

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

Conditional Application of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) for a Certificate of
Public Convenience and Necessity Authorizing the
Construction of the Los Banos-Gates 500 kV Transmission
Project

Application 01-04-012

**MOTION FOR A PROTECTIVE ORDER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION**

Charles F. Robinson, General Counsel
Jeanne M. Solé, Regulatory Counsel
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
Telephone: 916-351-4400
Facsimile: 916-608-7222

Dated: October 25, 2001

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

Conditional Application of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) for a Certificate of
Public Convenience and Necessity Authorizing the
Construction of the Los Banos-Gates 500 kV Transmission
Project

Application 01-04-012

**MOTION FOR A PROTECTIVE ORDER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION**

Pursuant to Rules 45 and 74.7 of the Commission's Rules of Practice and Procedure, the California Independent System Operator (CA ISO) moves for entry of the attached protective order. Entry of the attached order will facilitate discovery involving commercially sensitive information, without compromising proprietary and commercially sensitive information. The proposed order is similar to those entered in other Commission proceedings, and its entry will not prejudice the ability of the presiding administrative law judge to govern admission of evidence at public hearings held in this matter.

Respectfully submitted this 25th of October,

Jeanne M. Solé Regulatory Counsel
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
Telephone: 916-351-4400
Facsimile: 916-608-7222

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

Conditional Application of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) for a Certificate of
Public Convenience and Necessity Authorizing the
Construction of the Los Banos-Gates 500 kV Transmission
Project

Application 01-04-012

ORDER ADOPTING NONDISCLOSURE AND PROTECTIVE AGREEMENT

1. This Order shall govern the use of confidential and proprietary information (Protected Materials) which is produced or disclosed during the discovery phase of the above-referenced proceeding. This Order is made in the interest of facilitating prompt discovery, protecting and preserving the rights of the parties, and avoiding unnecessary law and motion practice.

2. No party shall be entitled to access to Protected Materials unless and until it first executes the Nondisclosure and Protective Agreement (“Agreement”) attached hereto as Attachment A, and no individual representative of any party shall be entitled to access to Protected Materials unless and until that person first executes the Nondisclosure Certificate appended to the Agreement as Appendix 1. The Agreement is incorporated herein by this reference.

3. All originally executed Agreements and Nondisclosure Certificates shall be delivered to the party from whom disclosure of Protected Materials is requested, who will then provide the Protected Materials pursuant to the terms of the Agreement.

IT IS SO ORDERED.

Dated _____, 2001 at San Francisco, California.

Michelle Cooke
Administrative Law Judge

Attachment (form Non-Disclosure Agreement)

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

Conditional Application of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) for a Certificate of
Public Convenience and Necessity Authorizing the
Construction of the Los Banos-Gates 500 kV Transmission
Project

Application 01-04-012

NONDISCLOSURE AND PROTECTIVE AGREEMENT

This Nondisclosure and Protective Agreement (“Agreement”) is effective this ____ day of _____, 2001, by and between _____ and its counsel of record, , and _____ (“_____”) and its counsel of record.

WHEREAS, certain of the information requested to be produced or disclosed in Application 01-04-012 (the “Proceeding”) may constitute trade secrets, proprietary and confidential information, or competitively sensitive documents (the “PROTECTED MATERIALS”); and

WHEREAS, the parties hereto wish to streamline discovery in the Proceeding and avoid unnecessary law and motion practice; and

WHEREAS, the parties hereto believe that this Agreement will facilitate prompt discovery, protect legitimate confidentiality concerns and preserve the rights of the parties hereto;

ACCORDINGLY, the parties hereto agree that the following terms and conditions shall govern the use of such information provided by one party (the “Designating Party”) to the other party (the “Receiving Party”) in the context of this Proceeding:

1. This Agreement shall govern all PROTECTED MATERIALS produced by or on behalf of any Designating Party and (notwithstanding any order terminating this Proceeding) shall remain in effect for a period of 60 days after an order concluding or

otherwise terminating this Proceeding is no longer subject to judicial review; however, the confidentiality obligations of Reviewing Representatives as specified in Appendix 1 to this Agreement will remain in full force and effect for 2 years after an order concluding or otherwise terminating this Proceeding.

2. A party may designate as PROTECTED MATERIALS those items provided through discovery which customarily are treated by that Designating Party or its consultants as confidential or proprietary, which are not available to the public, and which, if disclosed freely, would, in that Designating Party's judgment, subject it or its consultants to risk of competitive disadvantage or other business injury.

3. For purposes of this Agreement:

a. (1) The term "PROTECTED MATERIALS" includes (a) material provided by a party in response to discovery requests and designated by such party as protected; (b) any copy or reproduction of such designated materials; (c) any information contained in or obtained from such designated materials; (d) any other materials which are made subject to this Agreement by the Administrative Law Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the parties hereto; and (e) notes of PROTECTED MATERIALS.

(2) The term "notes of PROTECTED MATERIALS" means memoranda, handwritten notes, or any other form of information which copies or discloses materials described in the foregoing paragraph.

(3) PROTECTED MATERIALS shall not include (a) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless said information or document was provided to the agency on a confidential basis and is not a public record, or is subject to a protective order of such agency or court; or (b) information that is public knowledge or which becomes public knowledge as a result of publication or disclosure by the Designating Party.

b. The term “Reviewing Representative” is a person described in paragraphs 8 and 9.

c. The term “Commission” means the California Public Utilities Commission.

4. PROTECTED MATERIALS shall be made available under the terms of this Agreement only to the Reviewing Representatives as provided in paragraphs 8 and 9.

5. PROTECTED MATERIALS shall remain available until the date that an order concluding or otherwise terminating this Proceeding is no longer subject to judicial review. Within 30 days after such date, all Reviewing Representatives of the Receiving Party shall return the PROTECTED MATERIALS, including all copies thereof, and notes of PROTECTED MATERIALS to the Designating Party or shall destroy said materials. Within such time period the Receiving Party shall also submit to the Designating Party an affidavit stating that all PROTECTED MATERIALS, copies thereof, and notes of PROTECTED MATERIALS are being returned or have been destroyed by all Reviewing Representatives of the Receiving Party.

6. Each page of PROTECTED MATERIALS and each disk containing PROTECTED MATERIALS shall be physically marked “PROTECTED MATERIAL” OR "Contains Privileged Information - DO NOT RELEASE" by the Designating Party. All PROTECTED MATERIALS shall be maintained by the Receiving Party in a secure manner. Access shall be limited to those Reviewing Representatives specifically authorized pursuant to paragraphs 8 and 9.

7. PROTECTED MATERIALS covered by this Agreement shall be treated as confidential by the Receiving Party and by the Reviewing Representative in accordance with the certificate executed pursuant to paragraph 9. PROTECTED MATERIALS shall not be used except as necessary for the conduct of this Proceeding; nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of these Proceedings and who needs to

know the information in order to carry out that person's responsibilities in these Proceedings. Reviewing Representatives may make notes of PROTECTED MATERIALS which notes must be maintained in a secure manner pursuant to paragraph 6.

8. a. A Reviewing Representative is an individual who is:
 - (i) An attorney who has made an appearance in this Proceeding for a Receiving Party;
 - (ii) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (i);
 - (iii) An unaffiliated expert or an employee of an unaffiliated expert retained by Receiving Party for the purpose of advising, preparing for, or testifying in this Proceeding; and
 - (iv) An employee of a Receiving Party.

b. In the event that a Receiving Party wishes to nominate as a Reviewing Representative a person not described in subparagraph a. of this paragraph, Receiving Party shall seek agreement from the Designating Party providing the PROTECTED MATERIALS. If no agreement is reached, Receiving Party shall submit the disputed nomination to the presiding Administrative Law Judge.

9. a. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to the PROTECTED MATERIALS pursuant to this Agreement unless that Reviewing Representative has first executed, and there has been delivered to the Designating Party, a non-disclosure certificate in the form set forth in Appendix 1.

b. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their employment, instruction, supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose PROTECTED MATERIALS to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative have both executed and delivered a non-disclosure certificate to the Designating Party. In the event that any Reviewing Representative to whom the PROTECTED MATERIALS are disclosed ceases to be engaged in these Proceedings, or is employed or retained for a position whereby that person is no longer qualified to be a Reviewing Representative under paragraph 8, access to PROTECTED MATERIALS by that person shall be terminated and that person must comply with the return/destruction requirements in paragraph 5. However, even if no longer engaged in this Proceeding, every person who has agreed to a non-disclosure certification shall continue to be bound by the provisions of this Agreement and the certification.

11. If the Receiving Party intends to submit or use in this Proceeding any PROTECTED MATERIALS such that the submission or use would result in a public disclosure of those PROTECTED MATERIALS, including, without limitation, the presentation of prepared testimony, cross-examination, briefs, comments, protests, or other presentations before the Commission, the attorney for the Receiving Party shall contact the attorney for the Designating Party as soon as possible and not later than 3 business days prior to such use, and counsel shall constructively explore means of identifying the PROTECTED MATERIAL so that the confidentiality thereof may be reasonably protected (including, but not limited to, submission of testimony and briefs under seal and clearing the hearing room during examination, discussion, or argument concerning the PROTECTED MATERIAL), while at the same time enabling an effective presentation. If the Designating Party and the Receiving Party are unable to agree upon a procedure to protect the confidentiality of the PROTECTED MATERIAL, the Receiving Party shall request a ruling from the presiding Administrative Law Judge; the Designating Party reserves the right to oppose the Receiving Party's request. Except as

expressly provided for herein, no use can be made of the PROTECTED MATERIAL that would fail to protect its confidentiality without such a ruling from the presiding Administrative Law Judge.

12. The presiding Administrative Law Judge retains the discretion to review and evaluate the facts and circumstances involved in any proposed use of PROTECTED MATERIAL in Commission hearings, and the flexibility to respond in whatever manner is most appropriate under the circumstances, including the holding of in camera hearings.

13. Nothing in this Agreement shall be construed as precluding any party from objecting to the use of PROTECTED MATERIALS on any legal grounds.

14. Nothing in this Agreement shall preclude any party from requesting the presiding Administrative Law Judge, the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any part of any materials previously designated as PROTECTED MATERIALS pursuant to this Agreement.

15. The presiding Administrative Law Judge shall resolve any disputes arising under this Agreement. Prior to presenting any dispute under this Agreement to the presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any objection to the designation of PROTECTED MATERIALS or motion to compel, and any response to the objection or motion to compel shall be filed in writing with the Administrative Law Judge, and shall be delivered to the opposing party's counsel(s) of record within 24 hours of filing unless otherwise ordered by the presiding Administrative Law Judge. In any challenge to the designation of materials as PROTECTED MATERIALS, the burden of proof shall be on the Designating Party.

16. To the extent that PROTECTED MATERIALS are discussed, analyzed or otherwise the subject of consideration during any conference or other session held in connection with the Proceeding, only authorized representatives for the Receiving Party and the Designating Party may be present for such sessions.

17. The Receiving Party agrees that any release or attempted release of the PROTECTED MATERIALS or use of such materials other than as contemplated by this Agreement by a Receiving Party may cause Designating Party irreparable injury which could not be adequately compensated through pecuniary damages. Accordingly, the parties agree that any breach or threatened breach of this Agreement may be enjoined.

18. This Agreement shall be governed and construed according to the laws of the State of California.

19. This Agreement sets forth the complete understanding of the parties hereto with respect to the subject matter hereof as of the date first above set forth and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both parties, and shall not be implied by any usage of trade or course of conduct.

20. Nothing in this Agreement shall be deemed to preclude any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this Proceeding under this Agreement.

21. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: _____

By: _____

Attorney for:

Dated: _____

By: _____

Attorney for:

APPENDIX 1

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

Conditional Application of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) for a Certificate of
Public Convenience and Necessity Authorizing the
Construction of the Los Banos-Gates 500 kV Transmission
Project

Application 01-04-012

NONDISCLOSURE CERTIFICATE

I certify my understanding that access to PROTECTED MATERIALS is provided to me pursuant to the terms and restrictions of the Nondisclosure and Protective Agreement (“Agreement”), concerning the above-captioned proceeding. I have been given a copy of and have read that Agreement and agree to be bound by it. I understand that the contents of the PROTECTED MATERIALS, any notes or other memoranda or any other form of Information which copy or disclose PROTECTED MATERIALS shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only for the purpose of the above-captioned proceeding before the California Public Utilities Commission. I agree to honor the confidentiality of the PROTECTED MATERIALS until two years after an order concluding or otherwise terminating the above-captioned proceeding is no longer subject to judicial review.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Address: _____

Date: _____