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8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 In re )  
12 PACIFIC GAS AND ELECTRIC ) No. 01-30923 DM  
13 COMPANY, ) Chapter 11  
14 Debtor. ) Date: December 3, 2001  
15 ) Time: 1:30 p.m.  
16 ) Ctrm: Hon. Dennis Montali  
235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, California

17  
18 **UNITED STATES TRUSTEE'S**  
**STATEMENT OF SUPPORT FOR TURN'S REQUEST**  
19 **FOR INTERVENTION**

20 Linda Ekstrom Stanley, United States Trustee, submits this statement of support of  
21 the Motion to Intervene (the "Motion") filed by The Utility Reform Network ("TURN"). TURN  
22 has proved extensive experience in matters of utility regulation and rate-making. Indeed,  
23 the eponymous TURN Order stands as a primary pillar of PG&E's recent regulatory history.  
24 TURN's history and accomplishments justify an order granting the Motion.

25 Contrary to the Official Committee of Unsecured Creditor's contention, the Attorney  
26 General (the "A.G.") is an extremely poor substitute for a ratepayer advocate. The State of  
27 California's Department of Water Resources has purchased at least \$8 billion in power  
28 since January 2001 – the A.G.'s primary concern is to ensure the state is repaid, not to

1 ensure that rates paid are fair or just.

## 2 ARGUMENT

### 3 I. THE COURT SHOULD HEAR TURN'S VOICE

4 The Motion and the supporting declaration by Ms. Hoge set forth TURN's impressive  
5 history of effective advocacy. TURN has been deeply involved in ratepayer advocacy since  
6 1973. Most of TURN's advocacy has taken place at the California Public Utility  
7 Commission, the institution which for decades has been charged with rate-making. *Pacific*  
8 *Gas and Electric Company v. California Public Utility Comm'n* , 263 B.R. 306, 318-19  
9 (Bankr. N.D. Cal. 2001). The CPUC, "whose rate-making implements public policy" (*Id.*)  
10 has been so impressed with TURN's advocacy it has awarded TURN compensation from  
11 PG&E on innumerable occasions. Surely the high degree of respect accorded TURN by  
12 the chief policy maker on power issues in California is entitled to serious consideration by  
13 the Bankruptcy Court.

### 14 II. THE A.G. IS NOT AN EFFECTIVE ALTERNATIVE TO TURN

15 The OCC opposes the Motion, apparently on the grounds the A.G. is a better  
16 advocate for ratepayers. The OCC's argument lacks insight and should be given little  
17 weight in view of its obvious interest in limiting opposition to the debtor's plan.

#### 18 A. THE ATTORNEY GENERAL HAS A CONFLICT OF INTEREST WHICH 19 MAKES HIM A POOR CANDIDATE FOR RATEPAYER ADVOCATE

##### 20 1. The State's Obvious, Primary Interest is Recovering \$8 Billion in Power 21 Costs, Not Lower Rates

22 It is by now common knowledge that the State of California's Department of Water  
23 Resources (the "DWR") purchases the so-called "net open" electrical power position. Since  
24 February 2001, the DWR has purchased approximately \$8 billion in power for the state's  
25 investor owned utilities because they were not credit-worthy. It should be self-evident the  
26 DWR would be primarily interested in having that money repaid to the state's treasury,  
27 presumably sooner rather than later. The funds to reimburse the state for those purchases  
28 are expected to come from a long-expected and not yet completed bond sale of \$12.5  
billion dollars. They expect the revenue source for repayment of those bonds to be none

1 other than the rates paid by the utility customers. While the A.G. may have a residual  
2 interest in seeing customers served well and at a low cost, it is not reasonable to believe the  
3 A.G. could be the ratepayer's best friend. The A.G.'s job is to protect the state's important  
4 pecuniary interest by seeing the \$8 billion is repaid, not to reduce potential sources of  
5 revenue to repay those bonds.<sup>1</sup>

6 2. The A.G. Must Protect the Long Term Power Contracts At the Expense  
7 of Ratepayers

8 It seems equally certain the A.G. will not advocate primarily for ratepayers because  
9 he has to protect the long term power contracts the DWR executed. At the apex of the  
10 energy prices, the DWR signed numerous long term power contracts. Many of these  
11 contracts have come under significant attack by the CPUC and PG&E for being too  
12 expensive and unjustified. PG&E, as a matter of fact, argues strenuously the DWR's rate  
13 allocation, premised in part on those contracts, is unjustified and unlawful.

14 The logical consequence of power purchased at high costs is higher power rates for  
15 consumers of electricity. The A.G. must be expected to advocate and protect the contracts  
16 in the first instance for his client, the DWR. His advocacy for high-priced power contracts is  
17 inimical to the interests of ratepayers and makes A.G. an unsuitable advocate for them.<sup>2</sup>

18 3. The A.G. Has Not Appeared for Ratepayers

19 \_\_\_\_\_ If the A.G. intended to appear for ratepayers in the PG&E case, one might assume  
20 he would have done so before now. Instead, the A.G. has carefully limited his involvement  
21 in the case to issues with little direct application to ratepayers qua ratepayers. Besides  
22 \_\_\_\_\_

23 <sup>1</sup> The OCC fondness for citing the *In re Public Service Co. of New Hampshire* case betrays it in this  
24 context. That case and its conclusion that the Attorney General of New Hampshire is an appropriate party to  
25 advocate ratepayer rights have no application at all in the context of this case. In the Public Service bankruptcy  
26 case, there is no reported decision saying the state of New Hampshire purchased power for its cash-strapped  
27 utility. Nor is there any reported decision saying the State of New Hampshire entered into long term contracts  
28 with suppliers at rates which were criticized. Most importantly, New Hampshire's equivalent of the CPUC's  
ratepayer advocate appeared in the Public Service case for ratepayers. The Public Service case is not an  
aphorism for PG&E; it is a red-herring.

29 <sup>2</sup> The United States Trustee does not intend any criticism of the A.G. . He has many roles to play in this  
30 case and the state's pecuniary interest is likely to predominate. The other potential advocate for ratepayers, the  
Office of Ratepayer Advocates, has not appeared in the bankruptcy case, probably out of concern for the state's  
preservation of sovereign immunity.

1 claims filed on behalf of state agencies as *creditors* of the bankruptcy estate, the A.G.'s only  
2 substantive work seems directed to the question of whether the plan of reorganization can  
3 proceed without adversary proceedings. None of these limited forays into the bankruptcy  
4 case appears closely related to rate-making issues. If anything they show the state's  
5 concern to be its status as creditor and regulator.

6 4. The A.G.'s Press Release Shows His Primary Interest is not Ratepayer  
7 Advocacy

8 The OCC claims the A.G. is the most obvious advocate for ratepayers. Stapled to  
9 the OCC's opposition is a copy of a press release by the A.G. dated April 6, 2001,  
10 purportedly proving the point. Apart from the procedural error of this approach (lack of a  
11 proper document requesting judicial notice and lack of authentication), the press release  
12 does not say the A.G. is a ratepayer advocate.

13 The OCC offers the press release as evidence of the A.G.'s avowed intention "to  
14 protect ratepayers." *Response to TURN's Motion for Order Authorizing Turn to Appear*, 3:6-  
15 8. The press release says nothing whatever about "protecting" ratepayers. Rather, in the  
16 opening sentences, the press release makes clear the A.G.'s interest is to protect  
17 California's taxpayers. "[O]ur team of bankruptcy litigators has been preparing for several  
18 months to defend California **taxpayers** in the event of a utility bankruptcy." The single  
19 reference to *ratepayers* is in the very last sentence of the substantive portion of the  
20 document, where the A.G. suggests an intention to pursue "dollars that have been illegally  
21 or unfairly taken, and to punish wrongdoers." (emphasis added). The A.G.'s intention is not  
22 to protect ratepayers, but to punish wrongdoers and to recover any illegal overcharges.

23 Notably absent from the press release (the single bit of evidence offered by the OCC  
24 in support of its theory) is any mention of traditional rate-making issues. If the April 6, 2001  
25 press release is the sole expression of the A.G.'s intent, one might reasonably assume the  
26 A.G. would take pains to mention that safeguarding ratepayer interests is a predominant  
27 concern, that ensuring fair rates is very important, or that the changes effected by the  
28 bankruptcy case would be consistent with the ratepayers' best interest. No mention is

1 made of any of these important factors. Read fairly, the document only says the A.G. is  
2 concerned with keeping the lights on and pursuing “greedy generators” he alleges  
3 overcharged PG&E.

4 **CONCLUSION**

5 TURN’s request to intervene is justified by its long association with power issues and  
6 its history of effective advocacy. The argument in favor of the A.G. may have superficial  
7 appeal but is unwarranted on careful examination of the facts.

8 Date:

9 Patricia A. Cutler  
10 Assistant United States Trustee

11 By: \_\_\_\_\_  
12 Stephen L. Johnson  
13 Attorneys for United States Trustee