

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into implementation of Assembly Bill 970 regarding the identification of electric transmission and distribution constraints, actions to resolve those constraints, and related matters affecting the reliability of electric supply.

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Investigation No. 00-11-001
(Filed November 2, 2000)

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO ASSIGNED
COMMISSIONER'S RULING DATED MARCH 29, 2001**

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April 13, 2001

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I. INTRODUCTION.

In response to Assigned Commissioner Lynch's March 29, 2001 ruling in this Investigation, Pacific Gas and Electric Company ("PG&E") today files a Conditional Application for a certificate of public convenience and necessity ("CPCN") authorizing the construction of the Los Banos-Gates 500 kV Transmission Project. The Conditional Application includes a Proponent's Environmental Assessment ("PEA") and all other information necessary for the Commission to commence its environmental review of the Los Banos-Gates project under the California Environmental Quality Act ("CEQA"). The Conditional Application also includes a Scoping Memo setting forth proposed dates for the California Public Utilities Commission's ("CPUC") CEQA environmental review process as well as its general proceedings in connection with the Conditional Application. Consistent with CPUC General Order ("GO") 131-D, PG&E will provide public notice of the filing of the Conditional Application within ten days.

Concurrent with the filing of the Conditional Application, PG&E also files this Response to

Assigned Commissioner's Ruling to explain the serious concerns PG&E has about the timing, appropriateness, and validity of that Ruling. As discussed in this Response, the CPUC cannot order PG&E to file an application for a siting decision for this transmission-only project because the CPUC lacks jurisdiction over transmission planning, and neither PG&E nor the California Independent System Operator ("ISO") have, as of yet, determined whether the project is needed or cost-effective. Even if the CPUC did have the authority to act in this area, it could do so only by a decision of the full Commission after due process, not by an Assigned Commissioner's Ruling. Finally, the complete lack of evidentiary support for the Ruling would likewise render it without legal effect, even if it had been within the scope of the Commission's authority and procedurally proper.

II. BACKGROUND.

In a March 29, 2001 ruling, the Assigned Commissioner in this proceeding effectively removed the Los Banos-Gates 500 kV Transmission Project from this Investigation before it had even begun, preferring instead to direct PG&E to file an application for a CPCN for the project by April 13, 2001. By this action, the Assigned Commissioner ordered PG&E to initiate a process that could result in construction of what would be one of the biggest and most expensive electric transmission projects ever built in California. Despite the massive geographic scope and cost of the Los Banos-Gates project, and the fact that neither PG&E management nor the ISO has approved the project, the Assigned Commissioner's Ruling made the application due just two weeks from the date it was announced.¹

¹ The CPUC's rules require CPCN applications to include a vast amount of information. (*See, e.g.*, GO 131-D, Section IX.A.; CPUC Rules of Practice and Procedure, Rules 2 through 8, 15, 16, 17.1; CPUC Information and Criteria List.) PG&E currently has two CPCN applications pending before the Commission, for the Northeast San Jose and Tri Valley projects. PG&E staff worked for nearly two years on the extensive planning and environmental studies, economic analyses, and local agency and landowner consultations necessary to support these applications and their attendant PEAs. Even then, the CPUC took months to deem the applications complete and many more months after that to release Draft EIRs. The Northeast San Jose case was filed in September 1999 but did not receive its Draft EIR

PG&E is unaware of any prior instance of the Commission – much less a single assigned commissioner – ordering a utility to seek authority to build a project that has not yet been determined to be needed or cost-effective.

A decision to build a project of this magnitude cannot be entered into lightly, no matter what the press and popular opinion might assume about the merits of the contemplated Path 15 upgrades. The Los Banos-Gates project involves construction of some 84 miles of overhead 500 kV line and is estimated to cost approximately \$300 million. Even before beginning to incur construction costs, PG&E and, ultimately, the ratepayers would be forced under the Assigned Commissioner’s Ruling to incur permitting and certification costs expected to reach approximately \$20 million. Although PG&E and the ISO are working jointly to analyze the need for and cost-effectiveness of this significant upgrade, these issues are far from settled. In fact, PG&E and other stakeholders have studied the Los Banos-Gates project on more than one occasion, only to be told by the CPUC and others that this upgrade of Path 15 was not cost-effective. (*See, e.g.*, CPUC Dec. No. 91-04-071 (April 24, 1991).)

Also unclear is whether PG&E is the entity best situated to fund, build, and operate this project. PG&E and the ISO have been in discussions with the State of California, the Transmission Agency of Northern California (“TANC”), and the Western Area Power Administration (“WAPA”) concerning possible State construction and ownership of the Path 15 upgrade, with TANC and WAPA serving as lead agencies under CEQA and the National Environmental Policy Act (“NEPA”), respectively. These

until June 2000, its Final EIR until February 2001, and a Draft Decision until late March 2001. For the Tri Valley project, which PG&E filed in November 1999, the CPUC did not release a Draft EIR until late December 2000 or hold hearings until late February 2001. The CPUC still has not published a Final EIR or issued a Draft Decision for the Tri Valley project. The Los Banos-Gates project involves approximately four times the line mileage as Tri Valley and is estimated to be more than three times as expensive. Seen in this context, the Assigned Commissioner Ruling’s two week deadline for the preparation and filing of the Los Banos-Gates application in just two weeks is not reasonable.

discussions suggest that, given the number of parties other than PG&E ratepayers that may benefit from this project, the speed with which TANC can apparently conduct the required environmental review, and the precarious financial position of PG&E, State sponsorship of this project is more likely to ensure the earliest possible in-service date for this project, assuming it proves to be needed and cost-effective.

Despite the lack of consensus among the entities that have studied the Path 15 situation, the Assigned Commissioner's Ruling found that "it is necessary for the Commission to pursue relieving the constraints on Path 15 now to ensure electric service reliability and lowest cost dispatch." (Assigned Commissioner's Ruling at 2.) This finding was not based on any evidence in the record in this Investigation, as none has been developed. Nor were PG&E, the ISO, or other interested parties given an opportunity to comment on the Ruling, much less present evidence and conduct cross-examination through evidentiary hearings. Announcing this unprecedented decision by way of an assigned commissioner's ruling rather than after a vote of the full Commission further compounds the problem. For all of these reasons, PG&E has grave reservations about the appropriateness, timing, and validity of the Assigned Commissioner's Ruling.

Nonetheless, PG&E agrees that the Los Banos-Gates 500 kV Transmission Project merits the full attention of all parties involved in an effort to determine, as quickly as possible, whether this upgrade to Path 15 is needed and cost-effective and, if so, who can best build and permit the project. For that reason, PG&E has commenced biological studies related to those species whose habitat is best observed during the spring season,² and is committed to working with TANC to ensure that all preliminary biological studies necessary to support a potential future consultation with the U.S. Fish and

² Indeed, PG&E had set this work in motion well in advance of receiving the Commission's unnecessary April 3, 2001 Decision Requiring Pacific Gas and Electric Company to Conduct Biological Studies for Transmission Improvements.

Wildlife Service are performed this year. In addition, PG&E is today filing with the CPUC all information required to be included in an application for a CPCN for the Los Banos-Gates 500 kV Transmission Project, including environmental analysis sufficient to satisfy the CPUC's requirements for PEAs. PG&E will also provide notice of the filing of this document to all agencies, landowners, and others who are required to receive notice of the filing of a CPCN application under GO 131-D. PG&E expects the Energy Division will use this information to promptly deem the filing complete, prepare its Initial Study, conduct public scoping activities, and begin drafting its environmental impact report ("EIR") for the project. PG&E also anticipates that the Commission will docket any protests and requests for hearings that might be received within the applicable protest period, set a procedural schedule for the case, and receive evidence as to whether public convenience and necessity require the construction of the project.

At the same time, PG&E cannot commit to construct the Los Banos-Gates 500 kV Transmission Project without first determining that it is needed and cost-effective, that project costs can be recovered in rates, and that PG&E will have the financial wherewithal to fund the construction of the project. *Therefore, PG&E is not requesting a CPCN for the Los Banos-Gates project at this time, and the document filed concurrently herewith necessarily remains conditional.* If, at some future date, PG&E and ISO determine the project to be needed and cost-effective, and PG&E management subsequently approves the project, PG&E will promptly notify the Commission that it is formally and unconditionally seeking a CPCN for the project described in the attached Conditional Application. Prior to the Assigned Commissioner's Ruling, PG&E had planned on continuing its ongoing joint studies with the ISO over the summer, with management review scheduled for late summer or early fall and, assuming management approval of the project, a CPCN application to be filed in

September. In the meantime, PG&E has provided the CPUC with all the information necessary to conduct its environmental review of the project and alternatives, and to commence its administrative approval process. PG&E intends to fully cooperate with Energy Division staff and to participate actively in any evidentiary hearings that might be requested.

To the extent the Commission views the Assigned Commissioner's Ruling as somehow requiring more than this, PG&E expressly reserves its right to challenge the Ruling on all available grounds, including, but not limited to, the following:

- after the passage of Assembly Bill ("AB") 1890, the CPUC lacks jurisdiction over transmission planning in California and is therefore without power to order any utility to file an application for a transmission-only project such as the Los Banos-Gates 500 kV Transmission Project; for it to do so would circumvent the comprehensive, integrated transmission planning process overseen by the ISO in accordance AB 1890 and Federal Energy Regulatory Commission ("FERC") tariffs.

- assuming, *arguendo*, that the CPUC did have the authority to order a utility to file such an application, it would need to act by a decision of the full Commission following due process, not simply a ruling of the assigned commissioner in a separate investigation without any opportunity for comment; and

- even if the Ruling had covered matters within the Commission's jurisdiction and was procedurally proper, the Ruling was not supported by any evidence, as none has been developed in this Investigation.

Each of these grounds is discussed in greater detail below.

II. THE CPUC CANNOT ORDER PG&E TO FILE A CPCN APPLICATION FOR THE PATH 15 TRANSMISSION UPGRADE BECAUSE THE CPUC HAS NO JURISDICTION OVER TRANSMISSION PLANNING.

The CPUC is no longer responsible for transmission planning in California and therefore cannot order any utility to proceed with a transmission-only project such as the Los Banos-Gates project. Rather, under AB 1890 and FERC tariffs, the CPUC's only role in transmission-related matters relates to environmental review and selection of a route *once the ISO and a utility have determined that a project is necessary to promote economic efficiency or maintain system reliability and have proceeded with an application to the CPUC for a siting decision.*

AB 1890 transferred responsibility for the reliability of California's transmission system from the CPUC to the ISO and FERC. The FERC approved the ISO's tariff, thereby accepting exclusive jurisdiction over the ISO and over all aspects of the transmission system governed by the ISO, including transmission system upgrades, which are governed by Section 3.2 of the ISO's FERC-approved tariff. Accordingly, the CPUC lacks authority to order the Utility Distribution Companies to upgrade the transmission system and the Assigned Commissioner's Ruling is without legal effect.

A. AB 1890 Transferred Control Over California's Transmission System to the ISO.

In enacting AB 1890, the Legislature declared:

It is the intent of the Legislature to direct the creation of a proposed new market structure featuring two state chartered, nonprofit market institutions: a Power Exchange . . . and an Independent System Operator with centralized control of the statewide transmission grid, charged with ensuring the efficient use and reliable operation of the transmission system. . . . It is the further intent of the Legislature to direct the Independent System Operator to seek federal authorization to perform its functions and to be able to secure the generation and transmission resources needed to achieve specified planning and operational reserve criteria.

AB 1890 at Section 1(c). AB 1890 charged the ISO with the responsibility to “ensure efficient use and reliable operation of the transmission grid.” *See* Pub. Util. Code § 345. In this regard, AB 1890 specifically transferred “responsibility for ensuring short and long term reliability away from . . . regulatory bodies to the Independent System Operator. . . .” Pub. Util. Code § 334; *see also* Pub. Util. Code § 330(m) (“[i]t is the intention of the Legislature that California’s . . . electric utilities should commit control of their transmission facilities to the Independent System Operator”). AB 1890 specifically directed the ISO to seek FERC approval of its operations and to “seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria” Public Utilities Code § 346.³ In accordance with AB 1890, the Commission transferred control over authority over transmission to the ISO in Decision 98-01-053. (*See* 1998 Cal. PUC LEXIS 200, *9.)

B. The ISO, Having Received Authority From the FERC, Has the Responsibility For Determinations Related to Maintaining Electric Transmission System Reliability.

As directed by AB 1890, the ISO filed an application with the FERC for approval of its tariff. FERC approved the tariff, thereby accepting jurisdiction over the subject matter thereof and transferring operational control over California’s transmission system to the ISO. 81 FERC ¶ 61,122, 1997 FERC LEXIS 2413. Section 3.2 of the ISO’s tariff establishes procedures for upgrading the transmission system. Section 3.2.1 provides that the “ISO, a Participating TO [Transmission Operator], or any other Market Participant may determine the need for and propose a transmission system addition. A transmission addition or upgrade is determined to be needed where it would promote economic

³ The Federal Power Act, 16 U.S.C. § 824 et seq., grants the FERC jurisdiction over the transmission of electric energy in interstate commerce. The Path 15 transmission line facilitates interstate transmission.

efficiency or maintain system reliability as set forth below.”⁴ Pursuant to Section 3.2.1.1.1, if the Transmission Operator (*e.g.*, PG&E) declines to undertake the requested upgrade (and the proponent has not committed to pay the full cost of the upgrade), “the proposal will be submitted to the ISO ADR Procedures for resolution.” Similarly, Section 3.2.1.2 provides:

The ISO or the Participating TO, in coordination with the ISO and Market Participants, through the coordinated planning processes of the WSCC [Western States Coordinating Council] and the RTGs, will identify the need for any transmission additions or upgrades required to ensure system reliability consistent with all Applicable Reliability Criteria.

Hence, the FERC has held that, “as the transmission system operator, the ISO is the entity charged with maintaining the safety and reliability of the ISO Grid.” 80 F.E.R.C. ¶ 61, 128, 1997 FERC LEXIS 1562 at *77.

C. FERC’s Exercise of Jurisdiction Preempts Further State Regulation of Transmission System Reliability.

When California created the ISO and ordered it to submit to FERC jurisdiction, it permanently ceded jurisdiction over California’s transmission system to the FERC. The State, through SB 970, could not undo what had already been done. Accordingly, either the Assigned Commissioner misinterpreted the CPUC’s purported authority over transmission under SB 970 or SB 970 is unconstitutional pursuant to the Supremacy Clause.⁵ Pursuant to the Federal Power Act, upon the

⁴ Notably absent from Section 3.2.1 is any reference to the CPUC as having any authority to determine the need for and to propose a transmission upgrade.

⁵ SB 970, enacted after AB 1890, provides that, “the commission, in consultation with the Independent System Operator, shall . . . [i]dentify and undertake those actions necessary to reduce or remove constraints on the state’s existing electrical transmission requirements of utilities regulated by the commission.” Public Utilities Code § 399.15. Basic rules of statutory construction provide that, where two interpretations of a statute are reasonable, one of which would render the statute unconstitutional and one of which would not, it is presumed that the Legislature intended the statute to have the meaning that renders it constitutional. As discussed below, in the instant case, an interpretation of SB 970 as vesting the CPUC with authority over transmission planning violates the Supremacy clause and is hence unconstitutional. Another reasonable interpretation is that, in specifying that the CPUC is to act

transfer of this responsibility to the ISO, regulatory authority over ISO, including questions regarding its jurisdiction, are vested in FERC, not the CPUC. See *Pacific Gas and Electric Company*, 81 F.E.R.C. ¶ 61, 572, 1997 FERC LEXIS 2413 [Part 3 of 3], at *71-72.

FERC’s authority occupies the field, preempting all state regulation that intrudes even indirectly into areas of exclusive federal authority: “Cases are legion affirming the exclusive character of FERC jurisdiction where it applies, both under the [Natural Gas Act] [citations], and under the analogous provisions of the Federal Power Act.” *Public Utilities Commission v. Federal Energy Regulatory Commission*, 900 F.2d 269, 274 (D.C. Cir. 1990). See also *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 478 U.S. 354, 108 S.Ct. 2428, 2439 (1988) (exclusive federal jurisdiction over wholesale electric rates under Section 201 of the Federal Power Act); *Id.* at 2242 (Scalia, J., concurring in the judgment) (“if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject”); *Natahala Power & Light Co. v. Thornbeurg*, 476 U.S. 953, 106 S.Ct. 2349 (1986). “To the extent state regulation would operate ‘within this exclusively federal domain,’ it is preempted.” *Public Utilities Commission v. FERC*, 900 F.2d at 274. “Even where state regulation operates within its own field, it may not intrude ‘indirectly’ on areas of exclusive federal authority.” *Id.* at note 2. Thus, for example, in *California Power Exchange Corp.*, 85 FERC ¶ 61, 263, 1998 FERC LEXIS 2361 at *21, the FERC held that Electricity Oversight Board’s role in the governance of the California ISO was “preempted by the FPA” because it “undermines the independence of the ISO.”

The FERC-approved ISO tariffs clearly encompass transmission system upgrades. In addition, the FERC itself has exercised its jurisdiction over California’s transmission constraints. On March 14,

“in consultation with the ISO,” the Legislature intended that the CPUC would make recommendations to the ISO and take steps necessary to aid the ISO, such as processing applications for CPCNs and Permits to Construct for ISO-

2001, the FERC issued its “Order Removing Obstacles To Increased Electric Generation and Natural Gas Supply in the Western United States and Requesting Comments on Further Actions to Increase Energy Supply and Decrease Consumption.” 94 F.E.R.C. ¶ 61,272, 2001 FERC LEXIS 499. The order commences the task of “[i]nterconnecting new supply to the bulk power system, upgrading the system to ensure that the new supply can reach load reliably, and eliminating bottlenecks which prevent maximum utilization of existing supply.” Thus, both in approving the ISO’s tariffs and in issuing its March 14, 2001 order, the FERC exercised its exclusive jurisdiction over reliability of California’s transmission system, including upgrades thereto. The FERC having occupied the field, the CPUC is without authority to compel PG&E to upgrade Path 15.

The State, through AB 1890, offered to cede jurisdiction over California’s transmission system to the FERC. The FERC, in approving the ISO’s tariff, accepted jurisdiction, which at that point became exclusive. The State is without power to take jurisdiction back, and, to the extent that SB 970 purports to do so, it is preempted. As transmission system reliability is no longer within CPUC jurisdiction, the CPUC lacks authority to order PG&E to upgrade the system. The Assigned Commissioner’s Ruling is therefore without force.

III. EVEN IF THE COMMISSION HAD AUTHORITY TO ACT, IT COULD ONLY DO SO VIA AN ORDER OF THE FULL COMMISSION FOLLOWING DUE PROCESS.

A. The Assigned Commissioner’s Ruling Exceeded the Scope of Her Authority.

The authority of the Assigned Commissioner is governed by Rule 63 of the CPUC Rules of Practice and Procedure, which says nothing about ordering utilities to file applications for CPCNs. To the contrary, the duties of the Assigned Commissioner are essentially procedural in nature:

approved projects faster, and acting promptly to resolve any protests to CPUC-exempt projects.

The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections and *motions which do not involve final determination of proceedings*; receive offers of proof; hear argument; and fix the time for the filing of briefs.

CPUC Rules of Practice and Procedure, Rule 63 (emphasis added).

The Assigned Commissioner's Ruling, by contrast, was no mere procedural order. In unilaterally deciding that the Los Banos-Gates 500 kV Transmission Project should be removed from this Investigation and ordering PG&E to file a CPCN application for the project, the Assigned Commissioner effectively determined the outcome of the proceedings as to the Path 15 upgrades, and she did so on her own (unwritten) motion. In addition, by ordering PG&E to commence a time-consuming and expensive CPCN process, the Assigned Commissioner's Ruling ended the Investigation's consideration of Path 15 in a way that would require PG&E and, ultimately, the ratepayers to incur significant costs for permitting and certification. As part of the CPUC's CEQA and CPCN review processes, PG&E will need to conduct environmental studies, prepare an application and PEA, fund the preparation of the CPUC's EIR, conduct preliminary engineering and design work, consult with federal, state, and local agencies, retain lawyers and experts, prepare testimony and briefs, and otherwise participate in legal proceedings before the Commission, negotiate with landowners for land acquisition, and incur non-CPUC permitting and environmental compliance and mitigation costs. PG&E estimates that permitting and certification costs alone for the Los Banos-Gates project will be approximately \$20 million. By ordering PG&E to proceed down this path, the Assigned Commissioner's Ruling clearly overstepped the Assigned Commissioner's authority under Rule 63.

While the Assigned Commissioner is also empowered to "take such other action as may be necessary and *appropriate to the discharge of his or her duties*," those duties are, as noted above,

procedural in nature. Moreover, any “such other action” must be “consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.” (*Id.*) Since the Commission itself cannot require a utility to file a CPCN application for a transmission-only project, neither can the Assigned Commissioner. (*See supra.*)

Public Utilities Code section 310 further provides that, for matters within the Commission’s jurisdiction, less than the full Commission may, under some circumstances, make findings, release opinions, and issue orders. Even then, however, a commissioner or commissioners must first be “designated for the purpose by the commission.” (Pub. Util. Code § 310.) Moreover, their findings, opinions, and orders are ineffective unless and until they are “approved and confirmed by the commission and ordered filed in its office.” (*Id.*)⁶ None of this has happened here.

B. Due Process Requires A Meaningful Opportunity To Be Heard And To Present Evidence Prior To Taking PG&E’s Property

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: “No State shall . . . deprive any person of life, liberty, or property, without due process of law.” The Assigned Commissioner’s Ruling violates the Due Process Clause by mandating, without prior evidentiary hearings, that PG&E incur the significant expense of participating in the CPUC’s lengthy and expensive CEQA and CPCN processes for siting a major transmission line. “In situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of postdeprivation tort remedy to compensate for the taking.”

Zinermon v. Burch, 494 U.S. 113, 132, 110 S.Ct. 975, 987 (1990). In the context of regulated

⁶ *See also* R.00-10-002, “Presiding Officer and Assigned Commissioner Ruling Regarding Customer Reclassification Between Essential and Non-Essential Categories for Rotating Outages,” at 3 (March 27, 2001) (acknowledging that, under Pub. Util. Code section 310, ruling must be confirmed by the full Commission “at the earliest reasonable opportunity”).

utilities, the Due Process Clause provides a right to a fair and open hearing as to the propriety and reasonableness of ratesetting orders and other orders mandating expenditures. *See* Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio, 301 U.S. 292, 303 (1937). As the United States Supreme Court held in a case involving the predecessor to this Commission:

The right to a fair and open hearing is one of the rudiments of fair play assured to every litigant by the Federal Constitution as a minimal requirement. There must be due notice and an opportunity to be heard, the procedure must be consistent with the essentials of a fair trial, and the Commission must act upon evidence and not arbitrarily.

Railroad Commission of California v. Pacific Gas & Electric, 302 U.S. 388, 393 (1938) (citations omitted). The Assigned Commissioner's Ruling requires PG&E to undertake a significant capital investment without first providing a meaningful opportunity to be heard or any opportunity to present evidence. For this reason, too, the Assigned Commissioner's Ruling is invalid.

IV. ASSUMING, ARGUENDO, THAT THE ASSIGNED COMMISSIONER'S RULING HAD COVERED MATTERS WITHIN THE SCOPE OF THE CPUC'S JURISDICTION AND WAS PROCEDURALLY PROPER, THE RULING WOULD REMAIN INVALID BECAUSE IT IS NOT SUPPORTED BY ANY EVIDENCE.

In this Investigation, no evidence has been presented, no hearings have been held, and no cross-examination of witnesses has taken place. The Assigned Commissioner's Ruling refers in passing to an Energy Division report prepared as part of Phase 1 of this proceeding, but that document, too, is without any evidentiary support whatsoever. Nor was there any public notice or opportunity for comment on the Ruling. In all these respects, the Ruling violates PG&E's Due Process right. (*See supra*, Section III.B.)

V. BANKRUPTCY-RELATED AND OTHER CONSIDERATIONS.

PG&E reserves all other legal rights to challenge the decisions or statutes under which it has been required to make this filing and the concurrently-filed Conditional Application, and nothing in this

filing or the concurrently-filed Conditional Application constitutes a waiver of such rights. Also, PG&E reserves any additional legal rights to challenge the requirement to make this filing and the concurrently-filed Conditional Application by reason of its status as a debtor under Chapter 11 of the Bankruptcy Code, and nothing in this filing or the concurrently-filed Conditional Application constitutes a waiver of such rights.

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VI. CONCLUSION.

Despite the manifest substantive and procedural infirmities of the Assigned Commissioner's April 3, 2001 Ruling, which collectively render it without legal effect, PG&E today responds to the Ruling by filing a Conditional Application for the Los Banos-Gates 500 kV Transmission Project. PG&E does so in order to expedite full consideration by all parties of the need for and cost-effectiveness of this potential upgrade to Path 15. While PG&E cannot commit to construct a project of this magnitude without further study, today's filing provides the CPUC with all the information necessary to commence its CEQA and administrative processes. PG&E is encouraged by the Commission's apparent willingness to expedite its siting and environmental review of this potentially important transmission project, and trusts that this willingness will extend to other critically-needed upgrades such as the Northeast San Jose and Tri Valley projects.

Respectfully submitted,

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