

have the assistance of a truly independent legal counsel.

Rule 0–1 provides that a person is an independent legal counsel if a fund's independent directors determine (and record the basis for that determination in the minutes of their meeting) that any representation of the fund's investment adviser, principal underwriter, administrator (collectively, "management organizations") or their "control persons"<sup>7</sup> during the past two years is or was sufficiently limited that that it is unlikely to adversely affect the professional judgment of the person in providing legal representation. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with information necessary to make their determination and to update promptly that information when the person begins to represent, or materially increases his representation of, a management organization or control person. Generally, independent directors must re-evaluate their determination at least annually.

Any fund that relies on an exemptive rule in the Adopting Release is required to use the definition of independent legal counsel contained in rule 0–1. We assume that approximately 4,050 funds rely on at least one of the exemptive rules annually.<sup>8</sup> We further assume that the independent directors of approximately one-third (1,336) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.<sup>9</sup> We estimate that each of these 1,336 funds would be required to spend, on average, 0.75 hours annually to comply with the proposed recordkeeping requirement concerning this determination, for a total annual burden of approximately 1,002 hours. Based on this estimate, the total annual cost for all funds of this proposed definition would be approximately \$22,712. To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual hour burden (668 hours) would be incurred

by professionals with an average hourly wage rate of \$27 per hour, and one-third of that annual hour burden (334 hours) would be incurred by clerical staff with an average hourly wage rate of \$14<sup>10</sup> per hour.<sup>11</sup>

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 14, 2002.

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 35–27601; 70–10047]**

### **PG&E Corporation, et al.; Order Authorizing an Extension of Time to File Comments**

November 15, 2002.

PG&E Corporation ("PG&E Corp."), a holding company claiming exemption from registration under section 3(a)(1) of the Public Utility Holding Company Act

of 1935, as amended ("Act") by rule 2, Pacific Gas and Electric Company ("PG&E"), a direct public-utility company subsidiary of PG&E Corp., Newco Energy Corporation ("Newco"), a direct nonutility subsidiary of PG&E, and Electric Generation LLC ("Gen"), a direct nonutility subsidiary of Newco (collectively, "Applicants"), all located in San Francisco, California, have filed an application ("Application") with the Securities and Exchange Commission ("Commission") under sections 9(a)(2) and 10 of the Act.

On October 16, 2002, the Commission issued a notice of the Application (Holding Co. Act Release No. 27578). The Commission issued a supplemental notice (Holding Co. Act Release No. 27583) of the Application, which replaced the original notice, on October 23, 2002. Under the supplemental notice, the public may submit to the Commission comments regarding the Application through November 18, 2002.

By letter dated October 23, 2002, the California Public Utilities Commission ("CPUC") requested an extension of time to file its comments with the Commission ("CPUC Request") due to "the press of other work." The CPUC asked that it be allowed to file its comments on or before December 4, 2002.

By letter dated October 30, 2002, Applicants indicated that they oppose the CPUC request, primarily because a further extension of the notice period would delay the ultimate resolution of the Application. However, a further short extension of the notice period is not likely to delay in any significant way a final decision on the Application. Moreover, because the Act is designed to augment State regulation, *see Alabama Electric Cooperative v. S.E.C.*, 353 F.2d 905, 907 (D.C. Cir. 1865), *cert. denied* 383 U.S. 968 (1966), we believe that it is particularly appropriate to provide a short additional extension of the Notice period at the request of a State Commission.

*It is ordered*, under the applicable provisions of the Act and rules under the Act, that comments and/or requests for hearing in this matter should be filed in writing by December 4, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>7</sup> A "control person" is any person—other than a fund—directly or indirectly controlling controlled by, or under common control, with any of the fund's management organizations. See 17 CFR 270.01(a)(6)(iv)(B).

<sup>8</sup> Based on statistics compiled by Commission staff, we estimate that there are approximately 4,500 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (4,050) actually rely on at least one exemptive rules annually.

<sup>9</sup> We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel (but instead rely in some circumstances on counsel who does not represent them), so that no determination by the independent directors would be necessary.

<sup>10</sup> The Commission's estimates concerning the wage rate for professional time and for clerical time are based on salary information for the securities industry compiled by the Securities Industry Association. See Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (September 2001).

<sup>11</sup>  $(668 \times \$27/\text{hour}) + (334 \times \$14/\text{hour}) = \$22,712.$