

Decision 99-04-026 April 1, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authorization to Sell Certain Generating
Plants and Related Assets Pursuant to Public
Utilities Code Section 851. (U 39 E)

Application 98-01-008
(Filed January 15, 1998;
amended July 18, 1998)

FORMAL FILE COPY

**FINAL ORDER GRANTING THE
REQUESTED AUTHORIZATION**

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FINAL ORDER GRANTING THE REQUESTED AUTHORIZATION

Summary

Pacific Gas and Electric Company (PG&E) filed this application on January 15, 1998, originally seeking authority to sell its Hunters Point, Potrero, Pittsburg, and Contra Costa fossil fuel plants, and its Geysers geothermal plants. PG&E filed an amendment to this application on July 17, 1998, withdrawing the Hunters Point plant from the auction through which all of the plants were to be sold. The withdrawal of Hunters Point was contingent on the Commission approving certain ratemaking treatment and other conditions. The Commission approved the Hunters Point arrangement in Decision (D.) 98-10-029. In D.98-07-092, we gave PG&E permission to continue the auction process for its remaining plants, and concluded that it would be inappropriate for PG&E to accept final bids until the specific environmental mitigation measures that may be required are identified. In D. 98-11-064, we certified that the Final Environmental Impact Report (EIR) prepared in response to this amended application complies with the California Environmental Quality Act (CEQA). That report includes proposed mitigation measures.

In this decision we approve the results of the auction and review various aspects of the proposal. In addition, we review and consider the information provided in the Final EIR, adopting mitigation measures and a mitigation monitoring program that are conditions to the sale of the plants.

Background

In D.98-07-092 and D.98-11-064, we provided a summary of events related to the application, including the Commission's review of environmental impacts. In the first decision, the Commission authorized PG&E to continue its auction,

but precluded the company from accepting final bids prior to Commission approval of the EIR. On October 23, 1998, PG&E submitted testimony in which it provided estimates for the cost of environmental remediation and non-environmental decommissioning for each of the plants offered in the auction. The Commission approved the EIR in D.98-11-064, which it rendered on November 19, 1998. According to PG&E, bidders submitted final bids on November 23, 1998 and PG&E signed contracts with the winners the next day. Under those signed contracts, Southern Utilities would purchase Pittsburg and Contra Costa (Delta Power Plants) and Potrero; Calpine Geysers Company, L.P. would purchase the Lake County Geysers units; and FPL Energy, Inc. (an affiliate of the Florida Power & Light Company) would buy the Sonoma County Geysers units. On December 9, 1998, PG&E filed an initial set of documents as required in D. 98-11-064. These included signed contracts for the sale of each facility and a summary of other electric generation facilities in California owned and operated by the winning bidders.

PG&E provided the following summary of major milestones in the auction process:

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|------------------|--|
| January 15, 1998 | Morgan Stanley began distributing a Confidentiality Agreement to potential bidders |
| April 13, 1998 | PG&E began providing a Confidential Information Memorandum to potential bidders that signed and returned the Confidentiality Agreement |
| June 8, 1998 | Bidders submitted Statements of Qualifications and Interest, including non-binding Initial Bids, to PG&E |
| July 13, 1998 | Stage 2 of geothermal auction process started: PG&E notified geothermal Stage 2 bidders and subsequently sent them proposed plant-specific Purchase and Sale Agreements and associated |

	contracts
July 13, 1998	PG&E notified bidders that it was re-soliciting non-binding Initial Bids for the fossil plants
July 23, 1998	Commission's Interim Opinion (D.98-07-092)
July 31, 1998	Bidders submitted revised non-binding Initial Bids for the fossil plants to PG&E
July 13-November 23, 1998	Stage 2 geothermal bidders conducted additional due diligence, including review of documents in the Data Room, visits to each plant, management presentations, and discussions with PG&E personnel in areas of the bidders' interest
August 10, 1998	Stage 2 of fossil auction process started: PG&E notified fossil Stage 2 bidders and subsequently sent them proposed plant-specific Purchase and Sale Agreements and associated contracts
August 10-November 23, 1998	Stage 2 fossil bidders conducted additional due diligence, including review of documents in the Data Room, visits to each plant, management presentations, and discussions with PG&E personnel in areas of the bidders' interest
September 14, 1998	Bidders submitted contract markups to PG&E
October 21, 1998	PG&E provided bidders with revised, final contracts
November 19, 1998	D.98-11-064 certified EIR and authorized PG&E to accept final bids
November 23, 1998	Bidders submitted binding Offers to PG&E
November 24, 1998	PG&E and the winning bidders signed contracts

In response to PG&E filing this application, several potential bidders contacted PG&E and subsequently signed confidentiality agreements for access to the company's Data Room. On April 6, 1998, PG&E began advertising the availability of the plants. PG&E's investment banker, Morgan Stanley & Co., Incorporated (Morgan Stanley), sent letters to more than 200 domestic and international utilities, power marketers, independent power producers and others whom Morgan Stanley considered prospective purchasers. PG&E ran advertisements in the *Wall Street Journal* and the *Financial Times* of London. *Electric Power Daily* and the *Global Power Report* ran feature articles on PG&E's power plant sale. PG&E also advertised the availability of the plants for sale through PG&E's Internet web site. On April 13, 1998, PG&E began to send a Confidential Information Memorandum¹ to potential bidders that had signed and returned the Confidentiality Agreement. In all, 58 potential bidders received the Confidential Information Memoranda. In addition to the Confidential Information Memorandum, during Stage 1 of the auction, potential bidders were able to visit PG&E's Data Room to review documents related to the plants and to California's electric industry restructuring.

Stage 1 ended on June 8, 1998 for the Geysers, and July 31, 1998 for the fossil plants, when bidders submitted Statements of Qualifications and Interest, including their non-binding Initial Bids. Bidders were allowed to (and did) bid individually, or for both fossil plants (Potrero and Delta) in combination.

¹ The Confidential Information Memorandum consisted of four volumes. Volume 1 contained a narrative description of California's electric market, the highlights and basic operating and financial information about the plants. Volumes 2A and 2B contained the Auction Protocols, the pro forma Purchase and Sale Agreement (and exhibits), and the pro forma Operation and Maintenance Agreement for the fossil and geothermal plants, respectively. Volume 3 contained the Master Must Run Agreement.

Because of rights for first refusal held by the steam suppliers (as discussed below), the Sonoma County and Lake County Geysers Units could only be bid on individually and not in a bundle with any fossil plant or with each other. Based on an evaluation of the financial and operational background of the bidders and the amounts of their Initial Bids, PG&E selected the bidders to participate in Stage 2 of the auction.

PG&E initiated Stage 2 for the geothermal facilities on July 13, 1998, with the notification of bidders. Shortly thereafter, PG&E sent the Stage 2 bidders a proposed Purchase and Sale Agreement, Operation and Maintenance Agreement, Retained Assets Agreement, and Special Facilities Agreement tailored to the Sonoma County Units and the Lake County Units. On August 10, 1998, PG&E notified the fossil bidders of the start of Stage 2 for the fossil plants. Shortly thereafter, PG&E sent the fossil Stage 2 bidders a proposed Purchase and Sale Agreement, Operation and Maintenance Agreement, and Switchyard and Retained Properties Agreement tailored to the Delta and Potrero Power Plants. Between July 13 and November 23, 1998, all bidders visited the plants on which they were bidding, received a management presentation on the plants and associated contractual and regulatory issues, had follow-up meetings and telephone conference calls with knowledgeable PG&E personnel to answer their inquiries in specific areas, and made additional visits to the Data Room. Whenever PG&E provided one bidder with documents to supplement those in the Data Room, PG&E placed the documents in the Data Room so they would be available to all bidders.

On September 14, 1998, the bidders submitted contract markups and comments to PG&E. PG&E reviewed the suggestions and comments, and sent final, revised contracts to the bidders on October 21, 1998. All of the changes

were made to clarify the original documents or to accommodate suggestions made by bidders. None of the changes increased risk to ratepayers.

Meanwhile, PG&E and Calpine Geysers worked to resolve differences related to the geothermal steam supply agreements. Calpine Geysers is a whollyowned subsidiary of Calpine Corporation. Calpine Geysers is the supplier of geothermal steam to PG&E's Lake County Geysers Units as the successor-in-interest to Signal Oil and Gas Company under a March 23, 1973, steam supply agreement. Along with its partners (Union Oil Company of California and NEC Acquisition Company) it also holds a joint right of first refusal to acquire the Sonoma County Units through its Thermal Power Company affiliate.

Calpine Geysers protested this application on February 17, 1998. The same day, Calpine Geysers filed suit against PG&E in the Sonoma County Superior Court. Among other things, Calpine Geysers claimed that PG&E's generation divestiture invalidated the pricing formula in the steam supply agreement and that the agreement could not be assigned in the event of a sale of the Lake County Geysers Units. On April 8, 1998, PG&E and Calpine Geysers signed documents entitled Settlement Agreement and Amendment to the Steam Supply Agreement. PG&E submitted that agreement as part of its compliance filing. The settlement agreement resolved issues concerning the viability and assignability of the steam supply agreement. PG&E and Calpine Geysers agreed on a revised steam pricing formula to be applicable following PG&E's sale of the Lake County Units (the formula uses the 1998 steam price as the base price and provides for annual adjustments using the indices in the steam supply agreement that had previously been approved by the Commission), and agreed that the steam supply agreement would be assignable to any purchaser of the Lake County Geysers Units. PG&E and Calpine Geysers made other technical amendments to the steam supply agreement.

Finally, PG&E and Calpine Geysers agreed that Calpine Geysers would have a right of first refusal to acquire the Lake County Units for the same price and on the same terms and conditions as PG&E is prepared to sell to a third party. Calpine Geysers agreed that, if it exercised the right of first refusal, it would pay the winning bidder a breakup fee of 2% of the purchase price. PG&E advised the Commission of its settlement with Calpine Geysers in a letter dated April 17, 1998. In a confidential memorandum, PG&E informed prospective bidders of the settlement and of Calpine Geysers' right of first refusal.

The settlement agreement and the amendment to the steam supply agreement resulting from it are both expressly conditioned on this Commission's approval of the sale of the Lake County Units and the settlement agreement and amendment.

FPL Energy, Inc. submitted the highest bid for both the Sonoma County Units and the Lake County Units and signed contracts on November 24, 1998. On that day, PG&E also notified Calpine Geysers and its partners of the price, terms and conditions on which PG&E was prepared to sell the Geysers units. On November 30, 1988, Calpine Geysers notified PG&E that it was exercising its right of first refusal to acquire the Lake County Units. On December 4, 1998, PG&E and Calpine Geysers signed an agreement bound by a \$5 million irrevocable standby letter of credit. On January 22, 1999, Calpine Geysers and its steam supply partners notified PG&E that they would exercise their joint right of first refusal to acquire the Sonoma County Units. On behalf of Calpine Geysers and its partners, Geysers Power Company entered into a purchase and sale agreement with PG&E. Geysers Power Company is a wholly owned subsidiary of Calpine Corporation, which is guaranteeing the obligations of the purchasers under the agreement. In addition, Calpine Geysers has assigned its interest in the Lake County Units to Geysers Power.

Shortly before Calpine Geysers and its partners jointly exercised their right of first refusal to buy the Sonoma County Geysers Units, on January 21, 1999, Calpine and Thermal entered into an agreement to purchase the steam field assets of Unocal and NEC. Under its steam sales agreements, PG&E has a right of first refusal, exercisable on 90 days' notice, to acquire the steam field assets for the same price and on the same conditions to which Calpine and Thermal have agreed. In consideration of PG&E's agreement to waive its right of first refusal and to consent to the assignment of the Unocal and NEC Steam Sales Agreements to Thermal, Calpine and Thermal have agreed to reimburse PG&E for the break-up fee PG&E must pay to FPL Geysers (\$2 million) plus another \$3 million, for a total of \$5 million, payable no later than the close of the sale of the Sonoma County Geysers Units. PG&E decided not to exercise its right of first refusal because it would be inconsistent with its divestiture of generating assets and could lead to regulatory delays.

Southern Energy, Inc. submitted the highest bid for the Potrero and the Delta Power Plants, offering a total of \$801 million. PG&E states that no other combined or combination of individual bids equaled or exceeded the Southern Energy bid.

Pursuant to a ruling issued March 12, 1998, the Assigned Commissioner provided interested parties 15 days after the filing of the Compliance Filing within which to formally protest. Enron Corporation filed a Petition to Intervene and an accompanying protest questioning the appropriate forum for adjusting PG&E's revenue requirement to reflect the results of the divestiture. The Office of Ratepayer Advocates (ORA) filed a Response to the Compliance Filing raising questions about the market power implications of the sale of all of the remaining fossil plants to Southern Energy. No other parties filed a protest. PG&E filed a Reply to the Protest and Response. The Assigned Commissioner also provided

45 days in which any interested party could file briefs in response to the Compliance Filing. No party filed a brief.

On February 4, 1999, Southern Energy filed a Motion Requesting Finding That Certain Generation Facilities are Eligible Facilities Pursuant to Section 23 of the Public Utility Holding Company Act of 1935.

The draft decision in this matter was filed March 2, 1999. By March 22, 1999, four parties had filed comments on the draft decision. We have considered those comments and made changes to the draft where appropriate.

Discussion

A. The Sale Process

The Commission approved the process for these sales in D.98-07-092, and it appears that PG&E has rigidly implemented the approved process. The steps taken to advertise the availability of the plants appear reasonably likely to have reached all promising bidders. The fact that 58 potential bidders signed the confidentiality agreements needed to gain access to sensitive materials supports a conclusion that the effort to attract bidders was successful. The design of PG&E's program to enable all interested bidders to be fully informed about the facilities, the market environment and regulatory requirements was comprehensive. We have received no indication that it was implemented in a less-than-even-handed way. Because the approach taken by PG&E to attract and inform bidders appears likely to have attracted all interested market participants, it is reasonably likely to have led to successful bids that reflect the market value of the facilities at the time of the auction.

B. The Winning Bidders

Southern Energy, a Delaware corporation, is a subsidiary of Southern Company, which PG&E describes as the largest producer of electricity in the nation. Southern Company has domestic and foreign power plants with

46,000 MW of capacity. Southern Energy designs, builds and operates power and cogeneration plants in the United States and abroad. In 1997, Southern Company posted sales of \$12.6 billion and net income of \$972 million.

Southern Energy would acquire the Delta and Potrero Power Plants through two special-purpose Delaware limited liability companies – Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C. – that are subsidiaries of Southern Energy. Southern Energy is guaranteeing the obligations of the purchasers under the Purchase and Sale Agreements and associated contracts.

Calpine Geysers Company, L.P., is a Delaware limited partnership. It is a whollyowned subsidiary of Calpine Corporation. Calpine Geysers is the steam supplier for the Lake County Units. According to PG&E, Calpine Corporation, which has its headquarters in San Jose, California, is the nation's second largest producer of geothermal energy. Calpine has 5,500 megawatts of capacity in operation, under construction, or in development in 11 states. Calpine Corporation is guaranteeing the obligations of the purchaser under the Purchase and Sale Agreement and associated contracts.

C. The Steam Supply Settlement Agreement

As part of the package of agreements submitted by PG&E for our approval is an April 8, 1998 Settlement Agreement and Amendment to the Steam Sales Agreement between PG&E and Calpine Geysers. The settlement was prompted by a lawsuit filed by Calpine in the Superior Court in Sonoma County over the respective rights and obligations of PG&E and Calpine under the Steam Supply Agreement. The settlement and revised steam sales agreement do not appear to create new encumbrances for ratepayers and appear consistent with the disposition of the Geysers units pending in this application. Thus, we find the settlement and amendment to be reasonable. No party has raised objections to the approval of these documents.

D. Proceeds of the Sale

As of September 30, 1998, the total net book value of the assets to be sold was approximately \$592 million (See Tables 2-5 of PG&E's Compliance Filing). The gross sales total \$ 1.0138 billion. The total net book value of the Delta Plants and Potrero was \$318.394 million, compared to the winning bid of \$801 million. The total net book value of the Lake County Geysers Units was \$61.7 million, compared to a winning bid of \$73.8 million. The total net book value of the Sonoma County Units was \$211.4 million, compared to a winning bid of \$139 million. Net of taxes and transaction costs, PG&E estimates a positive adjustment to the Transition Cost Balancing Account of \$476 million from the sale of fossil plants and \$9 million from the sale of the Lake County Geysers Units. The sale of the Sonoma County units will result in a negative adjustment to the balancing account of \$75 million.

As discussed below, we are not yet prepared to assess the reasonableness of the transaction costs. However, as for the direct proceeds of the sale, we refer to D.98-07-092 (mimeo. p. 21) where the Commission concluded that absent significant irregularity, the Commission would rely on the auction process to establish the market value for these plants. We have seen no evidence of irregularity in the auction process and find that the results of the auction have established the market value for these plants.

E. Transaction Costs

PG&E summarizes its divestiture transaction costs as follows:

Summary of Divestiture Transaction Costs

<u>Description</u>	<u>Amount</u>
Investment Banker	\$4,554,000
Outside Legal Counsel for Regulatory Approvals and Transaction Support	4,139,000
Sonoma County Geysers Units - Break-up Fee (1)	--
Document Gathering for Regulatory Discovery and Buyer Due Diligence	1,544,000
 CEQA	
• CPUC Consultant	1,653,000
• PG&E Consultant - PEA	153,000
• PG&E Consultant - EIR	67,000
Preliminary Environmental Studies and Misc.	489,000
Environmental Support	
Title Reviews, Subdivision Map Compliance, Survey Work and Map Preparation	290,000
Advertising	27,000
Other Miscellaneous Contracts	10,000
Total Transaction Costs (through October 31, 1998)	\$12,926,000

PG&E asks the Commission to approve the recovery of these transaction costs in this proceeding. However, the company has made no showing as to why we should find these costs to be reasonable. In addition, PG&E indicated that it anticipates continuing to incur expenses until the closing of the contracts and that the transaction costs will ultimately be greater than those reflected on the chart above. While we approve the recovery of reasonable

transaction expenses in concept, we will expect PG&E to track the full extent of its transaction costs and demonstrate the reasonableness of those costs in its next Annual Transition Cost Proceeding.

F. Environmental Review Under the California Environmental Quality

The Project as originally proposed and as analyzed in the Final EIR involved sales of the power plants through a competitive auction process in the following four packages:

1. The Pittsburg Power Plant and the Contra Costa Power Plant to one owner due to coordinated dispatch requirements in the National Pollution Discharge Elimination System ("NPDES") permits for the plants;
2. The Potrero Power Plant;
3. The Sonoma County units of the Geysers Power Plant; and
4. The Lake County units of the Geysers Power Plant.

The two sets of Geysers units were offered for sale separately because each set (the Sonoma County units and the Lake County units) was subject to rights of first refusal residing in the owners of the respective steam fields underlying the units.

Following the Commission's certification of the Final EIR, PG&E conducted its auction process for the sale of the power plants. The winning bidder for both fossil-fueled power plant packages (one containing the Pittsburg and Contra Costa Power Plants and the other being the Potrero Power Plant alone) was the Southern Energy Company. Calpine is now the proposed purchaser of the entire Geysers Power Plant. Given these results, although the Commission did not mandate such occurrence, the environmentally superior alternative identified in the Final EIR (a combination of Alternative 2A, the bundling of the Potrero, Contra Costa and Pittsburg Power Plants, and

Alternative 3, the sale of the Geysers Power Plant to the steam field operators) is the Project proposed for approval. We will now review the potential impacts of the proposed project and consider the appropriate mitigation measures.

1. Project Impacts and Disposition of Related Mitigation Measures Identified in the EIR

The Final EIR prepared for the Project analyzed impacts in the following environmental topic areas: (1) land use and planning; (2) population and housing; (3) geologic problems; (4) water resources; (5) air quality; (6) transportation and circulation; (7) biological resources; (8) energy and mineral resources; (9) hazards; (10) noise; (11) public services; (12) utilities and service systems; (13) aesthetics; (14) cultural resources; and (15) recreation. The Final EIR indicates that the Project would have two potentially significant environmental impacts related to biological resources that would be reduced to a less than significant level by implementation of relevant Project-specific mitigation measures. These impacts are (i) the loss of important species or habitats and (ii) other impacts to protected species or habitats. The Final EIR indicates that the Project would result in a significant unavoidable air quality impact stemming from possible inconsistency with regional air plans. All other impacts were determined to be less than significant. While no mitigation measures for less than significant impacts are required by CEQA, in some such instances mitigation measures were proposed in the Final EIR that would further reduce the level of impact generated by the Project. As a condition of Project approval, we will require that the winning bidders comply with all Project-specific mitigation measures proposed in the Final EIR.

CEQA requires the Lead Agency approving a project to adopt a mitigation monitoring or reporting program for the changes to the project that it has adopted or made a condition of the project approval in order to assure

compliance with such mitigation measures during project implementation. The Mitigation Monitoring Program prepared for the Project, and dated December 15, 1998, is designed to serve this purpose for the Project-specific mitigation measures identified in the Final EIR. We have included that program as Attachment B to this decision and adopt it herein.

In the following discussion, we elaborate on the disposition of each identified impact and related mitigation measure, and make findings as required by CEQA with respect to each significant environmental effect of the Project.

a. Land Use and Planning

The Final EIR indicates that the proposed Project is consistent with all relevant adopted General Plan policies, land use designations and zoning, and therefore would not conflict with adopted environmental plans and goals of the cities or counties in which the power plants are located. This is a less than significant impact and no mitigation measures are required or proposed. (See pages 4.1-13 to 4.1-14 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project would not disrupt or divide the physical arrangement of any established community because each of the power plants is an existing land use that would remain in the same locations. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.1-15 to 4.1-16 of the Draft EIR, as amended by the Response Document.)

The Final EIR further indicates that the Project would not convert prime agricultural land to non-agricultural uses, or impair the agricultural productivity of prime agricultural land. This is a less than significant

impact. No mitigation measures are required or proposed. (See pages 4.1-16 to 4.1-17 of the Draft EIR, as amended by the Response Document.)

b. Population and Housing

The Final EIR indicates that the Project would not induce substantial growth or concentration of population. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.2-9 to 4.2-10 of the Draft EIR, as amended by the Response Document.)

Furthermore, to the extent that the sales of the power plants (as an element of the overall restructuring of the electricity market in California) would lower electricity prices and induce economic growth, the locations where such growth would physically manifest itself, and the potential environmental impacts of such growth, are too speculative to reasonably forecast and thus were not further evaluated in the Final EIR.

The Final EIR also indicates that the proposed Project would not displace a large number of people, and would not displace any residents of housing units. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.2-10 to 4.2-11 of the Draft EIR, as amended by the Response Document.)

c. Geologic Problems

The Final EIR indicates that minor construction activities resulting from the proposed Project, such as fencing and site remediation, could cause soil disturbance. However, such minor activities would not result in any change in the public exposure to hazards, geologic or otherwise, since they would not be expected to change topography and would employ appropriate engineering, design and construction practices. In addition, site remediation would be subject to appropriate oversight and controls (see Section 4.9 of the Draft EIR, as amended by the Response Document). Thus, the impact is

less than significant. No mitigation measures are required or proposed. (See pages 4.3-10 to 4.3-11 of the Draft EIR, as amended by the Response Document.)

The Final EIR states that operational changes resulting from the transfer in ownership of the Potrero, Pittsburg and Contra Costa plants would not create geological problems. This is a less than significant impact, and no mitigation measures are required or proposed. (See pages 4.3-11 and 4.3-12 of the Draft EIR as amended by the Final EIR.)

The Final EIR also indicates that a change in the ownership of the Geysers Power Plant should not affect the potential for the facility to induce microseismicity in the area and vicinity of the plant and that the level of any such seismic activities would be minimal. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.3-12 to 4.3-14 of the Draft EIR, as amended by the Response Document.)

The Final EIR further indicates that transfer of ownership of the Geysers Power Plant should not increase the frequency and magnitude of major earthquakes. This is a less than significant impact. No mitigation measures are required or proposed. (See page 4.3-15 of the Draft EIR, as amended by the Response Document.)

d. Water Resources

The Final EIR indicates that the proposed Project would not result in significant impacts to water resources from construction activities because the Project would involve only minor construction at the plants, which would be subject to appropriate permits and controls and would not substantially change the amount of impermeable surfaces. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.4-14 to 4.4-15 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project could increase the amount of water used at, and discharged from, the power plants. This is a less than significant impact because (i) with respect to the fossil-fueled power plants, even with increased production rates, the increases in wastewater discharges would be limited and regulated by NPDES permits, and (ii) with respect to the Geysers plant, changes in production would not be expected to affect water quality or quantity, since increased condensation from generating units would be reinjected and no off-site impacts would occur. No mitigation measures are required or proposed. (See pages 4.4-15 to 4.-16 of the Draft EIR, as amended by the Response Document.)

e. Air Quality

The Final EIR indicates that the proposed Project may result in an increase in criteria air pollutant emissions in the affected air basins. This is considered a less than significant impact because the increases in emissions relate to direct sources that are covered by air permits and would be consistent with all emissions limitations and standards. The Final EIR also states that Year 2005 cumulative impacts from increases in criteria air pollutants affecting air basins would be less than significant for two independent reasons. First, emissions would occur under air quality permits and would be consistent with emissions limitations and standards. Second, as to the fossil-fueled plants in the San Francisco Bay Area Air Basin, the net change in power plant emissions between 1999 and 2005 of ozone precursors (i.e., ROG and Nox) and of PM-10 and its precursor (i.e., ROG, Nox and Sox) is projected to be negative since the expected decrease in NOx. emissions would more than offset the potential increase in PM-10, ROG and SOx. emissions. Thus, the Bay Area fossil-fueled power plants would not contribute to the cumulative effect of increased emissions of PM-10 and PM-10 precursors from new development in the Bay

Area on regional PM-10 concentrations. For year 2015 cumulative increases of criteria air pollutant emissions affecting the San Francisco Bay Area Basin, the Final EIR indicates that there is no cumulative impact from the project because the net change in Bay Area power plant emissions of ozone precursors, PM-10 and PM-10 precursors in 2015 would be a decrease compared to the 1999 baseline conditions. Therefore, the Bay Area power plants would not contribute to the cumulative effect of increased emissions from new development in the Bay Area on regional ozone and PM-10 concentrations. No mitigation measures are required or proposed. (See pages 4.5-51 to 4.5-61 of the Draft EIR, as amended by the Response Document.) Despite these findings and determinations, the Final EIR contains several other analyses (discussed below) to determine whether the potential increase in power plant emissions as a result of the project (which would be within permitted levels) would result in any significant increase in local concentrations of criteria air pollutants (see Impact 4.5-2 of the Draft EIR, as amended by the Response Document), a significant increase in health risks in the vicinities of the plants (see Impact 4.5-3 of the Draft EIR, as amended by the Response Document), or significant cumulative increases relative to emissions projections used in regional air quality plans (see Impact 4.5-5 of the Draft EIR, as amended by the Response Document).

The Final EIR indicates that the proposed Project may result in an increase in local concentrations of criteria air pollutants in the vicinities of the power plants. This is considered a less than significant impact. The Final EIR demonstrates that increased power plant operations under the Project would not cause the violation of any ambient air quality standard or substantially contribute to a projected violation of an ambient air quality standard. The pollutant-specific concentration-based standards devised by the Bay Area Air Quality Management District (BAAQMD) under its Prevention of

Significant Deterioration program were used by the Final EIR to determine whether the Project would substantially contribute to projected violations of an ambient air quality standard. In addition, for the fossil-fueled power plants, detailed atmospheric dispersion modeling was performed using an EPA-approved dispersion model in order to determine whether the Project would cause respiratory related effects due to changes in particulate matter emissions (PM-10 and PM-2.5) from possible increased operations. The results of such modeling efforts indicated that, for both 1999 project and 2005 cumulative emissions, the incremental changes in the air pollutant concentrations between the baseline scenario and the Analytical Maximum scenario at each of the fossil-fueled power plants would be less than the standards of significance. The Final EIR evaluated the cumulative impact in 2015 of traffic-related carbon monoxide concentrations plus a maximum power plant CO increment at the intersection of 3rd and 16th Streets in San Francisco (near the Potrero Plant), and concluded that the resulting values would be well below their respective ambient standards so that no significant impact would result. The only criteria emissions of concern at the Geysers Power Plant are PM-10 and hydrogen sulfide (which was evaluated in Impact 4.5-3, discussed in the paragraph below). As to PM-10, the projected increase as a result of the Project is less than significant because emissions would not exceed either the 24-hour or annual average standards for PM-10 in either 1999 (for project impacts) or 2005 (for cumulative impacts). No mitigation measures are required or proposed. (See pages 4.5-61 to 4.5-71 of the Draft EIR, as amended by the Response Document.)

The Final EIR indicates that the proposed Project may lead to an increase in health risks from toxic air contaminants in the vicinities of the power plants. This is considered a less than significant impact. The total estimated carcinogenic risk from each of the fossil-fueled power plants in the

Analytical Maximum scenario is well under the significance thresholds. The predicted maximum hazard indices for both acute and chronic exposure to non-carcinogens at each of the fossil-fueled power plants are also below the significance thresholds. The cancer risks and the chronic and acute hazard indices associated with the Project itself remain well below the significance threshold in the year 2005 scenario. Under both the 2005 and the 2015 cumulative impact scenarios, the Final EIR explains that no standard of significance criterion exists for cumulative toxic air contaminant risks posed by mobile and stationary sources together or by existing sources or by existing plus new sources. Thus, any conclusion regarding significance of the cumulative impact would be speculative. In any event, however, the Final EIR indicates that the Project's contribution to any cumulative impact would not be considerable because the overall ambient risk from toxic air contaminants in the vicinity of each plant would be essentially the same with or without the project (thus, the effect of the project would be de minimis). At the Geysers Power Plant, the principal risk from toxic air contaminants stems from potential increased hydrogen sulfide emissions under the Analytical Maximum scenario. The Final EIR indicates that such increase would not have a significant effect on the local health risks or the potential for nuisance odor complaints that are associated with controlled releases, or steam stacking and related uncontrolled releases of steam, because the Project would not affect the operation of hydrogen sulfide abatement systems, the manifold systems, steam wells and wellheads, nor would it change the applicability of any air district rules or regulations, or affect the frequency of regional air stagnation. No mitigation measures are required or proposed. (See pages 4.5-71 to 4.5-75 of the Draft EIR, as amended by the Response Document.)

The Final EIR further indicates that the proposed Project may result in the elimination of PG&E's existing voluntary fallout-type

particulate matter (FTP) cleanup programs at the Contra Costa and Pittsburg Power Plants, leading to possible nuisance effects caused by FTP stains. This is considered a less than significant impact because BAAQMD Regulation 1-301 provides potential relief to affected parties, as would civil suits for nuisance damages. No measurable impact from FTP is expected at the Geysers plant due to the distance between potential receptors and Geysers units using incinerator-based emission controls. Although no mitigation measures are required to be imposed, implementation of Mitigation Measure 4.5-4 (requiring PG&E to provide buyers of the Pittsburg and Contra Costa Power Plants with a summary of the history of FTP emissions and claims, and requiring buyers of the plants to develop procedures for minimizing FTP emissions in the future and institute a program for processing FTP claims) is hereby made a condition of Project approval and is intended to ensure that this impact remains at a less than significant level. (See pages 4.5-75 to 4.5-77 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that, depending upon whether and how the BAAQMD modifies Regulation 9, Rule 11, to make it apply to the new plant owners, the proposed Project may be inconsistent with regional air quality plans. This is considered a significant impact. The potential for inconsistency, however, relates only to the fossil-fueled power plants. If the BAAQMD were to decline to modify Regulation 9, Rule 11 (which requires best available retrofit control technology to be installed at the plant boilers) so as to apply to new owners, the Project would be inconsistent with a specific control measure included in the '97 Clean Air Plan. In addition, to the extent that power plant operations would approach the Analytical Maximum scenario analyzed in the Final EIR, NO_x emissions from the power plants could exceed assumptions for emissions from power plants in the Bay Area that were used in the '97 Clean

Air Plan by the equivalent of more than 1% of the regional inventory for NO_x in 2000, with or without modifications to the BAAQMD rule. If such rule modifications are not implemented, the same would be true in 2003. However, if the BAAQMD rule is modified, the increase in NO_x emissions above the '97 Clean Air Plan assumptions would be less than 1% of the regional inventory for NO_x in 2003. Implementation of Mitigation Measure 4.5-5 is herein made a condition of Project approval. (See pages 4.5-77 to 4.5-81 of the Draft EIR, amended by the Response document.) This measure is designed to ensure that the existing NO_x emission rate limits will apply to the new owner, whether or not the BAAQMD modifies Regulation 9, Rule 11.

By imposition of this mitigation measure, changes or alterations have been required in the Project which substantially lessen the significant environmental affect identified in the Final EIR. No other mitigation measures were identified in the Final EIR to address this significant impact. For the reasons discussed below, the No-Project Alternative is infeasible, and Alternative 2A (sale of the fossil-fueled power plants to a single buyer) is indeed the Project being approved, and would thus have lesser impacts in this regard than would the project originally proposed by PG&E and analyzed in the Final EIR. With implementation of Mitigation Measure 4.5-5, the inconsistency with the control strategy developed to improve regional air quality would be eliminated. With respect to power plant emissions estimates, power plant NO_x emissions would still exceed the 1% criterion in 2000 under the Analytical Maximum scenario, but would be reduced to less than 1% by 2003. Therefore, if the Potrero, Contra Costa and Pittsburg Power Plants operated at the high levels assumed in the Analytical Maximum scenario, the estimated increase in power plant emissions over those included in the '97 Clean Air Plan would represent a significant and unavoidable, but temporary, impact of the Project. To the extent

that the impact would remain significant and unavoidable, and even if it were significant and unavoidable as to ROG and PM-10 (whose net differences are projected to be below 1% of the regional inventories of ROG and PM-10 in 2000 and 2003), such impact is hereby found to be acceptable because expected Project benefits outweigh any such unavoidable adverse environmental effects, as set forth in the Statement of Overriding Considerations in Section V below.

f. Transportation and Circulation

The Final EIR indicates that the proposed Project could increase traffic generation, but that any possible traffic increases would be negligible in comparison to existing traffic volumes and capacity. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.6-2 to 4.6-3 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the potential minor increases in traffic from the proposed Project would not increase traffic safety hazards. This is a less than significant impact, and no mitigation measures are required or proposed. (See page 4.6-4 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the potential minor increases in traffic from the proposed Project would not affect emergency access, or access to nearby land uses. This is a less than significant impact, and no mitigation measures are required or proposed. (See pages 4.6-4 of the Draft EIR, as amended by the Response Document.)

The Final EIR indicates that the proposed Project could increase demand for on-site parking. This is a less than significant impact because there is sufficient parking on the power plant sites to accommodate potential increases in parking demand. No mitigation measures are required or

proposed. (See page 4.6-5 of the Draft EIR, as amended by the Response Document.)

g. Biological Resources

The Final EIR indicates that the proposed Project could result in an overall loss of important species or habitats if future owners were unaware of the presence and sensitivity of such biological resources. This is considered to be a significant impact. Implementation of Mitigation Measure 4.7-1 (require PG&E to provide future plant owners with informational materials and training documents in PG&E's possession concerning jurisdictional wetlands and special status species and habitats in the vicinity of the Power Plant to be divested) is hereby made a condition of Project approval and should ensure that this impact is mitigated to a less than significant level. (See pages 4.7-34 to 4.7-35 of the Draft EIR, as amended by the Response Document.) Thus, changes or alternatives have been required in, or incorporated into, the Project so as to avoid or substantially lessen the significant environmental impact as identified in the Final EIR.

The Final EIR indicates that if the Section 10 Permits under the Federal Endangered Species Act for the Pittsburg and Contra Costa Power Plants have not been issued to PG&E prior to the close of the sale of those plants, or to the new owner of the Pittsburg and Contra Costa Power Plants at closing, the Project may delay the issuance of such permits, thereby resulting in possible impacts to protected species. This is considered a significant impact. Under a mitigation measure proposed as part of the Project (the unnumbered mitigation measure set forth on page 4.7-36 of the Draft EIR, as amended by the Response Document), if Section 10 Permits have been reissued to PG&E prior to the close of escrow, the new owner will be required to seek the reissuance of the Section 10 Permits issued to PG&E, and to accept the permittee's obligations

under the California Endangered Species Act Memorandum of Understanding, the Habitat Conservation Plan and the Implementing Agreements. In the alternative, if the permits have not been issued to PG&E, the new owner will be required to resubmit and accept any obligation under PG&E's pending application, including the resubmittal of the then-current draft Implementing Agreement and the Habitat Conservation Plan, and will be required to obtain such permits on substantially the same terms and conditions as were contained in PG&E's permit applications. Furthermore, implementation of Mitigation Measure 4.7-2 (if the Section 10 Permits are not held by the new owner at the closing of the sale of the Pittsburg and Contra Costa plants, but have been issued to PG&E, the new owner must send a letter to the permitting agencies committing to the obligations listed in the mitigation measure proposed as part of the Project and stating its intent to operate in the interim in accordance with their provisions and stating its acceptance of the authority of the permitting agencies to enforce compliance with those obligations) will ensure that if Section 10 permits have been issued, the new owner will comply with them even prior to their reissuance to the new owner. These two mitigation measures (the unnumbered mitigation measure referenced above and Mitigation Measure 4.7-2) are hereby made a condition of Project approval and will ensure that this impact is reduced to a less than significant level. (See pages 4.7-35 to 4.7-36 of the Draft EIR, as amended by the Response Document.) Thus, changes or alternatives have been required in, or incorporated into, the Project so as to avoid or substantially lessen the significant environmental impact as identified in the Final EIR.

The Final EIR also indicates that the proposed Project may result in impacts to locally designated species of concern and other aquatic organisms at the Potrero, Pittsburg and Contra Costa Power Plants if cooling

water volumes increase, and thus increase rates of entrainment and/or impingement mortality. However, substantial changes in impacts to locally designated species are not anticipated because the new owners will comply with the currently established NPDES permit requirements; the sale of the Pittsburg and Contra Costa Power Plants to a single owner will allow coordinated operations as specified in the Resource Management Plan; and new owners will comply with proposed additional regulatory constraints on operations associated with the Habitat Conservation Plan and state take authorization and federal take permits. Therefore, this is considered to be a less than significant impact. No mitigation measures are required or proposed. (See page 4.7-37 of the Draft EIR, as amended by the Response Document.)

h. Energy and Mineral Resources

The Final EIR indicates that the proposed Project would not conflict with adopted energy conservation plans. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.8-3 to 4.8-4 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project would not promote wasteful or inefficient use of non-renewable resources. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.8-4 to 4.8-5 of the Draft EIR, as amended by the Response Document.)

The Final EIR indicates that the Project would not result in the loss of availability of known mineral resources. This is a less than significant impact. No mitigation measures are required or proposed. (See page 4.8-5 of the Draft EIR, as amended by the Response Document.)

i. Hazards

The Final EIR indicates that the proposed Project could accelerate the time at which existing hazards are remediated, and therefore could accelerate a potential threat to worker safety or to the public health in the event of improper handling of environmental contamination. This is considered a less than significant impact because Phase I and Phase II Environmental and Risk Assessments have been or will be conducted so that all likely areas of known and potential contamination have been or will be identified and be known to prospective buyers, thereby assuring appropriate remediation measures. In addition, worker and public health and safety requirements and cleanup standards would apply during remediation activities to protect human health and the environment; remediation plans would include methods of treating soils in a manner that would be non-hazardous and otherwise protect public health and safety; remediation activities would be conducted in accordance with all applicable laws and regulations under the oversight of the appropriate lead agency; and PG&E intends to prepare a site remediation plan and a site safety plan prior to commencing work at any contaminated site to ensure protection of workers and the public. The implementation of Mitigation Measure 4.9-1 (requiring PG&E to prepare Risk Assessments that conform with the guidelines of the California Department of Toxic Substances Control and local County Health Departments; requiring the Risk Assessments to address all areas subject to remediation, describe the contaminants, estimate their potential risks, determine any need for additional data collection, and present appropriate health risk-based and/or environmental risk-based cleanup goals) is hereby made a condition of Project approval. The implementation of this mitigation measure should ensure that the impact remains less than significant. (See pages 4.9-14 to 4.9-18 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that remediation of contaminated soils, groundwater, or building materials at the plant sites would likely occur sooner as a result of the proposed Project, and remediation would eliminate potential future threats to public health or to the environment. This is considered a beneficial impact. No mitigation measures are required or proposed. (See page 4.9-18 of the Draft EIR, as amended by the Response Document.)

The Final EIR indicates that the proposed Project could promote increased use of hazardous materials at the power plants. This is considered a less than significant impact because implementation of operational controls and compliance with regulatory requirements applicable to hazardous materials handling will minimize risks associated with increased use of hazardous materials. Furthermore, the implementation of Mitigation Measure 4.9-3 (requiring PG&E to provide new owners of each plant with all of PG&E's material, non-privileged informational materials and training documents regarding worker health and safety, emergency plans and hazardous materials handling and storage) is hereby made as a condition of Project approval. (See pages 4.9-18 to 4.9-21 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project could result in an increased frequency of accidents at the power plants. This is considered a less than significant impact because the risk of accidents is reduced through design standards, operational controls, maintenance and inspections, and administrative controls required by laws and regulations, as well as by the implementation of required plans such as a Hazardous Materials Business Plan, Risk Management Plan, and Injury and Illness Prevention Plan. In addition, by requiring the implementation of Mitigation Measure 4.9-3, described above, as a condition of Project approval we should ensure that this impact remains less than

significant. (See pages 4.9-22 to 4.9-23 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project could result in increased generation of hazardous waste at the power plants. This is considered a less than significant impact because any increase in hazardous waste generation would not be substantial, and hazardous waste generation is subject to cradle-to-grave regulatory systems for transporting, storing and disposing of hazardous waste in a manner that protects human health and the environment, with liability schemes that would dissuade improper disposal of hazardous waste. No mitigation measures are required or proposed. (See pages 4.9-23 to 4.9-24 of the Draft EIR, as amended by the Response Document.)

j. Noise

The Final EIR indicates that minor construction activities that could be associated with the transfer of ownership would temporarily increase noise levels above existing ambient levels in Project vicinities, particularly at the Pittsburg Power Plant. This is considered a less than significant impact because the anticipated noise would be short-term and would occur during the daytime, and the construction activities would be subject to specific requirements in local disturbance ordinances. No mitigation measures are required or proposed. (See page 4.10-10 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project would generate noise levels above existing ambient levels in the Project vicinities due to potential increases in operations by new owners. The Project could increase the frequency of existing excesses of the pertinent Noise Ordinance standards near the Potrero Power Plant, but the public would not be affected

thereby. The Contra Costa Power Plant is located in a remote area with few sensitive receptors, and noise levels would not be expected to exceed the normally accepted range. The Project could result in potential increases in multiple unit operations at the Pittsburg Power Plant, but such increases would be within acceptable levels of the Noise Element of the County General Plan. At the Geysers Power Plant, the Project is not expected to increase the frequency of stacking events and their related noise impacts. The potential changes in noise levels due to operational changes at the plants are not considered to be a significant impact. No mitigation measures are required or proposed. (See pages 4.10-10 to 4.10-15 of the Draft EIR, as amended by the Response Document.)

k. Public Services

The Final EIR indicates that the proposed Project would not create the need for new or substantially altered fire, police, school or other government services. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.11-9 to 4.11-13 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the combined sale of the Contra Costa and Pittsburg Power Plants in Contra Costa County would not create the need for new or substantially altered fire, police, school, or other government services. This is a less than significant impact. No mitigation measures are required or proposed. (See page 4.11-13 of the Draft EIR, as amended by the Response Document.)

The Final EIR further indicates that the proposed Project may affect property tax revenues in the jurisdictions of the plants to be sold. This is considered a less than significant impact. Although it is uncertain whether the Project would result in an increase or decrease in property taxes, even if the Project resulted in a decrease in property tax revenues at each of the jurisdictions,

it is not likely that the decrease would substantially decrease the level of government services, as PG&E's tax revenues constitute a fraction of each jurisdiction's tax base. Furthermore, any decreased tax revenues could only be attributed to divestiture for a short time period since restructuring mandates that all plants be market valued (triggering reassessment for tax purposes) by the end of 2001. No mitigation measures are required or proposed. (See pages 4.11-14 to 4.11-16 of the Draft EIR, as amended by the Response Document.)

I. Utilities and Service Systems

The Final EIR indicates that the proposed Project would not result in the need for new or substantially altered electric power systems or supplies. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.12-16 to 4.12-17 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the potential increased operations at the power plants as a result of the Project could increase the demand for public water. This is a less than significant impact. At the fossil-fueled power plants, this means increased demands for water for cooling and domestic water; however, such increased demands would not have a significant effect on the quantity of raw water supplies for affected water utility districts or substantially increase the demand for, or require alterations to, the domestic water supply or distribution facilities for affected water utility districts. At the Geysers Power Plant, additional production would also not significantly affect the quantity of water supplies. No mitigation measures are required or proposed. (See pages 4.12-17 to 4.12-18 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project could result in an increase in wastewater disposal to the public sanitary sewer

systems and increase the need for wastewater treatment. This is a less than significant impact. For the fossil-fueled plants, any increased wastewater generation could be handled by existing infrastructure. For the Geysers plant, any potential increase in wastewater generation would continue to be collected, treated, and reinjected to the steam field, thereby having no impact to public sanitary and storm sewer collection infrastructure. No mitigation measures are required or proposed. (See page 4.12-18 to 4.12-19 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project could result in an increased demand for solid waste services. This is considered a less than significant impact because anticipated increases in solid waste disposal in connection with potential increased operations at the power plants would be relatively small, and in some cases would only be temporary. No mitigation measures are required or proposed. (See pages 4.12-19 to 4.12-20 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project would not increase the need for communication systems. This is a less than significant impact. (See page 4.12-20 of the Draft EIR, as amended by the Response Document.)

The Final EIR further indicates that the proposed Project would not result in the need for new or substantially altered natural gas systems or supplies. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.12-20 to 4.12-21 of the Draft EIR, as amended by the Response Document.)

m. Aesthetics

The Final EIR indicates that potential changes in operational activities by a new owner and minor construction activities

associated with the proposed Project would not produce new sources of light or glare in the Project vicinities. This is a less than significant impact. No mitigation measures are required or proposed. (See page 4.13-8 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the proposed Project would not result in the change or obstruction of scenic highway views or vistas open to the public or the creation of an aesthetically offensive site open to public view. This is considered a less than significant impact. No mitigation measures are required or proposed. (See pages 4.13-8 to 4.13-9 of the Draft EIR, as amended by the Response Document.)

n. Cultural Resources

The Final EIR indicates that minor construction activities associated with the proposed Project, such as fencing to separate the retained properties from the divested plant sites, could result in impacts to subsurface cultural resources. This is considered a less than significant impact. The potential for impacts to resources at the Potrero Power Plant, Contra Costa Power Plant, and the Pittsburg Power Plant is minimal because of the deep fill soils and the unlikelihood that fencing would penetrate into buried subsoils. At the Geysers Power Plant, the potential for impacts associated with fencing is minimal because of previous ground disturbances and because prior studies have indicated a low potential for cultural resources at specific plant locations. Implementation of Mitigation Measure 4.14-1 (requiring PG&E to prepare and certify its intent to comply with a program to address potential impacts to archaeological resources from PG&E actions related to the divestiture of each of the power plants, which program will require, among other things, the retention of a qualified archaeologist available for monitoring, consultation or evaluation, and with authority to halt construction if an unrecorded resource is discovered)

is hereby made a condition of Project approval and will ensure that the impact remains less than significant. (See pages 4.14-6 to 4.14-7 of the Draft EIR, as amended by the Response Document.)

The Final EIR also indicates that the continued operation of the divested plants would not affect known cultural resources. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.14-7 to 4.14.8 of the Draft EIR, as amended by the Response Document.)

o. Recreation

The Final EIR indicates that the proposed Project could minimally increase demand for neighborhood or regional parks or other recreational facilities as a result of relatively minor increases in employment at the power plants. No mitigation measures are required or proposed. (See page 4.15-4 of the Draft EIR, as amended by the Response Document.)

Finally, the Final EIR indicates that the Project would not significantly affect existing or proposed recreational opportunities. This is a less than significant impact. No mitigation measures are required or proposed. (See pages 4.15-5 to 4.15-6 of the Draft EIR, as amended by the Response Document.)

2. Cumulative Impacts

The Final EIR identified no significant cumulative impacts other than those noted earlier. (See pages 5-1 to 5-42 of the Draft EIR, as amended by the Response Document.)

3. Alternatives

The Final EIR evaluated the environmental impacts of three alternatives to the Project, as described below. The Final EIR also identified and discussed alternatives that were rejected because they were determined to be

infeasible and/or did not meet the basic objectives of the Project. (See pages 6-3 to 6-5 of the Draft EIR, as amended by the Response Document.) The environmental impacts and feasibility of the three alternatives evaluated in detail in the Final EIR are addressed below.

The following Project Objectives of both PG&E and the Commission are set forth on pages 2-1 to 2-2 of the Draft EIR, as amended by the Response Document. These objectives were considered when alternatives were identified that could feasibly attain these objectives. Each of the alternatives identified in the Final EIR has been evaluated therein and in these findings in relation to the following Project Objectives:

PG&E

1. Take advantage of the expected favorable market for sale of generating facilities in 1998.
2. Provide an objective measure of the market value of the plants through the proposed competitive auction process.
3. Position PG&E for the competitive future.

Commission

1. Facilitate competitive generation market.
2. Provide an objective measure of the market value of the plants.
3. Provide entities interested in participating in the California market a fair opportunity to acquire existing generation assets.
4. Facilitate its desire and the legislature's mandate to transition quickly to a competitive market.
5. Serve the financial interests of affected ratepayers.

a. No Project

Under this alternative, PG&E would continue its operation of the Potrero, Contra Costa, Pittsburg and Geysers Power Plants. PG&E could operate the power plants in any manner it desired within the constraints of its permits and the ISO must-run contract, or could potentially increase operations to the Analytical Maximum capacities noted in the Final EIR. However, the Final EIR, in its analysis, assumes that PG&E would operate the power plants in 1999 as is defined for the Baseline Scenario. The Final EIR evaluates the impacts associated with such PG&E operations in 1999, as well as the cumulative impacts associated with the 2005 No Project Alternative. The Final EIR indicates that this alternative would not result in any significant impacts. The Commission, however, finds that this alternative is infeasible and less desirable than the proposed Project, and therefore rejects this alternative for the following reasons:

1. This alternative would not result in the beneficial impacts associated with the Project's accelerated hazardous materials site remediations.
2. This alternative would not meet PG&E's Project Objectives to take advantage of the current favorable market for sale of generating facilities; provide an objective measure of the market value of the plants through the competitive auction process; or position PG&E for the competitive future.
3. This alternative would not meet the Commission's Project Objectives to facilitate the competitive generation market; provide an objective measure of the market value of the plants; provide entities interested in participating in the California market a fair opportunity to acquire existing generation assets; and facilitate the Commission's desire and the Legislature's mandate to transition quickly to a competitive market.

b. Different Power Plant Bundling Alternatives

Under this alternative, the three fossil-fueled power plants would be either sold together as a bundle to a single buyer (Alternative 2A) or sold separately to three different purchasers (Alternative 2B). The Geysers units are not considered in this alternative as they are already bundled for sale according to their relationship to specific steam fields and the way in which different units are manifold together for operational efficiency (See also Alternative 3 regarding the Geysers plant).

Under Alternative 2A, the fossil-fueled power plants would be sold as a bundle to a single buyer, resulting in one operator of these plants. The Final EIR concludes that, under this alternative, the new owner would have a small portfolio of plants to draw from, and therefore the tendency of the single new owner to increase generation would be lessened. BAAQMD Regulation 9, Rule 11 would have to be modified under this alternative, but BAAQMD may amend it only moderately (to separate PG&E's retained Hunters Point Power Plant from the other three Bay Area fossil-fueled plants), allowing the new owner to operate in a manner very similar to PG&E's current operations. Under this alternative, the magnitude of the environmental impacts would be less than with the Project as originally proposed (bundling of the Contra Costa and Pittsburg plants, but separate sale of the Potrero plant), but the levels of significance of the impacts, and the mitigation measures required, would be identical to the Project as proposed. The Final EIR identifies Alternative 2A as the environmentally superior alternative with respect to sale of the Potrero, Contra Costa and Pittsburg plants. Although the Commission has not mandated that this alternative be implemented, the Project as currently proposed by PG&E and addressed in these findings is indeed Alternative 2A for the fossil-fueled plants component of the sale.

Under Alternative 2B, each of the three fossil-fueled power plants would be offered for sale separately, including the Contra Costa and Pittsburg Power Plants, which could result in the revocation of the NPDES permit governing the cycling of the two plants for reducing endangered fish cooling water entrainment. The Final EIR assumes that the new owners would operate the Contra Costa and Pittsburg Power Plants up to their Analytical Maximum capacities within the constraints of permits, and that the new owner of the Potrero Power Plant would operate the plant in much the same way as under the Project. Under this alternative, the magnitude of the environmental impacts would be somewhat greater than with the Project as originally proposed, but the levels of significance, and the mitigation measures required, would be identical to the Project as proposed, except that there may be additional significant impacts relating to the use and discharge of water and biological resources if the new owners of the Contra Costa and Pittsburg Power Plants did not coordinate their operations. The Commission finds that this alternative is infeasible and less desirable than the proposed Project and rejects this alternative because it could result in more environmental impacts than the Project if the Contra Costa and Pittsburg Power Plants were not operated in a coordinated manner.

c. Sale of the Geysers Power Plants to the Steam Field Operators

Under this alternative, the Geysers Power Plant would be sold to the steam field operators, UNT (comprised of Unocal, NEC and Thermal Power Company) and Calpine. Specifically, the plants located in Sonoma County would be sold to UNT, while the plants located in Lake County would be sold to Calpine. The Final EIR assumes that the purchase of the Geysers Power Plants by the steam field operators would provide for greater

coordinated field and plant operations as the steam field operators would be uniquely positioned to coordinate the operations of the units to maximize utilization of steam pressure. This may reduce steam stacking. Aside from a possible reduction in steam stacking, the levels of significance of environmental impacts, and the mitigation measures required, would be identical to those of the Project as originally proposed. The Final EIR identifies Alternative 3 as the environmentally superior alternative with respect to the sale of the Geysers plant. Although the Commission has not mandated that this alternative be implemented, the Project as currently proposed by PG&E and addressed in these findings is indeed Alternative 3 for the Geysers plant component of the sale: PG&E intends to sell the entire Geysers plant to Calpine, which already owns all of the steam fields in Lake County and is part of the entity that owns the steam fields in Sonoma County. Given that both Alternative 2A and Alternative 3 are now proposed by PG&E, approval of the Project will ensure implementation of the environmentally superior alternative identified in the Final EIR.

d. Statement of Overriding Considerations

Based on all of the evidence in the record, the Commission has balanced the benefits of the Project against its unavoidable environmental impacts. The Commission hereby finds that the significant and unavoidable environmental impacts of the Project discussed above in these findings (to the extent that they may actually occur) are considered acceptable because the benefits of the Project outweigh its unavoidable adverse environmental effects. These benefits include the following:

1. The Project will facilitate the state's electric industry restructuring by helping to foster a competitive generation market through the sales of power plants currently owned by PG&E (an investor-owned utility with substantial generation assets in Northern California) to entities that are entering the

California electricity market and will compete with PG&E and other electricity providers.

2. The competitive electricity market enhanced by the Project is expected to produce lower electricity prices for customers throughout the state, financially benefiting existing customers and encouraging economic growth and development throughout the state.
3. The power plant sales, prices of which were determined as the result of a competitive auction, provide an objective measure of the market value of the plants, an important determination within the framework of the electric industry restructuring.
4. In light of the appreciable market value established for the plants through the power plant sales, the financial interests of affected ratepayers are well-served.
5. The sale of the electric generating units at the Geysers Power Plant to the steam field operators will enhance coordination and efficiencies between the steam fields and the generating units at the Geysers Plant.

G. Cost Estimates for Environmental Remediation

Pursuant to the agreements for the sale of these plants, PG&E would pay any decommission costs related to environmental clean-up, and the new owners would bear any other decommissioning costs. When PG&E sold its Oakland, Moss Landing and Morro Bay Power Plants, the Commission agreed to treat PG&E's part of these costs in the same manner that PG&E proposes here. After gaining Commission approval of its estimate for environmental clean-up costs, PG&E would remove those amounts from its non-nuclear decommissioning liability and reduce its non-environmental decommissioning cost balance to zero. Any resulting surplus would be pro-rated across the Company's remaining fossil plants, with the effect of reducing rate base.

To develop its cost estimates, PG&E retained a firm to perform tests on the soil, groundwater and bay sediment near each plant, where applicable. The consultants discovered soil and groundwater contamination at each of the plant sites, with the most dramatic clean-up challenges at the Potrero plant. The testimony describing the results of this study is hereby marked as Exhibit 2 and included in the formal files for this proceeding.

PG&E estimates clean-up costs at net present value totaling \$76,930,022, of which \$36.7 million relates to the Potrero plant. PG&E reports that it has spent \$6,307,680 to prepare its site assessment and estimates \$5,385,102 in program management costs. The resulting total estimated cost is \$88,622,804.

PG&E's accrual of clean-up funds up to December 31, 1998 is \$50,214,453. The comparable accrual for non-environmental decommissioning is \$86,917,272. The resulting over-collection can be calculated as follows:

\$ 50,214,453
+ 86,917,272
<u>- 88,622,804</u>
\$ 48,508,921

This is the amount that PG&E would use to offset ratebase for remaining plant. However, as PG&E rapidly reduces its remaining generation ratebase, it makes more sense to immediately credit this amount to its Transition Cost Balancing Account. This is what we will direct PG&E to do.

Exhibit 2 demonstrates that PG&E has taken logical steps to develop an accurate estimate. It retained a reputable environmental remediation firm, employed a logical site assessment methodology, and undertook a comprehensive field investigation. Without scrutinizing the specific costs involved in preparing the study, the level of work undertaken suggests that the costs would be substantial.

The result is that PG&E anticipates spending a significant amount of money for these purposes. PG&E proposes that it be allowed to keep the \$88,622,804 and that PG&E would then spend whatever is actually needed to clean up the sites. PG&E's shareholders would be liable for the actual clean-up costs, even if they exceed the estimated levels. Of course, PG&E would not be required to refund any amounts that were not spent.

In D.97-12-107, we approved a similar treatment for environmental remediation costs. We are satisfied with the estimates provided here and approve the accounting and ratemaking treatment as proposed. We note this approval is consistent with the approval granted in D.98-07-092. PG&E will retain environmental liability to remediate the sites for many years and will use these funds to accomplish this. PG&E should remove from its non-nuclear decommissioning liability the net amounts described above for environmental and non-environmental decommissioning, resulting in a surplus of \$48,508,921.

H. Request for Finding Pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935

Congress enacted a revision to the Public Utility Holding Company Act (PUHCA) as part of its Energy Policy Act of 1992. This new portion of PUHCA, Section 32, created a new class of electric generators called "exempt wholesale generators," which are exempt from the restrictions that would otherwise apply to corporations seeking to provide wholesale electric generation. Along with this exemption comes a loosening of regulatory protections for consumers. Thus, before a generator can receive such an exemption from the Federal Energy Regulatory Commission, an entity acquiring a formally rate-based power plant must first receive a finding from state regulators that allowing such an exemption (1) would benefit consumers, (2) would be in the public interest, and (3) would not violate state law.

Calpine and Southern Energy have both filed motions requesting that we make such findings. The Legislature has declared that there is a public interest in promoting competition for electric generation and that there should be a transition of utility generation from regulated to unregulated status. Thus, consumers would benefit if federal economic regulation of the plants at issue here was minimized. Such a result is consistent with the public interest, as defined by the Legislature. In addition, in light of AB 1890, the granting of such an exemption under PUHCA would not violate state law.

I. ORA's Response to the Compliance Filing

In its response to PG&E's Compliance Filing, ORA referred to Section 362 and its requirement that in approving sales of power plants, the Commission must ensure that "facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintain open competition and avoiding an overconcentration of market power." ORA urged that the Commission either examine the possibility that the sale of more than half of PG&E's fossil generation to Southern Energy might result in an overconcentration of market power or concede all consideration of market power concerns to the Federal Energy Regulatory Commission. Simply stated, market power is the ability of a seller to obtain a price higher than the competition charges for the same service or commodity (D.98-07-092, footnote 3).

Nothing in the record before us demonstrates that these sales will, in and of themselves, impair our efforts to maintain open competition and avoid an overconcentration of market power. However, we will continue to monitor the performance of these and other generation companies to ensure that they do not exercise inordinate market power through their operation sales and acquisition practices.

J. Enron's Petition to Intervene and Protest

Enron Corporation filed a Petition to Intervene in response to PG&E's Compliance Filing. Enron is hereby granted status as an active party in this proceeding for the purpose of raising the following concern.

Enron refers to pages 27-30 of the Compliance Filing, where PG&E discusses the need to adjust its revenue requirement to reflect changes in the allocation of Administrative and General (A&G) expenses that will be needed after the divestiture. At various times, the Commission considered entertaining such changes in a General Rate Case or in the divestiture docket. PG&E now proposes using a separate application for this purpose. Enron protests PG&E's failure to specify a time frame within which it would file its application. In its reply to the protest, PG&E says it will "attempt" to have a reallocation study completed and a new application filed within 90 days of the close of the sales. We will require that PG&E file its application within 90 days of the effective date for this decision.

The successful completion of the auction process in a manner consistent with the approved auction format, all in the context of our Legislative mandate to encourage the divestiture of utility-owned generation capacity, support the conclusion that the sale of assets encompassed by this Amended Application is in the public interest and should be approved. The sales are conditioned on compliance with various aspects of D.98-07-092 and this order as well as the full set of Mitigation and Mitigation Monitoring requirements set forth in the Final EIR.

K. Comments On Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were received from various parties on March 15, 1999

and March 22, 1999. PG&E filed reply comments on March 29, 1999. Changes have been made to this order in response to comments, where appropriate.

The alternate pages of Commissioner Bilas were mailed to the parties in accordance with Rule 77.6 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. The Commission approved the process for these sales in D.98-07-092 and it appears that PG&E has rigidly implemented the approved process.

2. The settlement and revised steam sales agreement do not appear to create new encumbrances for ratepayers and appear consistent with the disposition of the Geysers units pending in this application; thus, we find the settlement and amendment to be reasonable.

3. Because PG&E has offered no evidence in this regard, we are not yet prepared to assess the reasonableness of the transaction costs.

4. We have seen no evidence of irregularity in the auction process and find that the results of the auction have established the market value for these plants.

5. The significant and unavoidable environmental impacts of the Project (to the extent that they may actually occur) are considered acceptable because the benefits of the Project outweigh its unavoidable adverse environmental effects.

6. PG&E has taken reasonable steps to develop an accurate estimate of environmental clean-up costs.

7. Allowing Southern Energy and Calpine exemptions under Section 32 of the Public Utility Holding Company Act for the plants purchased here (1) would benefit consumers, (2) would be in the public interest, and (3) would not violate state law.

8. Nothing in the record before us demonstrates that these sales will, in and of themselves, impair our efforts to maintain open competition and to avoid an overconcentration of market power.

9. PG&E must adjust its revenue requirement to reflect changes in the allocation of Administrative and General (A&G) expenses that will be needed after the divestiture.

10. The Commission has received, reviewed and considered the information contained in the Final EIR.

11. In D.98-11-064, the Commission determined that the Final EIR was prepared pursuant to the California Environmental Quality Act and certified the document as complete.

12. PG&E's proposal for the treatment of environmental clean-up costs is the same as the treatment approved for its earlier divestiture in D.97-12-107.

13. PG&E has an overcollection of decommissioning funds which should be returned to ratepayers.

Conclusions of Law

1. In light of the industry restructuring mandated in Assembly Bill 1890, PG&E's sale of the Pittsburg, Contra Costa, Potrero and Geysers Power Plants is in the public interest.

2. The proposed transfer and sale of the Pittsburgh, Contra Costa, Potrero and Geysers Power Plants should be approved, subject to the mitigation measures, mitigation monitoring program and other conditions set forth in this decision and in D.98-07-092.

3. The April 8, 1998 Settlement Agreement and the Amendment to the Steam Sales Agreement between PG&E and Calpine Geysers should be approved.

4. Within 90 days of the effective date of this decision, PG&E should file an application proposing a method for reapportioning Administrative and General costs previously assigned to the divested plants.

5. In order to facilitate an expeditious closing of the contracts enacting these sales, this decision should become effective immediately.

6. While we approve the recovery of reasonable transaction expenses in concept, we will expect PG&E to track the full extent of its transaction costs and demonstrate the reasonableness of those costs in its next Annual Transition Cost Proceeding.

7. We should allow the same accounting and ratemaking for environmental remediation in this application as was approved in D.97-12-107 (Ordering Paragraph 2) and D.98-07-092 (Ordering Paragraph 7).

8. The overcollection of decommissioning funds for these plants should be applied as a credit to the Transition Cost Balancing Account.

O R D E R

IT IS ORDERED that:

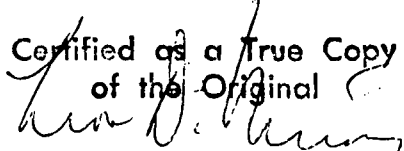
1. Subject to the mitigation measures and mitigation monitoring program described in Appendix B to this decision and subject to other conditions set forth in this decision and in Decision 98-07-092, Pacific Gas and Electric Company (PG&E) may transfer and sell its Pittsburg and Contra Costa plants to Southern Energy Delta L.L.C.; and the Potrero Power Plant to Southern Energy Potrero L.L.C.; and may transfer and sell its Geysers Geothermal Lake County and Sonoma County Plants to Geysers Power Company, L.L.C.

2. With the exception of transaction cost recovery, PG&E's proposed ratemaking and accounting adjustments are approved.
3. The April 8, 1998 Settlement Agreement and the Amendment to the Steam Sales Agreement between PG&E and Calpine Geysers is approved.
4. Within 90 days of the effective date of this decision, PG&E shall file an application proposing a method for reapportioning Administrative and General costs previously assigned to the divested plants.
5. The current surplus decommissioning funds, which should be no less than \$48,508,921, shall be credited to the Transition Cost Balancing Account as of the date for closing the last contract at issue here.
6. Application 98-01-008 is closed.

Dated April 1, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Certified as a True Copy
of the Original


ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION
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ATTACHMENT A

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Last updated on 13-JAN-1999 by: CPL
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(END OF ATTACHMENT A)

MITIGATION MONITORING AND REPORTING PROGRAM

PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR AUTHORIZATION TO SELL CERTAIN GENERATING PLANTS AND RELATED ASSETS (APPLICATION NO. 98-01-008)

INTRODUCTION

The purpose of this program is to describe the mitigation monitoring process for the project and to describe the role and responsibilities of the California Public Utilities Commission (CPUC) in ensuring the effective implementation of the mitigation measures adopted by the CPUC.

California Public Utilities Commission (CPUC)

The Public Utilities Code confers authority upon the CPUC to regulate the terms of service and safety, practices and equipment of utilities subject to its jurisdiction. It is the standard practice of the CPUC to require that mitigation measures stipulated as conditions of approval are implemented properly, monitored, and reported on. Section 21081.6 of the Public Resources Code requires a public agency to adopt a reporting and monitoring program when it approves or carries out a project for which an Environmental Impact Report (EIR) has been certified which identifies one or more significant effects on the environment.

The purpose of a reporting and monitoring program is to ensure that measures adopted to mitigate or avoid significant environmental impacts are implemented. The CPUC views the reporting and monitoring program as a working guide to facilitate not only the implementation of mitigation measures by the project proponents, but also the monitoring, compliance and reporting activities of the CPUC and any monitors it may designate.

Project Background

As part of its effort to "restructure" the state's electric utility industry, the CPUC identified the exercise of generation market power as a potential barrier to bringing competition into the state's electric utility industry.

In response to the CPUC's request, PG&E applied on January 15, 1998 in Application No. 98-01-008 to the CPUC for authority to divest (sell) four of its fossil-fueled power plants (Contra Costa, Pittsburg, Hunters Point, and Potrero) and its geothermal power plant (the Geysers Power Plant) through a competitive auction. The four fossil-fueled plants are located in the San Francisco Bay Area and the Geysers Power Plant is located in Sonoma and Lake Counties. PG&E later applied to the CPUC to withdraw the Hunters Point Power Plant from the proposed sale. The divestiture of the Contra Costa, Pittsburg, Potrero, and Geysers Power Plants is the project proposed by PG&E and the subject of this Mitigation Monitoring and Reporting Program.

In accordance with the California Environmental Quality Act (CEQA), the CPUC prepared an EIR to evaluate the potential environmental impacts related to PG&E's divestiture application. In completing the EIR process, the CPUC determined that the actions taken as a result of approving PG&E's divestiture application would have potentially significant impacts in the areas of:

- Air Quality
- Biological Resources

In the limited instances where the environment could potentially be significantly affected by divestiture, appropriate mitigation measures were recommended for adoption. With only one exception, each of the identified impacts can be mitigated to avoid the impact or reduce it to a less than significant level. In regards to Impact 4.5-5 of the EIR, it was determined that, even with the proposed mitigation, if the plants are operated at the Analytical Maximum level, the estimated increase in power plant emissions over those estimated in the '97 Clean Air Plan would be a significant, unavoidable, but temporary effect.

In addition, the EIR identified mitigation measures in the following areas that would reduce project impacts even though the potential project impacts were determined to be less than significant:

- Hazards
- Cultural Resources

The mitigation measures identified in these areas also have been incorporated into the Mitigation Monitoring and Reporting Program.

Roles and Responsibilities

As the lead agency under CEQA, the CPUC is required to monitor this project to ensure that the adopted mitigation measures are implemented effectively. The CPUC will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The purpose of this monitoring program is to document that the mitigation measures adopted by the CPUC are effectively implemented.

The CPUC has the authority to halt any activity associated with the divestiture of the four PG&E power plants if the activity is determined to be a deviation from the approved project or adopted mitigation measures. For details, refer to the Mitigation Monitoring and Reporting Program discussed below.

Mitigation Monitoring and Reporting Program

The table attached to this program presents a compilation of the Mitigation Measures in the Final EIR. The purpose of the table is to provide a single comprehensive list of mitigation measures, effectiveness criteria, and timing.

Dispute Resolution Process

The Mitigation Monitoring and Reporting Program is expected to reduce or eliminate many potential disputes. However, in the event that a dispute occurs, the following procedure will be observed:

Step 1: Disputes and complaints (including those of the public) shall be directed first to the CPUC's designated Project Manager for resolution. The Project Manager will attempt to resolve the dispute.

Step 2: Should this informal process fail, the CPUC Project Manager may initiate enforcement or compliance action to address the deviation from the proposed project or adopted Mitigation Monitoring and Reporting Program.

Step 3: If a dispute or complaint regarding the implementation or evaluation of the Mitigation Monitoring and Reporting Program or the Mitigation Measures cannot be resolved informally or through enforcement or compliance action by the CPUC, any affected participant in the dispute or complaint may file a written "notice of dispute" with the CPUC's Executive Director. This notice shall be filed in order to resolve the dispute in a timely manner, with copies concurrently served on other affected participants. Within 10 days of receipt, the Executive Director or designee(s) shall meet or confer with the filer and other affected participants for purposes of resolving the dispute. The Executive Director shall issue an Executive Resolution describing his decision, and serve it on the filer and the other participants.

Parties may also seek review by the CPUC through existing procedures specified in the CPUC's Rules of Practice and Procedure, although a good faith effort should first be made to use the foregoing procedure.

Mitigation Monitoring Table

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing
AIR QUALITY				
4.5-1: The project may result in an increase in criteria air pollutant emissions in the affected air basins.	4.5-1: The new owner of any generating unit at PG&E's Geysers Power Plant shall participate in the existing Geysers Air Monitoring Program through at least June 30, 2002.	The purchaser(s) of the Lake County units and the Sonoma County units shall submit documentation to the CPUC that the new owner has made a binding commitment to participate in the existing Geysers Air Monitoring Program through at least June 30, 2002, and has given notice of such participation to the Air Pollution Control Officer of the Lake County Air Quality Management District and/or the Northern Sonoma County Air Pollution Control District as applicable.	Documentation of delivery to the CPUC of documentation that the new owner has made a binding commitment to participate in the existing Geysers Air Monitoring Program through at least June 30, 2002, and has given notice of such participation to the Air Pollution Control Officer of the applicable air district.	At least 10 days prior to the transfer of title of the Geysers Power Plant.

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing
<p>4.5-4: The project may result in the elimination of PG&E's existing voluntary Fallout Type Particulate (FTP) cleanup programs. Loss of these programs could result in nuisance effects, caused by FTP stains.</p>	<p>4.5-4: PG&E will provide the buyer(s) of the Contra Costa and Pittsburg Power Plants with a summary of the history of FTP emissions and claims involving these plants, and information regarding PG&E's procedures for inspecting and cleaning the boilers and stacks at these two plants to minimize FTP. The buyer(s) of the Contra Costa and Pittsburg Power Plants will develop procedures for minimizing FTP emissions in future operations, and institute a program for processing FTP claims that includes, at a minimum, a point of contact for claimants and procedures for expeditiously verifying and processing claims. PG&E shall not be required to disclose attorney-client work product information to enable the buyer(s) to satisfy this condition.</p>	<p>PG&E will provide the CPUC mitigation monitor with (a) verification that the buyer(s) of the Contra Costa and Pittsburg Power Plants have received a historical summary of FTP emissions and claims involving the plants, and information regarding PG&E's FTP minimization procedures for these two plants, and (b) the buyer's description of its proposed FTP minimization procedures and claims processing program for the Contra Costa and Pittsburg Power Plants.</p>	<p>Documentation of delivery to the CPUC of (a) a historical summary of FTP emissions and claims involving the Contra Costa and Pittsburg Power Plants, and information regarding PG&E's FTP minimization procedures for these two plants, and (b) the buyer's description of its proposed FTP minimization procedures and claims processing program for the plants.</p>	<p>PG&E will provide the submittal to the CPUC a minimum of 45 days prior to the transfer of title for the Contra Costa and Pittsburg Power Plants. CPUC approval of the submittal at least 10 days prior to transfer of title of the Contra Costa and Pittsburg Power Plants.</p>
AIR QUALITY (Continued)				
<p>4.5-5: Depending upon whether, and how, the Bay Area Air Quality Management District (BAAQMD) modifies Regulation 9, Rule 11, the project may be inconsistent with regional air quality plans.</p>	<p>4.5-5: To assure that the existing NO_x emission rate limits would apply to a new owner, BAAQMD Regulation 9, Rule 11 shall be modified so that substantially equivalent emission rate limits would apply to any new owner, or PG&E will have existing permits revised (for any fossil-fueled plant that is divested) to incorporate NO_x emission rate limits, which would apply to any new owner, in substantially the form and stringency in the current BAAQMD Regulation 9, Rule 11.</p>	<p>PG&E shall provide the CPUC mitigation monitor with a copy of either the revised Regulation 9, Rule 11 or a modified permit to operate for each plant that is divested.</p>	<p>Documentation of delivery to the CPUC of revised Regulation 9, Rule 11 or a modified permit to operate.</p>	<p>At least 3 business days prior to the transfer of title.</p>

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing
BIOLOGICAL RESOURCES				
4.7-1: Divestiture could result in an overall loss of important species or habitat if future owners were unaware of the presence and sensitivity of such biological resources.	4.7-1: PG&E shall provide future plant owners with informational materials and training documents in PG&E's possession concerning jurisdictional wetlands and special status species and habitats in the vicinity of the power plants to be divested. This material shall be indexed and organized in a manner that is readily accessible to the new owners.	PG&E will provide the CPUC mitigation monitor with disclosure form(s) signed by the new owner listing documents received.	Documentation of delivery to the CPUC of the disclosure form for each plant to be divested.	At least 3 business days prior to transfer of title of the plant(s).
4.7-2: If the Section 10 Permits are not issued to PG&E prior to the close of the sale or to the new owner at closing, divestiture may delay the issuance of such permits. The delay caused by divestiture may result in impacts to protected species.	4.7-2: If the Section 10 Permits have been issued to PG&E prior to closing, the new owner will be required to seek the reissuance of the Section 10 Permits issued to PG&E, and accept the permittee's obligations under the California Endangered Species Act (CESA) Memorandum of Understanding (MOU), the Habitat Conservation Plan (HCP) and the Implementing Agreements. If the permits have not been issued to PG&E, the new owner will be required to resubmit and accept any obligations under, PG&E's pending applications for the Section 10 Permits, including the resubmittal of the then-current draft Implementing Agreement and HCP, and will seek to obtain such permits on substantially the same terms and conditions as were contained in PG&E's permit applications.	If the permits have been issued to PG&E, the new owner will provide the CPUC with a copy of the letter to the permitting agencies requesting reissuance of the permit. If permits have not been issued, the new owners will provide CPUC a copy of the new owner's resubmission to the permitting agencies of PG&E's applications for the Section 10 Permits, along with the resubmission of the then-current draft of the Implementing Agreement and HCP, making only the changes necessary to reflect the new identity of the applicant.	Documentation of delivery to the CPUC of the letter to the permitting agencies requesting reissuance of the Section 10 Permits. Alternatively, documentation of delivery to the CPUC of the new owner's resubmission to the permitting agencies of PG&E's applications for the Section 10 Permits, along with the updated Implementing Agreement and HCP.	The appropriate letter should be provided to the CPUC at least 40 days before the title transfer.

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing
BIOLOGICAL RESOURCES (Continued)				
	If the Section 10 permits are not held by the new owner at closing (but have been issued to PG&E), the new owner of the Contra Costa and Pittsburg Power Plants will send a letter to the permitting agencies committing to the obligations listed in the preceding mitigation measure and state its intent to operate in the interim in accordance with their provisions. The letter will also state acceptance of the authority of the permitting agencies to enforce compliance with those obligations, and provide notification of these commitments to the plant managers.	The new owner will submit to the CPUC a copy of the documentation provided to the permitting agencies committing it to the measures stated above, and verification that copies were delivered to plant managers.	Documentation of delivery to the CPUC of the letter to the permitting agencies committing to the measures stated above.	Documents should be provided to the CPUC at least 40 days before the title transfer and the Section 10 Permits should be provided to CPUC when obtained.
HAZARDS				
4.9-1: Divestiture could advance the time at which existing hazards are remediated and therefore could advance a potential threat to worker safety or to public health should existing environmental contamination at the power plants be handled improperly.	4.9-1: For each plant to be divested, PG&E will prepare a Risk Assessment that conforms with guidelines of the California Department of Toxic Substances Control and the local County Health Department. Each Risk Assessment shall address all areas identified as being subject to remediation in the Phase I or Phase II Environmental Site Assessments, and will describe the contaminants, estimate their potential risks to public health or to the environment, determine any need for additional data collection, and present appropriate health risk-based and/or environmental risk-based cleanup goals. Each Risk Assessment will assess potential human health risks identified at each of the contaminated areas, based in part upon realistic future use.	For each plant to be sold, PG&E will provide the Risk Assessment to the CPUC mitigation monitor, and will provide the CPUC mitigation monitor with written evidence that the Risk Assessment has been provided to the buyer of the plant and to the Department of Toxic Substances Control, the local County Health Department and the relevant Regional Water Quality Control Board.	Documentation of delivery to the CPUC of the Risk Assessment for each plant to be divested.	Within 10 business days prior to transfer of title.
4.9-3: Divestiture could promote increased use of hazardous materials at the power plants.	4.9-3: For the plants subject to this proceeding, PG&E shall provide the new owner, for each respective plant, with all of PG&E's material, non-privileged informational materials and training documents (not including records relating to PG&E personnel) regarding worker health and safety, emergency plans and hazardous materials handling	PG&E will provide the CPUC mitigation monitor with a disclosure form signed by the new owner listing documents to accomplish this condition.	Documentation of delivery to the CPUC of the disclosure form for each plant to be divested.	At least 3 business days prior to transfer of title.

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing
HAZARDS (Continued)				
	and storage. This material shall be indexed and organized in a manner that is readily accessible to the new owner.			
4.9-4: Divestiture could result in an increased frequency of accidents at the power plant sites.	See Mitigation Measure 4.9-3, which will also act to mitigate this impact.	Same as above.	Same as above.	Same as above.
CULTURAL RESOURCES				
4.14-1: Minor construction activities associated with divestiture, such as fencing to separate the retained properties from the divested plant sites, could result in impacts to subsurface cultural resources.	<p>4.14-1: PG&E shall prepare and certify its intent to comply with a program to address potential impacts to archaeological resources from PG&E actions related to the divestiture at the Potrero, Contra Costa, Pittsburg, and Geysers Power Plants, such as construction to separate the properties or soil remediation activities. The program shall include provisions in PG&E construction documents and protocols for coordination with appropriate resource agencies. The program shall at a minimum include the following provisions:</p> <p>A qualified archaeologist shall be consulted prior to implementing construction or soil remediation activities that involve earthmoving or soil excavation, and the archaeologist shall be available for consultation or evaluation of any cultural resources uncovered by such activities. For any previously undisturbed, known archaeological areas, a qualified archaeologist shall monitor earthmoving and soil excavation activities, consistent with relevant federal, state, and local guidelines. If an unrecorded resource is discovered, construction or excavation activities shall be temporarily halted or directed to other areas, pending the archaeologist's evaluation of its significance. If the resource is significant, data collection, excavation, or other standard archaeological or historical procedures shall be implemented to mitigate impacts, pursuant</p>	CPUC mitigation monitoring approval of PG&E's proposed archaeological mitigation program and any subsequent implementation reports.	Submittal of archaeological mitigation program and subsequent implementation reports to CPUC for each plant.	<p>Approval by CPUC mitigation monitor of archaeological mitigation program at least 10 business days prior to transfer of ownership of each plant; review implementation</p> <p>reports upon submittal.</p>

Impact	Mitigation Measure	Monitoring/ Reporting Action	Effectiveness Criteria	Timing
CULTURAL RESOURCES (Continued)				
	<p>to the archaeologist's direction. If any human remains are encountered, the archaeologist shall contact the appropriate County Coroner immediately, and security measures shall be implemented to ensure that burials are not vandalized until the decision of burial deposition has been made pursuant to California law. If human remains are determined to be Native American interments, the Coroner shall contact the Native American Heritage Commission pursuant to Public Resources Code Section 5097.98 and follow the procedures stated herein and other applicable laws. A report by the archaeologist evaluating the find and identifying mitigation actions taken shall be submitted to the CPUC. Where appropriate to protect the location and sensitivity of the cultural resources, the report may be submitted under Public Utilities Code Section 583 or other appropriate confidentiality provisions.</p>			

(END OF ATTACHMENT B)