BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM	Investigation 02-04-026

COMMENTS OF THE

FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

Michael J. Strumwasser
Fredric D. Woocher
Daniel J. Sharfstein
STRUMWASSER & WOOCHER LLP
100 Wilshire Boulevard, Suite 1900
Santa Monica, California 90401
Telephone: (310) 576-1233
Facsimile: (310) 319-0156

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The California Public Utilities Commission (CPUC) filed its Pacific Gas & Electric (PG&E) Alternative Plan of Reorganization in the United States Bankruptcy Court, Northern District of California, with no public meeting, no hearing, no notice, no evidence, no findings, and no opportunity for review by California courts. After shutting the electricity consumers of California out of the decision-making process, in flagrant violation of the California Constitution and open meeting statutes, the Commission now deigns with its "Order Instituting Investigation" (OII) to allow members of the public to comment on the "ratemaking implications" of the Commission's Reorganization Plan. Even before it was adopted on April 22, the CPUC had already announced the OII to the California Supreme Court in the hope that doing so would thereby create an administrative remedy that might foreclose judicial review of the Commission's conduct as sought by the Foundation for Taxpayer and Consumer Rights (FTCR) in *Foundation for Taxpayer and Consumer Rights v. California Public Utilities Commission et al.*, Cal. S. Ct. No. S1058097. Days later, CPUC General Counsel Gary Cohen confirmed that this OII is just a sham, when, on April 24, he assured the Bankruptcy Court that the CPUC deemed itself bound by its plan.

This obvious attempt to prevent judicial review of the CPUC's conduct is a supreme act of contempt for the public that was left in the dark, the Legislature whose refusal to bail out the utilities the CPUC now presumes to overrule, and the courts whom the CPUC unconscionably seeks to mislead.

FTCR refuses to play along in this charade. Rather than commenting about whether the CPUC's secret decision to void state laws and transfer billions of dollars from ratepayers to PG&E shareholders was wise, FTCR simply reminds the Commission that it is, in fact, subject to the rule of law. Under the Constitution and statutes of the state of California, the CPUC has no authority to sponsor its

Reorganization Plan and no authority to spend state funds purportedly to measure the plan's effects.

Although FTCR declines to proffer comments on "ratemaking implications," it is willing to offer its prognostication on the outcome of this OII: The Commission will receive comments critical of its plan, will ignore those comments, and will issue an opinion concluding that the plan it has already adopted and filed in federal Bankruptcy Court is the best that consumers can hope for. The CPUC plan, it will explain, is necessary to block PG&E's Reorganization Plan, which would remove generating assets from this Commission's jurisdiction and give them to the Federal Energy Regulatory Commission (FERC) — an event that the CPUC will liken to the end of civilization as we know it.

At this juncture, California consumers have no practical reason to distinguish between the CPUC and FERC. In recent years, as Californians have been overwhelmed by a massive economic and public-safety crisis, each agency has oscillated between ineptitude and venality. Whether the current CPUC of secret deals and flagrant violations of state law is better or worse than the current FERC of reluctant price-caps and myopic investigations is a close question. History suggests that consumers have the most to fear from the CPUC, the agency that instigated the worst regulatory failure in modern times, deregulation of California's electricity market — a process that itself handed over regulation of thousands of megawatts to FERC. To consumers staggering under the highest rates in history, there's not a dime's worth of difference between the two agencies — and certainly not $10 billion worth.

In any event, the debate the CPUC says it now wants to hold is irrelevant. State law prohibits the CPUC from spending $10 billion of ratepayer money to defend its turf.

Instead of capitulating to its fear of the PG&E Reorganization Plan by staging its own raid on consumers' wallets, the CPUC should have concentrated its resources on blocking the PG&E plan. Both plans are illegal, and neither plan can be confirmed. That fact, and the magnitude of the CPUC's

give-away, could have been fully explored in a meaningful hearing prior to the CPUC's decision. But the Commission's panic-driven decision was made with neither public input nor careful contemplation. An "investigation" now, before this agency, into the "ratemaking implications" of either plan is a fool's errand.

FTCR will continue to pursue judicial remedies to prohibit the Commission from refusing to enforce otherwise valid state laws unless and until those laws have been determined invalid, unconstitutional, or unenforceable by an appellate court; to prohibit the Commission from taking regulatory action in a closed session called to "confer with counsel"; and to prohibit the Commission from blocking rate-decreases, extinguishing refund rights, blocking future enforcement rights, or approving specified costs to be included in future rates in closed session or otherwise without taking evidence and making findings on that evidence. Because the Commission has shown a persistent inability to obey the law and to appreciate that it exists to serve the public and not the other way around, it is now the responsibility of the judiciary to ensure that the public is protected.

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Respectfully submitted,

STRUMWASSER & WOOCHER LLP
Michael J. Strumwasser
Fredric D. Woocher
Daniel J. Sharfstein

By _____
Michael J. Strumwasser

Attorneys for the Foundation for Taxpayer and Consumer Rights