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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PG&E National Energy Group, LLC	)	
and PG&E National Energy Group, Inc.	)	Docket No. EC01-49-000
On Behalf of Themselves and	)	
Their Public Utility Subsidiaries	)	

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**STATE OF CALIFORNIA'S MOTION TO INTERVENE; REQUEST TO SET ASIDE  
ORDER ISSUED UNDER SECTION 203 OF THE FEDERAL POWER ACT**

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I. Introduction

On December 28, 2000, PG&E National Energy Group, LLC and other PG&E entities  
("PG&E") filed an Application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b,

and 18 C.F.R. Part 33, with the Federal Energy Regulatory Commission (“Commission”) requesting that the Commission, on shortened time, allow certain holdings of the PG&E utility subsidiaries be transferred or “upstreamed” to a new corporate entity. By Order dated January 12, 2001, the Commission granted PG&E’s Application.

Under 16 U.S.C. §824b(a), the Commission “shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to any other persons as it may deem advisable.” The Commission, in addition, may not make its decision on the Application until there is an “opportunity for a hearing.” *Id.* With respect to PG&E’s December 28, 2000 Application, the Commission failed to give the required notice to the Governor of the State of California or the California Public Utilities Commission. Because both the Governor and the California Public Utilities Commission (“PUC”) are keenly interested in closely evaluating PG&E’s Application and the implications of upstreaming of assets, the State of California requests that, in light of the failure of the Commission to provide notice or a hearing, that the Commission withdraw its January 12, 2001 Order.

## II. Intervention

PG&E operates one of the three primary utilities in the State of California. It appears from PG&E’s Application that some of the assets it proposes to upstream are located in California. Even if no such assets are located in California, the State could be significantly and adversely affected. The Application, as the Commission noted, states that the proposed corporate reorganization “is designed to facilitate NEG’s credit rating and future financings either by NEG or on behalf of the Subsidiaries.”

Application at 4. As Commissioner Massey states in his dissent, “the purpose of this urgent filing, in part, is a reorganization to shield the assets of PG&E Corporation’s unregulated subsidiaries from the creditors of its regulated utility, Pacific Gas and Electric Company, in the event that the regulated utility imminently takes bankruptcy.” Dissent at 1. The issue of bankruptcy and protection of the subsidiary assets are directly related to the on-going deregulation matters currently at issue in California. The State of California has a very substantial interest in all aspects of the current energy issues involving the State, and with respect to any possible utility bankruptcy. PG&E’s application to upstream assets is directly related to both the deregulation situation in California and possible bankruptcy filings. We therefore request that the Commission grant the State of California status as intervenor in this matter.

This motion for intervention is filed today because, as a result of the fact that the Commission failed to send notice of the Application to the Governor or the PUC, the State of California, its Governor, and the PUC were not aware of the filing or the Commission’s ruling until January 16, 2001.

### III. Request to Set Aside Order and Hold Hearing

16 U.S.C. § 824b(a) states:

No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval **the Commission shall give reasonable notice in writing to the Governor and State commission** of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. **After notice and opportunity for a hearing**, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall

approve the same. (Emphasis added).

In this matter, the Commission did not give the requisite notice to the Governor of the State of California or the PUC. As a result, neither the Governor nor the PUC participated in the application process. As noted above, the State of California, acting through its Governor and Attorney General, is keenly interested in reviewing PG&E's Application and participating in any hearing concerning the matter. The absence of notice precluded the State's review and participation. As a result, the Commission's Order was issued without full and appropriate participation, and without a hearing in contravention of federal law. Thus, the State of California requests that the Commission vacate the Order and set a date for a hearing on the Application.

Respectfully submitted,

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Date: January 19, 2001

/s/ \_\_\_\_\_

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