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September 24, 2003

**BY FEDERAL EXPRESS**

Cathy A. Catterson, Clerk  
United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *California Public Utilities Commission v. U.S. Nuclear Regulatory  
Commission et al.*, Case No. 02-72735

Dear Ms. Catterson:

Please find enclosed for filing an original and four (4) copies of "Intervenor Pacific Gas and Electric Company's Status Report Related to Stay of Proceeding" in Case No. 02-72735.

You will also find enclosed a duplicate copy of Pacific Gas and Electric Company's filing. Please date-stamp this copy and return it in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter.

Sincerely,

  
David A. Repka

Counsel for  
Pacific Gas and Electric Company

Enclosures

September 24, 2003

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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California Public Utilities Commission and  
County of San Luis Obispo,  
Petitioners,

v.

U.S. Nuclear Regulatory Commission,  
Respondent,

and

Pacific Gas and Electric Company, et al.,  
Intervenors.

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No. 02-72735

**INTERVENOR PACIFIC GAS AND ELECTRIC COMPANY'S  
STATUS REPORT RELATED TO STAY OF PROCEEDING**

On July 16, 2003, intervenor Pacific Gas and Electric Company ("PG&E") requested that further proceedings in this matter be held in abeyance in light of a proposed settlement agreement currently before the Bankruptcy Court in PG&E's ongoing Chapter 11 bankruptcy case that could eventually render this pending appeal moot. In an Order dated July 28, 2003, the Court granted PG&E's motion, and stayed this proceeding until September 26, 2003. The Court directed that, on or before expiration of the stay, PG&E file a status report. Pursuant to that

Order, PG&E herein files its status report. As discussed below, the settlement proceedings are progressing in accordance with established schedules. Accordingly, PG&E respectfully requests that this proceeding continue to be stayed pending resolution of the settlement process.

## I. BACKGROUND

The Petition for Review in the captioned matter relates to an administrative order of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”). The NRC order, in turn, relates to PG&E’s November 30, 2001, application to the NRC for approval of a transfer of its licenses to own and operate the Diablo Canyon Power Plant (“DCPP”). The license transfers would be required to implement a PG&E Plan of Reorganization that is pending before the Bankruptcy Court. Also before the Bankruptcy Court is an alternative plan proposed by the California Public Utilities Commission (“CPUC”) and the Official Committee of Unsecured Creditors (“OCC”). The Bankruptcy Court previously initiated confirmation hearings on these two competing plans.

Pursuant to settlement procedures implemented by the Bankruptcy Court, PG&E, PG&E Corporation and the CPUC staff announced, on June 20, 2003, a proposed settlement of the PG&E bankruptcy case (the “Settlement Agreement”), which provides that PG&E will seek Bankruptcy Court approval of a plan of reorganization (“Settlement Plan”) in place of the plans previously

proposed by PG&E and the CPUC/OCC. Accordingly, confirmation hearings on the PG&E and CPUC/OCC plans have been stayed in the Bankruptcy Court.

Under the provisions of the proposed Settlement Agreement, it is expected that PG&E would emerge from Chapter 11 protection in early 2004 as a vertically integrated utility, subject to the traditional ratemaking jurisdiction of the CPUC. If consummated, the Settlement Agreement and Settlement Plan would eliminate the need for the NRC license transfer at issue in this matter.

The Settlement Agreement provides that the Agreement will become binding only upon its approval by the board of directors of PG&E and PG&E Corporation, its approval by the CPUC, and its execution by PG&E, PG&E Corporation, and the CPUC on or before December 31, 2003. The proposed settlement gives the parties the right to terminate the proposed settlement if the necessary approvals are not received by December 31, 2003.

## II. DISCUSSION

### A. *The Bankruptcy Proceeding*

Pursuant to the proposed settlement, on July 10, 2003, PG&E and the OCC jointly submitted the Settlement Plan for confirmation by the Bankruptcy Court. On September 8, 2003, the Bankruptcy Court held a status conference addressing several procedural matters. In particular, the court set October 16, 2003, as the hearing date for any summary judgment motions that may be filed.

Such motions must be filed by September 26, 2003. A second status conference is scheduled for October 8, 2003, at which time the bankruptcy judge will set the case calendar through the end of the year. The confirmation trial is scheduled to begin on November 10, 2003. PG&E anticipates that the trial should be completed, and a decision issued, before the end of the year. Assuming that the Settlement Plan is confirmed on this schedule, PG&E anticipates the Plan will be made effective during the first quarter of 2004.

*B. The CPUC Proceeding*

A CPUC proceeding is currently under way, in parallel with the Bankruptcy Court proceeding, related to approval of the Settlement Agreement. In this proceeding, a prehearing conference was held on September 9, 2003, setting a schedule for hearings. Hearings began on September 10, 2003, and are scheduled to conclude by the end of September. PG&E anticipates a proposed decision from the administrative law judge on or about November 18, 2003, with a final CPUC decision due on or about December 18, 2003.

*C. The NRC Proceeding*

The NRC issued its order approving the DCPD license transfers on May 27, 2003.<sup>1</sup> On June 2, 2003, the CPUC and San Luis Obispo County (the

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<sup>1</sup> See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments, 68 Fed. Reg. 33,208 (June 3, 2003). An appeal of this order is

“County”) filed a request with the Commission to stay the effectiveness of the May 27, 2003, NRC order. On June 12, 2003, PG&E filed an opposition to the stay request. Thereafter, pursuant to the terms of the Settlement Agreement, on June 24, 2003, PG&E requested that the Commission hold the remaining aspects of the NRC adjudicatory proceeding (that is, the CPUC/County stay request) in abeyance until further notice in light of the proposed bankruptcy settlement.

In a Memorandum and Order dated September 8, 2003, the Commission granted PG&E’s motion to hold the remaining aspects of the NRC license transfer proceeding in abeyance.<sup>2</sup> The Commission found that, in view of the tentative bankruptcy settlement, and the fact that both this Court and the Court of Appeals for the District of Columbia Circuit have issued orders holding appeals of Commission decisions on the DCPD license transfer matter in abeyance, its decision would not cause “any conceivable harm” to the County. CLI-03-10, slip op. at 3. The Commission also noted that the NRC’s approval of the license transfer has no immediate effect in any event, because the transfer cannot be implemented absent, among other things, Bankruptcy Court approval of the PG&E plan of reorganization. *Id.*

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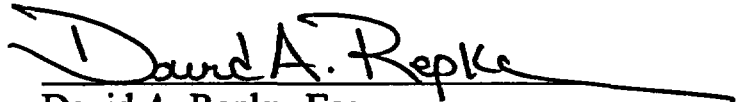
pending before the U.S. Court of Appeals for the District of Columbia Circuit (No. 03-1184, appeal docketed July 1, 2003).

<sup>2</sup> See *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, units 1 & 2), CLI-03-10, 58 NRC \_\_ (slip op. Sept. 8, 2003).

#### IV. CONCLUSION

As discussed above, proceedings for approval of the Settlement Agreement and Settlement Plan are moving forward in a timely fashion, both in the Bankruptcy Court and before the CPUC. PG&E currently anticipates that the schedule in both forums is proceeding consistent with the target date to receive the necessary approvals on or before December 31, 2003. PG&E respectfully requests that this proceeding continue to be held in abeyance.

Respectfully submitted,



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ATTORNEYS FOR INTERVENOR  
PACIFIC GAS & ELECTRIC COMPANY

Dated at Washington, DC  
this 24th day of September 2003

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

California Public Utilities Commission and  
County of San Luis Obispo,  
Petitioners,

v.

U.S. Nuclear Regulatory Commission,  
Respondent,

and

Pacific Gas and Electric Company, et al.,  
Intervenors.

No. 02-72735

CERTIFICATE OF SERVICE

I hereby certify that copies of "INTERVENOR PACIFIC GAS AND ELECTRIC COMPANY'S STATUS REPORT RELATED TO STAY OF PROCEEDING" in the captioned proceeding have been served as shown below by United States mail, first class, this 24th day of September 2003.

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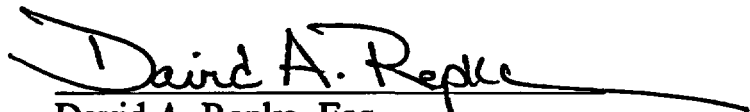
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Respectfully submitted,

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

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