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with Claims against Pacific Gas & Electric Co.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)

In re Pacific Gas & Electric Co., Debtor. Federal I.D. No. 94-0742640	CASE NO. 01-30923 Chapter 11 **CALIFORNIA COUNTIES MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE TO DEBTOR'S MOTION TO PAY PRE-PETITION PROPERTY TAXES** Date: May 16, 2001 Time: 9:30 a.m. Place: 235 Pine Street, 22nd Floor San Francisco, California

COME NOW, City and County of San Francisco and the counties of Alameda, Fresno, Kern, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Sonoma, Stanislaus, Trinity, Tulare and Tuolumne (collectively "California Counties") and hereby respectfully submit their Memorandum of Points and Authorities in support of the California Counties' Response to the Debtor's Motion for Authority to Pay Pre-Petition Property Taxes ("Debtor's Motion").

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ADD: Rick's Ogc Mail Center

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MEMORANDUM OF POINTS AND AUTHORITIES

1. The Debtor's Motion is grounded upon the equitable powers of the Bankruptcy Court under the Bankruptcy Code, specifically Section 105(a). "The equitable origins of the bankruptcy powers suggest substantial leeway to tailor solutions to meet the diverse problems facing Bankruptcy Court. Section 105 gives the Bankruptcy Court the power to fill-in gaps and further the statutory mandates of Congress in an efficient manner." (2 Collier on Bankruptcy 15th Ed. Rev. 105-8.1).

2. It is recognized, as set forth in the authorities cited by the Debtor in its Memorandum of Points and Authorities that the Bankruptcy court may authorize debtors to pay pre-petition claims in the early stages of a reorganization case, where to do so would facilitate the reorganization goals. Authorization to make such payments as part of first day motion practice has become common place.

3. The court has the power "sua sponte" to take any action or make any determination "necessary or appropriate to prevent an abuse of process." (Section 105(a)). Limiting the relief prayed for by the Debtor to those counties who waive their statutory rights to delinquent penalties and costs is such an abuse of process. The facts alleged establish valid grounds for payment without such limitation.

4. The delinquent penalty attached "at 5:00 p.m., or the close of business, which ever is later, on April 10." Revenue and Taxation Code §2618. The Debtor failed to allege any reason for failure to pay the tax prior to the penalty attaching.

5. The Debtor is required to "manage and operate the property in his possession . . . according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. §959(b).

6. The Debtor in conducting its business "under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation." 28 U.S.C. §960.

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7. Under California law, beginning on July 1, following a default in the payment of real property taxes, there shall commence a redemption penalty of one and one-half percent (1 1/2%) per month which shall continue to accrue until the property has been redeemed. Revenue and Taxation Code §4103(a).

8. "For purposes of an administrative hearing or any claim in a bankruptcy proceeding pertaining to the property being redeemed, the assessment of penalties determined pursuant to Subdivision (a) with respect to the redemption of that property constitutes the assessment of interest." Revenue and Taxation Code §4103(b).

9. In order for the Debtor to redeem the property, that is to satisfy the tax liens, California law requires that the Debtor pay defaulted taxes, delinquent penalties and costs, redemption penalties and a redemption fee of $15.00. Revenue and Taxation Code §4102.

10. Aside from public policy and federalism considerations, which are substantial in this case, there are solid economic benefits which will be realized by the Debtor and the other creditors in this case if the outstanding defaulted real property taxes, are paid before July 1, 2001.

11. Cancellation of delinquent penalties can be negotiated on a county by county basis pursuant to Revenue and Taxation Code Section 4985.2

12. Relief should be granted in the form set forth in the proposed order submitted by the California Counties.

13. Under the facts of this case, the concepts of equity and fair dealing require that this Debtor holding ample cash reserves with which to operate its business and pay its taxes do so as required by State and Local law. Relief should be granted in the form set forth in the proposed order submitted herewith by the responding counties.

Respectfully submitted,

DATED: May 10, 2001

By: Irving Sulmeyer
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