

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND  
ELECTRIC COMPANY and PG&E  
CORPORATION for Limited Exemption  
from Rule V.E of the Commission's Affiliate  
Transaction Rules

Application No. 08-07- 014  
(Filed July 9, 2008)

(U 39 M)

**MOTION FOR INTERIM DECISION GRANTING LIMITED,  
TEMPORARY WAIVER OF AFFILIATE TRANSACTION  
RULE V.E.**

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July 9, 2008

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On July 8, 2008, Pacific Gas and Electric Company's ("PG&E") President and Chief Executive Officer (CEO), William Morrow, announced plans to leave his positions with PG&E, effective August 31, 2008. Concurrently with this motion, PG&E and PG&E Corporation (collectively, "Applicants") filed an application for a limited exemption from Rule V.E. of the Commission's Affiliate Transaction Rules to allow Peter Darbee, PG&E Corporation's President and CEO, to serve also as PG&E's President and CEO, while Applicants continue to share regulatory affairs, lobbying and legal services, for so long as PG&E Corporation does not have significant non-Commission-regulated subsidiaries (the "Application"). Because Applicants will not otherwise be able to obtain relief before Mr. Morrow's departure, Applicants move, pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, for an interim ruling granting Applicants a temporary waiver of Rule V.E allowing Mr. Darbee to assume the duties of the President and CEO of PG&E from September 1, 2008, the day after Mr. Morrow's announced departure date, until the Commission rules on the Application.

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To obtain a Commission decision before September 1, 2008, Applicants are filing concurrently with this motion a motion for an order shortening the time to respond to this motion to July 16, 2008 (seven days), and shortening the time to comment on the Commission's Proposed Decision to eleven days, in accordance with the following proposed schedule:

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July 9, 2008	Filing of Application and accompanying motions
July 16, 2008	Responses to motion for interim relief
July 31, 2008	Proposed Interim Decision

1 August 11, 2008 Comments on Proposed Interim Decision  
2 August 15, 2008 Reply Comments on Proposed Interim Decision  
3 August 21, 2008 Commission Interim Decision

4 **I. SUMMARY OF MOTION**

5 William Morrow, PG&E President and CEO, and a member of the PG&E Board of Directors,  
6 has informed PG&E Corporation and PG&E that he plans to resign from his positions at the Utility  
7 effective August 31, 2008. The Board of Directors of PG&E has passed a resolution expressing its  
8 intent to have Peter A. Darbee, the President and CEO of PG&E Corporation, serve as the President  
9 and CEO of PG&E as well, upon the approval of this Commission.

10 A dual-hatted President and CEO is contrary to the express provisions of Rule V.E, as modi-  
11 fied by D.06-12-029, since PG&E and PG&E Corporation opted to continue to treat regulatory af-  
12 fairs, lobbying and legal as shared services. In PG&E's case, however, the rationale for the modified  
13 rule ("the likelihood for preferential treatment, unfair competitive advantage, or the sharing of com-  
14 petitively sensitive information within the partly regulated, mostly unregulated corporate family and  
15 the consequences such competitive abuse poses for energy markets and captive ratepayers," D.06-12-  
16 029, mimeo at 10) applied weakly, and the Commission made it applicable to Applicants because of  
17 the expectation that "in the future, PG&E will have unregulated affiliates again." D.06-06-062,  
18 mimeo at 9. In the 18 months since Rule V.E was modified, PG&E has remained PG&E Corpora-  
19 tion's only major subsidiary. As of March 31, 2008, PG&E accounted for 100% of PG&E Corpora-  
20 tion's consolidated operating revenue, 99.1% of the total assets and 99.99% of the total physical as-  
21 sets. See PG&E Corporation Form 10-Q, filed May 6, 2008 for the period ending March 31, 2008, at  
22 3-4 and 7-8.

23 Because PG&E remains PG&E Corporation's only significant subsidiary and PG&E Corpora-  
24 tion does not have any significant unregulated business, allowing PG&E and PG&E Corporation to  
25 share a President and CEO does not undermine the purpose of the 2006 modification to Rule V.E.  
26 The Application therefore requests a limited exemption from Rule V.E so that they may share a Presi-  
27 dent and CEO, and continue to share regulatory affairs, lobbying and legal services, until such time as  
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1 PG&E's Rule II.B affiliates constitute 5% of PG&E Corporation's consolidated assets or generate 5%  
2 of PG&E Corporation's consolidated operating revenues.

3 This motion requests a temporary waiver of Rule V.E pending final resolution of the Applica-  
4 tion. This temporary waiver will avoid PG&E having a period without any President or CEO. Under  
5 Applicants' proposed schedule, after the Commission issues its interim ruling, parties will have an  
6 opportunity to comment on the proposed interim decision, and to request evidentiary hearings on the  
7 application, if they deem hearings necessary. The Commission's final ruling will be based on a com-  
8 plete record.

## 9 **II. GRANTING INTERIM RELIEF IS IN THE PUBLIC INTEREST.**

### 10 **A. Applicants' Reasons For Seeking The Limited Exemption**

11 PG&E currently has six Rule II.B affiliates, two of which are subsidiaries of PG&E (and thus  
12 not relevant to this motion), four of which have no current operations (their entire business currently  
13 relates to the proposed Pacific Connector natural gas pipeline in Oregon).<sup>1</sup> These affiliates generate  
14 no operating revenue, constitute less than 1% of PG&E Corporation's total assets and less than one  
15 hundredth of a percent of PG&E Corporation's physical assets. Moreover, PG&E Corporation's cur-  
16 rent business priorities are focused on achieving operational excellence for PG&E, improving PG&E  
17 customer satisfaction, strengthening PG&E's infrastructure and setting the foundations for PG&E to  
18 achieve a sustainable energy future. Mr. Darbee therefore devotes almost all of his time and effort to  
19 PG&E. While PG&E Corporation remains interested in investing in non-utility subsidiaries, for the  
20 foreseeable future, PG&E is likely to remain its sole significant operating subsidiary. The present  
21 focus of PG&E Corporation, combined with Mr. Darbee's intimate knowledge of PG&E's business,  
22 allows Mr. Darbee, for the foreseeable future, to effectively fill the role of PG&E's President and  
23 CEO.

24 As discussed in section B, below, given the limited nature of PG&E Corporation's non-utility  
25 business, the dangers Rule V.E was intended to protect against do not exist, and strict application of  
26 the Rule to PG&E and PG&E Corporation does not serve its intended purpose.

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28 <sup>1</sup> A description of PG&E's Rule II.B. affiliates is attached to this motion.

1           **B.       Granting A Temporary Waiver Is Consistent With The Public In-**  
2           **Interest Articulated By The Commission In D.06-12-029.**

3           In October, 2005, the Commission issued its *Order Instituting Rulemaking Concerning Rela-*  
4           *tionship Between California Energy Utilities and Their Holding Companies and Non-Regulated Af-*  
5           *filiates*. R.05-10-030. The OIR stemmed from the repeal of the Public Utility Holding Company Act  
6           (PUHCA), and the fact that, since the utility holding companies were formed, “these companies have  
7           made significant investments in distribution and transmission lines, natural gas pipelines and termi-  
8           nals, powerplants, trading companies, marketing companies and other energy service companies (‘en-  
9           ergy infrastructure’) both overseas and within the United States.” *Id.* at 1. The OIR identified the  
10          Commission’s goals and concerns as follows:

11                     The Commission’s goals remain the same: (1) to ensure that the utili-  
12                     ties meet their public service obligations at the lowest reasonable cost  
13                     and (2) to ensure that the utilities do not favor or otherwise engage in  
14                     preferential treatment of their affiliates.

15                     The Commission also needs to ensure that the California energy utilities  
16                     retain sufficient capital and the ability to access such capital in order to  
17                     meet their customers’ needs. Additional rules or regulations may be  
18                     necessary to address the potential conflicts between the utilities’ rate-  
19                     payers’ interests and the parent holding companies’ and affiliates’ inter-  
20                     ests in order to ensure that these conflicts do not undermine the utilities’  
21                     ability to meet their public service obligations at the lowest possible  
22                     cost.

23           *Id.* at 2.

24           The Commission amended its OIR in D.06-06-062, again emphasizing that its goal was “to  
25           ensure that the utilities meet their public service obligations at the lowest reasonable cost” and “to  
26           ensure that the utilities do not favor or otherwise engage in preferential treatment of their affiliates.”  
27           *Id.*, mimeo at 2. The Commission also emphasized the expanded businesses of Sempra Energy’s and  
28           Edison International’s non-CPUC-regulated affiliates: “Since the Commission’s issuance of the Af-  
29           filiate Transaction Rules, the California energy utilities’ holding companies and/or other affiliates  
30           have acquired or built electric generation plants and pipeline facilities, and currently are constructing  
31           liquefied natural gas (LNG) facilities and connecting pipelines, and/or acquiring equity interests in  
32           new pipeline proposals.” *Id.* at 4 (citing Sempra’s and Edison’s web sites). The Commission noted  
33           PG&E’s lack of affiliates, but that “PG&E Corporation currently [was] examining new business op-

1 opportunities in the unregulated sector of the energy market, and therefore, the Commission expects that  
2 in the future, PG&E will have unregulated affiliates again.” *Id.* at 8-9.

3 The Commission modified the Affiliate Transaction Rules in D.06-12-029 to address two  
4 “main concerns.” D.06-12-029, mimeo at 10. The first was “the likelihood for preferential treatment,  
5 unfair competitive advantage, or the sharing of competitively sensitive confidential information  
6 within the partly regulated, *mostly unregulated* corporate family and the consequences such competi-  
7 tive abuse poses for energy markets and captive ratepayers.” *Id.* (emphasis added). The second was  
8 “the potential threat to the utility’s financial health and ability to meet its public service obligations  
9 unless it is adequately insulated from the financial risks and debts of its unregulated parent and affili-  
10 ates.” *Id.* The second concern was addressed by Rule IX, adopting ringfencing requirements for the  
11 utilities.

12 Amendments to Rule V.E addressed the concern about potential detriment from unregulated  
13 affiliates. Rule V.E created exceptions to the Affiliate Transaction Rules’ separation requirements to  
14 allow utilities to share corporate support services with affiliates, provided such sharing did not give  
15 any affiliate an unfair competitive advantage. The Commission questioned the breadth of some of the  
16 exceptions, such as financial planning and analysis, regulatory affairs, lobbying and legal, that “could  
17 include matters affecting marketing or operational issues, for example, where an affiliate can be given  
18 an unfair competitive advantage.” *Id.* at 22. The Commission therefore allowed utilities to elect be-  
19 tween two options: (1) eliminate shared “key officers,” or (2) eliminate the sharing of regulatory af-  
20 fairs, lobbying or legal services: “We think that the election goes far to solve the matters of greatest  
21 concern to us, either by directly limiting the scope of shared services or by restricting the potential  
22 conflict of interest among top corporate decision makers.” *Id.* at 26 and Appendix A, Rule V.E. Ap-  
23 plicants elected not to share key officers.

24 The Commission made its amended rule applicable to Applicants in the expectation that “in  
25 the future, PG&E will have unregulated affiliates again.” D.06-06-062, mimeo at 9. Two years later,  
26 PG&E still has no significant Rule II.B affiliates. Because PG&E Corporation has no significant op-  
27 erating subsidiaries other than PG&E, the dangers the Commission sought to protect against are not  
28 present. Sharing a President and CEO until such time as PG&E Corporation has significant non-

1 utility subsidiaries presents no conflict of interest. The Commission amended Rule V.E on the as-  
2 sumption that the holding company's business operations would be "mostly unregulated." D.06-12-  
3 029, mimeo at 10. The opposite is true in the case of PG&E Corporation, and there is thus no risk of  
4 "preferential treatment, unfair competitive advantage, or the sharing of competitively sensitive confi-  
5 dential information within the partly regulated, mostly unregulated corporate family." *Id.*

6 The Commission expressly contemplated that exemptions might be necessary. D.06-06-062  
7 noted that the "Commission has authority to grant an exemption from its own rules in individual cir-  
8 cumstances, when warranted," and further noted that "this exemption authority may need to be util-  
9 ized if we adopt more comprehensive rules, as suggested in (2)(a) above [making the rules applicable  
10 to holding companies]." D.06-06-062, mimeo at 21. The present circumstances warrant a temporary  
11 waiver. Given that PG&E currently accounts for over 99.99% of PG&E Corporation's physical as-  
12 sets and 100% of PG&E Corporation's operating revenue, the public interest will not be harmed by  
13 granting a temporary waiver allowing PG&E and PG&E Corporation to share a single President and  
14 CEO while the Commission considers the Application.

1 **III. CONCLUSION**

2 For obvious reasons, it is important that PG&E have a qualified President and CEO. Given  
3 PG&E Corporation's lack of non-utility business operations, the public interest would not be harmed  
4 by allowing Peter Darbee, who is intimately familiar with PG&E's business operations and needs, to  
5 also act as President and CEO of PG&E while continuing to act as President and CEO of PG&E  
6 Corporation, at least on an interim basis while the Commission considers the Application. The  
7 Commission should therefore grant Applicants a temporary waiver of Rule V.E's requirement that  
8 Applicants elect between sharing a President and CEO and sharing regulatory affairs, lobbying and  
9 legal services until the Commission issues a final decision on the Application.

10 Dated, this 9th day of July, 2008.

11  
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24 PACIFIC GAS AND ELECTRIC COMPANY and PG&E CORPORATION  
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## Pacific Gas and Electric Company Rule II.B. Affiliates

<b>PARENT COMPANY: PG&amp;E Corporation</b>			
Subsidiary Name	Subsidiary's Line of Business (products or services offered)	Primary Location of Subsidiary	Rule II.B Affiliate
PG&E Corporation Support Services, Inc.	Provides services to the PG&E Corporation family.	San Francisco, CA	Yes
PG&E Strategic Capital, Inc.	Formed for general business purposes, including possibly serving as a vehicle for investments and holding ownership of shares. Holds a one-third interest in Pacific Connector Gas Pipeline, LLC and Pacific Connector Gas Pipeline, LP.	San Francisco, CA	Yes
Pacific Connector Gas Pipeline, LLC	Formed to act as the General Partner in the Pacific Connector Gas Pipeline, LP. (Affiliate; ownership: Fort Chicago LNG II U.S.L.P. 33 1/3%, Williams Pacific Connector Gas Pipeline LLC 33 1/3%, and PG&E Strategic Capital, Inc. 33 1/3%.)	Salt Lake City, Utah	Yes
Pacific Connector Gas Pipeline, LP	Established for the purpose of developing, constructing, owning, and operating a natural gas pipeline extending from the proposed Jordan Cove Energy Project LNG terminal at Coos Bay, Oregon to either Malin, Oregon, or a point of interconnection with the natural gas transmission system owned and operated by Pacific Gas and Electric Company within the state of California. (Affiliate; ownership: Fort Chicago LNG II U.S.L.P. 33%, Williams Pacific Connector Gas Pipeline LLC 33%, PG&E Strategic Capital, Inc. 33%, and Pacific Connector Gas Pipeline 1%.)	Salt Lake City, Utah	Yes

<b>PARENT COMPANY: Pacific Gas and Electric Company</b>			
Subsidiary Name	Subsidiary's Line of Business (products or services offered)	Primary Location of Subsidiary	Rule II.B Affiliate
Pacific Energy Fuels Company	Created to own and finance nuclear fuel inventory previously owned by Pacific Energy Trust.	San Francisco, CA	Yes
Fuelco, LLC	Joint Venture LLC formed between Union Electric Company d/b/a AmerenUE 33 1/3%, Texas Utilities (TXU) Generation Company LP 33 1/3%, and Pacific Energy Fuels Company 33 1/3%, for purposes of sharing costs and reducing fuel acquisition costs.	St. Louis, MO	Yes

**CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department, PO Box 7442, San Francisco, CA 94120.

On the 9th day of July, 2008, I served a true copy of:

**MOTION FOR INTERIM DECISION GRANTING LIMITED,  
TEMPORARY WAIVER OF AFFILIATE TRANSACTION  
RULE V.E.**

By e-mail to all parties to A.05-10-030.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 9th day of July, 2008.

*/s/*

\_\_\_\_\_  
LINDA S. DANNEWITZ