

Examiners, 11 Cal.3d 1, 14-15. “The Attorney General . . . is the chief law officer of the state. As such he possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest. He represents the interests of the people in matters of public concern. . . . He has the power to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interest.” *D’Amico*, 11 Cal.3d at 14-15 (citations omitted). *See also* 15 U.S.C. § 79s (granting authority for participation by State in Commission hearings). This Petition is on behalf of the Attorney General and not on behalf of any other California agency or office.

PG&E Corp. has been exempted from virtually all provisions of PUHCA, based on the notion that the holding company and the public utility are primarily intrastate in nature, functioning and deriving income almost exclusively from activities in California. That notion is no longer true; PG&E Corp. is a massive entity, operating power plants, controlling assets, pursuing business activities in at least a dozen states outside of California, as well as operations around the world. Unequivocally, PG&E Corp. no longer qualifies for the PUHCA exemption as an intrastate entity. PG&E Co. has now filed for bankruptcy after upstreaming billions of dollars from the utility to the holding company—the precise type of behavior identified in PUHCA as a primary basis for the law. By this Petition, the Attorney General strongly urges the Commission to review and revoke the exemption from PUHCA enjoyed by PG&E Corp. This Petition is not an exhaustive discussion of all of PG&E Corp.’s and PG&E Co.’s holdings, assets, and financial activities; it contains information obtained solely from public sources. Nonetheless, it overwhelmingly reflects the fact that PG&E Corp. is not an intrastate entity, and that the

exemption no longer applies and no longer furthers the public interest or the interest of consumers.

I. Notice

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II. The Public Utility Holding Company Act and PG&E Corp.'s Exemption

A. History and Purpose of PUHCA

Due to the rapid growth of the utility industry in the 1920s, Congress directed the Federal Trade Commission (“FTC”) to conduct a comprehensive study of the public utility industry. The FTC published a 107-volume report after an extensive seven-year study. This study was followed by a second, two-year study conducted by Congress. These studies uncovered unprecedented industry abuses facilitated by the holding company structure. The root of these abuses was the utility holding companies’ pyramidal corporate structure. “Holding companies bought other holding companies - creating up to 10 layers of ownership between the utility subsidiary and its holding company. . . . The holding company structure made it virtually impossible to trace these abusive interaffiliate transactions. As a result of the abuses, investors were defrauded, subsidiary companies were forced to pay excessive prices for services, and in the end, energy prices were grossly inflated.” Senate Report No. 107-15 to accompany S. 206 at p. 5, May 9, 2001.

Congress enacted PUHCA, inter alia, to prevent abuses that occur “when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties.” 15 U.S.C. § 79a(b). Further:

When abuses . . . become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is declared to be the policy of [PUHCA], in accordance with which policy all the provisions of [PUHCA] shall be interpreted, to meet the problems and eliminate the evils as enumerated [in § 79a], connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination there-from of properties detrimental to the proper functioning of such systems. . . .

15 U.S.C. § 79a(c). When Congress enacted PUHCA, holding companies often controlled numerous local utilities and engaged in multiple non-utility ventures. Some had used the holding company structure to siphon funds from the utility companies and their ratepayers in order to finance other ventures as well as pay dividends to shareholders of the holding company. PG&E Corp. has engaged in precisely the kind of activity that was of concern to Congress: it has upstreamed billions of dollars from its California utility to the holding company, potentially to the detriment of the utility, as underlined by the bankruptcy filing. *See* 15 U.S.C. § 79(c). In addition, PG&E Corp. has ringfenced valuable assets of its utilities through creation of a new layer of corporate structure in an attempt, inter alia, to “facilitate” a wholly-owned, non-utility holding company subsidiary’s “credit rating and future financings.” PG&E Application to FERC, Docket No. EC01-49-000, submitted 12/28/2000, at page 4 (copy attached). The SEC, in light of PG&E Corp.’s exemption, has not reviewed the new corporate structure and ringfencing to determine the impact on the utility, its ratepayers, and consumers.

At its heart, PUHCA acts as a limit on holding company control. So, for example, the Commission is charged with examining:

the corporate structure of every registered holding company and subsidiary thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding company system and the companies therein may be simplified, unnecessary complexities therein eliminated, . . . and properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

15 U.S.C. § 79k(a). In addition, PUHCA prohibits new acquisitions of utility companies, securities, assets, and other interests unless specific standards are met, in order to prevent “concentrations of control.” PUHCA sections 9 and 10, 15 U.S.C. §§ 79i and 79k, were designed to preclude a return to the pre-enactment concentration of utility ownership by holding companies. PUHCA also grants to the Commission authority to review stock and security transactions, interaffiliate loans and sales of goods, and issuance of securities by holding companies and utilities. *E.g.*, 15 U.S.C. §§ 79f, 79g, 79k, 79l, and 79m. These provisions have not been applied to PG&E Corp. due to PG&E Corp.’s status as an exempt holding company.

B. Standard of Review

PG&E Corp. operates under the intrastate exemption to PUHCA:

The Commission . . . shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of [PUHCA], *unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—*

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized. .

15 U.S.C. § 79c(a)(1) (emphasis added). The exemption applies, therefore, only where the Commission determines that, first, the holding company and the utility are intrastate in character, and, second, an exemption would cause no detriment to the public interest. Neither is true here. Under section 79c(c), the Commission has the authority—and therefore must—revoke the exemption where it finds that the circumstances which gave rise to the issuance of the order no longer exist.¹ See 17 C.F.R. § 250.6.

In determining whether income from an out-of-state utility subsidiary is “material” for purposes of section 3(a)(1), the Commission looks at all sources of a parent holding company’s income. The Commission has considered various criteria, including gross revenues, net operating revenues, utility assets, number of customers, and volume of gas or electricity distributed or sold. See *In re Eastern Enterprises*, 2000 SEC LEXIS 2395 (Nov. 7, 2000). Under any and all of those criteria, PG&E Corp., which, according to its 2000 Form 10-K and 10-Q filings had over \$13 billion in out of state assets, with 2000 out of state income of at least \$150 million, clearly derives a material part of its income from its substantial out-of-state utility subsidiaries.

In *North American Co. v. Securities and Exchange Commission*, 327 U.S. 686 (1946) North American Corp. contested the constitutionality of section 11(b)(1) of the Act authorizing the SEC to act to bring about the geographic and economic integration of holding company systems. The Supreme Court found that North American was a “typical utility holding company,”

¹The Commission, if it determines that the exemption should still apply, can nonetheless modify its broad grant of exemption and apply particular provisions of PUHCA to PG&E Corp. if it finds that a total exemption is detrimental to the public interest or the interest of investors or consumers. Because, the Attorney General believes that the exemption no longer applies, we do not propose a partial modification of the broad grant.

the "pinnacle of a great pyramid of corporations, the majority of which operate electric and gas utility properties." *Id.* at 692. The various companies in the North American system conducted business in seventeen states and the District of Columbia. *Id.* PG&E Co. was itself a direct subsidiary of North American at this time. The Supreme Court held: "Like most public utility holding companies, North American is engaged in interstate commerce directly and through its subsidiaries. It can lay no claim to a predominantly intrastate character; as to it, section 3(a)(1) is wholly inapplicable." *Id.* at 700.²

In the *North American* case, the holding company owned ten direct subsidiaries: three holding companies, four operating companies, a company that owned a coal mine, an investment trust, and a company that owned real estate. "The various companies in the North American system perform a variety of functions from electric and gas service to railroad transportation, warehousing and amusement park operations." *Id.* at 692. North American contended that it was simply a "large investor seeking to promote the sound development of his investment." *Id.* In rejecting North American's claim that it was not an interstate holding company, the court stated:

Turning to § 11(b)(1) [15 U.S.C. § 79k(b)(1)] . . . we find that it directs the Commission to apply its provisions to holding companies engaged in interstate

²Congress declared in section 1(c) of PUCHA that all the provisions of the Act shall be interpreted to meet the problems and remove the "evils" connected with public utility holding companies "which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce." *See North American Co.*, 327 U.S. at 698. The Commission, in denying an exemption under the "unless and except" clause of section 3(a) is bound by the policy set forth in section 1(c) to act so as to eliminate evils connected with holding companies "engaged in interstate commerce or in activities which directly affect or burden interstate commerce." *Id.* The Commission has recognized the fact that the declaration of policy in section 1(c) must be considered in granting or denying exemptions under section 3(a) to predominantly intrastate holding companies. *See In re Niagara Hudson Power Corporation*, Holding Company Act Release No. 5115; *In re Long Island Lighting Company*, Holding Company Act Release No 5746.

commerce. In essence, it confines the operations of each holding company system to a single integrated public utility system with provision for the retention of additional systems **only if they are relatively small, located close to the single system and unable to operate economically under separate management without the loss of substantial economies; in addition, other holdings may be retained only if their retention is related to the operations of the retained utility properties.**

Id. at 696-97.³

Here, as detailed below, it is beyond dispute that PG&E Corp. can no longer lay any claim to being “predominantly intrastate” in character. Just as one example, PG&E Corp. “will begin construction of five generating facilities this year and has at least four others on the drawing board. . . in New York, New Jersey, Wisconsin, Michigan, Arizona, Illinois, Oregon, and Nevada.” *San Francisco Chronicle*, May 18, 2001. “‘The businesses that we have outside California are designed to grow shareholder value,’ PG&E Chairman Robert Glynn told shareholders. Indeed, PG&E’s National Energy Group, which oversees the company’s power plants, is the corporation’s fastest growing division—a marked contrast to PG&E’s cash-strapped utility operations.” *Id.*

III. Out of State Assets and Activities and Movement of Capital

PG&E Corporation has extensive assets, investments, and activities outside of California. It describes itself as “a national energy-based holding company with 1999 revenues of almost \$21 billion, and nearly \$30 billion in assets,” which “markets energy services and products throughout North America through its National Energy Group, and is the parent company of Pacific Gas and

³The Court goes on to note that “if a holding company and all of its subsidiaries are predominantly intrastate in character and carry on their businesses substantially in a single state in which such holding company and every subsidiary thereof are organized,” the Commission may grant the intrastate exemption. *Id.* at 698-99.

Electric Company.” PG&E website, www.pgecorp.com, May 22, 2001. According to PG&E Corp.’s 2000 Form 10-K and 10-Q filings, out-of-state assets controlled by one subsidiary—PG&E National Energy Group—exceed \$13 billion, nearly 50% of PG&E Corp.’s total assets. In no sense can the corporation be considered an intrastate operation. The following information is gleaned from public records. PG&E Corp., in its “Statement by Holding Company Claiming exemption Under Rule U-3A-2/A from the Provisions of PUHCA,” filed May 1, 2001 (“Exemption filing”), makes its claim for exemption as a “predominantly intrastate in character.” The claim, on its face, is patently absurd. (A copy of the PG&E Corp. filing is attached). Some examples, all from PG&E Corp.’s filing to the Commission, follow:

* Alberta and Southern Gas Co., Ltd., is a wholly-owned Canadian corporation.

Exemption Filing at 5.

* Alberta and Southern Gas Marketing, Inc., is a Canadian corporation and a wholly-owned subsidiary of Alberta and Southern Gas Co. Ltd., which formerly marketed natural gas in non-California markets. *Id.* at 5.

* PG&E Funding, LLC is a Delaware corporation, wholly owned by PG&E Co. for ownership of transition property and issuance of securities. *Id.* at 7.

* PG&E Holdings, LLC is a Delaware corporation and wholly-owned subsidiary of PG&E Co. for repurchased shares. *Id.* at 9.

* PG&E National Energy Group, Inc. is a Delaware corporation and a wholly-owned subsidiary of PG&E Corp., formed for the purpose of holding ownership of PG&E Corp.’s unregulated subsidiaries, both direct and indirect. *Id.* at 9. It is an “integrated energy company with a strategic focus on power generation, new power plant development, natural gas

transmission, and wholesale energy marketing and trading in North America.” PG&E Corp. Form 10-K, for the period ending 12/31/00, page 36. As noted below, these holdings are massive, and outside of California.

* PG&E Enterprises is a wholly owned subsidiary of PG&E National Energy Group, Inc. and a holding company for oil and gas, real estate, electric generation, and technology investments. *Id.* at 9. Many of these investments are outside of California.

* PG&E Shareholdings, Inc. is a wholly-owned non-regulated subsidiary of PG&E Enterprises, formed as an investment holding company. *Id.* at 9. This entity also has substantial non-California assets.

* Gilia Enterprises is wholly-owned by PG&E Shareholdings, Inc., formed to hold real estate investments.

* PG&E Energy Trading Holdings, LLC, a Delaware limited liability company, 100% owned by PG&E Shareholdings, Inc., holds stock in PG&E Energy Trading-Power Holdings Corp. *Id.* at 11.

* PG&E Energy Trading-Power Holdings Corp., 100% owned by PG&E Energy Trading Holding, LLC, is a holding company for energy trading and overseas entities. *Id.* at 11. It should be noted that energy trading, whereby the trading company seeks the highest price for the commodity, could impact prices of energy paid by PG&E Co. for energy it needs to provide service to ratepayers in California. PG&E Energy Trading-Power Holdings Corp. also owns entities, such as PG&E Energy Trading-Power, LP, that engage in electric power marketing and trading. *Id.* at 12.

* PG&E ET Synfuel 166, LLC, a Delaware LLC, was formed to acquire a synthetic fuel

production facility in South Carolina. *Id.* at 12.

* PG&E International, a wholly-owned subsidiary of PG&E Energy Trading-Power Holdings Corp., is a holding company for overseas project companies. *Id.* at 12. Its holdings include PG&E International Development Holdings, LLC, formed to own and sell an Australian pipeline development company; Gannet Power Corp.; PG&E Overseas Holdings I, Ltd, located in the Grand Cayman Islands; PG&E Overseas Holdings II, Ltd., located in Malaysia; PG&E Corporation Australian Holdings Pty, Ltd, located in Australia, and itself the owner of substantial and diverse holdings in Australia. The Australian corporation also owns Rocksavage Services I, a Delaware corporation. *Id.* at 12-14.

* PG&E Energy Trading-Gas Corporation, another PG&E Energy Trading-Power Holdings Corp. wholly owned subsidiary, engages in natural gas marketing and trading activities in the United States. *Id.* at 14. Natural gas marketing and trading can and does impact electricity prices paid by PG&E Co. in California, and can directly impact ratepayers and consumers.

* PG&E Energy Trading Canada Corporation and its subsidiary CEG Energy Options, Inc., both Canadian corporations, engage in natural gas marketing and trading activities in Canada. *Id.* at 14.

* True Quote LLC, a Kentucky LLC, 46.24% owned by PG&E Energy Trading-Gas is an e-commerce venture for transmission of energy. *Id.* at 15.

* PG&E Generating Co., LLC, a Delaware LLC, 100% owned by PG&E Shareholdings, Inc., is another holding company. *Id.* at 15.

* PG&E Generating Energy Group, LLC, a Delaware LLC, 100% owned by PG&E Generating Co., is a holding company for PG&E National Energy Group merchant projects and

USGen New England, Inc. *Id.* at 15.

* Among PG&E Generating Energy Group holdings are: Badger Power Corp., a Delaware corporation; Black Hawk Power Corp.; Black Hawk III Power Corp.; Lake Road Power I, LLC; Harlan Power Corp.; Umatilla Generating Co., LP, a Delaware LP; Peach I Power Corp., a Delaware corporation; Peach IV Power Corp., a Delaware corporation; Lake Road Power II, LLC, a Delaware LLC; Juniper Power Corp., a Delaware corporation; Plover Power Corp.; Beech Power Corp., a Delaware corporation; Mantua Creek Urban Renewal LP, a Delaware LP; Black Hawk II Power Corp.; Peach III Power Corp., a Delaware corporation; First Arizona Land Corp., a Delaware corporation; First California Land Corporation, a Delaware corporation; PG&E Generating New England, Inc., a Delaware corporation; PG&E Generating New England, LLC, a Delaware LLC; Attala Power Corp., a Delaware corporation; Attala Generating Co., LLC, a Delaware LLC; Osprey Power Corp.; Magnolia Power Corp., a Delaware corporation; San Gorgonio Power Corp., a Delaware corporation; Kennerdell Power Corp., a Delaware corporation; Kennerdell Generating Co., LLC, a Delaware LLC; La Paloma Power Corp., a Delaware corporation; Liberty Generating Corp., a Delaware corporation; Liberty Urban Renewal, LLC, a Delaware LLC; Otay Mesa Power Corp., a Delaware corporation; Otay Mesa Generating Co., a Delaware LLC; Bluebonnet Power Corp., a Delaware corporation; Bluebonnet Generating Co., LLC, a Delaware LLC; Harquahala Power Corp., a Delaware corporation; Harquahala Generating Co., LLC, a Delaware LLC; Madison Wind Power Corp., a Delaware corporation; Okeechobee Power Corporation, a Delaware corporation; PG&E Dispersed Power Corp., a Delaware corporation; Covert Power Corp., a Delaware corporation; Goose Lake Power Corporation, a Delaware corporation; Goose Lake Generating Co., LLC, a Delaware LLC;

Meadow Valley Power Corp., a Delaware corporation; Meadow Valley Generating Co., LLC, a Delaware LLC; PG&E Generating Power Group, LLC, a Delaware LLC; Apolomado Power Corp.; Beal Generating Co., a Delaware corporation; Indian Orchard Generating Co., Inc., a Delaware corporation; MASSPOWER, LLC, a Delaware LLC; JMC Altresco, Inc., a Colorado corporation; Altresco, Inc., a Colorado corporation; Berkshire Pittsfield, Inc., a Colorado corporation; Berkshire Feedline Acquisition LP, a Massachusetts partnership; Pittsfield Partners, Inc., a Colorado corporation; JMC Iroquois, Inc., a Delaware corporation; Iroquois Gas Transmission System, LP, a Delaware partnership; JMC Selkirk Holdings, Inc., a Delaware corporation; JMC Selkirk, Inc., a Delaware corporation; PentaGen Investors, LP, a Delaware partnership; Orchard Gas Corp., a Delaware corporation; Mason Generating Co., a Delaware corporation; Bowdoin Storage Services, Inc., a Delaware corporation; J. Makowski Assoc., Inc., a Massachusetts corporation; JMC Avoca, Inc., a Delaware corporation; Avoca Natural Gas Storage, a New York general partnership; JMC Cayuta, Inc., a Delaware corporation; Eagle Power Corp.; Granite Generating Co., LP, a Delaware LP; Granite Water Supply Co., Inc., a Delaware corporation; Keystone Cogeneration Co., LP, a Delaware LP; Larkspur Power Corp.; Buckeye Power Corp., a Delaware corporation; Raptor Holdings Co.; Gray Hawk Power Corp., a Delaware corporation; Cedar Bay Cogeneration, Inc., a Delaware corporation; PG&E Management Services Co.; Toyan Enterprises; Indiatown Project Investment Partnership, LP, a Delaware LP; Spruce Power Corp, a Delaware corporation; Spruce Limited Partnership, a Delaware LP; Colstrip Energy Limited Partnership, a Montana LP; Merlin Power Corp.; Fellows Generating Co., LP, a Delaware LP; Pelican Power Corp.; Okeelanta Power, LP, a Florida LP; Peregrin Power Corp.; Heron Power; Gator Generating Co., LP, a Delaware LP; Jaeger Power

Corp.; Falcon Power Corp.; Scrubgrass Power Corp, a Pennsylvania corporation; Eucalyptus Power Corp. a Delaware corporation; Citrus Generating Co., LP, a Delaware LP; Cooper's Hawk Power Corp.; Loon Power Corp., a Delaware corporation; PG&E Generating Services, LLC, a Delaware LLC; J. Makowski Pittsfield, Inc., a Delaware corporation; J. Makowski Services, Inc., a Delaware corporation; JMCS I Management, Inc., a Delaware corporation; USGen Fuel Services, Inc., a Delaware corporation; PG&E Construction Agency Services, LLC, a Delaware LLC; PG&E Construction Agency Services II, LLC, a Delaware LLC; PG&E Construction Agency Services III, LLC, a Delaware LLC; PG&E Turbine Acquisition Co., LLC, a Delaware LLC; PG&E Operating Services Holding, Inc.; USOSC Holdings, Inc., a Delaware corporation; PG&E Operating Services Co.; USGen Holdings, Inc., a Delaware corporation; PG&E National Energy Group Co.; First Oregon Land Corporation, a Delaware corporation; Topaz Power Corporation, a Delaware corporation; Carneys Point Generating Co., a Delaware general partnership; Garnet Power Corporation, a Delaware corporation; PG&E National Energy Group Acquisition Co., LLC, a Delaware LLC; Valley Real Estate, Inc.; PG&E Overseas, Inc.; PG&E Australia; PG&E Overseas, Ltd., a Cayman Islands company; PG&E Pacific I, Ltd., a Cayman Islands company; PG&E Pacific II, Ltd., a Cayman Islands company; Quantum Ventures; PG&E Energy Services Ventures, Inc., a Delaware corporation; Barakat & Chamberlin, Inc.; Creston Financial; Real Estate Energy Solutions, LLC, a Delaware LLC; PG&E Gas Transmission Corp.; PG&E Gas Transmission, Holdings Corporation; North Baja Pipeline, LLC, a Delaware LLC; GTN Holdings, LLC, a Delaware LLC; PG&E Gas Transmission, Northwest Corp.; Pacific Gas Transmission International, Inc.; Pacific Gas Transmission Co; Stanfield Hub Services, LLC, a Washington LLC; PG&E Strategic Capital, Inc., a Delaware corporation; PG&E Corporate

Support Services, Inc., a Delaware corporation (for support of PG&E companies outside of California); PG&E National Energy Group, LLC, a Delaware LLC; PG&E Ventures ePro, LLC, a Delaware corporation; PG&E Ventures, LLC, a Delaware corporation; Pacific Venture Capital, LLC, a Delaware corporation; PG&E Telecom, LLC, a Delaware corporation; and PG&E Capital, LLC, a Delaware corporation. *Id.* at 16-37. Most of these holdings possess—very substantial—assets outside of California.

Among PG&E Generating Energy Group Holdings are the following out of state power generating entities:

* The Pittsfield Generating Company operates a 165 megawatt cogeneration power plant in Massachusetts. Total equity of the company on December 31, 2000 was \$26,903,931, with a 12 month net income of \$8,295,070. *Id.* at 40.

* Selkirk Cogen Partners operates power plants in New York. Total equity of the company on December 31, 2000 was (\$49,646,790), with a 12 month net income of \$42,413,926. *Id.* at 41.

* Logan Generating Co., LP operates power plants in New Jersey. Total equity of the company on December 31, 2000 was \$103,530,514, with a twelve month net income of \$36,722,858.

* Hermiston Generating Co., LP operates a power plant in Oregon. Total equity of the company on December 31, 2000 was \$64,004,324, with a twelve month net income of \$12,895,848.

* MASSPOWER operates a power plant in Massachusetts. Total equity of the company on December 31, 2000 was \$41,222,845, with a twelve month net income of \$28,351,992.

* Millenium Power Partners, LP is constructing a power plant in Massachusetts.

* Cedar Bay Generating Co., LP operates a power plant in Florida. Total equity of the company on December 31, 2000 was (\$47,506,066), with a twelve month net income of (\$20,162,334).

* Northhampton Generating Co., LP operates a power plant in Pennsylvania. Total equity of the company on December 31, 2000 was \$47,892,668, with a twelve month net income of \$6,772,514.

* Scrubgrass Generating Co., LP, operates a power plant in Pennsylvania. Total equity of the company on December 31, 2000 was \$78,119,011, with a twelve month net income of \$10,200,605.

* Indiantown Cogeneration, LP operates a power plant in Florida. Total equity of the company on December 31, 2000 was \$84,979,674, with twelve month net income of \$22,135,124.

* Chambers Cogeneration LP operates a power plant in New Jersey. Total equity of the company on December 31, 2000 was \$91,279,094, with twelve month net income of \$23,757,096.

* Athens Generating Co., LP is currently constructing a power plant in Maryland.

* La Paloma Generating Co. is currently constructing a 1,020 megawatt power plant in Kern County, California to generate a sell power into the California market on a spot basis. Spot sales impact the price paid by California for power and impact consumers and ratepayers.

* Lake Road Generating Co. is currently constructing a power plant in Connecticut.

* Mantua Creek Generating Co. is currently constructing a power plant in Maryland.

* Okeechobee Generating Co., is currently developing a power plant in Maryland.

* USGen New England, Inc. owns and operates 17 power plants in New England, with a twelve month income (through December 31, 2000) of \$95,037,697.

* PG&E Dispersed Generating Co., is currently developing power plants in Ohio and California.

* Liberty Generating Co., is developing a power plant in New Jersey.

* Badger Generating Co. is developing a power plant in Wisconsin.

* Madison Windpower operates a power plant in New York.

* Covert Generating Co. is developing a power plant in Michigan.

* PG&E Co. sold 39 million Mcf of natural or manufactured gas at wholesale outside of California or at the California border in 2000.

As set forth above and in the Exemption Filing, PG&E Corp. owns or holds stakes in more than thirty power plants in eleven states and has been especially aggressive in the New England area where it has twenty-one generating facilities. “The largest investor-owned utility in Massachusetts asked federal regulators . . . to block PG&E Corp. from raising electricity prices during power shortages.” *San Francisco Chronicle*, May 18, 2001. PG&E Corp. is active in other parts of the United States as well. “We’re obviously very interested in the Nevada market,” said PG&E spokeswoman Sandra McDonough. “It’s a fast-growing market and we want to be in it.” *Id.* It is ludicrous for PG&E Corp. to suggest that it is predominantly an intrastate company, and it is incumbent upon the Commission to fully regulate PG&E Corp. under PUHCA⁴.

⁴Some of the generation facilities (Pittsfield, Selkirk, Keystone, Logan, Hermiston, MASSPower, Millenium, Cedar Bay, Northhampton, Scrubgrass, Indiantown, and Chambers), are “exempt wholesale generators (EWGs)” under 15 U.S.C. § 79z-5a, which allows some interstate

According to information available from PG&E Corp.'s 10-Ks and 10-Qs, PG&E National Energy Group, which derives its **income almost exclusively from operations and businesses outside of California, held assets worth approximately \$13 billion at the end of 2000.** This figure does not include the substantial assets considered "exempt wholesale generators" under 15 U.S.C. § 79z-5a.

PG&E Corp.'s holdings and status as an interstate holding company are eerily similar, albeit on a massively larger scale, to the holdings of North American Co., review by the U. S. Supreme Court in 1946. *North American Co. v. SEC*, 324 U. S. 686 (1946). North American Co., at that time, owned PG&E Co. The Supreme Court found that North American was

the nucleus of a far-flung empire of corporations extending from New York to California and covering seventeen states and the District of Columbia. Its influence and domination permeate the entire system and frequently evidence themselves in affirmative ways. The mails and instrumentalities of interstate commerce are vital to the functioning of this system. . . . Such interstate commercial transactions involve the very essence of North American's business. . . . ¶ In view of North American's very substantial stock interest and its domination as to the affairs of its subsidiaries, as well as its latent power to exercise even more affirmative influence, it cannot hide behind the facade of a mere investor. Their acts are its acts in the sense that what is interstate as to them is interstate as to North American. These subsidiaries thus accentuate and add materially to the interstate character of North American.

324 U. S. at 694-95. Here, PG&E Corp.'s interstate character is equally manifest. PG&E Corp. has far outgrown its exemption, and PUHCA's full regulatory scope must be applied for the protection of the public.

IV. Harm and Potential Harm to the Public Interest

ownership by intrastate holding companies. PG&E Corp., however, owns the EWG's through other holding companies. The extensive EWG holdings simply underline the massive nature of PG&E Corp.'s out-of-state holdings.

In two cases, the Commission has revoked a company's exemption. In each case, the Commission found that changed circumstances and detriment to protected interests required revocation of exempted status. *In Re Long Island Lighting Co.*, 18 S.E.C. 717 (1945) (company's changed structure violated 11(b)(2) which was detrimental to the public interest); *Colonial Gas Energy Sys.*, HCAR No. 22144 (July 30, 1981) (Commission found detriment to the public where the holding company structure adversely affected its operating subsidiary). *See also Central Vermont Public Service Corp.*, 39 FERC Para. 61,295 (1987) (Federal Energy Regulatory Commission recognized that reorganization in which a public utility becomes the wholly-owned subsidiary of a parent holding company may present potential for abuses adverse to the public interest).

Here, public records reflect a number of actions taken by PG&E Corp. that underline the potential for abuses identified in PUHCA. For example, PG&E Corp. was formed on January 1, 1997 "to better segregate utility business from any non-utility business."⁵ PG&E Testimony, under oath, Creditor's Meeting (6/7/2001), PG&E Company Bankruptcy, Case 01-30923, N.D.Cal., page 47 (hereafter "Bankruptcy Testimony") (transcript of Testimony attached). It is of note, further, that PG&E Company's Board of Directors is identical to the Board of Directors of PG&E Corporation, with the exception of Gordon Smith, President and CEO of PG&E Company. Bankruptcy Transcript at 75.

PG&E Corp. has ringfenced assets of its utilities through creation of a separate, wholly-

⁵PG&E Corp. uses the terms "utility" and "non-utility" differently in different contexts, sometimes referring to PG&E Co. as its sole utility, other times including all its generating facilities throughout the country. PUHCA's definition of "utility" includes many of PG&E Corp.'s out of state facilities. 15 U.S.C. § 79b(3).

owned corporate entity, PG&E National Energy Group, LLC, in order to increase the capitalization and financial standing of the wholly-owned entity. In January, 2001, PG&E Corp. changed the upstream ownership of some of the assets of its subsidiary utilities' to a wholly owned subsidiary of PG&E Corp. See PG&E's Application to FERC, Docket No. EC01-49-000, submitted 12/28/2000. (Copy attached). PG&E Corp. listed its public utility subsidiaries in the FERC filing as: Athens Generating Co., LP, Badger Generating Co., LLC, Hermiston Generating Co., LP, Lake Road Generating Co., LP, La Paloma Generating Co., LLC, Liberty Generating Co., LLC, Logan Generating Co, LP, Madison Windpower, LLC, Mantua Creek Generating Co, LP, Millennium Power Partners, LP, Okeechobee Generating Co., LLC, PG&E Dispersed Generating Col, LLC, PG&E Energy Trading-Power, LP, Pittsfield Generating Co., LP, and USGen New England, Inc. *Id.* PG&E Corp. changed the corporate structure in an attempt to shield out of state assets from PG&E Co.'s potential creditors, and to benefit the financial condition of an upstream corporation, PG&E NEG. PG&E Corp., in its Application to FERC, stated that the changes are not subject to review under PUHCA because of PG&E Corp.'s PUHCA exemption. *Id.* at 6. Without meaningful review under PUHCA (and the Federal Power Act), it cannot be determined what impact the ringfencing may have on the financial condition of PG&E Company and other public utilities.

PG&E Corp. has upstreamed assets from PG&E Co. regularly and in manner potentially materially detrimental to PG&E Co.:

* Cash has flowed in one direction: from PG&E Co. to PG&E Corp., and then to unregulated PG&E Corp. affiliates. Review of Pacific Gas and Electric Company Financial Condition for the California Public Utilities Commission, January 30, 2001, at page VI-4

(hereafter “Financial Review,” copy attached).

* Transfers of cash from PG&E Co. to PG&E Corp. have been use for payment of dividends to shareholders, repurchases of corporation stock, payment of consolidated taxes to government, repayment of borrowings under credit facilities, and investments in and loans to subsidiaries. Financial Review at VI-4 to 5.

* From 1997 to 1999, PG&E Co. sent \$4.0 *billion* to PG&E Corp. in the form of dividends (\$1.5 billion) and common stock repurchases (\$2.5 billion), representing 69 percent of the cash inflows to PG&E Corp. during this period. Financial Review at VI-5.

* From 1997 to 1999, PG&E Corp. invested \$800 million in its other subsidiaries, \$2.7 billion to buy back its stock from the public, and \$1.5 billion to pay dividends to its shareholders. Financial Review at VI-5.

*In 1999 alone, PG&E Co. generated \$3.4 billion in cash, and transferred \$1.3 billion to PG&E Corp. for common stock repurchases and dividends. Financial Review at VI-3.

*In 1999, PG&E Co. paid \$278 million more for income taxes to PG&E Corp. than was actually paid by PG&E Corp. to local, state, and federal governments. Financial Review at VI-3.

* In the first nine months of 2000, PG&E Co. generated \$1.8 billion in cash and transferred \$632 million to PG&E Corp. for common stock repurchases and dividends. Financial Review at VI-3.

* The following questions and answers are from the June 7, 2001 Creditor’s Meeting in the PG&E Co. bankruptcy proceeding:

“Question (from the Bankruptcy trustee): Is it fair to say that the deregulation of the utility and the freeing up of capital occasioned by the utility’s head room permitted the parent to redirect capital to new unregulated subsidiaries; was that

the intention?

“Mr. Harvey (PG&E Co. CFO): In freeing up essentially the utility became smaller, and as the utility shrunk it repurchased shares. Now the corporation (inaudible) for the most part repurchased shares in kind on the public market. They could have also repurchased fewer shares, made more investments, they could have repurchased more shares and made fewer investments. Ultimately, they’re making additional decisions every day on behalf of the public corporation’s shareholders about whether or not to invest it in capital or to return the capital to the shareholders.

“Question: But the point is that the parent is making a conscious decision to redeploy capital from the regulated subsidiaries to unregulated subsidiaries; isn’t that correct?”

“Harvey: I think that what’s really happening is you have a utility entity that is becoming smaller, and at the same time you have non-utility entities that are (inaudible). Not necessarily a redeployment of capital that’s intentional in that respect. The fact of the matter is that utility is shrinking due to deregulation in California.

“Question: And capital is being moved from the utility through the parent to the other unregulated subsidiaries; is that correct?”

“Harvey: Going directly to shareholders (inaudible)”

Bankruptcy Transcript at 78-79.

PG&E Corp. “ringfenced” its assets, and now asserts that those billions of dollars are unavailable to PG&E Co., which is in bankruptcy. In the absence of the PUHCA exemption, the Commission would have been charged with evaluating and regulating all of these transactions and would have reviewed and determined the propriety of PG&E Corp.’s various holdings. Here, the ringfencing involved assets of companies in numerous states, reflecting the complex nature of the transaction, the difficulty of single state regulation, and the need for SEC review under PUHCA.

PG&E Corp.’s exemption from PUHCA has real and detrimental consequences to the

public interest, to consumers, and to the people of the State of California.⁶ As noted above, PG&E Co. is now in bankruptcy. While many factors may have contributed to the company's financial difficulties, it is undisputed that PG&E Co. sent billions of dollars to PG&E Corp., which invested the money in non-utility matters and sent it to the corporation's shareholders. Without the exemption, those upstream payments would be subject to Commission review. Review by the Commission would also be required for PG&E's corporate restructuring for purposes of ringfencing and increased credit rating through the creation of the wholly-owned subsidiary PG&E National Energy Group, LLC. Among the potential harm that should be subject of Commission jurisdiction and review (but are not because of the exemption) include the following:

1. PG&E Corp.'s investments in numerous non-utility businesses have created an incentive, and an appearance of an incentive, to draw cash out of the utility subsidiaries. Even more than an incentive, PG&E Corp. has, in fact, drawn cash from PG&E Co. (very likely to the financial detriment of PG&E Co., the consumers, ratepayers, and taxpayers in California, and to the public interest). PG&E Corp. has, in fact, moved assets from its utility subsidiaries into non-utility businesses. Provisions of PUHCA, if made applicable to PG&E Corp., are designed to address this problem.

2. PG&E Corp. has used interaffiliate transactions to draw cash from the utility subsidiaries, including \$12 million loan payments from PG&E Co. to Alberta and Southern Gas Company. Bankruptcy Transcript at 82-83. By moving assets from utilities to other entities,

⁶Actual harm to investors, consumers, or the public interest is not required to invoke the "unless and except" clause. The Commission has recognized that potential harm to protected interests is itself a detriment even though no actual harm has yet occurred. *Standard Oil Co.*, 10 S.E.C. 1122, 1129 (1942), citing *Detroit Edison Co. v. S.E.C.*, 119 F.2d 730, 739 (1941).

PG&E Corp. has potentially undermined the financial position of PG&E Co. The Commission, through application of PUHCA to PG&E Corp., can establish rules that limit or eliminate such activity and protect the utility and consumers.

3. The Commission can order PG&E Corp. to cooperate fully with state regulatory requirements. Currently, PG&E Corp. and PG&E Co. may have very different interests in relation to the requirements set forth by the California Public Utilities Commission. Indeed, PG&E Corp. argues that it is not subject to the jurisdiction of the California PUC in any respect—not even with regard to the conditions imposed by the PUC when it approved the formation of the holding company. The exercise by the SEC of clear-cut jurisdiction under PUHCA over the holding company, accompanied by an order from the SEC for the holding company to cooperate fully with the state Commission would greatly benefit the state process.

The Commission’s authority in these matters is extensive and necessary. Congress, in PUHCA, recognized the difficulties posed by unregulated holding companies to enforcement of state law. For example, public utility holding companies’ “activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.” 15 U.S.C. § 79a(a)(5). Consumers and investors are adversely affected when utility holding company securities “are issued without the approval or consent of the States having jurisdiction over the subsidiary public-utility companies.” 15 U.S.C. § 79a(b)(1). Consumers and investors are also adversely affected when “control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies.” 15 U.S.C. § 79a(b)(2). The Commission, with respect to non-exempt holding companies, may “upon its

own motion,” “ investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof of facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding company system.” 15 U.S.C. § 79r(b).

The exercise of the Commission’s authority under PUHCA has become essential in this matter. PG&E Corp. no longer qualifies for exemption, and its actions in moving assets and carrying on activities throughout the country that could negatively impact the subsidiary utilities and their financial standing raise serious questions about the relationship of the holding company to the utilities. These issues speak directly to the Commission’s jurisdiction and to the public interest. This is the proper time for the Commission to reassess PG&E Corp.’s PUHCA exemption. Because PG&E Corp. no longer qualifies for the exemption as set forth in the statute, the Commission must revoke it and enforce all requirements of PUHCA. Short of that, at the very least, the Commission should re-evaluate the extent of the exemption granted to PG&E Corp. and modify it to ensure compliance with state laws and consistency with the protection of the interests of consumers and the public.

CONCLUSION

The Commission should—must--revoke PG&E Corp.’s exemption from the PUHCA, as the holding company clearly is no longer a primarily intrastate entity: PG&E Corp. controls over \$13 billion in assets outside of California. All of the primary evils addressed by PUHCA are relevant to PG&E Corp., including movement of capital and assets from its utilities to the holding company and affiliated, wholly-owned subsidiaries as well as massive investments in out-of-state

non-utility activities and properties. The Commission has the chance, indeed the obligation, to address potential holding company abuses by PG&E Corp. before additional damage is done.

The current crisis in California has been a catalyst for closer scrutiny of federal and state regulation of the utility industry. This crisis highlights the fact that Commission enforcement of PUHCA is still needed.

The Attorney General, on behalf of the People of the State of California, strongly urge the Commission to revoke PG&E Corp.'s PUHCA exemption—as required by the statute--and to fully regulate the activities of the holding company. At the very least, we request a hearing on

the matter as soon as possible. We anticipate hearing from the Commission within sixty days with respect to this Petition.

Respectfully submitted,

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