

July 18, 2003

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Northern California Power Agency,
Petitioner,

v.

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

and

Pacific Gas and Electric Company,
Proposed Intervenor.

Case No. 03-1184

MOTION OF PACIFIC GAS AND ELECTRIC COMPANY FOR LEAVE TO INTERVENE

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, and Circuit Rule 15(b) of the United States Court of Appeals for the District of Columbia Circuit, Pacific Gas and Electric Company ("PG&E") hereby moves for leave to intervene as a party respondent in the captioned proceeding. In support of its motion, PG&E states as follows:

1. Petitioner Northern California Power Agency ("NCPA") is seeking review of an Order Approving Transfer of Licenses from Pacific Gas and Electric Company to Electric Generation LLC and Diablo Canyon LLC, and Approving Conforming Amendments. This Order was issued on May 27, 2003, in Nuclear Regulatory Commission ("NRC") docket numbers 50-275 and 50-323. *See* 68 Fed. Reg. 33,208 (June 3, 2003).

2. The Order relates to PG&E's November 30, 2001 request to the NRC for authorization to transfer the NRC operating licenses for the Diablo Canyon Power Plants, Units 1 and 2 (collectively, "DCPP") in connection with implementation of a comprehensive Plan of

Reorganization for PG&E as filed with the United States Bankruptcy Court under Chapter 11 of the United States Bankruptcy Code. Under the Plan of Reorganization, operating authority for DCPD would be transferred to a new limited liability company named Electric Generation LLC and ownership of DCPD would be assigned to a wholly-owned subsidiary of Gen named Diablo Canyon LLC.

3. PG&E is the licensed owner and operator of DCPD. PG&E applied for the NRC approval that is the subject of the Order and the Petition for Review, and participated as the applicant in the administrative proceedings below before the NRC. PG&E's operations and Plan of Reorganization are directly implicated by the Order and would be directly affected should the Court suspend, enjoin, or set aside the NRC's Order that is the subject of the Petition for Review. Accordingly, PG&E has its own direct and substantial interest in this matter.

4. PG&E has been granted leave to intervene in a related proceeding before this Court, case number 03-1038, also styled *Northern California Power Agency v. Nuclear Regulatory Commission et al.* In that case, NCPA is challenging a Memorandum and Order of the NRC, CLI-03-02, issued February 14, 2003, in the adjudicatory proceeding in NRC docket numbers 50-275-LT and 50-323-LT. In CLI-03-02, the Commission rejected on their merits the contentions raised by NCPA related to the ongoing vitality of the DCPD antitrust license conditions. The Commission held that it lacks authority to impose antitrust license conditions with respect to DCPD and instructed the NRC Staff not to include these antitrust conditions in the transferred licenses if it otherwise approves the PG&E license transfer application, and denied all of NCPA's remaining requests for relief. The May 27, 2003 Order approving the proposed transfers reflects the Commission's ruling in the adjudicatory proceeding in regard to the antitrust license conditions.

5. Counsel for NCPA and the NRC have indicated that they have no objection to PG&E's motion for leave to intervene.¹

Respectfully submitted,



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Dated in Washington, District of Columbia
this 18th day of July, 2003

¹ As discussed in the July 11, 2003, response of PG&E to the motion of NCPA to suspend the briefing schedule and hold in abeyance case number 03-1038, PG&E is pursuing a settlement of its Chapter 11 bankruptcy case. That settlement, if approved, and if other conditions required for implementation are met, would obviate the NRC approval that is the subject of both case number 03-1038 and the present Petition for Review. In addition, on July 14, 2003, NCPA filed a motion to hold this proceeding in abeyance. PG&E has no objection to NCPA's requests to hold the cases in abeyance pending approval of the settlement and confirmation of the settlement plan of reorganization for PG&E. If the settlement agreement is not approved and executed by December 31, 2003, PG&E reserves the right to request that the proceeding be reactivated.