

**STATEMENT OF COMMISSIONER LYNCH
ON HER ALTERNATE DECISION IN THE PG&E BANKRUPTCY CASE**

I offer this Alternate Decision as a different conceptual framework for consideration by my colleagues. It rejects the Proposed Settlement Agreement as presented and modifies it in significant respects to reduce the amount of profits paid to PG&E shareholders by over \$3 billion. At the same time, it meets all objective financial indices and tests to ensure PG&E's investment-grade creditworthiness by 2005 and paying all PG&E debtors in full -- and at the same interest rate as all plans on the table. Most importantly, this Alternate strips out the excessive profits to the parent company, pays only known, not speculative, costs and refuses to undo past regulatory decisions in order to pay more profit to PG&E.

My Alternate requires that both PG&E's shareholders and PG&E's ratepayers share the pain to bring PG&E back to investment-grade creditworthiness and to pay off PG&E's valid debts. It does so by keeping rates at their current level throughout 2004 and by requiring that PG&E's shareholders pay dividends that they otherwise would accrue in 2004 to pay off the back debt, if necessary. In essence my alternate treats PG&E in a similar manner as Southern California Edison. It keeps current rates in effect until PG&E's energy crisis debts are paid, and then drops rates back to a cost-of-service level. Northern California businesses and families would be in a much better economic position once rates are lowered substantially, with the possibility of further rate decreases thereafter rather than dropping rates a little, but freezing that small drop in place for nine years.

This Alternate also comports with state law that the PUC not cede its constitutional and statutory powers to either PG&E or the bankruptcy court and ensures that the PUC is not prevented from protecting ratepayers for the next nine years. In so doing, this alternate reduces the legal vulnerabilities inherent in the proposed settlement and does not create any uncertainty concerning the DWR bond deal or the Attorney General's lawsuit against PG&E Corp., the parent company of PG&E, the utility.

In the first quarter of 2005 PG&E's rates would drop by at least 1.6 cents/kilowatt, double the rate decrease envisioned, but not promised, in the proposed settlement. At its essence, by stripping out undue costs, like the over \$500 million PG&E has spent on lawyers and financial experts in this bankruptcy case, by preventing PG&E from undoing regulatory decisions from the 1990s that would result in almost \$400 million in retroactive additional profits paid to PG&E, and by refusing to change the accounting rules by which PG&E currently operates, the costs still to be paid are reduced by over \$1 billion. That enables PG&E to emerge from bankruptcy within one more year, but free and clear of the enormous debt overhang created by the proposed settlement and without the regulatory bells and whistles that all tip in PG&E's favor.

I recognize that this alternate may still be a work in progress and that significant effort would be needed to discuss this with the Creditors Committee. I also recognize that I

might not be interpreting every nuance of the proposed settlement agreement as PG&E intended it. Of course, due to the continuing gag order imposed by the bankruptcy settlement judge, I was and am not privy to how this language developed or the understandings between the negotiators as to what the language means and does not mean. All of the possible decisions before the PUC require additional time and effort for completion. At base, the myriad alternates and possibilities facing the PUC on behalf of all Northern California ratepayers establish one thing: this Commission should not rush to judgment and sacrifice getting it done right for getting it done now. If we rush forward we will saddle Northern Californians with extraordinary excessive costs for no reason other than we failed to take the time and effort to do it right.

The U.S. Ninth Circuit court's denial on November 19th of PG&E's vision that it can preempt state laws in service of its deregulation plan changed the playing field. That affirmance of California's laws and legal protections against PG&E's bankruptcy plan gives us a crucial chance to renegotiate in favor of ratepayers, not at their expense. We should take that chance and take the time to get this right. The fear that we must do the backroom deal presented without change or the PG&E electric system will be chopped up is no longer a real threat. What is real is that if this Commission signs a deal to keep Northern California rates excessively high for excessively long, jobs and businesses will drain from North to South. We should not countenance such a disparity in price for this fundamental economic necessity, electricity. This alternate seeks to prevent that problem.

I welcome comments and suggestions for improvements to this work in progress.