distribution, electric transmission, gas transmission, and electric generation. PG&E Corporation and the Utility believe that the Plan will enable the Utility to successfully reorganize its business and accomplish the objectives of Chapter 11 of the Bankruptcy Code, and

that acceptance of the Plan is in the best interests of the Utility, its creditors and all parties in interest. Throughout the process of developing the Plan, PG&E Corporation and the Utility have been working closely with the Official Committee of Unsecured Creditors (Committee) and the Committee has endorsed the Plan.

Pursuant to the Plan the Utility would create three new California limited liability companies and separate its operations into four lines of business: retail gas and electric distribution; electric transmission; interstate gas transmission; and electric generation. The companies are referred to herein as the reorganized Utility, ETrans, GTrans and Gen, respectively. Under the Plan, the majority of the assets and liabilities associated with the Utility's electric transmission business would be transferred to ETrans or its subsidiaries or affiliates, the majority of the assets and liabilities associated with the Utility's gas transmission business would be transferred to GTrans or its subsidiaries or affiliates, and the majority of the assets and liabilities associated with the Utility's generation business (including the conventional hydroelectric generating plants, the Helms Pumped Storage Plant, the Diablo Canyon nuclear power plant, beneficial interests in the Diablo Canyon Nuclear Facilities Decommissioning Master Trust, and the irrigation district power purchase contracts) would be transferred to Gen or its subsidiaries or affiliates. The Plan further contemplates that the Utility would create a separate holding corporation (Newco) to hold the membership interests of each of ETrans, GTrans and Gen, and that the Utility would be the sole shareholder of Newco. After the transfer of Utility assets to the newly-formed entities or their subsidiaries or affiliates, the Utility would distribute the outstanding common stock of Newco to PG&E Corporation, and each of ETrans, GTrans and Gen would thereafter be an indirect wholly-owned subsidiary of PG&E Corporation. These transactions are referred to as the Internal Restructurings.

The Plan contemplates that on or as soon as practicable after the date on which the Plan becomes effective (Effective Date), PG&E Corporation will distribute the shares of the reorganized Utility's common stock it holds to the holders of PG&E Corporation common stock on a pro rata basis (hereinafter referred to as the Spin Off). The reorganized Utility would thereafter operate as a stand alone electric and gas distribution business, would continue to own the majority of Utility assets, and would continue to provide electric and gas distribution services to customers. Pursuant to the Plan, the Utility's currently outstanding preferred stock would remain in place as shares of preferred stock of the reorganized Utility. It is contemplated that holders of preferred stock would receive on the Effective Date in cash any dividends unpaid and sinking fund payments accrued in respect of such preferred stock through the last scheduled payment date before the Effective Date. The common stock of the reorganized Utility would be registered pursuant to the Securities Exchange Act of 1934, and would generally be freely tradable by the recipients on the Effective Date or as soon as practicable thereafter. The reorganized Utility would apply to list the common stock of the reorganized Utility on the New York Stock Exchange.

Procurement of Wholesale Electric Power

In January 2001, following the downgrade of the Utility's credit ratings to below investment grade the Utility was unable to continue procuring power in the electricity market on behalf of its retail customers. Thereafter, the California Department of Water Resources (DWR) began to purchase power to meet the amount of power needed by the Utility's retail electric customers that cannot be met by Utility-owned generation or power under contract to the Utility. Pursuant to the Plan, the reorganized Utility would seek a Bankruptcy Court order prohibiting the Utility from reassuming the responsibility to purchase power to meet the net open position not already provided through the DWR's power purchase contracts, until such time as (1) the reorganized Utility establishes an investment grade credit rating from Standard & Poor's (S&P) and Moody's Investor Services, Inc. (Moody's), (2) the reorganized Utility receives assurances from S&P and Moody's that the reorganized Utility's credit rating will not be downgraded as a result of the reassumption of the obligation to meet the net open position, (3) there is an objective retail rate recovery mechanism in place pursuant to which the reorganized Utility is able to fully recover in a timely manner its wholesale costs of purchasing electricity to meet the net open position, (4) there are objective standards in place regarding pre-approval of procurement transactions, and (5) after reassumption of the obligation to meet the net open position, the conditions in clauses (3) and (4) remain in effect. The Utility also would seek a Bankruptcy Court order prohibiting the reorganized Utility from accepting the assignment, directly or indirectly, of wholesale electric power procurement contracts executed by the DWR.

Pursuant to the Plan, Gen and the reorganized Utility would enter into a 12-year bilateral power sales agreement, subject to approval of the Federal Energy Regulatory Commission (FERC), under which the reorganized Utility would purchase output generated by Gen's facilities and procured under its power purchase agreements. The agreement would ensure that output from the facilities and power purchase contracts transferred on the Effective Date would be under contract to the reorganized Utility to use to serve its retail customers. The amount of output available to the reorganized Utility would phase out in years nine through twelve of the contract term and as the irrigation district power purchase contracts expire. Upon termination of this agreement, the reorganized Utility and Gen would have an opportunity to renegotiate or extend the agreement but would have no obligation to do so.

Proposed Treatment of Allowed Claims

Pursuant to the Plan, the Utility would satisfy allowed claims representing the principal amounts of its existing debt (other than allowed claims representing the various pollution control bond-related obligations, including the first mortgage bonds securing certain of the pollution control bond-related obligations, environmental claims and certain tort claims) either (1) in cash; (2) with a combination of cash and long-term notes issued by each of ETrans, GTrans and Gen, and in the case of certain claims, long-term notes issued by each of the reorganized Utility, ETrans, GTrans, and Gen; or (3) with long-term subordinated notes issued by each of ETrans, GTrans and Gen. Accrued and unpaid interest due on all allowed claims would be paid in cash, other than for allowed claims representing the various pollution control bond-related obligations. To maintain the tax-free nature of

issuances and debt financings contemplated by the Plan. Gen will seek FERC approval to sell power to the reorganized Utility pursuant to the bilateral power sales agreement. It is anticipated that the FERC approvals will be obtained within eight months after the date the applications are filed with the FERC, if there is no evidentiary hearing on the applications. The Utility currently intends to submit such applications on or before November 30, 2001.

Securities and Exchange Commission (SEC): PG&E Corporation is a holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). As PG&E Corporation would own two public utilities (ETrans and Gen) after the Utility distributes the shares of Newco to PG&E Corporation, PG&E Corporation would request SEC approval for the indirect acquisition of the ETrans and Gen membership interests. It is anticipated that SEC approval will be obtained within one to three months after all other regulatory approvals have been obtained, assuming there is no evidentiary hearing on the application.

California Public Utilities Commission (CPUC): If the Utility were not subject to the jurisdiction of the Bankruptcy Court, under the California Public Utilities Code the approval of the CPUC would be required to transfer many of the Utility's assets to ETrans, GTrans, Gen, or their subsidiaries or affiliates, and CPUC approval could be required to effect the Spin Off. In connection with the confirmation of the Plan, however, the Debtor will seek an affirmative ruling from the Bankruptcy Court that any approvals or actions pursuant to these statutes are not required because section 1123 of the Bankruptcy Code preempts such state law.

Nuclear Regulatory Commission (NRC): The Utility will request the approval of the NRC in connection with the transfer of the licenses related to the Diablo Canyon nuclear power plant to Gen and its subsidiaries. The Utility anticipates that the NRC approval will be obtained within nine months to a year after the date the applications are filed with the NRC. The NRC may issue its approval before completion of any NRC public hearing that may be held. In such event, the approval may be subject to further conditions developed through the hearing process. The Utility currently intends to submit such applications on or before November 30, 2001.

Other Federal Agencies: The Utility, ETrans, GTrans, and Gen and their subsidiaries will seek approval of various federal agencies for the transfer of federal permits, rights-of-way and other authorizations as required.

There can be no assurance that the regulatory approvals will be obtained in a timely manner or at all. If any of the required approvals are not obtained, the Utility will be compelled to consider alternatives and the Plan, as currently contemplated, would not be consummated.

Post-Restructuring Regulation

Upon consummation of the Plan, the operations of ETrans, GTrans, Gen, and the reorganized Utility would be subject to the jurisdiction of the following governmental agencies:

FERC: The FERC will continue to have jurisdiction over ETrans's rates, terms and conditions for all transmission and transmission-related services, including, but not limited to, conditions of transmission access and interconnection. In addition, the FERC will have jurisdiction over ETrans's participation in the California Independent System Operator (ISO) or any future Western Regional Transmission Organization (RTO) which will have operating control over the transmission assets pursuant to FERC tariffs. ETrans would join a FERC-approved Western RTO at such time as one is established and approved by FERC. If the FERC certifies the ISO as a RTO, ETrans may decide to remain with the ISO.

The FERC will have jurisdiction over the rates, terms and conditions of service established by GTrans. The FERC will have license and operating jurisdiction over the hydroelectric facilities and rate jurisdiction over the sale of the output of the entire portfolio of Gen and its subsidiaries. The portion of the decommissioning funds in the nuclear facilities decommissioning trusts related to the Diablo Canyon nuclear power plant will also be subject to FERC jurisdiction and oversight. The funds in the decommissioning trusts related to the Humboldt Bay Power Plant Unit 3 would continue to be subject to CPUC oversight.

NRC: The NRC will continue to have jurisdiction over the operations of the Diablo Canyon nuclear power plant without modification. The NRC will continue to have jurisdiction over the maintenance and decommissioning of the shutdown nuclear generating unit at Humboldt Bay Power Plant Unit 3 (proposed to be retained by the reorganized Utility as decommissioning of this facility has already begun) without modification.

CPUC: The CPUC will continue to have jurisdiction over the electric and gas distribution operations and rates of the reorganized Utility. The CPUC will retain some jurisdiction over siting of transmission, construction and certain non-rate aspects of ETrans' operations, such as safety.

Other Federal, State and Local Agencies: The ongoing operations of ETrans, GTrans, Gen and their subsidiaries or affiliates, and the reorganized Utility will continue to be subject to a variety of other federal, state and local agencies following consummation of the Plan.

Tax Ruling Request

The Internal Restructurings are intended to qualify as tax-free reorganizations and the Spin Off is intended to qualify as a tax-free spin off. PG&E Corporation and the Utility will seek a private letter ruling from the Internal Revenue Service (IRS) confirming the tax-free treatment of these transactions. It is anticipated that the ruling process may take up to one year, or longer, due to the complexity of the issues involved. If a ruling cannot be obtained, PG&E Corporation and the Utility may choose to proceed without a ruling and instead obtain certain opinions of its tax advisors with respect to such transactions. If the Internal Restructurings and the Spin Off were determined to be taxable, the resulting tax liability could be substantial and PG&E Corporation and the Utility would have to assess

the continued financial feasibility of the Internal Restructurings and the Spin Off. Pursuant to the Plan, PG&E Corporation and the Utility retain the flexibility to adjust the nature or terms of the consideration to be received by holders of claims if such changes are necessary to obtain the desired tax treatment.

Conditions Precedent to Confirmation of the Plan

The Plan provides that it may not be confirmed by the Bankruptcy Court unless and until the Bankruptcy Court has entered an order or orders, which may be the confirmation order, (1) approving the Plan documents, authorizing the Utility to execute, enter into and deliver the Plan documents and to execute, implement and take all actions necessary or appropriate to give effect to the transactions contemplated by the Plan and the Plan documents, (2) determining that the Utility, PG&E Corporation and their affiliates are not liable or responsible for any DWR power contracts or purchases of power by the DWR, and any liabilities associated therewith, (3) prohibiting the reorganized Utility from accepting an assignment of the DWR contracts, (4) prohibiting the reorganized Utility from reassuming the net open position unless the conditions discussed above are satisfied, (5) approving the execution of the proposed power sales contract between Gen and the reorganized Utility and a proposed gas transmission and storage contract between GTrans and the reorganized Utility, (6) prohibiting the CPUC and the State of California from taking any action related to the allocation or other treatment of any "gain on sale" related to assets transferred or disposed of under the Plan that would adversely impact the value or utility of any assets of the reorganized Utility, (7) finding that the CPUC affiliate transaction rules are not applicable to the restructuring transactions, (8) finding that the approval of state and local agencies of California, including, but not limited to, the CPUC, shall not be required in connection with the restructuring transactions because section 1123 of the Bankruptcy Code preempts such state and local laws, (9) finding that neither PG&E Corporation nor the Utility are required to comply with certain provisions of the California Corporations Code relating to corporate distributions and the sale of substantially all of a corporation's assets because section 1123 of the Bankruptcy Code preempts such state law, and (10) approving the commitment of ETrans to join a FERC-approved RTO and authorizing ETrans to join such FERC-approved RTO at such time as it is operational. In addition, the confirmation order must be, in form and substance, acceptable to PG&E Corporation and the Utility. Any of these conditions may be waived by PG&E Corporation and the Utility.

Conditions Precedent to Effectiveness of the Plan

The Plan provides that it will not become effective unless and until the following conditions shall have been satisfied or waived: (1) the confirmation order, in form and substance acceptable to PG&E Corporation and the Utility, shall have been signed by the Bankruptcy Court on or before June 30, 2002, and shall have become a final order, (2) the Effective Date shall have occurred on or before January 1, 2003, (3) all actions, documents and agreements necessary to implement the Plan shall have been effected or executed, (4) PG&E Corporation and the Utility shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or

documents that are determined by PG&E Corporation and the Utility to be necessary to implement the Plan, (5) S&P and Moody's shall have established credit ratings for each of the securities to be issued by the reorganized Utility, ETrans, GTrans, and Gen that are acceptable to PG&E Corporation and the Utility, (6) the Plan shall not have been modified in a material way since the confirmation date, and (7) the disaggregated entities shall have consummated each of the debt offerings contemplated by the Plan.

If one or more of the conditions to the Effective Date described above have not occurred or been waived by January 1, 2003, (1) the confirmation order shall be vacated, (2) no distributions under the Plan shall be made, (3) the Utility and all holders of claims and equity interests shall be restored to the status quo ante as of the day immediately preceding the confirmation date as though the confirmation date never occurred, and (4) the Utility's obligations with respect to claims and equity interests shall remain unchanged.

Cautionary Statement Regarding Forward Looking Statements

This report and the exhibits hereto contain forward looking statements about the proposed Plan, projected financial information relating to the disaggregated entities and the various assumptions underlying such projections, and a summary of the proposed terms of long-term debt that would be issued pursuant to the Plan by each of the disaggregated entities. These statements, financial projections and underlying assumptions, and summary of proposed terms of long-term debt, are necessarily subject to various risks and uncertainties that could cause actual results to differ materially from those contemplated by the forward looking statements, financial projections, and summary of proposed terms of long-term debt. Although PG&E Corporation and the Utility are not able to predict all of the factors that may affect whether the Plan will be confirmed, or whether, if confirmed, it will become effective, some of the factors that could affect the outcome materially include: the pace of the Bankruptcy Court proceedings; the extent to which the Plan is amended or modified; legislative and regulatory initiatives regarding deregulation and restructuring of the electric and natural gas industries in the United States, particularly in California; whether the Utility is able to obtain timely regulatory approvals or whether the Utility is able to obtain regulatory approvals at all; risks relating to the issuance of new debt securities by each of the disaggregated entities, including higher interest rates than are assumed in the financial projections which could affect the amount of cash raised to satisfy allowed claims, and the inability to successfully market the debt securities due to, among other reasons, an adverse change in market conditions or in the condition of the disaggregated entities before completion of the offerings; whether the Bankruptcy Court exercises its authority to pre-empt relevant non-bankruptcy law and if so, whether and the extent to which such assertion of jurisdiction is successfully challenged; whether a favorable tax ruling or opinion is obtained regarding the tax-free nature of the Internal Restructurings and the Spin Off; and the ability of the Utility to successfully disaggregate its businesses.

In particular, the financial projections, attached as Exhibit C

to the proposed disclosure statement, have been prepared based upon certain assumptions that the Utility believes to be reasonable under the circumstances, taking into account the purpose for which they were prepared. Those assumptions considered to be significant are described in the financial projections, which are also included in Exhibit C. However, the financial projections were not prepared with a view toward compliance with the published guidelines of the SEC or the American Institute of Certified Public Accountants regarding projections or forecasts. In addition, the financial projections have not been examined or compiled by the independent accountants of the Utility or PG&E Corporation. Neither the Utility nor PG&E Corporation makes any representation as to the accuracy of the projections or the ability of the disaggregated entities to achieve the projected results. Many of the assumptions on which the projections are based are subject to significant uncertainties. Inevitably, some assumptions will not materialize and unanticipated events and circumstances may affect the actual financial results. Therefore, the actual results achieved may vary from the projected results and the variations may be material.

Item 7. Financial Statements, Pro Forma Financial Information, and Exhibits

Exhibit 99 - Proposed form of disclosure statement filed by PG&E Corporation and Pacific Gas and Electric Company, together with Exhibit A (Proposed plan of reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company), Exhibit C (Projected Financial Information and Underlying Assumptions), and Exhibit D (Summary of Terms of Long-Term Debt).

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:

PACIFIC GAS & ELECTRIC CO.
(Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2)

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Docket No. 72-26 - ISFSI

**DECLARATION OF DR. GORDON R. THOMPSON
IN SUPPORT OF INTERVENORS' ENVIRONMENTAL CONTENTIONS**

Under penalty of perjury, I, Gordon Thompson, declare as follows:

1. I am the executive director of the Institute for Resource and Security Studies (IRSS), a nonprofit, tax-exempt corporation based in Massachusetts. Our office is located at 27 Ellsworth Avenue, Cambridge, MA 02139. IRSS was founded in 1984 to conduct technical and policy analysis and public education, with the objective of promoting peace and international security, efficient use of natural resources, and protection of the environment. I am an expert in the technical analysis of safety and environmental issues related to nuclear facilities. A copy of my curriculum vitae is attached.
2. I received an undergraduate education in science and mechanical engineering at the University of New South Wales, in Australia. Subsequently, I pursued graduate studies at Oxford University and received from that institution a Doctorate of Philosophy in mathematics in 1973, for analyses of plasmas undergoing thermonuclear fusion. During my graduate studies I was associated with the fusion research program of the UK Atomic Energy Authority. My undergraduate and graduate work provided me with a rigorous education in the methodologies and disciplines of science, mathematics, and engineering.
3. Since 1977, a significant part of my work has consisted of technical analyses of safety and environmental issues related to nuclear facilities. These analyses have been sponsored by a variety of nongovernmental organizations and local, state and national governments, predominantly in North America and Western Europe. Drawing upon these analyses, I have provided expert testimony in legal and regulatory proceedings, and have served on committees advising US government agencies. To illustrate my expertise, I provide in the following paragraphs some details of my experience.
4. I have conducted, directed, and/or participated in a number of studies that evaluated aspects of the design and operation of nuclear facilities with respect to severe accident probabilities and consequences. These include generic studies and studies of individual

facilities. For instance, with respect to generic studies on the potential for severe accidents at nuclear power plants, I was co-investigator in a study by the Union of Concerned Scientists on the "source term" issue -- the potential for release of radioactive material to the environment.¹ Also, I was one of a team of four scientists who prepared, for Greenpeace International, a comprehensive critique of the state of the art of probabilistic risk assessment (PRA) for nuclear power plants.² Our report noted that acts of malice, such as sabotage and acts of war, are not considered in PRAs, despite a history of malicious acts at many nuclear facilities. In addition, I conducted analysis on the relevance of PRA to emergency response planning, as part of a study on emergency planning for nuclear power plant accidents.³ All of these studies required me to be highly familiar with the design and operation of nuclear power plants, as well as the characteristics of probabilistic risk assessment.

5. I have also done considerable work on the risks posed by individual nuclear facilities. In addition to performing the studies described elsewhere in this declaration, I have studied the risks posed by the Seabrook and Three Mile Island plants (USA), the Darlington and Pickering stations (Canada), the Sizewell B station (UK) and the Dukovany plant (Czech Republic). All of these studies required me to become familiar with the relevant details of the design and operation of the facilities involved.

6. To a significant degree, my work has been accepted or adopted by relevant governmental agencies. During the period 1978-1979, for example, I served on an international review group commissioned by the government of Lower Saxony (a state in Germany) to evaluate a proposal for a nuclear fuel cycle center at Gorleben. I led the subgroup that examined accident risks and identified alternative options with lower risk.⁴ One of the risk issues that I identified and analysed was the potential for self-sustaining, exothermic oxidation reactions of fuel cladding in a high-density spent fuel pool if water is lost from the pool. Hereafter, for simplicity, this event is referred to as a "pool fire".⁵ In examining the potential for a pool fire, I identified partial loss of water as a more severe condition than total loss of water. I identified a variety of events that could cause a

¹ Steven Sholly and Gordon Thompson, The Source Term Debate (Cambridge, Massachusetts: Union of Concerned Scientists, January 1986).

² H Hirsch et al, IAEA Safety Targets and Probabilistic Risk Assessment (Hannover, Germany: Gesellschaft für Ökologische Forschung und Beratung mbH, August 1989).

³ D Golding et al, Preparing for Nuclear Power Plant Accidents (Boulder, Colorado: Westview Press, 1995).

⁴ Jan Beyea, Yves Lenoir, Gene Rochlin and Gordon Thompson (subgroup chair), Report of the Gorleben International Review, Chapter 3: Potential Accidents and their Effects, submitted (in German) to the Government of Lower Saxony, March 1979.

⁵ At water-cooled reactors, such as those at Diablo Canyon, the fuel cladding is made from a zirconium alloy that can enter into a vigorous exothermic oxidation reaction with either air or steam. For simplicity, this reaction can be referred to as a "fire".

loss of water from a pool, including aircraft crash, sabotage, terrorism and acts of war. Also, I identified and described alternative fuel storage options with lower risk; these lower-risk options included design features such as spatial separation, natural cooling and underground vaults. The Lower Saxony government accepted my findings about the risk of a pool fire, and ruled in May 1979 that high-density pool storage of spent fuel was not an acceptable option at Gorleben. As a direct result, policy throughout Germany has been to use dry storage in casks, rather than high-density pool storage, for away-from-reactor storage of spent fuel.

7. My work has also influenced decisionmaking by safety officials in the U.S. Department of Energy (DOE). During the period 1986-1991, I was commissioned by environmental groups to assess the safety of the military production reactors at the Savannah River Site, and to identify and assess alternative options for the production of tritium for the US nuclear arsenal. Initially, much of the relevant information was classified or otherwise inaccessible to the public. Nevertheless, I addressed safety issues through analyses that were recognized as accurate by nuclear safety officials at DOE. I eventually concluded that the Savannah River reactors could not meet the safety objectives set for them by DOE.⁶ DOE subsequently reached the same conclusion, and scrapped the reactors. The current national policy for tritium production is to employ commercial reactors, an option that I had concluded was technically attractive but problematic from the perspective of nuclear weapons proliferation.

8. In 1977, and again during the period 1996-2000, I examined the safety of nuclear fuel reprocessing and liquid high-level radioactive waste management facilities at the Sellafield site in the UK. My investigation in the latter period was supported by consortia of local governments in Ireland and the UK, and I presented my interim findings at briefings in the UK and Irish parliaments in 1998. I identified safety issues that were not addressed in any publicly available literature about the Sellafield site.⁷ As a direct result of my investigation, the UK Nuclear Installations Inspectorate (NII) required the operator of the Sellafield site -- British Nuclear Fuels (BNFL) -- to conduct extensive safety analyses. These analyses confirmed the significance of the safety issues that I had identified, and in January 2001 the NII established a legally binding schedule for reduction of the inventory of liquid high-level radioactive waste at Sellafield.⁸ The NII

⁶ Gordon Thompson and Steven C Sholly, No Restart for K Reactor (Cambridge, Massachusetts: Institute for Resource and Security Studies, October 1991).

⁷ Gordon Thompson, High Level Radioactive Liquid Waste at Sellafield: Risks, Alternative Options and Lessons for Policy (Cambridge, Massachusetts: Institute for Resource and Security Studies, June 1998).

⁸ Nuclear Installations Inspectorate, "Specification Issued under Licence Condition 32(4) for the Limitation of the Accumulation or Storage of Liquid High Level Radioactive Waste in B215. Licence Instrument 343. January 2001."

took this action in recognition of the grave offsite consequences of a release to the environment from the tanks in which liquid high-level waste is stored. I had identified a variety of events that could cause such a release, including acts of malice or insanity.

9. In May 2000 I completed a study for Greenpeace International on the hazard potential of the La Hague site in France.⁹ Nuclear fuel reprocessing and related activities are conducted at this site. The operator of the site -- COGEMA -- is authorised to store 14,000 tonnes of spent fuel in high-density pools at La Hague, and proposes to increase the capacity of these pools to 17,600 tonnes. My study described the potential for a pool fire at La Hague, and identified events -- including acts of malice or insanity -- that could lead to a pool fire. One of the findings of my study was that neither COGEMA nor the French government had a thorough understanding of La Hague's hazard potential, including the potential for a pool fire. Subsequent to the terrorist events of 11 September 2001 in New York and Washington, media exposure brought La Hague's hazard potential to the attention of the French government. During October 2001 the French government deployed anti-aircraft missiles at La Hague.

10. As stated in paragraph 6, I determined in the period 1978-1979 that partial loss of water from a high-density spent fuel pool is a more severe condition than total loss of water. This is because convective heat transfer is suppressed by the presence of residual water at the base of the fuel assemblies. During any scenario for loss of water from a spent fuel pool, there will be a period of time during which residual water is present. As a result, comparatively old fuel -- potentially including fuel aged 10 or more years after discharge from a reactor -- can ignite if water is lost from a high-density spent fuel pool. The NRC Staff failed, for more than two decades, to understand this point. An illustration of the Staff's lack of understanding was provided by its statements during a license amendment proceeding in regard to the expansion of spent fuel pool capacity at the Harris nuclear power plant. I served as an expert witness for Orange County, North Carolina, the intervenor in this proceeding. In filings during March and April 2000, the Staff repeatedly disparaged my statements that comparatively old fuel can ignite. A few months later, however, the Staff adopted my position. In a report dated October 2000, but not published until January 2001, the Staff recognized that the flow of air to exposed fuel assemblies could be blocked by the presence of collapsed structures -- which might be attributable, for example, to a cask drop or an earthquake -- or by the presence of residual

⁹ Gordon Thompson, Hazard Potential of the La Hague Site: An Initial Review (Cambridge, Massachusetts: Institute for Resource and Security Studies, May 2000).

water.¹⁰ The Staff analyzed the heat transfer implications of flow blockage and concluded:¹¹

"While the February 2000 [draft] study indicated that for the cases analyzed a required decay time of 5 years would preclude a zirconium fire, the revised analyses show that it is not feasible, without numerous constraints, to define a generic decay heat level (and therefore decay time) beyond which a zirconium fire is not physically possible."

11. On numerous occasions, I have drawn attention in my writings and oral presentations to the vulnerability of nuclear facilities to acts of malice or insanity. I have pointed out that PRAs do not address acts of malice or insanity, with the result that a PRA can, at best, provide a lower bound to the probability of a release of radioactive material.¹² In 1996 I wrote a generic report on war and terrorism as risk factors for nuclear power plants.¹³ Among other findings, this report noted that an act of war or terrorism at a nuclear power plant might have as its primary target the spent fuel stored at the plant, rather than the reactor. The report concluded with a statement that:

"Public debate about the future operation of existing nuclear power plants, and the construction of new plants, should be broadened to encompass the possible involvement of nuclear plants in war or terrorism."

12. I am familiar with the License Application, Safety Analysis Report, and Environmental Report for Pacific Gas & Electric Company's proposed Independent Fuel Storage Installation on the site of the Diablo Canyon nuclear power plant.

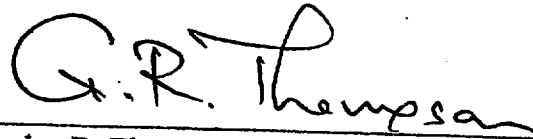
¹⁰ Timothy Collins et al (authors are all from the NRC Staff), Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants, October 2000.

¹¹ Collins et al, October 2000 (op cit), page 2-1.

¹² The strengths and weaknesses of PRA methodology are discussed in Hirsch et al, August 1989 (op cit).

¹³ Gordon Thompson, War, Terrorism and Nuclear Power Plants (Canberra: Peace Research Centre, Australian National University, October 1996).

13. I assisted the Intervenor in the preparation of contentions EC-1, EC-2, and EC-3, regarding the inadequacy of the Environmental Report to address the potential for destructive acts of malice or insanity, the inadequacy of the Environmental Report's statement of purpose, and the inadequacy of the Environmental Report's discussion of transportation-related impacts. The statements of fact in those contentions are true and correct to the best of my knowledge, and the opinions set forth therein are based on my best professional judgment.

A handwritten signature in black ink, appearing to read "G.R. Thompson". The signature is written in a cursive, flowing style with a large initial "G".

Gordon R. Thompson, Ph.D.

July 18, 2002

INSTITUTE FOR RESOURCE AND SECURITY STUDIES

Curriculum Vitae: GORDON R. THOMPSON

December 2000

Professional expertise

Consulting technical and policy analyst in the fields of energy, environment, sustainable development, and international security.

Education

- D.Phil. in applied mathematics, Oxford University (Balliol College), 1973.
- B.E. in mechanical engineering, University of New South Wales, Sydney, Australia, 1967.
- B.Sc. in mathematics & physics, University of New South Wales, 1966.

Current appointment

- Executive director, Institute for Resource & Security Studies (IRSS), Cambridge, Massachusetts.

Project sponsors and tasks (selected)

- Massachusetts Water Resources Authority, 2000: evaluated risks associated with water supply and wastewater systems that serve greater Boston.
- Canadian Senate, Energy & Environment Committee, 2000: reviewed risk issues associated with the Pickering Nuclear Generating Station.
- Greenpeace International, Amsterdam, 2000: reviewed impacts associated with the La Hague nuclear complex in France.
- Orange County, North Carolina, 1999-2000: assessed safety issues associated with spent fuel storage at the Harris nuclear power plant.
- Government of Ireland, 1998-2000: developed framework for assessment of impacts and alternative options associated with the Sellafield nuclear complex in the UK.
- Clark University, Worcester, Massachusetts, 1998-1999: participated in review of a major foundation's grant-making related to climate change.
- UN High Commissioner for Refugees, 1998: developed a strategy for conflict management in the CIS region.
- General Council of County Councils (Ireland), W Alton Jones Foundation (USA), and Nuclear Free Local Authorities (UK), 1996-2000: assessed safety and

economic issues of nuclear fuel reprocessing in the UK; assessed alternative options.

- Environmental School, Clark University, Worcester, Massachusetts, 1996: session leader at the Summer Institute, "Local Perspectives on a Global Environment".
- Greenpeace Germany, Hamburg, 1995-1996: a study on war, terrorism and nuclear power plants.
- HKH Foundation, New York, and Winston Foundation for World Peace, Washington, DC, 1994-1996: studies and workshops on preventive action and its role in US national security planning.
- Carnegie Corporation of New York, Winston Foundation for World Peace, Washington, DC, and others, 1995: collaboration with the Organization for Security and Cooperation in Europe to facilitate improved coordination of activities and exchange of knowledge in the field of conflict management.
- World Bank, 1993-1994: a study on management of data describing the performance of projects funded by the Global Environment Facility (joint project of IRSS and Clark University).
- International Physicians for the Prevention of Nuclear War, 1993-1994: a study on the international control of weapons-usable fissile material.
- Government of Lower Saxony, Hannover, Germany, 1993: analysis of standards for radioactive waste disposal.
- University of Vienna (using funds supplied by the Austrian government), 1992: review of radioactive waste management at the Dukovany nuclear plant, Czech Republic.
- Sandia National Laboratories, 1992-1993: advice to the US Department of Energy's Office of Foreign Intelligence.
- US Department of Energy and Battelle Pacific Northwest Laboratories, 1991-1992: advice for the Intergovernmental Panel on Climate Change regarding the design of an information system on technologies that can limit greenhouse gas emissions (joint project of IRSS, Clark University and the Center for Strategic and International Studies).
- Winston Foundation for World Peace, Boston, Massachusetts, and other funding sources, 1992-1993: development and publication of recommendations for strengthening the International Atomic Energy Agency.
- MacArthur Foundation, Chicago, Illinois, W. Alton Jones Foundation, Charlottesville, Virginia, and other funding sources, 1984-1993: policy analysis and public education on a "global approach" to arms control and disarmament.
- Energy Research Foundation, Columbia, South Carolina, and Peace Development Fund, Amherst, Massachusetts, 1988-1992: review of the US government's tritium production (for nuclear weapons) and its implications.
- Coalition of Environmental Groups, Toronto, Ontario (using funds supplied by Ontario Hydro under the direction of the Ontario government), 1990-1993:

coordination and conduct of analysis and preparation of testimony on accident risk of nuclear power plants.

- Greenpeace International, Amsterdam, Netherlands, 1988-1990: review of probabilistic risk assessment for nuclear power plants.
- Bellerive Foundation, Geneva, Switzerland, 1989-1990: planning for a June 1990 colloquium on disarmament and editing of proceedings.
- Iler Research Institute, Harrow, Ontario, 1989-1990: analysis of regulatory response to boiling-water reactor accident potential.
- Winston Foundation for World Peace, Boston, Massachusetts, and other funding sources, 1988-1989: analysis of future options for NATO (joint project of IRSS and the Institute for Peace and International Security).
- Nevada Nuclear Waste Project Office, Carson City, Nevada (via Clark University), 1989-1990: analyses of risk aspects of radioactive waste management and disposal.
- Ontario Nuclear Safety Review (conducted by the Ontario government), Toronto, Ontario, 1987: review of safety aspects of CANDU reactors.
- Washington Department of Ecology, Olympia, Washington, 1987: analysis of risk aspects of a proposed radioactive waste repository at Hanford.
- Natural Resources Defense Council, Washington, DC, 1986-1987: preparation of testimony on hazards of the Savannah River Plant.
- Lakes Environmental Association, Bridgton, Maine, 1986: analysis of federal regulations for disposal of radioactive waste.
- Greenpeace Germany, Hamburg, 1986: participation in an international study on the hazards of nuclear power plants.
- Three Mile Island Public Health Fund, Philadelphia, Pennsylvania, 1983-1989: studies related to the Three Mile Island nuclear plant.
- Attorney General, Commonwealth of Massachusetts, Boston, Massachusetts, 1984-1989: analyses of the safety of the Seabrook nuclear plant.
- Union of Concerned Scientists, Cambridge, Massachusetts, 1980-1985: studies on energy demand and supply, nuclear arms control, and the safety of nuclear installations.
- Conservation Law Foundation of New England, Boston, Massachusetts, 1985: preparation of testimony on cogeneration potential at a Maine papermill.
- Town & Country Planning Association, London, UK, 1982-1984: coordination and conduct of a study on safety and radioactive waste implications of the proposed Sizewell nuclear plant.
- US Environmental Protection Agency, Washington, DC, 1980-1981: assessment of the cleanup of Three Mile Island Unit 2 nuclear plant.
- Center for Energy & Environmental Studies, Princeton University, Princeton, New Jersey, and Solar Energy Research Institute, Golden, Colorado, 1979-1980: studies on the potentials of renewable energy sources.

- Government of Lower Saxony, Hannover, Federal Republic of Germany, 1978-1979: coordination and conduct of studies on safety aspects of the proposed Gorleben nuclear fuel cycle center.

Other experience (selected)

- Principal investigator, project on "Exploring the Role of 'Sustainable Cities' in Preventing Climate Disruption", involving IRSS and three other organizations, 1990-1991.
- Visiting fellow, Peace Research Centre, Australian National University, 1989.
- Principal investigator, Three Mile Island emergency planning study, involving IRSS and Clark University, 1987-1989.
- Co-leadership (with Paul Walker) of a study group on nuclear weapons proliferation, Institute of Politics, Harvard University, 1981.
- Foundation (with others) of an ecological political movement in Oxford, UK, which contested the 1979 Parliamentary election.
- Conduct of cross-examination and presentation of evidence, on behalf of the Political Ecology Research Group, at the 1977 Public Inquiry into proposed expansion of the reprocessing plant at Windscale, UK.
- Conduct of research on plasma theory (while a D.Phil candidate), as an associate staff member, Culham Laboratory, UK Atomic Energy Authority, 1969-1973.
- Service as a design engineer on coal-fired plants, New South Wales Electricity Commission, Sydney, Australia, 1968.

Publications (selected)

- *The Potential for a Large, Atmospheric Release of Radioactive Material from Spent Fuel Pools at the Harris Nuclear Power Plant: The Case of a Pool Release Initiated by a Severe Reactor Accident*, a report for Orange County, North Carolina, 20 November 2000.
- *A Review of the Accident Risk Posed by the Pickering 'A' Nuclear Generating Station*, a report for the Standing Committee on Energy, Environment and Natural Resources, Canadian Senate, August 2000.
- *High-Level Radioactive Liquid Waste at Sellafield: An Updated Review*, a report for the UK Nuclear Free Local Authorities, June 2000.
- *Hazard Potential of the La Hague Site: An Initial Review*, a report for Greenpeace International, May 2000.
- *A Strategy for Conflict Management: Integrated Action in Theory and Practice* (with Paula Gutlove), Working Paper No. 7, IRSS, Cambridge, Massachusetts, March 1999.

- *Risks and Alternative Options Associated with Spent Fuel Storage at the Shearon Harris Nuclear Power Plant*, a report for Orange County, North Carolina, February 1999.
- *High Level Radioactive Liquid Waste at Sellafield: Risks, Alternative Options and Lessons for Policy*, IRSS, Cambridge, Massachusetts, June 1998.
- "Science, democracy and safety: why public accountability matters", in F. Barker (ed), *Management of Radioactive Wastes: Issues for local authorities*, Thomas Telford, London, 1998.
- "Conflict Management and the OSCE" (with Paula Gutlove), *OSCE/ODIHR Bulletin*, Volume 5, Number 3, Fall 1997.
- *Safety of the Storage of Liquid High-Level Waste at Sellafield* (with Peter Taylor), Nuclear Free Local Authorities, UK, November 1996.
- *Assembling Evidence on the Effectiveness of Preventive Actions, their Benefits, and their Costs: A Guide for Preparation of Evidence*, IRSS, Cambridge, Massachusetts, August 1996.
- *War, Terrorism and Nuclear Power Plants*, Working Paper No. 165, Peace Research Centre, Australian National University, Canberra, October 1996.
- "The Potential for Cooperation by the OSCE and Non-Governmental Actors on Conflict Management" (with Paula Gutlove), *Helsinki Monitor*, Volume 6 (1995), Number 3.
- "Potential Characteristics of Severe Reactor Accidents at Nuclear Plants", "Monitoring and Modelling Atmospheric Dispersion of Radioactivity Following a Reactor Accident" (with Richard Sclove, Ulrike Fink and Peter Taylor), "Safety Status of Nuclear Reactors and Classification of Emergency Action Levels", and "The Use of Probabilistic Risk Assessment in Emergency Response Planning for Nuclear Power Plant Accidents" (with Robert Goble), in D. Golding, J. X. Kasperson and R. E. Kasperson (eds), *Preparing for Nuclear Power Plant Accidents*, Westview Press, Boulder, Colorado, 1995.
- *A Data Manager for the Global Environment Facility* (with Robert Goble), Environment Department, The World Bank, June 1994.
- *Preventive Diplomacy and National Security* (with Paula Gutlove), Winston Foundation for World Peace, Washington, DC, May 1994.
- *Opportunities for International Control of Weapons-Usable Fissile Material*, ENWE Paper #1, International Physicians for the Prevention of Nuclear War, Cambridge, Massachusetts, January 1994.
- "Article III and IAEA Safeguards", in F. Barnaby and P. Ingram (eds), *Strengthening the Non-Proliferation Regime*, Oxford Research Group, Oxford, UK, December 1993.
- *Risk Implications of Potential New Nuclear Plants in Ontario* (prepared with the help of eight consultants), a report for the Coalition of Environmental Groups, Toronto, submitted to the Ontario Environmental Assessment Board, November 1992 (3 volumes).

- *Strengthening the International Atomic Energy Agency*, Working Paper No. 6, IRSS, Cambridge, Massachusetts, September 1992.
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Miscellaneous

- Married, two children.
- Extensive experience in public speaking before professional and lay audiences, and in interviews with print and broadcast journalists.
- Author of numerous newspaper, newsletter, and magazine articles and book reviews.

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Help

In Afghan Jail, a Terrorist Who Won't Surrender Bin Laden Disciple Held by N. Alliance Would Attack U.S.

By William Branigin

Washington Post Staff Writer

Tuesday, October 30, 2001; Page A13

KHOJA MAKBUL, Afghanistan -- He sits cross-legged on a carpet, fixing his visitor intently with dark eyes behind thick, oversize glasses. With his flowing black beard, embroidered skullcap and beatific smile, the soft-spoken Pakistani still resembles the Islamic scholar he once was.

But, by his own account, Salahuddin Khaled is a dangerous man. The 27-year-old member of the hard-line Pakistani Muslim group Harkat ul-Mujaheddin is an ally of Afghanistan's ruling Taliban militia, a disciple of Osama bin Laden and a highly trained terrorist. After five years behind bars, he is the longest serving prisoner of war held by the opposition Northern Alliance. And there is a reason he is likely to continue to serve time in a single-story, mud-brick compound in the Panjshir Valley.

If released, he readily acknowledges, he would gladly carry out the kind of terrorist attacks that killed almost 5,000 people in the United States last month.

He talks of using atomic weapons



Abdul Jabar, left, and Noor Mohammed Abdullah, both former Taliban fighters, are captives of the Northern Alliance opposition in Afghanistan. (William Branigin - The Washington Post)

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against America, and wonders whether the Sept. 11 attackers would have better served their cause by flying one of the hijacked planes into a nuclear power plant. "I don't know who did that action," Khaled says in halting English. "If Muslim organizations did that action, I agree, because America is their enemy. . . . They have to hurt America in its military, economic and political centers to make America leave its plans against Islam."

While it may never be possible to fully understand the passions and motives of someone such as Khaled, an interview with him at the Northern Alliance's Baharak Prison provides a glimpse into the mind of a terrorist. Never raising his voice, he explains in his rudimentary English and fluent Dari, the language of the Tajik ethnic group here, the reasons for his implacable hatred of the United States.

He occasionally expresses regret for the deaths of civilians in the Sept. 11 attacks and other operations against the United States. But he makes it clear that these casualties are secondary to the goal of punishing America for a long list of sins, headed by U.S. support for Israel.

He also makes it clear that he sees the United States as the main obstacle to establishing Islamic law in Afghanistan, across Central Asia and elsewhere around the world.

Khaled is among 21 foreigners and 306 Afghan Taliban members held at the Baharak Prison, which opened eight months ago in a desolate spot a couple of miles north of the village of Baharak. It is reached by leaving a dirt road cut into a mountainside, fording a shallow part of the Panjshir River and walking across a narrow metal bridge. The prison sits on a rocky spit of land that juts into a bend in the river and is bordered by barren, forbidding mountains that rise almost vertically from the riverbed.

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The fortress-like prison contains a row of dark cells facing a sunny interior courtyard. Each cell is about 12 feet wide by 28 feet long and crammed with more than 30 inmates. Shoes, bags of clothes and other belongings hang from the walls and from log beams in the ceiling.

The other foreign prisoners are from Burma, China, Yemen and Iraq, as well as Pakistan. Like Khaled, they joined extremist Muslim organizations that urged them to fight for the Taliban in its "holy war" in Afghanistan.

Abdul Jabar, 22, a Pakistani with a slight build and a sparse beard, studied at a veterinary college for two years before coming to Afghanistan in 1999. After three weeks of training, he was sent to the front to fight the Northern Alliance and was promptly captured.

Interviewed in a prison sitting room, he said he still believes in the Taliban cause, admires bin Laden and hates the U.S. government "because it helps Israel." He said he came to Afghanistan believing that he was going to be fighting Russians, but found himself facing only Muslim Afghans. (The Soviet Union withdrew its occupation forces from Afghanistan in 1989.) If he had known that, he said, "I would not fight. I would fight against Israel or in Kashmir or against America."

Would he carry out a suicide bombing? "If I know that [the target] is not Muslim but is Jewish or [of] another religion, I would immediately carry out this action," he said. But if he knew the target were Muslim, he would question the order.

Noor Mohammed Abdullah, 29, a Muslim from China, was also captured two years ago after barely a month in Afghanistan. He came here from a Pakistani Islamic school whose principal has close ties to the Taliban and told students they had an obligation to fight in Afghanistan, he said. He said he was told he would be fighting Russians and Americans.

Abdullah said he now realizes he made a mistake. If released, he would continue his religious studies and no longer fight the Northern Alliance, "because they are Muslim," he said.

Khaled has no such qualms.

"He will not change his ideas," said Abdul Qayyum, an Afghan with gray hair and pale blue eyes who is a deputy warden of the prison.

Another deputy warden, Farouk, said Khaled is the hardest of the hard-liners at Baharak, and probably the most dangerous man in the prison. "Any time he is free, he will work with Osama bin Laden and the Taliban," Farouk said.

Khaled has consistently expressed his radical views to all who will listen, seemingly unconcerned about the chilling effect his words have on any prospect of release or a prisoner exchange. It is as if softening his hard-line positions would be tantamount to renouncing his faith, Farouk said.

At one time, the Northern Alliance held 2,500 Taliban prisoners. Most have since been exchanged for alliance POWs.

In a study this year on foreign prisoners held by the Northern Alliance, Julie Sirrs, a former Afghan analyst for the Defense Intelligence Agency, reported that more non-Afghans are fighting in the country than ever before. She said the foreigners are more difficult to capture because they tend to be more motivated than Afghans on the Taliban side, "many of whom are conscripts."

Contrary to the popular perception, Sirrs said, only 43 percent of the 113 prisoners she interviewed identified themselves as *talibs*, or religious students. Most of the foreign fighters were recruited while working as shopkeepers, laborers, party activists and in other occupations. Only 30 percent of the Pakistanis identified themselves as Pashtuns, the ethnic group that dominates the Taliban.

Khaled said he was born in Baluchistan province, the son of an Islamic studies professor. He earned a degree in Islamic law from the Islamia University of Punjab, where friends recruited him into the fundamentalist Harkat ul-Mujaheddin, which has been implicated in the deaths of Americans and declared a terrorist organization by the U.S. government. Khaled arrived in Afghanistan in 1992 determined, he said, to "defend Muslims" at a time when Serbs were killing Muslims in Bosnia.

He said he underwent training for two years near Khost, south of the capital, Kabul, first in a Harkat camp. He later moved up to a camp for more advanced trainees that eventually was taken over by bin Laden, he said. There, 35 men received instruction in guerrilla tactics, bomb-making and "chemicals and poisons." He said the last instruction covered "poison gas and bombs," but he declined to go into details. He denied any knowledge of anthrax, the disease currently being spread in the United States by biological agents sent through the mail, and said its use was not taught while he was at the training center.

After bin Laden moved to Afghanistan in 1995, he occasionally visited the camp to give pep talks, said Khaled, who was serving as an instructor by then. Bin Laden would tell the trainees, "You should spill more sweat during training so you don't spill your blood during battle," Khaled recalled. He said bin Laden told the students they were "fighting against people who want to finish Islam" and that the U.S. government was an enemy of Muslims.

After his training, Khaled said he went to Kashmir to fight the Indian government, returning a year later to Afghanistan, where he linked up with the Taliban.

He was in command of 30 Harkat fighters when his unit was cut off by Northern Alliance soldiers near Jabal Saraj in October 1996. While his men escaped to Kabul, he said he held off his attackers for five hours, using an AK-47 assault rifle and the sharpshooting skills he acquired during his training. He said he killed more than 10 alliance fighters before he ran out of ammunition and surrendered.

Today, Khaled is as unapologetic about his support for the Taliban as he is about his hatred for America.

"If America didn't work against us, we would never take action against their cities," he said. "Our enemies are America and Israel, but we cannot fight against them face to face. We have to fight against them secretly to make them leave their plans and stop working against us."

Besides support for Israel, including \$3 billion a year in aid, Khaled's catalogue of complaints against the United States includes the activities of the CIA, the presence of U.S. troops on "holy land" in Saudi Arabia since the Persian Gulf War (a major grievance of bin Laden), the U.S. intervention in Somalia, the bombing of Iraq, an airstrike against Libya, the dropping of atomic bombs on Japan during World War II and even Washington's rejection of the Kyoto treaty on global warming.

At one point, he launched into a stream of revisionist history, portraying the United States as the aggressor against Japan in World War II and justifying the attack on Pearl Harbor. Hawaii, he asserted, rightfully belonged to Japan.

Of the Sept. 11 attacks, Khaled said, "the target was not to kill civilian people, but [to cause] important hurt to the American government." There was no other way to achieve the goal, he said. "They had to do that action."

Would he participate in such a mission? "If my commander led me to an action like this, I would do it. If Osama bin Laden told me to do it, I would do it." He added, "I'm from Harkat, but I think that Osama bin Laden is also my leader."

He has no reservations about sacrificing himself in a suicide attack, he said, "because our target is very important, more important than my life." But he said he did not necessarily agree with the specific targets last month.

"In America, there are more important places, like atomic plants and reactors [that] they could attack," he said. "Not only atomic plants, but the CIA center, arms factories and the White House."

"America tries to say to the world that Muslim fundamentalist organizations [are] terrorist," Khaled said. "But we think the American government is terrorist."

He rejected the notion that the terrorist attacks last month were counterproductive, since they did not cause the United States to reconsider its policies but united Americans in a desire for revenge and brought an intervention in Afghanistan aimed at eliminating bin Laden and the Taliban.

"You will see, America will not be successful in [its] goals," Khaled said. The use of U.S. troops will eventually be necessary, he said, and "American ground forces wouldn't be able to fight against us. We're fighting the Americans on three front lines: in Afghanistan, in Pakistan and in the United States."

Even if bin Laden is killed, Khaled said, another leader will quickly take his place. And if the Taliban eventually is defeated, "we will do secret activities, secret action."

Does he mean more terrorist attacks?

Khaled smiled broadly. "That's right."

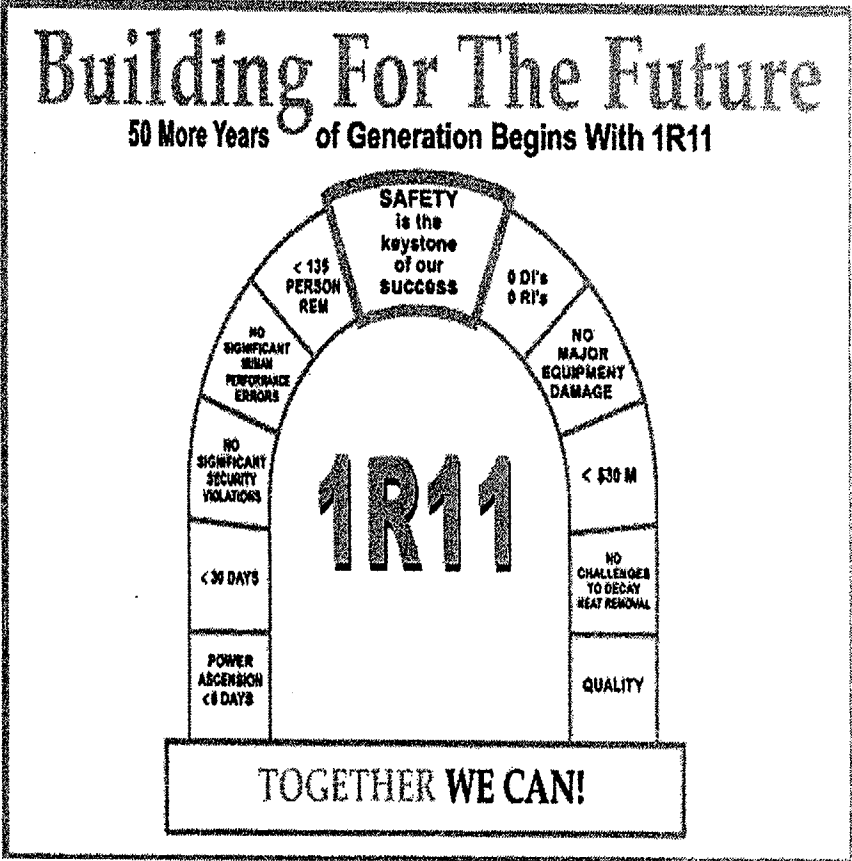
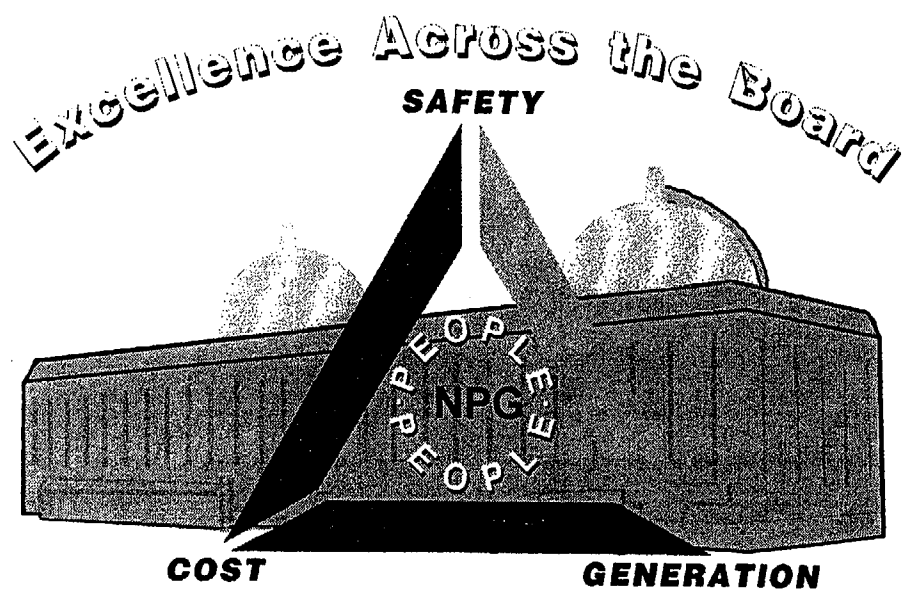
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AGENDA



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CAROLINA POWER & LIGHT
COMPANY

(Shearon Harris Nuclear Power Plant)

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Docket No. 50-400-LA

ASLBP No. 99-762-02-LA

AFFIDAVIT OF GARETH W. PARRY, STEPHEN F. LAVIE,
ROBERT L. PALLA AND CHRISTOPHER GRATTON
IN SUPPORT OF NRC STAFF BRIEF AND SUMMARY OF RELEVANT
FACTS, DATA AND ARGUMENTS UPON WHICH THE STAFF PROPOSES
TO RELY AT ORAL ARGUMENT ON ENVIRONMENTAL CONTENTION EC-6

Gareth W. Parry, Robert L. Palla, Stephen F. LaVie and Christopher Gratton, being duly sworn, do hereby state as follows:

1. My name is Gareth W. Parry. I have been employed by the U.S. Nuclear Regulatory Commission (NRC) since 1996 as the Senior Level Advisor on Probabilistic Safety Assessment for the Division of System Safety and Analysis in the Office of Nuclear Reactor Regulation. My responsibilities are primarily to support the development of the use of risk assessment methods and results in regulatory processes associated with the operation of nuclear power reactors. Prior to working for NRC I worked for more than fifteen years for NUS, a consulting engineering company. While at NUS I participated in various capacities in the performance of more than 20 PRAs of nuclear power plants in the USA and also in Taiwan, Korea, Spain, the Czech Republic and the United Kingdom. I managed two full scale PRA projects, and contributed in a major way as task leader for several tasks in others. I contributed to the development of methods for the analysis of human reliability, common cause failures and uncertainty analysis as a contractor to both NRC and also the Electric Power Research Institute, and have published a large number of papers in areas

related to probabilistic risk assessment. I have a Ph.D. degree in Theoretical Physics from the Imperial College of Science and Technology, the University of London, England, and a Bachelor of Science degree in Physics also from Imperial College. I have more than 25 years of experience in the analysis of safety of nuclear reactors. My resume, including a list of publications is attached (Exhibit 1-Resume of Gareth W. Parry).

2. My name is Stephen F. LaVie. I am employed by the Nuclear Regulatory Commission as a Health Physicist in the Licensing Section, Probabilistic Safety Analysis Branch, Division of Systems Safety and Analysis in the Office of Nuclear Reactor Regulation. I am responsible for reviews of licensee submittals involving assessments of the radiological consequences of design basis accidents, and for the preparation of regulatory guidance for performing these analyses. In addition, I have twenty years of experience in the commercial nuclear power field, including radiation protection, radiological emergency preparedness, atmospheric dispersion, radiation shielding, analyses of the radiological consequences of design basis accidents, including development of assessment methodologies and computer codes. I have fifteen years of direct involvement in providing radiological engineering support to the operating and engineering departments at a commercial pressurized water reactor. A statement of my professional qualifications is attached hereto. (Exhibit 2-Resume of Stephen F. LaVie).

3. My name is Robert L. Palla. I am employed by the U.S. Nuclear Regulatory Commission as a Senior Reactor Engineer in the Safety Program Section, Probabilistic Safety Assessment Branch, Division of Systems Safety and Analysis in the Office of Nuclear Reactor Regulation. I am responsible for technical evaluations of license applications and policy issues in the areas of severe accident progression and phenomena, containment performance, offsite consequences, and risk management, including risk evaluation of spent fuel pools at

General Approach to the Analysis

21. This section describes the approach taken by the Staff to the estimation of the probability of the seven step accident sequence identified in Paragraph 6. The estimation of the probability of this chain of events is not simply the product of the probabilities of the seven events. In fact, as will be discussed below, steps 4 and 6 in the sequence are not random events for which probabilities may be assessed, but rather they represent conditions that are used to evaluate the probability of step 5. As will be seen in the later discussions the timing of the steps in the sequence plays a significant role in the determination of the overall probability of the sequence.

22. As shown by the PRAs performed to date, there are many postulated degraded core accidents, each having its own characteristics and its own frequency of occurrence. What the characteristics of the sequences are will be discussed as necessary later. The conditional probability of containment failure or bypass given a degraded core accident is dependent on the characteristics of the accident sequence.

23. In Orange County's Request for Admission of Late-Filed Environmental Contentions (Request for Admission), dated January 31, 2000, BCOC makes the statement that "a degraded core accident at the Harris, reactor, with containment failure or bypass, would almost certainly lead to interruption of cooling of the Harris pools." The Staff has identified that there are some core damage accident sequences for which the spent fuel pool cooling is interrupted. It also recognizes that there is a potential, for those sequences in which spent fuel pool cooling is not interrupted, for

the spent fuel pool cooling to be interrupted following the failure of containment. Thus the estimate of the joint probability of the first three steps in the seven-step sequence may contain contributions in which spent fuel pool cooling is lost before containment failure, and also contributions in which containment failure precedes loss of pool cooling.

24. If the pool cooling is interrupted for a sufficient length of time, then, because of the heat generated by the decay of fission products in the spent fuel, the water in the pools would heat up and evaporate or boil off, leading to uncovering of the fuel elements. Therefore, should pool cooling be interrupted, it is essential that it be restored before the fuel becomes uncovered. Event 6, the loss of all pool water through evaporation, is guaranteed if those functions are not restored. Stated another way, if the pool cooling and makeup functions can be restored before the fuel has been uncovered, the scenario is terminated. The length of time it takes for the water heat up and boil off is a function of the total heat load (which is a function of both the age and quantity of fuel), and the amount of water present.

25. For many of the scenarios of concern, the pool cooling function is recoverable. However, a prolonged interruption of the cooling will require makeup to establish an appropriate flow through the cooling system. There are several methods of providing makeup.

26. In the Request for Admission, on pages 8-9, BCOC writes, "Restoration of cooling water lost by evaporation would be precluded because onsite radiation levels would prevent access by personnel." There are two "events" in the seven step sequence that relate to this, namely event 4, extreme radiation doses precluding personnel access, and event 5, inability to restart any pool

cooling or makeup systems due to extreme radiation doses. "Event 4" is not an event as such, but, for the purposes of this analysis, represents the necessity, for each scenario included in the combination of events 1, 2, and 3, to assess whether that scenario can lead to sufficient contamination dose level to prevent access to areas where corrective or restorative actions are to be taken at the time that such actions have to be taken. The location and severity of dose is a function of the nature of the degraded core accident, and particularly of the containment failure mode and location. Furthermore, the dose to personnel in contaminated areas is both a function of time from the release, and of the time spent in the contaminated area.

27. If the age of the fuel is such that an exothermic reaction of the fuel clad is possible once the fuel is uncovered, the onset of the fire would be later than the time it takes for the water in the pools to evaporate to the point of uncovering of the fuel. However, the additional time, while uncertain, is assumed to be small. Therefore, the time to fuel uncovering is assumed to be the time available to perform remedial actions to prevent the occurrence of an exothermic reaction. The condition represented by event 6 is used to determine the time available to perform the necessary actions.

28. The probability associated with event 5 is interpreted for this analysis to be the probability of failure to restart any pool cooling or makeup systems given the constraints imposed by the radiological contamination following the degraded core accident. The more methods that are not precluded by the radioactive release the better from the point of view of assuring that at least one of them succeeds. The more time that is available the more the likelihood of success.

29. The consequence of the loss of most or all pool water is most likely an exothermic reaction of the fuel in the pools if the fuel is not so old that the decay heat can be removed by air cooling. Precisely how old the fuel has to be to prevent a fire is still not resolved. Therefore, rather than estimate the probability of an exothermic reaction in pools C and D (event 7 in the seven step sequence), it is assumed conservatively that the probability is 1, given that the sequence has progressed to the point that the water in the pools has been lost through evaporation. However, there will be fuel in pools A and B that is less than five years old and loss of water in pools A and B would almost certainly result in an exothermic reaction. At that point, it is not likely that cooling could be restored to pools C and D. Thus the time available to effectively recover the pool cooling and/or makeup functions is conservatively assumed to be the time taken to uncover the fuel in pools A and B.

30. In this affidavit, the Staff presents its assessment of the probability of the seven-step scenario identified in paragraph 6 above. This analysis was subjected to a peer review by Dr. Nathan Siu and Mr. Charles Tinkler of the Office of Research. The Staff did not identify any sequences where the ability to restart spent fuel pool cooling or provide makeup, following a severe core damage accident that failed containment and led to an interruption of spent fuel pool cooling, was precluded by severe doses. The Staff's conclusion therefore, is that the probability of this sequence as written is very low, and as discussed in paragraphs 234 to 255, is bounded by 2E-07/reactor year.

Probability of Degraded Core Accident at the Harris Nuclear Plant