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50-245/323

8 Attorney for County of Nevada

9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 **In Re:**

13 **PACIFIC GAS AND ELECTRIC COMPANY,**  
14 **A CALIFORNIA CORPORATION,**  
15 **Debtor.**

16 **Case No. 01 30923 11DM**  
17 **(Chapter 11)**

18 **OBJECTION BY COUNTY OF NEVADA**  
19 **TO DEBTOR'S MOTIONS**  
20 **TO USE CASH COLLATERAL AND**  
21 **TO INCUR POST-PETITION SECURED DEBT**  
22 **AND**  
23 **MEMORANDUM OF POINTS AND AUTHORITIES**  
24 **IN SUPPORT THEREOF**

25 Date: May 9, 2001  
26 Time: 9:30 a.m.  
27 Dept: 22; Honorable Dennis Montali

28 The County of Nevada, California (herein "County"), objects to the relief sought  
29 by Debtor in its Motions to Use Cash Collateral and to Incur Post-Petition Secured Debt  
30 filed April 6, 2001 (herein "Motions") to the extent said Motions create secured interests  
31 which are senior to secured real property taxes and secured personal property taxes  
32 (herein "Taxes"), and to the extent said Motions accelerate the priority of pre-petition  
obligations to a priority senior to said secured Taxes. The basis of County's objection is  
that California statutes provide that said Taxes are senior to all other liens and the  
bankruptcy code does not provide for nor supercede California law in the face of an  
objection. County further objects on the same basis to the Interim Orders issued April  
9, 2001, and to the final orders sought.

Objection to Cash Collateral Motions

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E-Rids*

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Specifically, County objects as follows:

1. County does not consent under 11 USC 363(c)(2)(A) or otherwise to the Interim Orders, nor the final orders requested.
2. The Interim Orders and the final orders requested do not provide for payment to County of said Taxes.
3. The Interim Orders and the final orders requested do not provide that said Taxes for the current tax years<sup>1</sup> are a first lien on Debtor's real property as mandated by California law.
4. The Interim Orders and the final orders requested do not provide that Taxes accruing for subsequent tax years shall continue to be a first lien on Debtor's real property as mandated by California law.

OFFICE OF THE COUNTY COUNSEL

Dated: May 4, 2001

  
By: William A. Heidelberger, Deputy

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<sup>1</sup> California real and personal property taxes enjoy a lien date of January 1<sup>st</sup> preceding each tax year (July 1<sup>st</sup> through June 30<sup>th</sup>) for which the taxes are levied. Although these taxes accrue on the lien date (Jan 1), they are not delinquent until December 10<sup>th</sup> (1<sup>st</sup> installment) and April 10<sup>th</sup> (2<sup>nd</sup> installment) of the following calendar year. Thus, the 2000/2001 taxes accrued January 1, 2000. The 2001/2002 taxes accrued January 1, 2001 as pre-petition taxes, even though they will not be billed for another six months.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 I  
4 COUNTY'S CLAIM

5 The County of Nevada is a political subdivision of the State of California which  
6 possesses the authority to assess and collect *ad valorem* taxes on real and personal  
7 property. (*California Revenue and Tax Code Section 121* (herein "R&T").) County  
8 asserts its pre-petition secured claims for tax years 2000/2001 and 2001/2002 which  
9 include both secured real property and secured personal property amounts set forth in  
10 Exhibit "A" attached hereto and incorporated herein by reference, a summary of which  
11 is set forth below:

12  
13 \$ 323,600.88 2000/2001 Tax Year, Nevada County Public Utility Roll,  
14 State Assessment NO. 135 (Balance of 2<sup>nd</sup> installment)

15 \$ 616,382.62<sup>2</sup> Taxes 2000/2001  
16 292,781.74 Paid on or about 04/10/01  
17 \$ 323,600.88 Balance due, exclusive of penalties,  
18 fees & interest

19 \$1,257,420.55 2001/2002 Tax Year, Nevada County Public Utility Roll,  
20 State Assessment NO. 135 (1<sup>st</sup> and 2<sup>nd</sup> installments)  
(Estimated @ 102%)

21 \$1,257,420.55 Taxes 2001/2002, estimated  
22 0.00 Paid  
23 \$1,257,420.55 Balance, not due

24  
25 \$1,581,021.43 2000/2001 & 2001/2002 Pre-Petition tax claim  
26  
27

28  
29 <sup>2</sup> 2000/2001 Taxes were based upon the following unitary assessment:

30 \$ 11,537,238 Real Property  
31 107,491,979 Improvements  
32 337,179 Personal Property  
\$119,366,396 Total Unitary Assessment

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**II**  
**CALIFORNIA REAL PROPERTY TAXES CONSTITUTE**  
**A FIRST PRIORITY LIEN UPON REAL PROPERTY**

"Every tax on real property is a lien against the property assessed." (*R&T § 2187.*) Equally, "Every tax on improvements is a lien on the taxable land on which they are located, if they are assessed to the same person to whom the land is assessed." (*R&T § 2188.*) Such tax liens attach annually as of January 1<sup>st</sup> next preceding the fiscal year for which the taxes are levied (*R&T § 2192*), and enjoy priority over all other liens (*R&T § 2192.1*). Specifically:

"Every tax declared in this chapter to be a lien on real property, and every public improvement assessment declared by law to be a lien on real property, have priority over all other liens on the property, regardless of the time of their creation. ... " (*R&T § 2192.1.*)

**III**  
**DEBTOR'S PROPERTY TAXES CONSTITUTE**  
**ARE SPECIFICALLY MADE A PART OF THE SECURED ROLL**

Debtor is a regulated public utility and as such, its assets have been assessed by the California State Board of Equalization. Property owned by a public utility are assessed by the State Board of Equalization.

"The Board shall annually assess ... property ... owned or used by companies transmitting or selling gas or electricity. ... " (*Calif. Constitution, Art. XIII § 19.*)

The term "State assessed property" encompasses all of the property, both real and personal, contemplated within the reach of the Constitutional provision.

" ' State assessed property ' means all property required to be assessed by the board under Section 19 of Article XIII of the Constitution and which is subject to local taxation." (*R&T s 108.*)

This "state assessed property" is specifically made a part of the secured roll.

" ' Roll ' means the entire assessment roll. The 'secured roll' is that part of the roll containing State assessed property and

1 property the taxes on which are a lien on real property  
2 sufficient, in the opinion of the assessor, to secure payment  
3 of the taxes. The remainder of the roll is the 'unsecured roll'.  
4 The 'local roll' is those parts of the secured and unsecured  
5 roll containing property which it is the county assessor's duty  
6 to assess. The 'board roll' is that part of the secured roll  
7 containing State assessed property." (R&T § 109.)

8  
9 This assessment is apportioned to the respective counties according to the  
10 extent of the assets lying within the jurisdictional confines of each respective county.

11  
12 **IV**  
13 **SECURITY IS SOUGHT IN RELATION TO**  
14 **ALL OF DEBTOR'S ASSETS**

15 The Declaration of Kent Harvey filed April 6, 2001 in support of Debtor's  
16 Emergency Motion ... Authorizing Interim Use of Cash Collateral in Which Mortgage  
17 Bondholder's Have an Interest; ..., states at paragraph 4 that Debtor has granted to the  
18 Indenture Trustee " ... virtually all of its existing and after-acquired property (collectively,  
19 the Bondholders' Collateral) ... " At paragraph 9, Mr. Kent states that the Debtor's  
20 property, plant and equipment ... is a part of the Bondholder's Collateral, [and] had a net  
21 book value in excess of \$12 billion as of September 30, 2000."

22 The Conclusion of Debtor's Memorandum of Point and Authorities in Support of  
23 Debtor's Emergency Motion ... Authorizing Interim Use of Cash Collateral in Which  
24 Mortgage Bondholder's Have an Interest; ... filed April 6, 2001 states at paragraph 1,  
25 page 18:

26 " ... Debtor respectfully requests that this Court make and  
27 enter its orders:

28 "1. Authorizing the Debtor to use Cash Collateral in which  
29 the Bondholders have a beneficial interest, ... "

30 As a consequence, the broad authority of this request allows the Debtor to  
31 encumber real property assets (property, plant and equipment) in derogation of  
32 County's lien rights. Specifically, County objects that Debtor has not clearly delineated

1 those assets which in which it seeks a "replacement lien", nor the amount of the  
2 replacement lien, nor the terms thereof, nor whether prior pre-petition obligations will be  
3 accelerated to a first lien position as a term of the replacement lien. To the extent that  
4 real property assets are within the ambit of Debtor's request, County strenuously  
5 objects.

6  
7 Significant efforts have been made in presenting this motion to the Court, and  
8 County does not lightly object to what is no doubt a very pressing and very real need.  
9 However, County cannot lightly countenance a potential compromise of its lien rights,  
10 and must accordingly lodge this protest.

11  
12 Accordingly, County asserts that Debtor has failed to adequately demonstrate  
13 that the lien holder (County of Nevada) will be adequately protected, as required under  
14 *11 USC 364(d)(1)(B)*. The amount of the replacement lien and its priority in relation to  
15 the County's tax lien has not been addressed. Thus, it would seem problematic for this  
16 Court to exercise its discretion in concluding that the County's lien rights have been  
17 protected.

18  
19 **CONCLUSION**

20  
21 State assessed property enjoys a first lien on the property so assessed, certainly  
22 to the extent of the Debtor's real property holdings. Debtor has failed to demonstrate  
23 that it has adequately protected county's tax lien. County respectfully requests that a  
24 "carve out" provision be enabled which would preserve County first priority lien status.

25  
26 The issue of whether this Court may set aside or otherwise County's tax lien is  
27 raised, but need not be addressed at this juncture so long as a carve out provision  
28 properly recognizes County's tax lien rights.

29  
30 OFFICE OF THE COUNTY COUNSEL

31 Dated: May 4, 2001

32 William A. Heidelberg  
By: William A. Heidelberg, Deputy

Objection to Cash Collateral Motions

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597,369.12 \* +

10,965.11 +

24.63 +

8,023.76 +

616,382.62 \*

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BILL NO.

1

TAX RATE AREA

00001

STATE ASSESSMENT NO.

135

DUE 4-10-01

597,369.12

MAKE CHECKS PAYABLE TO AND MAIL TO:  
E. CHRISTINA DABIS, TAX COLLECTOR  
P.O. BOX 128, NEVADA CITY, CA 95959-0128

657,116.03

AMOUNT DUE AFTER APRIL 10TH INCLUDES  
10% PENALTY AND \$10.00 COST.

NEVADA COUNTY SECOND INSTALLMENT 00/01

BILL NO.

35

TAX RATE AREA

68007

STATE ASSESSMENT NO.

135

DUE 4-10-01

10,965.11

MAKE CHECKS PAYABLE TO AND MAIL TO:  
E. CHRISTINA DABIS, TAX COLLECTOR  
P.O. BOX 128, NEVADA CITY, CA 95959-0128

12,071.62

AMOUNT DUE AFTER APRIL 10TH INCLUDES  
10% PENALTY AND \$10.00 COST.

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NEVADA COUNTY SECOND INSTALLMENT 00/01

BILL NO.

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TAX RATE AREA

77032

STATE ASSESSMENT NO.

135

DUE 4-10-01

24.63

MAKE CHECKS PAYABLE TO AND MAIL TO:  
E. CHRISTINA DABIS, TAX COLLECTOR  
P.O. BOX 128, NEVADA CITY, CA 95959-0128

37.09

AMOUNT DUE AFTER APRIL 10TH INCLUDES  
10% PENALTY AND \$10.00 COST.

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NEVADA COUNTY SECOND INSTALLMENT 00/01

BILL NO.

47

TAX RATE AREA

79000

STATE ASSESSMENT NO.

135

DUE 4-10-01

8,023.76

MAKE CHECKS PAYABLE TO AND MAIL TO:  
E. CHRISTINA DABIS, TAX COLLECTOR  
P.O. BOX 128, NEVADA CITY, CA 95959-0128

8,836.13

AMOUNT DUE AFTER APRIL 10TH INCLUDES  
10% PENALTY AND \$10.00 COST.

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EXHIBIT "A"

WARNING - THIS DOCUMENT CONTAINS A VOID PANTOGRAPH, COLORED BACKGROUND AND WATERMARK ON THE BACK



77 Beale Street,  
San Francisco, CA

Mellon GCM  
20 Cabot Rd  
Medford, MA 02155

53-292  
0113

Date: 04/10/2001

Check No. 8270089

Pay \$\*\*\*\*\*292,781.74\*

TWO HUNDRED NINETY-TWO THOUSAND SEVEN HUNDRED EIGHTY-ONE..... AND 74/100 DOLLARS

To The Order Of

NEVADA COUNTY TAX COLLECTOR  
PO BOX 128  
NEVADA CITY CA 95959-0128

ACCOUNTS PAYABLE

*W.M. Lanning*  
SVP. CFO & TREASURER  
*Michael Donnelly*  
ASSISTANT TREASURER

VOID AFTER 90 DAYS

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CERTIFICATE OF SERVICE

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I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the within action; my business address is: OFFICE OF THE COUNTY COUNSEL, ERIC ROOD ADMINISTRATION CENTER, 950 Maidu Avenue, Nevada City, California 95959-8617.

On May 4, 2001, I served the attached: **OBJECTION BY COUNTY OF NEVADA TO DEBTOR'S MOTIONS TO USE CASH COLLATERAL AND TO INCUR POST-PETITION SECURED DEBT**, on the parties to this action by fax and then placing a true copy thereof in a sealed envelope, addressed as follows:

James L. Lopes, Esq.  
Jeffrey L. Schaffer, Esq.  
Gary M. Kaplan, Esq.  
Howard, Rice, Nemerovski, Canady,  
Galk & Rabkin  
Three Embarcadero Center, 7<sup>th</sup> Floor  
San Francisco, CA 94111

Fax No: 415/217-5910

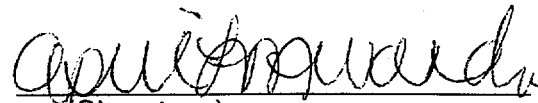
XX (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of the Nevada County Counsel for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

XX (BY FACSIMILE) I caused such document to be transmitted by facsimile machine to the number indicated after the address(es) noted above and thereafter placed in a sealed envelope and deposited in the U.S. Postal Service the same day.

\_\_\_\_\_ (State) I declare under penalty of perjury that the foregoing is true and correct.

XX (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

APRIL L. MIRANDA  
(Type or Print Name)

  
(Signature)

CERTIFICATE OF SERVICE

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I am employed in the County of Nevada, State of California. I am over the age of 18 years and not a party to the within action; my business address is: OFFICE OF THE COUNTY COUNSEL, ERIC ROOD ADMINISTRATION CENTER, 950 Maidu Avenue, Nevada City, California 95959-8617.

On May 11, 2001, I served the attached: **OBJECTION BY COUNTY OF NEVADA TO DEBTOR'S MOTIONS TO USE CASH COLLATERAL AND TO INCUR POST-PETITION SECURED DEBT**, on the parties to this action by placing a true and correct copy thereof in a sealed envelope, addressed as follows:

PLEASE SEE ATTACHED SPECIAL NOTICE LIST

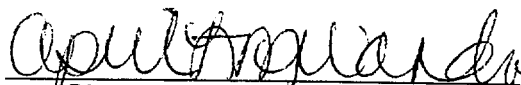
XX (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Nevada City, California, following ordinary business practices. I am readily familiar with the practice of the Nevada County Counsel for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the U.S. Postal Service the same day as it is placed for processing. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

\_\_\_\_\_ (BY FACSIMILE) I caused such document to be transmitted by facsimile machine to the number indicated after the address(es) noted above and thereafter placed in a sealed envelope and deposited in the U.S. Postal Service the same day.

\_\_\_\_\_ (State) I declare under penalty of perjury that the foregoing is true and correct.

XX (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

APRIL L. MIRANDA  
(Type or Print Name)

  
(Signature)

**Special Notice LIST**  
As of April 26, 2001

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County]

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Attn: Peggie Sanders  
1850 Gateway Boulevard  
Concord, CA 94520

Bank of America National Trust and Savings Association  
CA5-705-12-10  
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San Francisco, CA 94104

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Los Angeles, CA 90071

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1 Bank One Plaza  
Chicago, IL 60670-0126

Bank One, NA  
Attn: Robert G. Bussa, Jane Bek  
Energy & Utilities  
Mail Code IL 1-0363  
Bank One Plaza  
Chicago, IL 60670

Bankers Trust Co. of California, NA  
Structured Finance Group  
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New York, NY 10006

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Corporate Trust Services  
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San Francisco, CA 94102

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Sacramento, CA 94279-8063

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San Jose, CA 94566

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San Francisco, CA 94104

Calpine King City Cogen LLC  
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Beard & Beard  
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Coast Energy Canada Inc.  
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Attn: Caroline Pitre

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Sugarland, TX 77478  
Attn: Ruben Alonso

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10100 Santa Monica Blvd., 25<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Hans O. Saeby

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[Counsel for Tucson Electric Power Company]

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A California Limited Partnership  
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[Counsel for Corestaff Services (California), Inc.]

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