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9 ENVIRONMENTAL DEFENSE and
10 UTILITY CONSUMERS' ACTION NETWORK
11

12 UNITED STATES BANKRUPTCY COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 In re

17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California Corporation,

19 Debtor.

20 Federal I.D. No. 94-0742640

No. 01 30923 DM

Chapter 11 Case

Date: May 16, 2001

Time: 9:30 a.m.

Place: 235 Pine St., 22nd Floor
San Francisco, California

21 MEMORANDUM OF ENVIRONMENTAL AND CONSUMER GROUPS
22 IN SUPPORT OF DEBTOR'S MOTION FOR AUTHORITY TO HONOR ITS
23 OBLIGATIONS FOR PUBLIC PURPOSE PROGRAMS
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Table of Contents

I. INTRODUCTION	1
II. DESCRIPTION OF THE ENVIRONMENTAL AND CONSUMER ORGANIZATIONS	2
III. ARGUMENT	3
<u>A. The Public Purpose Funds Provide Essential Support for California's Severely Overstressed Electricity Grid</u>	3
<u>B. Continued Uncertainty about the Status of the Public Purpose Funds Undermines Energy Efficiency Investment throughout California.</u>	4
<u>C. A Prompt and Favorable Decision on this Motion should Minimize Damage to Consumer and Environmental Interests.</u>	5
IV. CONCLUSION	5

I.
INTRODUCTION

This memorandum is submitted on behalf of the Natural Resources Defense Council (NRDC), Environmental Defense (ED), and Utility Consumers Action Network (UCAN). Its purpose is to support the Pacific Gas & Electric Company's Motion for Authority to Honor its Obligations for Public Purpose Programs, which was filed with this court on April 24, 2001. These nonprofit environmental and consumer organizations (described in section I below) share urgent concerns regarding the environmental and consumer interests that will be damaged if this motion is not granted promptly. The sole purpose of this filing is to provide additional information to the Bankruptcy Court on the issues raised by PG&E's filing, and the parties that join in this memorandum do not by virtue of its submission either seek or waive any further role in these proceedings.

NRDC, ED, and UCAN are wholly independent of the debtor and often contest its views in other forums. But they strongly endorse PG&E's conclusion that it is merely a conduit of the public purpose funds at issue in this motion, and that such funds do not constitute part of the bankruptcy estate. Delays in confirming this contention put at risk desperately needed electricity savings and place a badly overstressed California electricity grid at greater risk of destructive interruptions. Extensive support for these conclusions appears in the attached Declaration of Peter M. Miller, Senior Scientist at the Natural Resources Defense Council.

II.

DESCRIPTION OF THE ENVIRONMENTAL AND CONSUMER ORGANIZATIONS

The Natural Resources Defense Council is a nonprofit organization staffed by attorneys and scientists with more than 85,000 members in California and two offices in the state. NRDC's record of involvement in California electricity policy covers more than a quarter century. The organization has focused particularly on ways to use cost-effective energy efficiency and renewable energy resources to ensure the reliable, environmentally sustainable electricity services that a healthy economy requires.

Environmental Defense, a leading national nonprofit organization based in New York, represents more than 300,000 members nationwide, more than 60,000 of whom reside in California. Since 1967, the organization has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems. Its California electricity analysis and advocacy dates to the mid-1970s.

Utility Consumers' Action Network (UCAN) is a San Diego-based utility consumer watchdog group. It is a non-profit organization comprised of 41,000 members, most of whom live in San Diego County and are served by San Diego Gas & Electric (SDG&E). Since 1984, UCAN has advocated on behalf of its members as well as the totality of residential and small business customers of SDG&E before regulatory and legislative bodies in California and in Washington DC.

1 III.

2 ARGUMENT

3 A. The Public Purpose Funds Provide Essential Support for California's Severely
4 Overstressed Electricity Grid.

5 California has aggressively promoted energy efficiency in buildings and
6 equipment since at least 1978, reducing total peak electricity needs by about one-fifth
7 (some 10,000 megawatts). Approximately half of those reductions have come from
8 Public Purpose Programs funded by a small surcharge on bills paid by customers of
9 PG&E, Edison and SDG&E. Since 1998 alone, these programs have delivered about
10 500 Megawatts of savings at an average cost of less than three cents per kilowatt-hour
11 over the life of the efficiency measures (about one-tenth of current wholesale prices). At
12 a time when the difference between an intact grid and rolling blackouts is sometimes
13 measured in the tens of Megawatts, energy efficiency clearly represents the fastest,
14 cheapest and cleanest solution to California's electricity dilemma. For 2001, the
15 California PUC has set a minimum demand reduction target for the Public Purpose
16 Programs of 250 Megawatts, with PG&E alone responsible for half of the total. This
17 represents a substantial increase compared to last year, and at the time of PG&E's
18 bankruptcy filing, program investment was accelerating in response to the urgent
19 reliability needs of the system. The need for such efforts was underscored further by the
20 resumption of rolling blackouts in Northern California on May 8, 2001. Miller
21 Declaration, paragraphs 5-6.
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1 B. Continued Uncertainty about the Status of the Public Purpose Funds Undermines
2 Energy Efficiency Investment throughout California.

3 On April 6, PG&E's stopped making energy-efficiency payments for pre-petition
4 obligations from the dedicated state fund for Public Purpose Programs. Numerous
5 PG&E checks to conservation contractors bounced, in some cases only after they had
6 paid their own subcontractors for the work in question. Many elements of the delivery
7 system are at risk as a result, since in the weeks immediately preceding the bankruptcy
8 all programs were ramping up to meet urgent summer peak needs. Miller Declaration,
9 paragraph 7.
10

11 Many of PG&E's energy efficiency contractors are relatively small firms without
12 financial capacity to carry large unpaid debts for extended periods. Their survival, let
13 alone their ability to deliver additional savings, now hangs in the balance. More than ten
14 thousand checks are due and owing for work performed prior to April 6. In addition, the
15 suspension of payments puts in question the security of payments now administered by
16 Southern California Edison and San Diego Gas & Electric, which face their own financial
17 challenges. The threatened damage to California's energy efficiency infrastructure would
18 reverberate far beyond this summer. Miller Declaration, paragraphs 7-8.
19

20 Finally, until and unless this court grants PG&E's motion, significant obstacles
21 will impede efficient allocation and use of additional energy efficiency funding recently
22 provided by the legislature on an emergency basis. Some \$246 million of General Fund
23 revenues have been dedicated specifically to assisting customers throughout the PG&E,
24 Edison and SDG&E systems. Any uncertainty about the potential exposure of Public
25 Purpose Programs funding to bankruptcy creditors severely complicates near-term
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1 funding allocations. This threatens to delay urgently needed replenishment of depleted
2 program accounts, without which substantial inexpensive energy savings will be lost.

3 Miller Declaration, paragraph 9.

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5 C. A Prompt and Favorable Decision on this Motion should Minimize Damage to
6 Consumer and Environmental Interests.

7 PG&E has used the period since the bankruptcy filing to identify all unpaid energy
8 efficiency contractors and to make advance preparations for clearing Public Purpose
9 Program arrearages within five days if this court issues a favorable decision. This should
10 promptly revive a threatened PG&E delivery system, while also helping to remove the
11 cloud over the security of payments for Public Purpose Programs administered by
12 Southern California Edison and Sempra. Miller Declaration, paragraph 10.

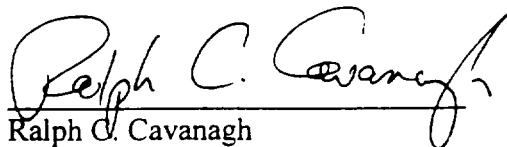
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14 IV.

15 CONCLUSION

16 For all these reasons, NRDC, ED, and UCAN respectfully request that this court
17 grant without delay PG&E's Motion for Authority to Honor its Obligations for Public
18 Purpose Programs.

19 DATED: May 10, 2001

20 Respectfully submitted.

21 

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19
20 DECLARATION OF PETER M. MILLER IN SUPPORT OF
21 MEMORANDUM OF ENVIRONMENTAL AND CONSUMER GROUPS
22 REGARDING DEBTOR'S MOTION FOR AUTHORITY TO HONOR ITS
23 OBLIGATIONS FOR PUBLIC PURPOSE PROGRAMS

24 I, Peter M. Miller, declare as follows:

25 1. I am a Senior Scientist for the Natural Resources Defense Council, a position I
26 have held since 1990. Among my principal activities has been evaluating the impact of
27 California's public purpose programs and advising California regulators and legislators

28 DECLARATION IN SUPPORT OF ENVIRONMENTAL AND CONSUMER GROUPS' MEMORANDUM

1 on energy-efficiency investments by the state's utilities, including the Pacific Gas &
2 Electric Company (PG&E). From 1997-1999, I served as a member of the California
3 Board for Energy Efficiency (CBEE) charged by the California Public Utilities
4 Commission (PUC) with oversight and advisory responsibilities for the state's public
5 purpose energy efficiency program. Prior to that I was a member of the California DSM
6 Measurement Advisory Committee (CADMAC) from its inception in 1994. The
7 CADMAC was a formally-chartered advisory board created by the PUC to resolve
8 conflicts, provide advice, and develop new approaches for measurement and evaluation
9 of energy efficiency programs.
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11
12 2. I make this declaration in support of the Memorandum of Environmental and
13 Consumer Groups in Support of Debtor's Motion for Authority to Honor its Obligations
14 for Public Purpose Programs. This Declaration is based on my personal knowledge of
15 the matters addressed, and if called as a witness I could and would testify competently to
16 the facts stated below.

17 The Role and Urgently Needed Contribution of Public Purpose Programs
18

19 3. Although inexpensive opportunities are available to reduce electricity needs in
20 virtually every sector of California's economy, residential and commercial customers
21 generally will not invest in such opportunities without programmatic support such as
22 financial incentives, education, and extensive marketing. Widely documented market
23 barriers to energy efficiency investment have resulted in statewide electricity
24 consumption that today is at least 20-40 percent higher than cost-minimizing levels.
25

1 4. There are many explanations for the almost universal reluctance to make long-
2 term energy efficiency investments (and the problem is not, of course, limited to
3 California). Decisions about efficiency levels often are made by people who will not be
4 paying the electricity bills, such as landlords or developers of commercial office space.
5 Many buildings are occupied for their entire lives by very temporary owners or renters,
6 each unwilling to make long-term improvements that would mostly reward subsequent
7 users. And sometimes what looks like apathy about efficiency merely reflects inadequate
8 information, time, or resources to evaluate the options, as everyone knows that has
9 rushed to replace a broken water heater, furnace or refrigerator.
10

11 5. For more than two decades, California has worked to overcome these market
12 barriers by dedicating a small fraction of every utility bill to energy efficiency incentives,
13 which cumulatively have yielded significant reductions in the state's electricity needs.
14 Typical programs provide financial incentives to design more energy-efficient buildings
15 or to buy the most energy-efficient equipment available on the market in a particular
16 category (e.g., refrigerators, air conditioners, light bulbs, clothes washers). The
17 California Energy Commission recently estimated that, since 1978, California's portfolio
18 of energy efficiency policies has cut statewide needs by about 10,000 megawatts, or the
19 equivalent of approximately one-fifth of current peak demand. About half of that total
20 was attributed to the incentive programs, which since 1996 have been funded through
21 dedicated surcharges on utility bills. This "Public Purpose Programs" charge accounts
22 for less than three percent of each residential bill (fractions vary for other customer
23 classes). About half of the funds collected are used for energy efficiency programs: the
24 remainder is reserved for other long-term investments that generate significant public
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DECLARATION IN SUPPORT OF ENVIRONMENTAL AND CONSUMER GROUPS' MEMORANDUM

1 benefits, like renewable energy, low-income energy services, and long-term research and
2 development for clean energy technologies.

3 6. Between 1998 and 2000, programs funded through the Public Purpose
4 Programs charge saved California about 500 megawatts, at an average cost of less than
5 three cents per kilowatt-hour saved over the lifetime of the efficiency measures (about
6 one-tenth of the current average wholesale power cost). Frequently over the past six
7 months, the California system has been literally tens of megawatts away from declaring
8 rolling blackouts; on at least five occasions since January, the grid has been overstressed
9 enough to require widespread interruptions of service. Recognizing that the system
10 needs every additional megawatt that we can find, the California PUC in January 2001
11 directed utilities to raise their savings targets and accelerate their efforts to promote
12 efficiency improvements. The target for this year is 250 Megawatts, with PG&E alone
13 responsible for half of the total. This represents a substantial increase compared to last
14 year, and at the time of PG&E's bankruptcy filing, program investment was accelerating
15 in response to the urgent reliability needs of the system.

16 Imminent Damage to California's Energy Efficiency Progress

17 7. On April 6, immediately following its bankruptcy filing, PG&E stopped
18 making energy-efficiency payments from the dedicated state fund for Public Purpose
19 Programs. Numerous PG&E checks to conservation contractors bounced, in some cases
20 only after they had paid their own subcontractors for the work in question. Many
21 elements of the delivery system were affected, since in the weeks immediately preceding
22 the bankruptcy all programs were ramping up to meet urgent summer peak needs.

1 8. Program implementation is often outsourced to contractors. And many of
2 PG&E's energy efficiency contractors are relatively small firms without the financial
3 capacity to carry large unpaid debts for extended periods. Their very survival, and of
4 course their ability to deliver additional savings, now hangs in the balance. More than
5 ten thousand checks are due and owing for work performed before April 6. For example,
6 the statewide residential lighting and appliance program is outsourced to a prime
7 contractor and a set of subcontractors. This program provides incentives and marketing
8 to increase sales of energy-efficient appliances (e.g., refrigerators, air conditioners,
9 clothes washers) and lights. In part as a result of this program, sales of qualifying
10 lighting products are two to three times higher than normal levels. One of the
11 subcontractors is ECOS, Inc. They are a small firm responsible for rebate processing,
12 program tracking, and retail support, and they are owed \$140,000 for program services
13 already rendered. ECOS cannot sustain for much longer a delay in payment of this
14 amount, and without its specialized services, the state will lose urgently needed energy
15 savings in the months immediately ahead. Another illustration involves Express
16 Efficiency, a program that provides incentives to small and medium-sized commercial
17 customers for energy efficiency equipment. American Lighting and Distribution is an
18 independent contractor that works with businesses to install efficient lighting systems
19 under this program. Last year, their efforts resulted in approximately 15 MW of
20 inexpensive and durable electricity savings, earning PG&E's Trade Ally of the Year
21 Award. This year, the company is owed over \$500,000 for work performed prior to the
22 bankruptcy filing. As a result, its suppliers will no longer provide materials on a credit
23 basis. This has severely compromised American Lighting's ability to provide savings.
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1 cutting its potential output by 75%. Finally, the suspension of payments puts in question
2 the security of payments now administered by Southern California Edison and San Diego
3 Gas & Electric, which face their own financial challenges. The threatened damage to
4 California's energy efficiency infrastructure would reverberate far beyond this summer.
5

6 9. I am also concerned about growing threats to the efficient allocation and use of
7 additional Public Purpose Programs funding recently provided through emergency
8 legislation signed by the Governor on April 11, 2001 [Senate Bill 5 and Assembly Bill
9 29 (First Extraordinary Session)]. This legislation was prompted in part by concerns that
10 the utilities' energy efficiency programs were running short of funds due to
11 overwhelming customer response, and some \$246 million in General Fund revenues are
12 dedicated specifically to the needs of "the customers of electric and gas corporations
13 subject to [the California Public Utilities Commission's] jurisdiction." [Senate Bill 5
14 (First Extraordinary Session), section 5(a)]. But concerns about possible bankruptcy
15 issues are clearly an obstacle to rapid deployment of these funds through the utility-
16 administered Public Purpose Programs, particularly for the two major utilities potentially
17 still subject to bankruptcy proceedings. This threatens to delay urgently needed
18 replenishment of depleted program accounts, without which substantial inexpensive
19 energy savings will be lost.
20

21
22 Immediate Public Benefits from Granting PG&E's Motion

23 10. Since its bankruptcy filing, PG&E management has informed me that the
24 company has identified all its unpaid energy efficiency contractors and made advance
25 preparation for clearing its arrearages within five days if its pending motion is granted.
26 In my opinion, this should promptly revive a threatened PG&E delivery system, while
27

1 also helping to remove the cloud over the security of payments for Public Purpose
2 Programs administered by Southern California Edison and San Diego Gas & Electric.

3 I declare under penalty of perjury under the laws of the United States of America
4 and the State of California that the foregoing is true and correct. Executed this 10th day
5 of May, 2001, at San Francisco, California.
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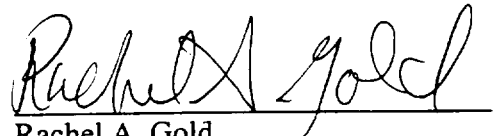


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of MEMORANDUM OF ENVIRONMENTAL AND CONSUMER GROUPS IN SUPPORT OF DEBTOR'S MOTION FOR AUTHORITY TO HONOR ITS OBLIGATIONS FOR PUBLIC PURPOSE PROGRAMS and DECLARATION OF PETER M. MILLER IN SUPPORT OF MEMORANDUM OF ENVIRONMENTAL AND CONSUMER GROUPS REGARDING DEBTOR'S MOTION FOR AUTHORITY TO HONOR ITS OBLIGATIONS FOR PUBLIC PURPOSE PROGRAMS on all parties as listed on the attached service list by causing to be mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on the 10th of May 2001, at San Francisco, California.

A handwritten signature in black ink, appearing to read "Rachel A. Gold", written over a horizontal line.

Rachel A. Gold
Natural Resources Defense Council
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San Francisco, CA 94105
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