

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

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Attorneys for Nevada Irrigation District

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS & ELECTRIC
COMPANY, a California
corporation,

Debtor.

Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

**DECLARATION OF JAMES CHATIGNY IN SUPPORT OF NEVADA IRRIGATION
DISTRICT'S QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER
AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER
PURCHASE CONTRACTS**

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I, James Chatigny, declare:

1. I am General Manager of Nevada Irrigation District ("NID"). I make this Declaration in support of NID's Qualified Opposition to Debtor's Motion for Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts. Unless otherwise stated, I have personal knowledge of the matters set forth herein and if called as a witness would testify to them.

2. Based on my review of NID's business records kept in the ordinary course of business, NID and Debtor executed the Yuba-Bear Project Contract in 1963, and the Rollins Powerhouse Project Contract in 1978. There contracts are collectively referred to herein as the "Contracts." Copies of the Contracts are attached as Exhibits 3 and 7 to the Declaration of Randal S. Livingston filed by Pacific Gas & Electric Company ("PG&E" or "Debtor").

3. Since Debtor filed this bankruptcy case on April 6, 2001 (and for some time before), Debtor has not made any payments to NID under the Contracts. Debtor owes the following amounts for Operating and Maintenance expenses under the Contracts pursuant to Withdrawal Requests submitted by NID to the Trustee under the Contracts:

a. YUBA-BEAR PROJECT

DATE	REQUEST NUMBER	AMOUNT
3/30/01	2021	\$46,531.58
3/30/01	2022	\$36,108.15
4/6/01	2023	\$16,866.10
4/16/01	2024	\$971.04

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DATE	REQUEST NUMBER	AMOUNT
4/16/01	2025	\$35,494.82
4/23/01	2026	\$21,945.42
4/28/01	2029	\$20,172.84
5/11/01	2033	\$5,568.37
4/16/01	2024	\$200.00
4/23/01	2026	\$5,692.84
4/23/01	2027	\$54,840.00
4/23/01	2028	\$130,000.00
4/28/01	2029	\$16,970.29
4/30/01	2030	\$35,491.14
5/08/01	2031	\$1,050.61
5/08/01	2032	\$6,421.43
5/11/01	2034	<u>\$5,032.89</u>
TOTAL		<u>\$439,357.52</u>

b. ROLLINS POWER PROJECT

DATE	REQUEST NUMBER	AMOUNT
3/30/01	1382R	\$1,316.95
3/30/01	1383R	\$2,067.81
4/6/01	1384R	\$251.01
4/16/01	1385R	\$2,319.01
4/23/01	1386R	\$646.89
4/28/01	1389R	\$646.89
4/23/01	1387R	\$3,000.00
4/23/01	1388R	\$6,000.00
4/28/01	1389R	\$1,176.15

4/30/01	1390R	\$2,084.21
5/8/01	1391R	\$274.54
TOTAL		<u>\$19,212.96</u>

4. In addition, Debtor owes semi-annual payments under Paragraph 9(a) of the Contracts. The semi-annual payments are used by NID to make the semi-annual payments owed under a number of long-term revenue bonds issued by NID. Debtor has asserted that it intends to pay only a *pro rata* portion of these payments based on the April 6, 2001 bankruptcy petition date in this case. Moreover, it has been the custom, practice, and agreement of the parties to the Contracts that Debtor make to these payments approximately thirty (30) days before their semi-annual due dates, and Debtor has failed to do so prior to the May 15, 2001 due date. If Debtor fails to make the semi-annual payment, NID will be in default under those bonds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th of May, 2001, at Grass Valley, California.


James Chatigny

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

16 In re .
17 PACIFIC GAS & ELECTRIC
18 COMPANY, a California
19 corporation,
20 Debtor.
21 Federal I.D. No. 94-0742640

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Date: May 25, 2001
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Judge: Honorable Dennis Montali

Accompanying Documents:
1) Declaration of James Chatigny In
Support of Qualified Opposition
2) Proof of Service

22
23 **NEVADA IRRIGATION DISTRICT'S QUALIFIED OPPOSITION TO DEBTOR'S**
24 **MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY**
25 **HYDROELECTRIC POWER PURCHASE CONTRACTS**

1 **I INTRODUCTION**

2 Nevada Irrigation District ("NID") hereby submits its Qualified
3 Opposition ("Opposition") to the Motion For Order Authorizing Assumption of
4 Executory Hydroelectric Power Purchase Contracts ("Motion to Assume") filed by
5 Pacific Gas & Electric Company ("PG&E" or Debtor").

6 NID does not object in principle to the concept of the Motion to
7 Assume. However, since NID is a public agency and since the risks to NID are
8 potentially severe if Debtor should default in performance of its contractual
9 obligations, NID seeks to insure that Debtor, as required by the provisions of 11
10 U.S.C. § 365: (i) will immediately cure all existing defaults under the Yuba-Bear
11 Project Contract and the Rollins Powerhouse Project Contract ("Contracts"), which
12 contracts Debtor seeks to assume; (ii) will be financially able to perform under the
13 Contracts and can provide adequate assurance of its ability to perform under the
14 Contracts; and (iii) will, in fact, perform all of the terms of the Contracts.

15 In addition, NID wants to insure that if Debtor is to assume the
16 Contracts, that the assumption occurs as soon as possible to avoid an impending
17 default on NID's bonds.

18 NID also requests clarification from Debtor as to which "ancillary
19 agreements and amendments" it seeks to assume under the Motion.

20 **II. SUMMARY OF FACTS**

21
22 **A. BACKGROUND**

23 NID is a public water agency providing water resources to the public in
24 Nevada County.

25 In 1963, NID and Debtor entered into the Yuba-Bear Contract. In
26 1978, NID and Debtor entered the Rollins Powerhouse Project Contract. [See
27 Declaration of James Chatigny in Support of NID's Limited Opposition ("Chatigny
28

1 Decl.") at ¶2. See also Exhibits 3 and 7 to Declaration of Randall S. Livingston
2 filed by Debtor in support of the Motion.]

3 The Contracts were part of a set of interrelated transactions whereby
4 NID would be able to construct, maintain and operate facilities ("Facilities") to
5 provide residents of Nevada County with energy and water. As an integral part of
6 the transaction, NID issued public revenue bonds ("Bonds").

7 The Contracts imposed on NID the burden of financing, building,
8 maintaining and operating the Facilities and all related licenses, permits and
9 contracts (subject to certain limitations and conditions) and imposed on Debtor the
10 obligation of paying fixed amounts which were calculated to allow NID to retire the
11 Bonds and the obligation of paying all expenses of maintaining and operating the
12 Facility and all related licenses, permits and contracts.

13 The Contracts provided in essence for two types of payments after the
14 Facility had been completed. First under Section 9(a) of the Contracts, Debtor was
15 to make semi-annual payments in specified amounts which were calculated to
16 match the payments owed by NID under its Bonds (collectively the "9a Payments").
17 The 9a Payments were determined based upon the payments on the Bonds and the
18 due dates were set to allow for payments on the Bonds. The 9a Payments were
19 not calculated or tied in any way to the receipt of electrical power by Debtor from
20 NID. Debtor was obligated to make the 9a Payments on the dates specified even if
21 the Facility was not in operation and no electrical power were being generated.
22 Generally, no discounts or pro-rations were permitted under the Contract except
23 prior to full completion of the Facility. Prior to full completion of the Facility, the
24 Contract provided for one method of calculating the amounts owed under the
25 Contract; after full completion, the Contract provided another procedure for
26 payment. The very first payment under Section 9a was pro-rated as specified. The
27 pro-ration allowed for the change of payment procedures to that under Section 9a.
28

1 The second type of payments called for after completion of
2 construction was under Section 9(b) of the Contracts. Debtor was to pay all
3 expenses of maintaining and operating the Facility and all related licenses, permits
4 and contracts together with other related expenses (collectively the "9b
5 Payments"). The 9b Payments were to be provided monthly upon request of NID.
6 (Such requests are usually referred to as "Withdrawal Requests".)

7 The course of dealing between Debtor and NID developed that the NID
8 would submit payment requests under Section 9b periodically as incurred (i.e. more
9 frequently than monthly) and payment would be processed by Debtor as received.

10 In Debtor's Motion to Assume, Debtor explains to the Court that the
11 Contracts provide low cost energy to Debtor; the Motion to Assume even specifies
12 a per unit price. However nothing in the Contracts set any price. The Contracts
13 call for two fixed payments on specified dates and ongoing expense payments on a
14 going-forward basis. Debtor's calculations are presumably determined by
15 estimating the energy to be provided by the Facilities and computing a per unit
16 price based upon an estimate of the anticipated 9b Payments and the 9a Payments.

17 **B. DEFAULT**

18 Debtor is currently in default under the Contracts as follows.

19 First, Debtor has not made certain 9b Payments requested by NID both
20 before and after the date on which Debtor commenced this bankruptcy case
21 ("Petition Date"). NID is owed the sum of approximately \$439,357.52 (Yuba-Bear
22 Project) and \$19,212.96 (Rollins Power Project) in connection with such payments.
23 Chatigny Decl. at ¶ 3. Notwithstanding the defaults, NID has continued to perform
24 under the Contracts following the Petition Date.

25 Second, Debtor has advised NID that on May 15, 2001 it will not pay
26 the full amount of the 9a Payments which come due on May 15, 2001, (or earlier
27 based on the practices of the parties). Debtor has stated that it would be pro-rating
28 the payment amount based on the Petition Date. Such pro-ration was done

1 despite the fact that the payment was due in full on May 15 (or earlier), and was
2 not subject to pro-ration since no amounts were owed prior to the Petition Date.

3 **C. RISKS TO NID**

4 First, if the 9a Payments are not made on a timely basis (and one
5 payment is already due on May 15, 2001), NID would be in default on its Bonds.
6 NID's credit rating would be adversely affected and thereafter all revenue bonds or
7 other debt issued by NID would require that NID pay a higher interest rate. Such a
8 higher interest rate would be applicable to all future revenue bonds of such other
9 debt for the life of those bonds or other debt. The actual amounts which NID
10 would be required to pay is difficult to calculate or estimate at present; however, it
11 is obvious that the actual amount of additional interest would be quite large when
12 calculated over the life of all such bonds/debt. In the alternative, NID could
13 consider making all or a portion of the bond payments by liquidating other assets (if
14 it had sufficient assets). This alternative would similarly have an extremely adverse
15 impact on the NID's financial condition and a significant disruption in NID's cash
16 flow since NID's budget had not contemplated a bankruptcy of Debtor.

17 Second, if the 9b Payments are not made, the Facility would quickly
18 cease to operate since its operation and maintenance expenses would immediately
19 stop. NID would be left with a defunct operation. All public money spent to date
20 would have been in effect wasted in large part.

21 Debtor's Motion to Assume also implies that any negative impact on
22 NID would be minimal since it could look for any alternate buyer for its electric
23 power. While it is true that NID ultimately could find an alternate buyer, NID would
24 still suffer great harm in such a situation. There would be extensive startup
25 expenses (if the Facility were to shut down) in addition to the ordinary and
26 customary Operating Maintenance Expenses. All of these expenses NID would
27 have to pay with its own funds at a time when NID would be losing the revenues
28 which otherwise would have been paid by Debtor.

1 Here, Debtor is in default under the Contract by failing to make any 9a
2 payments, and by not making any (or incomplete) 9b payments. Chatigny Decl. at
3 ¶¶ 3 and 4. Debtor does not recognize these specific defaults in its motion, but
4 instead refers almost exclusively to an "aggregate" monetary default of
5 "approximately \$1.62 million" under all of the hydroelectric power contracts that it
6 presently seeks to assume. Debtor's MPA at 10:27-28. Debtor then asserts,
7 without evidentiary support, that it has more than adequate cash reserves to cure
8 the arrears. *Id.* at 11:2. While this statement may be true, Debtor has not met its
9 evidentiary burden on this motion. NID seeks testimony or a verified statement
10 from an authorized agent of Debtor that Debtor: (1) has the ability to cure the
11 defaults described above; and (2) will, in fact, cure all such defaults immediately
12 upon, or promptly upon, entry of any order granting this motion. Debtor cannot
13 meet its burden on this Motion without this evidence, and has not provided it in Mr.
14 Livingston's Declaration. NID requests that the Court not grant Debtor's motion
15 until Debtor provides this evidence.

16 **C. The Court Should Only Grant Debtor's Motion If Debtor Provides Adequate**
17 **Assurance Of Future Performance Under The Contract**

18 Bankruptcy Code Section 365(b) (11 U.S.C. § 365(b)) also provides
19 that Debtor must provide adequate assurances of future performance under the
20 Contract in order to assume it. 11 U.S.C. § 365(a) and (b)(1)(C).² Debtor has the

21 _____
22 ² These subsections provide:

23 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
24 this section, the trustee, subject to the court's approval, may assume or reject any executory
contract or unexpired lease of the debtor.

25 (b)(1) If there has been a default in the executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of assumption of such contract or
lease, the trustee –

27 (C) provides adequate assurance of future performance of such contract or lease.

28 11 U.S.C. § 365(a) and (b)(1)(C).

1. burden of providing adequate assurance of future performance under the Contract.
2 See *Id.* See also *Superior Toy, supra.*

3 Here, Debtor's motion again contains conclusory statements that it will
4 have available cash to make all future payments under the Contract, and that it
5 intends to make such payments. Debtor's MPA at 11:3-17. Again, while these
6 statements may be accurate, Mr. Livingston's Declaration does not establish these
7 necessary evidentiary facts, and says nothing about future performance of Debtor's
8 non-monetary obligations under the Contract. NID is entitled to this evidence.

9 Debtor's other proposed form of adequate assurance is also
10 unsupported. Debtor asserts that a "court-ordered liquidation of these contracts,"
11 or an independent sale of the subject hydroelectricity would yield sufficient cash to
12 cover NID's damages from breach. Any breach by Debtor, however, would result
13 in delayed payments to NID, which, in turn, would result in defaults by NID on its
14 bond obligations that could have a negative long-term impact on NID's bond rating
15 and ability to obtain financing. This delay undercuts any claim of adequate
16 assurance of future performance by Debtor as performance, in fact, would be
17 altered to the detriment of NID.

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IV CONCLUSION

Based on the foregoing, NID requests that the Court condition any order approving Debtor's assumption of the Contract on Debtor specifying in greater detail the contracts to be assumed, curing all defaults under the Contract and establishing adequate assurances of future performance under the Contracts.

DATED: May 11, 2001.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By 
Peter S. Muñoz
Attorneys for
Nevada Irrigation District

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9 Attorneys for Oroville-Wyandotte Irrigation District

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

13
14 In re

15 PACIFIC GAS & ELECTRIC
16 COMPANY, a California
17 corporation,

18 Debtor.

19 Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001

Time: 1:30 p.m.

Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111

Judge: Honorable Dennis Montali

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21
22 **DECLARATION OF PATRICIA A. SANDS IN SUPPORT OF OROVILLE-**
23 **WYANDOTTE IRRIGATION DISTRICT'S QUALIFIED OPPOSITION TO DEBTOR'S**
24 **MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY**
25 **HYDROELECTRIC POWER PURCHASE CONTRACTS**
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I, Patricia A. Sands, declare:

1. I am Treasurer and Business Manager of Oroville-Wyandotte Irrigation District ("OWID"). I make this Declaration in support of OWID's Qualified Opposition to Debtor's Motion for Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts. Unless otherwise stated, I have personal knowledge of the matters set forth herein and if called as a witness would testify to them.

2. Based on my review of OWID's business records kept in the ordinary course of business, OWID and Debtor executed the South Fork Project Contract in 1960 and the Sly Creek Powerhouse Project Contract in 1981. These contracts are collectively referred to herein as the "Contracts," copies of which is attached as Exhibits 2 and 8 to the Declaration of Randal S. Livingston filed by Pacific Gas & Electric Company ("PG&E" or "Debtor").

3. Since Debtor filed this bankruptcy case on April 6, 2001 (and for some time before), Debtor has not made any payments under the Contracts. Debtor owes the following amounts for Operating and Maintenance expenses under the Contracts (i.e. "9b payments") pursuant to Withdrawal Requests submitted by OWID to the Trustee under the Contracts:

a. South Fork Project Contract:

Date	Request Number	Amount
April 4, 2001 (Revised May 3, 2001)	1417	\$186,433.76
April 30, 2001 (Revised May 9, 2001)	1418	\$97,712.28
Total		\$284,146.04

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b. Sly Creek Project:

Date	Request Number	Amount
April 4, 2001	687-S	\$29,525.98

4. In addition, Debtor owes semi-annual payments under Paragraph 9(a) of the Contracts in the sum of \$1,564,000.00 (South Fork Project Contract) and approximately \$515,239.00 (Sly Creek Powerhouse Project Contract) as of July 1, 2001. The semi-annual payments are used by OWID to make the semi-annual payments owed under a number of long-term revenue bonds issued by OWID. If Debtor fails to make the semi-annual payment, OWID will be in default under those bonds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11 of May, 2001, at ORVILLE, California.


Patricia A. Sands

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13 UNITED STATES BANKRUPTCY COURT
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16 In re
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19 corporation,
20 Debtor.
21 Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

Accompanying Documents:
1) Declaration of Patricia A. Sands In
Support of Qualified Opposition
2) Proof of Service

22
23 **OROVILLE-WYANDOTTE IRRIGATION DISTRICT'S QUALIFIED OPPOSITION TO**
24 **DEBTOR'S MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY**
25 **HYDROELECTRIC POWER PURCHASE CONTRACTS**

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I. INTRODUCTION

Oroville-Wyandotte Irrigation District ("OWID") hereby submits its Qualified Opposition ("Opposition") to the Motion For Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts ("Motion to Assume") filed by Pacific Gas & Electric Company ("PG&E" or Debtor).

OWID does not object in principle to the concept of the Motion to Assume. However, since OWID is a public agency and since the risks to OWID are potentially severe if Debtor should default in performance of its contractual obligations, OWID seeks to insure that Debtor, as required by the provisions of 11 U.S.C. § 365: (i) will immediately cure all existing defaults under the South Fork Project Contract and the Sly Creek Powerhouse Project Contract ("Contracts") which Contracts Debtor seeks to assume; (ii) will be financially able to perform under the Contracts and can provide adequate assurance of its ability to perform under the Contracts; and (iii) will, in fact, perform all of the terms of the Contracts.

In addition, OWID wants to insure that, if Debtor is to assume the Contracts, that the assumption occurs as soon as possible to avoid an impending default on OWID's bonds.

Finally, OWID also requests clarification from Debtor as to which "ancillary agreements and amendments" it seeks to assume under the Motion.

II. SUMMARY OF FACTS

A. BACKGROUND

OWID is a public water agency providing water resources to the public in the Oroville-Wyandotte area.

In 1960, OWID and Debtor entered into the South Fork Project Contract ("South Fork Contract"). In 1981 OWID and Debtor entered into the Sly Creek Powerhouse Contract ("Sly Creek Contract"). Declaration of Patricia A. Sands In Support of OWID's Limited Opposition ("Sands Decl.") at ¶ 2. See also

1 Exhibits 2 and 8 to Declaration of Randall S. Livingston filed by Debtor in support of
2 the Motion.]

3 The Contracts were part of a set of interrelated transactions whereby
4 OWID would be able to construct, maintain and operate facilities ("Facilities") to
5 provide residents in the Oroville-Wyandotte area with energy and water. As an
6 integral part of the transaction, OWID issued public revenue bonds ("Bonds").

7 The Contracts imposed on OWID the burden of financing, building,
8 maintaining and operating the Facilities and all related licenses, permits and
9 contracts (subject to certain limitations and conditions) and imposed on Debtor the
10 obligation of paying fixed amounts which were calculated to allow YCWA to retire
11 the Bonds and the obligation of paying all expenses of maintaining and operating
12 the Facility and all related licenses, permits and contracts.

13 The Contracts provided for several types of payments.

14 First, the Contract provided in essence for two types of payments
15 after the Facilities had been completed. First, under Section 9(a) of the Contract,
16 Debtor was to make semi-annual payments in specified amounts which were
17 calculated to match the payments owed by OWID under its Bonds (collectively the
18 "9a Payments"). The 9a Payments were determined based upon the payments on
19 the Bonds and the due dates were set to allow for payments on the Bonds. The 9a
20 Payments were not calculated or tied in any way to the receipt of electrical power
21 by Debtor from OWID. Debtor was obligated to make the 9a Payments on the
22 dates specified even if the Facility was not in operation and no electrical power
23 were being generated. Generally, no discounts or pro-rations were permitted under
24 the Contract except prior to full completion of the Facility. Prior to full completion
25 of the Facility, the Contract provided for one method of calculating the amounts
26 owed under the Contract; after full completion, the Contract provided another
27 procedure for payment. The very first payment under Section 9a was pro-rated as
28

1 specified. The pro-ration allowed for the change of payment procedures to that
2 under Section 9a.

3 The second type of post-completion payments called for under the
4 Contracts was under Section 9(b) of the Contracts. Debtor was to pay all
5 expenses of maintaining and operating the Facilities and all related licenses, permits
6 and contracts together with other related expenses (collectively the "9b
7 Payments"). The 9b Payments were to be provided monthly upon request of
8 OWID. (Such requests are usually referred to as "Withdrawal Requests".)

9 The course of dealing between Debtor and OWID developed that the
10 OWID would submit payment requests under Section 9b periodically as incurred
11 (i.e. more frequently than monthly) and payment would be processed by Debtor as
12 received.

13 In Debtor's Motion to Assume, Debtor explains to the Court that the
14 Contracts provide low cost energy to Debtor; the Motion to Assume even specifies
15 a per unit price. However nothing in the Contracts sets any price. The Contracts
16 call for two fixed payments on specified dates and ongoing expense payments on a
17 going-forward basis. Debtor's calculations are presumably determined by
18 estimating the energy to be provided by the Facility and computing a per unit price
19 based upon an estimate of the anticipated 9b Payments and the 9a Payments.

20 In addition to the 9a Payments and the 9b Payments, after completion
21 of the Facility, Debtor was required under Section 10 of the South Fork Contract to
22 pay additional amounts based on the water usage at various power plants specified
23 under that Contract.

24 In addition to the 9a Payments and the 9b Payments, after completion
25 of the Facility, Debtor was required under Section 9(c) of the Sly Creek Contract to
26 pay additional amounts based upon the kilowatt hours used at rates specified under
27 that Contract ("9c Payments").

28

1 **B. DEFAULT**

2 Debtor is currently in default under the Contracts. First, Debtor has
3 not made certain 9b Payments requested by OWID both before and after the date
4 which Debtor commenced the Bankruptcy case herein ("Petition Date"). Therefore
5 OWID is owed the sum of approximately \$284,146.04 (South Fork Project) and
6 \$29,525.98 (Sly Creek Project) in connection with such payments. Sands Decl. at
7 ¶ 3. Notwithstanding the defaults, OWID has continued to perform under the
8 Contracts following the Petition Date.

9 **C. RISKS TO OWID**

10 Debtor's Motion to Assume glosses over the potential risks to OWID
11 which are potentially extremely severe.

12 First, if the 9a Payments are not made on a timely basis (and
13 payments are already due based upon the practices of the parties, see Sands Decl.
14 at paragraph 4), OWID would be in default on its Bonds. OWID's credit rating
15 would be adversely affected and thereafter all revenue bonds or other debt issued
16 by OWID would require that OWID pay a higher interest rate. Such a higher
17 interest rate would be applicable to all future revenue bonds or debt for the life of
18 those bonds or of such debt. The actual amounts that OWID would be required to
19 pay is difficult to calculate or estimate at present; however, it is obvious that the
20 actual amount of additional interest would be quite large when calculated over the
21 life of all such bonds/debt. In the alternative, OWID could consider making all or a
22 portion of the bond payments by liquidating other assets (if it had sufficient assets).
23 This alternative similarly would have an extremely adverse impact on the OWID's
24 financial condition and a significant disruption in OWID's cash flow since OWID's
25 budget had not contemplated a bankruptcy of Debtor.

26 Second, if the 9b Payments are not made, the Facility would quickly
27 cease to operate since its operation and maintenance expenses would immediately
28

1 stop. OWID would be left with a defunct operation. All public money spent to date
2 would have been in effect wasted in large part.

3 Debtor's Motion to Assume also implies that any negative impact on
4 OWID would be minimal since it could look for any alternate buyer for its electric
5 power. While it is true that OWID could ultimately find an alternate buyer, OWID
6 would still suffer great harm in such a situation. There would be extensive startup
7 expenses (if the Facilities were to shut down) in addition to the ordinary and
8 customary Operating Maintenance Expenses. All of these expenses OWID would
9 have to pay with its own funds at a time when OWID would be losing the revenues
10 which otherwise would have been paid by Debtor.

11 Therefore, OWID would be paying (i) higher operating and maintenance
12 expenses and (ii) higher interest on its bonds, all at a time when it would have no
13 income from the Facility with which to pay such increased expenses and interest.

14 III. QUALIFIED OPPOSITION

15 A. Debtor Should Specify in Greater Detail the Contracts To Be Assumed

16 The Motion to Assume states that Debtor is seeking to assume certain
17 specified agreements which are listed in the Motion to Assume; it also states that
18 Debtor will assume certain "ancillary agreements and amendments".

19 As mentioned above, the Contract between Debtor and OWID are part
20 of a number of contracts which are related to some extent more or less. Debtor
21 should be required to specify the "ancillary agreements and amendments" with
22 more particularity so that the parties to said contracts can determine whether there
23 are defaults under those contracts and require compliance therewith.

24 B. The Court Should Grant Debtor's Motion Only If Debtor Cures All Defaults 25 Under The Contracts

26 Bankruptcy Code Section 365 (11 U.S.C. § 365) permits Debtor to
27 assume the Contracts only if it cures all defaults. 11 U.S.C. § 365(a) and (b)(1)(A)
28

1 and (B).¹ Debtor has the burden to prove its ability to satisfy these obligations.
2 See *Id.* See also *Superior Toy and Manuf. Co.*, 78 F. 3d 1169, 1172 (7th Cir.
3 1996).

4 Here, Debtor is in default under the Contracts by failure to make 9b
5 Payments. Sands Decl. at ¶ 3. Debtor does not recognize these specific defaults
6 in its motion, but instead refers almost exclusively to an "aggregate" monetary
7 default of "approximately \$1.62 million" under all of the hydroelectric power
8 contracts that it presently seeks to assume. Debtor's MPA at 10:27-28. Debtor
9 then asserts, without evidentiary support, that it has more than adequate cash
10 reserves to cure the arrears. *Id.* at 11:2. While this statement may be true, Debtor
11 has not met its evidentiary burden on this motion. OWID seeks testimony or a
12 verified statement from an authorized agent of Debtor that Debtor: (1) has the
13 ability to cure the defaults described above; and (2) will, in fact, cure all such
14 defaults immediately upon, or promptly upon, entry of any order granting this
15 motion. Debtor cannot meet its burden on this Motion without this evidence, and
16 has not provided it in Mr. Livingston's Declaration. OWID requests that the Court
17 not grant Debtor's motion until Debtor provides this evidence.

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19

20 _____
21 ¹ These subsections provide:

22 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
23 this section, the trustee, subject to the court's approval, may assume or reject any executory
contract or unexpired lease of the debtor.

24 (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the
25 trustee may not assume such contract or lease unless, at the time of the assumption of such
contract or lease, the trustee -

26 (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

27 (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a
28 party other than the debtor to such contract or lease, for any actual pecuniary loss to such party
resulting from such default; 11 U.S.C. § 365(a) and (b)(1)(A) and (B).

1 **C. The Court Should Only Grant Debtor's Motion If Debtor Provides Adequate**
2 **Assurance Of Future Performance Under The Contracts**

3 Bankruptcy Code Section 365(b) (11 U.S.C. § 365(b)) also provides
4 that Debtor must provide adequate assurances of future performance under the
5 Contracts in order to assume it. 11 U.S.C. § 365(a) and (b)(1)(C).² Debtor has the
6 burden of providing adequate assurance of future performance under the Contracts.
7 See *Id.* See also *Superior Toy, supra.*

8 Here, Debtor's motion again contains conclusory statements that it will
9 have available cash to make all future payments under the Contracts, and that it
10 intends to make such payments. Debtor's MPA at 11:3-17. Again, while these
11 statements may be accurate, Mr. Livingston's Declaration does not establish these
12 necessary evidentiary facts, and says nothing about future performance of Debtor's
13 non-monetary obligations under the Contracts. OWID is entitled to this evidence.

14 Debtor's other proposed form of adequate assurance is also
15 unsupported. Debtor asserts that a "court-ordered liquidation of these contracts,"
16 or an independent sale of the subject hydroelectricity would yield sufficient cash to
17 cover OWID's damages from breach. Any breach by Debtor, however, would result
18 in delayed payments to OWID, which, in turn, would result in defaults by OWID on
19 its bond obligations that could have a negative long-term impact on OWID's bond
20 rating and ability to obtain financing. This delay undercuts any claim of adequate

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22 ² These subsections provide:

23 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
24 this section, the trustee, subject to the court's approval, may assume or reject any executory
contract or unexpired lease of the debtor.

25 (b)(1) If there has been a default in the executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of assumption of such contract or
lease, the trustee –

27 (C) provides adequate assurance of future performance of such contract or lease.

28 11 U.S.C. § 365(a) and (b)(1)(C).


1 assurance of future performance by Debtor as performance, in fact, would be
2 altered to the detriment of OWID.

3 **IV. CONCLUSION**

4 Based on the foregoing, OWID requests that the Court condition any
5 order approving Debtor's assumption of the Contracts on Debtor specifying in
6 greater detail the contracts to be assumed, curing all defaults under the Contracts,
7 and establishing adequate assurances of future performance.

8
9 DATED: May 11, 2001.

10 CROSBY, HEAFEY, ROACH & MAY
11 Professional Corporation

12 By 
13 Peter S. Muñoz
14 Attorneys for
15 Oroville-Wyandotte Irrigation
16 District
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CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

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Gregg M. Ficks (State Bar No. 148093)
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7 Facsimile: (415) 391-8269

8 Attorneys for Placer County Water Agency

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS & ELECTRIC
COMPANY, a California
corporation,

Debtor.

Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

Accompanying Documents:
1) Declaration of Patricia A. Anders In
Support of Qualified Opposition
2) Proof of Service

**PLACER COUNTY WATER AGENCY'S QUALIFIED OPPOSITION TO DEBTOR'S
MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY
HYDROELECTRIC POWER PURCHASE CONTRACTS**

1 **I. INTRODUCTION**

2 Placer County Water Agency ("PCWA") hereby submits its Qualified
3 Opposition ("Opposition") to the Motion For Order Authorizing Assumption of
4 Executory Hydroelectric Power Purchase Contracts ("Motion to Assume") filed by
5 Pacific Gas & Electric Company ("PG&E" or "Debtor").

6 PCWA does not object in principle to the concept of the Motion to
7 Assume. However, since PCWA is a public agency and since the risks to PCWA
8 are potentially severe if Debtor should default in performance of its contractual
9 obligations, PCWA seeks to insure that Debtor, as required by the provisions of 11
10 U.S.C. 365: (i) will immediately cure all existing defaults under the Middle Fork
11 Project Contract between Placer County Water Agency and Pacific Gas and Electric
12 Company ("Contract") which Debtor seeks to assume; (ii) will be financially able to
13 perform under the Contract and can provide adequate assurance of its ability to
14 perform under the Contract; and (iii) will, in fact, perform all of the terms of the
15 Contract.

16 In addition, PCWA wants to insure that if Debtor is to assume the
17 Contract that the assumption occurs as soon as possible to avoid an impending
18 default on PCWA's bonds.

19 Finally, PCWA also requests clarification from Debtor as to which
20 "ancillary agreements and amendments" it seeks to assume under the Motion.

21 **II. SUMMARY OF FACTS**

22
23 **A. BACKGROUND**

24 PCWA is a public water agency providing water resources to the public
25 in Placer County.

26 In 1963, PCWA and Debtor entered into the Contract. [See
27 Declaration of Patricia A. Anders In Support of PCWA's Limited Opposition
28

1 ("Anders Decl.") at ¶ 2. See also Exhibit 4 to Declaration of Randall S. Livingston
2 filed by Debtor in support of the Motion.]

3 The Contract was part of a set of interrelated transactions whereby
4 PCWA would be able to construct, maintain and operate a facility ("Facility") to
5 provide residents of Placer County with energy and water. As an integral part of
6 the transaction, PCWA issued public revenue bonds ("Bonds").

7 The Contract imposed on PCWA the burden of financing, building,
8 maintaining and operating the Facility and all related licenses, permits and contracts
9 (subject to certain limitations and conditions) and imposed on Debtor the obligation
10 of paying fixed amounts which were calculated to allow YCWA to retire the Bonds
11 and the obligation of paying all expenses of maintaining and operating the Facility
12 and all related licenses, permits and contracts.

13 The Contract provided in essence for two types of payments after the
14 Facility had been completed. First under Section 9(a) of the Contract, Debtor was
15 to make semi-annual payments in specified amounts which were calculated to
16 match the payments owed by PCWA under its Bonds (collectively the "9a
17 Payments"). The 9a Payments were determined based upon the payments on the
18 Bonds and the due dates were set to allow for payments on the Bonds. The 9a
19 Payments were not calculated or tied in any way to the receipt of electrical power
20 by Debtor from PCWA. Debtor was obligated to make the 9a Payments on the
21 dates specified even if the Facility was not in operation and no electrical power
22 were being generated. Generally, no discounts or pro-rations were permitted
23 under the Contract except prior to full completion of the Facility. Prior to full
24 completion of the Facility, the Contract provided for one method of calculating the
25 amounts owed under the Contract; after full completion, the Contract provided
26 another procedure for payment. The very first payment under Section 9a was pro-
27 rated as specified. The pro-ration allowed for the change of payment procedures to
28 that under Section 9a.

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The second type of payments called for after completion of construction was under Section 9(b) of the Contract. Debtor was to pay all expenses of maintaining and operating the Facility and all related licenses, permits and contracts together with other related expenses (collectively the "9b Payments"). The 9b Payments were to be provided monthly upon request of PCWA. (Such requests are usually referred to as the "Withdrawal Requests.")

The course of dealing between Debtor and PCWA developed that the PCWA would submit payment requests under Section 9b periodically as incurred (i.e. more frequently than monthly) and payment would be processed by Debtor as received.

In Debtor's Motion to Assume, Debtor explains to the Court that the Contract provides low cost energy to Debtor; the Motion to Assume even specifies a per unit price. However nothing in the Contract sets any price for energy (except for the period prior to completion of the Facility). The Contract calls for two fixed payments on specified dates and ongoing expense payments on a going-forward basis. Debtor's calculations are presumably determined by estimating the energy to be provided by the Facility and computing a per unit price based upon the known 9a Payments and an estimate of the anticipated 9b Payments.

B. DEFAULT

Debtor is currently in default under the Contracts as set forth below. First, Debtor failed to make certain 9b Payments requested by PCWA both before and after the date on which Debtor commenced the Bankruptcy case herein ("Petition Date"). PCWA is owed approximately \$574,712.84 (pre- and post-petition) in connection with such payments. Anders Decl. at ¶ 4. Notwithstanding the defaults, PCWA has continued to perform under the Contract following the Petition Date.

1 Second, Debtor has advised PCWA that on May 15, 2001 it will not
2 pay the full amount of the 9a Payment which comes due on May 15, 2001 but
3 instead will pay only \$1,186,458.33, rather than the entire amount of the 9a
4 Payment which is \$2,512,500. Apparently, Debtor has calculated this amount by
5 pro-rating the specified payment amount from the Petition Date. Such pro-ration
6 was done despite the fact that the payment is due in full on May 15 and is not
7 subject to pro-ration since no amount was owed prior to the Petition Date as
8 described above.

9 In addition to the defaults specified above, PCWA believes that Debtor
10 is not in compliance with the Contract in that in the past it has not provided
11 sufficient funds to maintain the Facility in an appropriate manner pursuant to the
12 Contract. However, PCWA acknowledges that Debtor may dispute the nature and
13 extent of expenses which PCWA believes is appropriate. The Contract provides
14 that if there should be a dispute between PCWA and Debtor under the Contract,
15 the dispute would be subject to arbitration. PCWA is willing to allow the
16 assumption of the Contract with the understanding that: (i) the dispute would be
17 arbitrated after the assumption and resolved in a reasonably prompt manner; and (ii)
18 any amount determined by arbitration to be owed by Debtor must thereafter be
19 promptly paid. PCWA does not take the position that this particular default must
20 be cured before assumption.

21 **C. RISKS TO PCWA**

22 Debtor's Motion to Assume glosses over the potential risks to PCWA
23 which are potentially extremely severe.

24 First, if the 9a Payments are not made on a timely basis (and one
25 payment is already due on May 15, 2001), PCWA would be in default on its Bonds.
26 PCWA's credit rating would be adversely affected and thereafter all revenue bonds
27 or other debt issued by PCWA would require that PCWA pay a higher interest rate.
28 Such a higher interest rate would be applicable to all future revenue bonds or other

1 debt for the life of those bonds or such debt. The actual amounts which PCWA
2 would be required to pay is difficult to calculate or estimate at present; however, it
3 is obvious that the actual amount of additional interest would be quite large when
4 calculated over the life of all such bonds/debt. PCWA does not have the alternative
5 of making the bond payments itself due to the size of such payments.

6 Second, if the 9b Payments are not made, the Facility would quickly
7 cease to operate since its operation and maintenance expenses would immediately
8 stop. PCWA would be left with a defunct operation. All public money spent to
9 date would have been in effect wasted in large part.

10 Debtor's Motion to Assume also implies that any negative impact on
11 PCWA would be minimal since it could look for any alternate buyer for its electric
12 power. While it is true that PCWA could ultimately find an alternate buyer, PCWA
13 would still suffer great harm in such a situation. There would be extensive startup
14 expenses (if the Facility were to shut down) in addition to the ordinary and
15 customary Operating Maintenance Expenses. All of these expenses PCWA would
16 have to pay with its own funds at a time when PCWA would be losing the revenues
17 which otherwise would have been paid by Debtor.

18 Therefore, PCWA would be paying (i) higher operating and
19 maintenance expenses and (ii) higher interest on its bonds, all at a time when it
20 would have no income from the Facility with which to pay such increased expenses
21 and interest.

22 III QUALIFIED OPPOSITION

23 A. Debtor Should Specify in Greater Detail the Contracts To Be Assumed

24 The Motion to Assume states that Debtor is seeking to assume certain
25 specified agreements which are listed in the Motion to Assume; it also states that
26 Debtor will assume certain "ancillary agreements and amendments".

27 As mentioned above, the Contract between Debtor and PCWA are part
28 of a number of contracts which are related to some extent more or less. Debtor

1 should be required to specify the "ancillary agreements and amendments" with
2 more particularity so that the parties to said contracts can determine whether there
3 are defaults under those contracts and require compliance therewith.

4 **B. The Court Should Grant Debtor's Motion Only If Debtor Cures All Defaults**
5 **Under The Contract**

6 Bankruptcy Code Section 365 (11 U.S.C. § 365) permits Debtor to
7 assume the Contract only if it cures all defaults. 11 U.S.C. § 365(a) and (b)(1)(A)
8 and (B).¹ Debtor has the burden to prove its ability to satisfy these obligations.
9 See *Id.* See also *Superior Toy and Manuf. Co.*, 78 F. 3d 1169, 1172 (7th Cir.
10 1996).

11 Here, Debtor is in default under the Contract by: (1) not making 9a
12 Payments; (2) not making 9b Payments; and (3) not providing sufficient funds to
13 maintain the facility. Anders Decl. at ¶¶ 4 and 5. Debtor does not recognize these
14 specific defaults in its motion, but instead refers almost exclusively to an
15 "aggregate" monetary default of "approximately \$1.62 million" under all of the
16 hydroelectric power contracts that it presently seeks to assume. Debtor's MPA at
17 10:27-28. Debtor then asserts, without evidentiary support, that it has more than
18 adequate cash reserves to cure the arrears. *Id.* at 11:2. While this statement may
19 be true, Debtor has not met its evidentiary burden on this motion. PCWA seeks

20 _____
21 ¹ These subsections provide:

22 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
23 this section, the trustee, subject to the court's approval, may assume or reject any executory
24 contract or unexpired lease of the debtor.

24 (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the
25 trustee may not assume such contract or lease unless, at the time of the assumption of such
26 contract or lease, the trustee -

26 (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

27 (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a
28 party other than the debtor to such contract or lease, for any actual pecuniary loss to such party
resulting from such default; 11 U.S.C. § 365(a) and (b)(1)(A) and (B).

1 testimony or a verified statement from an authorized agent of Debtor that Debtor:
2 (1) has the ability to cure the defaults described above; and (2) will, in fact, cure all
3 such defaults immediately upon, or promptly upon, entry of any order granting this
4 motion. Debtor cannot meet its burden on this Motion without this evidence, and
5 has not provided it in Mr. Livingston's Declaration. PCWA requests that the Court
6 not grant Debtor's motion until Debtor provides this evidence.

7 **C. The Court Should Only Grant Debtor's Motion If Debtor Provides Adequate**
8 **Assurance Of Future Performance Under The Contract**

9 Bankruptcy Code Section 365(b) (11 U.S.C. § 365(b)) also provides
10 that Debtor must provide adequate assurances of future performance under the
11 Contract in order to assume it. 11 U.S.C. § 365(a) and (b)(1)(C).² Debtor has the
12 burden of providing adequate assurance of future performance under the Contract.
13 See *Id.* See also *Superior Toy, supra.*

14 Here, Debtor's motion again contains conclusory statements that it will
15 have available cash to make all future payments under the Contract, and that it
16 intends to make such payments. Debtor's MPA at 11:3-17. Again, while these
17 statements may be accurate, Mr. Livingston's Declaration does not establish these
18 necessary evidentiary facts, and says nothing about future performance of Debtor's
19 non-monetary obligations under the Contract. PCWA is entitled to this evidence.
20

21 _____
22 ² These subsections provide:

23 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
24 this section, the trustee, subject to the court's approval, may assume or reject any executory
contract or unexpired lease of the debtor.

25 (b)(1) If there has been a default in the executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of assumption of such contract or
lease, the trustee -

27 (C) provides adequate assurance of future performance of such contract or lease.

28 11 U.S.C. § 365(a) and (b)(1)(C).

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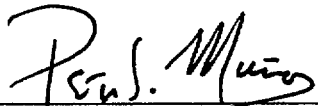
Debtor's other proposed form of adequate assurance is also unsupported. Debtor asserts that a "court-ordered liquidation of these contracts," or an independent sale of the subject hydroelectricity would yield sufficient cash to cover PCWA's damages from breach. Any breach by Debtor, however, would result in delayed payments to PCWA, which, in turn, would result in defaults by PCWA on its bond obligations that could have a negative long-term impact on PCWA's bond rating and ability to obtain financing. This delay undercuts any claim of adequate assurance of future performance by Debtor as performance, in fact, would be altered to the detriment of PCWA.

IV CONCLUSION

Based on the foregoing, PCWA requests that the Court condition any order approving Debtor's assumption of the Contract on Debtor specifying in greater detail the contracts to be assumed, curing all defaults under the Contract and establishing adequate assurances of future performance under the Contract.

DATED: May 11, 2001.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By 
Peter S. Muñoz
Attorneys for
Placer County Water Agency

CROSBY, HEAFEY, ROACH & MAY
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8 Attorneys for Placer County Water Agency

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re	No. 01-30923 DM
PACIFIC GAS & ELECTRIC COMPANY, a California corporation,	Chapter 11
Debtor.	Date: May 25, 2001 Time: 1:30 p.m. Place: 235 Pine St., 22nd Fl., San Francisco, CA 94111
Federal I.D. No. 94-0742640	Judge: Honorable Dennis Montali

**DECLARATION OF PATRICIA A. ANDERS IN SUPPORT OF PLACER COUNTY
WATER AGENCY'S QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER
AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER
PURCHASE CONTRACTS**

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I, Patricia A. Anders, declare:

1. I am Director of Financial Services of Placer County Water Agency ("PCWA"). I make this Declaration in support of PCWA's Qualified Opposition to Debtor's Motion for Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts. Unless otherwise stated, I have personal knowledge of the matters set forth herein and if called as a witness I could and would testify to them.

2. Based on my review of PCWA's business records kept in the ordinary course of business, PCWA and Debtor executed the Middle Fork Project Contract in 1963 (the "Contract") a copy of which is attached as Exhibit 4 to the Declaration of Randal S. Livingston filed by Pacific Gas & Electric Company ("PG&E" or "Debtor").

3. Under the Contract it is PCWA's practice to submit requests for payment of operating and maintenance expenses under Section 9b of the Contract more frequently than once a month. These requests are processed by PG&E and paid in due course.

4. Since Debtor filed this bankruptcy case on April 6, 2001 (and for some time before), Debtor has not made any payments under the Contract. Debtor owes approximately \$574,712.84 (pre- and post-petition) for Operating and Maintenance expenses, non-routine maintenance, and additions and betterments under the Contract pursuant to Withdrawal Requests submitted by PCWA to the Trustee under the Contract (i.e. "Paragraph 9b Payments").

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

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5. In addition, Debtor owes semi-annual payments under Paragraph 9(a) of the Contract in the sum of \$2,512,500 as of May 15, 2001. Debtor has asserted that it intends to pay only the sum of \$1,186,458.33 as a *pro rata* portion of the semi-annual payment based on the April 6, 2001 bankruptcy petition date in this case. Moreover, it has been the custom, practice, and agreement of the parties to the Contract that Debtor make to these payments approximately thirty (30) days before its semi-annual due date, and Debtor has failed to do so prior to the May 15, 2001 due date. The semi-annual payments are used by PCWA to make the semi-annual payments owed under a number of long-term revenue bonds issued by PCWA. If Debtor fails to make the semi-annual payment, PCWA will be in default under those bonds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th of May, 2001, at Carlsbad, California.



Patricia A. Anders

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PROFESSIONAL CORPORATION

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11 Attorneys for Yuba County Water Agency

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

15 In re

16 PACIFIC GAS & ELECTRIC
17 COMPANY, a California
18 corporation,

19 Debtor.

20 Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

Accompanying Documents:
1) Declaration of Curt Aikens In Support
of Qualified Opposition
2) Proof of Service

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23 **YUBA COUNTY WATER AGENCY'S QUALIFIED OPPOSITION TO DEBTOR'S**
24 **MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY**
25 **HYDROELECTRIC POWER PURCHASE CONTRACTS**
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I INTRODUCTION

Yuba County Water Agency ("YCWA") hereby submits its Qualified Opposition ("Opposition") to the Motion For Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts ("Motion to Assume") filed by Pacific Gas & Electric Company ("PG&E" or Debtor").

YCWA does not object in principle to the concept of the Motion to Assume. However, since YCWA is a public agency and since the risks to YCWA are potentially severe if Debtor should default in performance of its contractual obligations, YCWA seeks to insure that Debtor, as required by the provisions of 11 U.S.C. §365: (i) will immediately cure all existing defaults under the Yuba River Development Power Purchase Contract between Yuba County Water Agency and Pacific Gas and Electric Company ("Contract") which Debtor seeks to assume; (ii) will be financially able to perform under the Contract and can provide adequate assurance of its ability to perform under the Contract; and (iii) will, in fact, perform all of the terms of the Contract.

In addition, YCWA wants to insure that if Debtor is to assume the Contract, the assumption occurs as soon as possible to avoid an impending default on YCWA's bonds.

Finally, YCWA also requests clarification of which "ancillary agreements and amendments" Debtor seeks to assume under the Motion.

II. SUMMARY OF FACTS

A. BACKGROUND

YCWA is a public water agency providing water resources to the public in Yuba County.

In 1966, YCWA and Debtor entered into the Contract. [See Declaration of Curt Aikens In Support of YCWA's Limited Opposition ("Aikens

1 Decl.") at ¶ 2. See also Exhibit 6 to Declaration of Randall S. Livingston filed by
2 Debtor in support of the Motion.]

3 The Contract was part of a set of interrelated transactions whereby
4 YCWA would be able to construct, maintain and operate a facility ("Facility") to
5 provide residents of Yuba County with energy and water. As an integral part of the
6 transaction, YCWA issued public revenue bonds ("Bonds").

7 The Contract imposed on YCWA the burden of financing, building,
8 maintaining and operating the Facility and all related licenses, permits and contracts
9 (subject to certain limitations and conditions) and imposed on Debtor the obligation
10 of paying fixed amounts which were calculated to allow YCWA to retire the Bonds
11 and the obligation of paying all expenses of maintaining and operating the Facility
12 and all related licenses, permits and contracts.

13 The Contract provided in essence for two types of payments after the
14 Facility had been completed. First under Section 9(a) of the Contract, Debtor was
15 to make semi-annual payments in specified amounts which were calculated to
16 match the payments owed by YCWA under its Bonds (collectively the "9a
17 Payments"). The 9a Payments were determined based upon the payments on the
18 Bonds and the due dates were set to allow for payments on the Bonds. The 9a
19 Payments were not calculated or tied in any way to the receipt of electrical power
20 by Debtor from YCWA. Debtor was obligated to make the 9a Payments on the
21 dates specified even if the Facility was not in operation and no electrical power
22 were being generated. Generally, no discounts or pro-rations were permitted under
23 the Contract except prior to full completion of the Facility. Prior to full completion
24 of the Facility, the Contract provided for one method of calculating the amounts
25 owed under the Contract; after full completion, the Contract provided another
26 procedure for payment. The very first payment under Section 9a was pro-rated as
27 specified. The pro-ration allowed for the change of payment procedures to that
28 under Section 9a.

1 The second type of payments called for after completion of
2 construction was under Section 9(b) of the Contract. Debtor was to pay all
3 expenses of maintaining and operating the Facility and all related licenses, permits
4 and contracts together with other related expenses (collectively the "9b
5 Payments"). The 9b Payments were to be provided monthly upon request of
6 YCWA. (Such requests are usually referred to as "Withdrawal Requests".)

7 The course of dealing between Debtor and YCWA developed that the
8 YCWA would submit payment requests under Section 9b periodically as incurred
9 (i.e. more frequently than monthly) and payment would be processed by Debtor as
10 received.

11 In Debtor's Motion to Assume, Debtor explains to the Court that the
12 Contract provides low cost energy to Debtor; the Motion to Assume even specifies
13 a per unit price. However nothing in the Contract sets any price. The Contract
14 calls for two fixed payments on specified dates and ongoing expense payments on
15 a going-forward basis. Debtor's calculations are presumably determined by
16 estimating the energy to be provided by the Facility and computing a per unit price
17 based upon an estimate of the anticipated 9b Payments and the 9a Payments.

18 **B. DEFAULT**

19 Debtor is currently in default under the Contracts as Debtor has not
20 made certain 9b Payments requested by YCWA both before and after the date on
21 which Debtor commenced this Bankruptcy case ("Petition Date"). YCWA is owed
22 the sum of approximately \$325,606.77 in connection with such payments. Aikens
23 Decl. at ¶3. Notwithstanding the defaults, YCWA has continued to perform under
24 the Contract following the Petition Date.

25 In addition, Debtor owes YCWA \$860,000 in connection with the Lake
26 Francis Dam Facility, which was included in its 2000 and 32001 Budgets which
27 were approved by Debtor. This amount was not paid by Debtor in 2000; and prior
28

1 to the Petition Date, Debtor committed to making the payment. Debtor must again
2 commit to paying as part of any assumption of the Contracts.

3
4 **C. RISKS TO YCWA**

5 Debtor's Motion to Assume glosses over the potential risks to YCWA
6 which are potentially extremely severe.

7 First, if the 9a Payments are not made on a timely basis, YCWA would
8 be in default on its Bonds. YCWA's credit rating would be adversely affected and
9 thereafter all revenue bonds and other debt issued by YCWA would require that
10 YCWA pay a higher interest rate. Such a higher interest rate would be applicable to
11 all future revenue bonds and other debt for the life of those bonds or such debt.
12 The actual amounts which YCWA would be required to pay is difficult to calculate
13 or estimate at present; however, it is obvious that the actual amount of additional
14 interest would be quite large when calculated over the life of all such bonds/debt.
15 In the alternative, YCWA could consider making all or a portion of the bond
16 payments by liquidating other assets (if it had sufficient assets). This alternative
17 would similarly have an extremely adverse impact on the YCWA's financial
18 condition and a significant disruption in YCWA's cash flow since YCWA's budget
19 had not contemplated a bankruptcy of Debtor.

20 Second, if the 9b Payments are not made, the Facility would quickly
21 cease to operate since its operation and maintenance expenses would immediately
22 stop. YCWA would be left with a defunct operation. All public money spent to
23 date would have been in effect wasted in large part.

24 Debtor's Motion to Assume also implies that any negative impact on
25 YCWA would be minimal since it could look for any alternate buyer for its electric
26 power. While it is true that YCWA could ultimately find an alternate buyer, YCWA
27 would still suffer great harm in such a situation. There would be extensive startup
28 expenses (if the Facility were to shut down) in addition to the ordinary and

1. customary Operating Maintenance Expenses. All of these expenses YCWA would
2 have to pay with its own funds at a time when YCWA would be losing the
3 revenues which otherwise would have been paid by Debtor.

4 Therefore, YCWA would be paying (i) higher operating and
5 maintenance expenses and (ii) higher interest on its bonds, all at a time when it
6 would have no income from the Facility with which to pay such increased expenses
7 and interest.

8 In addition, YCWA has contracts with seven other water districts for
9 delivery of water, which contracts could be adversely affected if Debtor did not
10 make the required payments. Finally, YCWA has minimum instream flow
11 requirements set by Federal and State agencies, which could be jeopardized without
12 payments by Debtor. In addition any corresponding negative effect on water flow
13 could have incidental take of threatened species effect under the National Marine
14 Fishery Service

15 III QUALIFIED OPPOSITION

16 A. Debtor Should Specify in Greater Detail the Contracts To Be Assumed

17 The Motion to Assume states that Debtor is seeking to assume certain
18 specified agreements which are listed in the Motion to Assume; it also states that
19 Debtor will assume certain "ancillary agreements and amendments."

20 As mentioned above, the Contract between Debtor and YCWA are part
21 of a number of contracts which are related to some extent more or less. Debtor
22 should be required to specify the "ancillary agreements and amendments" with
23 more particularity so that the parties to said contracts can determine whether there
24 are defaults under those contracts and require compliance therewith.

25 B. The Court Should Grant Debtor's Motion Only If Debtor Cures All Defaults 26 Under The Contract

27 Bankruptcy Code Section 365 (11 U.S.C. § 365) permits Debtor to
28 assume the Contract only if it cures all defaults. 11 U.S.C. § 365(a) and (b)(1)(A)

1 and (B).¹ Debtor has the burden to prove its ability to satisfy these obligations.
2 See *Id.* See also *Superior Toy Manuf. Co.*, 78 F. 3d 1169, 1172 (7th Cir. 1996).

3 Here, Debtor is in default under the Contract by not making 9b
4 Payments of not less than \$325,606.77. Aikens Decl. at ¶ 3. Debtor also owes
5 YCWA \$860,000 in conjunction with the Lake Francis Dam project. Debtor does
6 not recognize these specific defaults in its motion, but instead refers almost
7 exclusively to an "aggregate" monetary default of "approximately \$1.62 million"
8 under all of the hydroelectric power contracts that it presently seeks to assume.
9 Debtor's MPA at 10:27-28. Debtor then asserts, without evidentiary support, that
10 it has more than adequate cash reserves to cure the arrears. *Id.* at 11:2. While
11 this statement may be true, Debtor has not met its evidentiary burden on this
12 motion. YCWA seeks testimony or a verified statement from an authorized agent
13 of Debtor that Debtor: (1) has the ability to cure the defaults described above; and
14 (2) will, in fact, cure all such defaults immediately upon, or promptly upon, entry of
15 any order granting this motion. Debtor cannot meet its burden on this Motion
16 without this evidence, and has not provided it in Mr. Livingston's Declaration.
17 YCWA requests that the Court not grant Debtor's motion until Debtor provides this
18 evidence.

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¹ These subsections provide:

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; 11 U.S.C. § 365(a) and (b)(1)(A) and (B).

1 **C. The Court Should Only Grant Debtor's Motion If Debtor Provides Adequate**
2 **Assurance Of Future Performance Under The Contract**

3 Bankruptcy Code Section 365(b) (11 U.S.C. § 365(b)) also provides
4 that Debtor must provide adequate assurances of future performance under the
5 Contract in order to assume it. 11 U.S.C. § 365(a) and (b)(1)(C).² Debtor has the
6 burden of providing adequate assurance of future performance under the Contract.
7 See *Id.* See also *Superior Toy, supra.*

8 Here, Debtor's motion again contains conclusory statements that it will
9 have available cash to make all future payments under the Contract, and that it
10 intends to make such payments. Debtor's MPA at 11:3-17. Again, while these
11 statements may be accurate, Mr. Livingston's Declaration does not establish these
12 necessary evidentiary facts, and says nothing about future performance of Debtor's
13 non-monetary obligations under the Contract. YCWA is entitled to this evidence.

14 Debtor's other proposed form of adequate assurance is also
15 unsupported. Debtor asserts that a "court-ordered liquidation of these contracts,"
16 or an independent sale of the subject hydroelectricity would yield sufficient cash to
17 cover YCWA's damages from breach. Any breach by Debtor, however, would
18 result in delayed payments to YCWA, which, in turn, would result in defaults by
19 YCWA on its bond obligations that could have a negative long-term impact on
20 YCWA's bond rating and ability to obtain financing. This delay undercuts any claim

21 _____
22 ² These subsections provide:

23 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
24 this section, the trustee, subject to the court's approval, may assume or reject any executory
contract or unexpired lease of the debtor.

25 (b)(1) If there has been a default in the executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of assumption of such contract or
lease, the trustee –

27 (C) provides adequate assurance of future performance of such contract or lease.

28 11 U.S.C. § 365(a) and (b)(1)(C).

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1 of adequate assurance of future performance by Debtor as performance, in fact,
2 would be altered to the detriment of YCWA.

3 **IV CONCLUSION**

4 Based on the foregoing, YCWA requests that the Court condition any
5 order approving Debtor's assumption of the Contract on Debtor specifying in
6 greater detail the contracts to be assumed, curing all defaults under the Contract
7 and establishing adequate assurances of future performance under the Contract.

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9 DATED: May 11, 2001.

10 CROSBY, HEAFEY, ROACH & MAY
11 Professional Corporation

12 By Peter S. Muñoz
13 Peter S. Muñoz
14 Attorneys for
15 Yuba County Water Agency
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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 In re	No. 01-30923 DM
15 PACIFIC GAS & ELECTRIC	Chapter 11
16 COMPANY, a California	Date: May 25, 2001
17 corporation,	Time: 1:30 p.m.
18 Debtor.	Place: 235 Pine St., 22nd Fl., San Francisco, CA 94111
Federal I.D. No. 94-0742640	Judge: Honorable Dennis Montali

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22 **DECLARATION OF CURT AIKENS IN SUPPORT OF YUBA COUNTY WATER**
23 **AGENCY'S QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER**
24 **AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER**
25 **PURCHASE CONTRACTS**
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I, Curt Aikens, declare:

1. I am General Manager of Yuba County Water Agency ("YCWA"). I make this Declaration in support of YCWA's Qualified Opposition to Debtor's Motion for Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts. Unless otherwise stated, I have personal knowledge of the matters set forth herein and if called as a witness would testify to them.

2. Based on my review of YCWA's business records kept in the ordinary course of business, YCWA and Debtor executed the Yuba River Development Project Contract in 1966 (the "Contract") a copy of which is attached as Exhibit 6 to the Declaration of Randal S Livingston filed by Pacific Gas & Electric Company ("PG&E" or "Debtor").

3. Since Debtor filed this bankruptcy case on April 6, 2001 (and for some time before), Debtor has not made any payments under the Contract. Debtor owes the following amounts for Operating and Maintenance expenses under the Contract pursuant to Withdrawal Requests submitted by YCWA to the Trustee under the Contract (i.e., "Paragraph 9b Payments"):

DATE	REQUEST NUMBER	AMOUNT
March 27, 2001	1131	\$109,642.08
April 10, 2001	1132	\$120,067.16
April 24, 2001	1134-A	\$95,897.53
Total		<u>\$325,606.77</u>

4. Debtor has also failed to pay YCWA an agreed sum of \$860,000 in connection with the Lake Francis Dam Facility which was included in its 2000 and 2001 Budgets which were approved by Debtor. This sum

1 was to have been paid by Debtor in 2000 but was not. Prior to bankruptcy I spoke
2 with representatives of Debtor who agreed that this delinquent payment would be
3 made in 2001.
4

5 5. In addition, Debtor owes semi-annual project bond and interest
6 payments under Paragraph 9(a) of the Contract in the sum of \$3,850,000. The
7 Contract has a recited due date of July 15, 2001 for the next payment. It has been
8 the custom, practice, and agreement of the parties to the Contract, however, that
9 Debtor make this payment approximately forty-five (45) days before its semi-annual
10 due date.
11

12 I declare under penalty of perjury under the laws of the United States
13 of America that the foregoing is true and correct. Executed this 11 of May,
14 2001, at Sacramento, California.
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17 _____
18 Curt Aikens
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CROSBY, HEAFEY, ROACH & MAY
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8 Attorneys for Merced Irrigation District

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

13
14 In re
15 PACIFIC GAS & ELECTRIC
COMPANY, a California
16 corporation,
17 Debtor.
18 Federal I.D. No. 94-0742640

No. 01-30923 DM
Chapter 11
Date: May 25, 2001
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Place: 235 Pine St., 22nd Fl.,
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Judge: Honorable Dennis Montali

Accompanying Documents:
1) Declaration of Ross Rogers In Support
of Qualified Opposition
2) Proof of Service

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23 **MERCED IRRIGATION DISTRICT'S QUALIFIED OPPOSITION TO DEBTOR'S**
24 **MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY**
25 **HYDROELECTRIC POWER PURCHASE CONTRACTS**

I INTRODUCTION

1
2 Merced Irrigation District ("MID") hereby submits its Qualified
3 Opposition ("Opposition") to the Motion For Order Authorizing Assumption of
4 Executory Hydroelectric Power Purchase Contracts ("Motion to Assume") filed by
5 Pacific Gas & Electric Company ("PG&E" or Debtor").

6 MID does not object in principle to the concept of the Motion to
7 Assume. However, since MID is a public agency and since the risks to MID are
8 potentially severe if Debtor should default in performance of its contractual
9 obligations, MID seeks to insure that Debtor, as required by the provisions of 11
10 U.S.C. §365: (i) will immediately cure all existing defaults under the Merced River
11 Development Project Contract ("Contract") which Debtor seeks to assume; (ii) will
12 be financially able to perform under the Contract and can provide adequate
13 assurance of its ability to perform under the Contract; and (iii) will, in fact, perform
14 all of the terms of the Contract.

15 In addition, MID wants to insure that if Debtor is to assume the
16 Contract that the assumption occurs as soon as possible to avoid a potential default
17 on MID's bonds.

18 Finally, MID also requests clarification from Debtor as to which
19 "ancillary agreements and amendments" it seeks to assume under the Motion.

II. SUMMARY OF FACTS

20
21
22 **A. BACKGROUND**

23 MID is a public water agency providing, among other things, retail
24 electric services and water resources to the public in Merced County.

25 In 1969, MID and Debtor entered into the Contract. [See Declaration
26 of Ross Rogers In Support of MID's Limited Opposition ("Rogers Decl.") at ¶ 2.
27 See also Exhibit 5 to Declaration of Randall S. Livingston filed by Debtor in support
28 of the Motion.]

1 The Contract was part of a set of interrelated transactions whereby
2 MID would be able to construct, maintain and operate a facility ("Facility") to
3 provide residents of Merced County with energy and water. As an integral part of
4 the transaction, MID issued public revenue bonds ("Bonds").

5 The Contract imposed on MID the burden of financing, building,
6 maintaining and operating the Facility and all related licenses, permits and contracts
7 (subject to certain limitations and conditions) and imposed on Debtor the obligation
8 of paying fixed amounts which were calculated to allow MID to retire the Bonds
9 and the obligation of paying all expenses of maintaining and operating the Facility
10 and all related licenses, permits and contracts.

11 The Contract provided in essence for two types of payments after the
12 Facility had been completed. First, under Section 9(a) of the Contract, Debtor was
13 to make semi-annual payments in specified amounts which were calculated to
14 match the payments owed by MID under its Bonds (collectively the "9a
15 Payments"). The 9a Payments were determined based upon the payments on the
16 Bonds and the due dates were set to allow for payments on the Bonds. The 9a
17 Payments were not calculated or tied in any way to the receipt of electrical power
18 by Debtor from MID. Debtor was obligated to make the 9a Payments on the dates
19 specified even if the Facility was not in operation and no electrical power were
20 being generated. Generally, no discounts or pro-rations were permitted under the
21 Contract except prior to full completion of the Facility. Prior to full completion of
22 the Facility, the Contract provided for one method of calculating the amounts owed
23 under the Contract; after full completion, the Contract provided another procedure
24 for payment. The very first payment under Section 9a was pro-rated as specified.
25 The pro-ration allowed for the change of payment procedures to that under Section
26 9a.

27 The second type of payments called for after completion of
28 construction was under Section 9(b) of the Contract. Debtor was to pay all

1 expenses of maintaining and operating the Facility and all related licenses, permits
2 and contracts together with other related expenses (collectively the "9b
3 Payments"). The 9b Payments were to be provided monthly upon request of MID.
4 (Such requests are usually referred to as "Withdrawal Requests".)

5 The course of dealing between Debtor and MID developed that the
6 MID would submit payment requests under Section 9b periodically as incurred (i.e.
7 more frequently than monthly) and payment would be processed by Debtor as
8 received.

9 In Debtor's Motion to Assume, Debtor explains to the Court that the
10 Contract provides low cost energy to Debtor; the Motion to Assume even specifies
11 a per unit price. However nothing in the Contract sets any price. The Contract
12 calls for two fixed payments on specified dates and ongoing expense payments on
13 a going-forward basis. Debtor's calculations are presumably determined by
14 estimating the energy to be provided by the Facility and computing a per unit price
15 based upon an estimate of the anticipated 9b Payments and the 9a Payments.

16 **B. DEFAULT**

17 Debtor is currently in default under the Contract as follows.

18 First, Debtor has not made certain 9b Payments requested by MID
19 both before and after the date on which Debtor commenced this Bankruptcy case
20 ("Petition Date"). MID is owed the sum of approximately \$716,800.71 in
21 connection with such payments. Rogers Decl. at ¶ 3. Notwithstanding the
22 defaults, MID has continued to perform under the Contract following the Petition
23 Date.

24 Second, Debtor has advised MID that it will not pay the full amount of
25 the July 1, 2001 9a Payment, which under the practice of the parties would be
26 paid in full on May 15, 2001, but instead will pay only a pro-rated amount of
27 \$384,861.11. Debtor has calculated this pro-rated amount based on the Petition
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1 Date. Such pro-ration was done despite the fact that the payment was not subject
2 to pro-ration since no amount was owed prior to the Petition Date.

3 **C. RISKS TO MID**

4 Debtor's Motion to Assume glosses over the potential risks to MID
5 which are potentially extremely severe.

6 First, if the 9a Payments are not made on a timely basis (and one
7 payment is already due on May 15, 2001 under the practice of the parties), MID
8 would be in default on its Bonds. MID's credit rating would be adversely affected
9 and thereafter all revenue bonds and other debt issued by MID would require that
10 MID pay a higher interest rate. Such a higher interest rate would be applicable to
11 all future revenue bonds for the life of those bonds or such debt. The actual
12 amounts which MID would be required to pay is difficult to calculate or estimate at
13 present; however, it is obvious that the actual amount of additional interest would
14 be quite large when calculated over the life of all such bonds/debt. In the
15 alternative, MID could consider making all or a portion of the bond payments by
16 liquidating other assets (if it had sufficient assets). This alternative would similarly
17 have an extremely adverse impact on the MID's financial condition and a significant
18 disruption in MID's cash flow since MID's budget had not contemplated a
19 bankruptcy of Debtor.

20 Second, if the 9b Payments are not made, the Facility would quickly
21 cease to operate since its operation and maintenance expenses would immediately
22 stop. MID would be left with a defunct operation. All public money spent to date
23 would have been in effect wasted in large part.

24 Debtor's Motion to Assume also implies that any negative impact on
25 MID would be minimal since it could look for any alternate buyer for its electric
26 power. While it is true that MID could ultimately find an alternate buyer, MID
27 would still suffer great harm in such a situation. There would be extensive startup
28 expenses (if the Facility were to shut down) in addition to the ordinary and

1. customary Operating Maintenance Expenses. All of these expenses MID would
2 have to pay with its own funds at a time when MID would be losing the revenues
3 which otherwise would have been paid by Debtor.

4 Therefore, MID would be paying (i) higher operating and maintenance
5 expenses and (ii) higher interest on its bonds, all at a time when it would have no
6 income from the Facility with which to pay such increased expenses and interest.

7 III QUALIFIED OPPOSITION

8 A. Debtor Should Specify in Greater Detail the Contracts To Be Assumed

9 The Motion to Assume states that Debtor is seeking to assume certain
10 specified agreements which are listed in the Motion to Assume; it also states that
11 Debtor will assume certain "ancillary agreements and amendments."

12 As mentioned above, the Contract between Debtor and MID are part of
13 a number of contracts which are related to some extent more or less. Debtor
14 should be required to specify the "ancillary agreements and amendments" with
15 more particularity so that the parties to said contracts can determine whether there
16 are defaults under those contracts and require compliance therewith.

17 B. The Court Should Grant Debtor's Motion Only If Debtor Cures All Defaults 18 Under The Contract

19 Bankruptcy Code Section 365 (11 U.S.C. § 365) permits Debtor to
20 assume the Contract only if it cures all defaults. 11 U.S.C. § 365(a) and (b)(1)(A)
21 and (B).¹ Debtor has the burden to prove its ability to satisfy these obligations.

22 ¹ These subsections provide:

23 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
24 this section, the trustee, subject to the court's approval, may assume or reject any executory
contract or unexpired lease of the debtor.

25 (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of the assumption of such
contract or lease, the trustee -

27 (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

28 (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a

1 See *Id.* See also *Superior Toy and Manuf. Co.*, 78 F. 3d 1169, 1172 (7th Cir.
2 1996).

3 Here, Debtor is in default under the Contract by not making 9b
4 Payments in the sum of \$716,800.71 and indicating it will not make a complete 9a
5 Payment. Rogers Decl. at ¶¶ 3 and 4. Debtor does not recognize these specific
6 defaults in its motion, but instead refers almost exclusively to an "aggregate"
7 monetary default of "approximately \$1.62 million" under all of the hydroelectric
8 power contracts that it presently seeks to assume. Debtor's MPA at 10:27-28.
9 Debtor then asserts, without evidentiary support, that it has more than adequate
10 cash reserves to cure the arrears. *Id.* at 11:2. While this statement may be true,
11 Debtor has not met its evidentiary burden on this motion. MID seeks testimony or
12 a verified statement from an authorized agent of Debtor that Debtor: (1) has the
13 ability to cure the defaults described above; and (2) will, in fact, cure all such
14 defaults immediately upon, or promptly upon, entry of any order granting this
15 motion. Debtor cannot meet its burden on this Motion without this evidence, and
16 has not provided it in Mr. Livingston's Declaration. MID requests that the Court not
17 grant Debtor's motion until Debtor provides this evidence.

18 **C. The Court Should Only Grant Debtor's Motion If Debtor Provides Adequate**
19 **Assurance Of Future Performance Under The Contract**

20 Bankruptcy Code Section 365(b) (11 U.S.C. § 365(b)) also provides
21 that Debtor must provide adequate assurances of future performance under the
22 Contract in order to assume it. 11 U.S.C. § 365(a) and (b)(1)(C).² Debtor has the

23 party other than the debtor to such contract or lease, for any actual pecuniary loss to such party
24 resulting from such default; 11 U.S.C. § 365(a) and (b)(1)(A) and (B).

25 ² These subsections provide:

26 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
27 this section, the trustee, subject to the court's approval, may assume or reject any executory
28 contract or unexpired lease of the debtor.

(b)(1) If there has been a default in the executory contract or unexpired lease of the debtor, the
trustee may not assume such contract or lease unless, at the time of assumption of such contract or

1 burden of providing adequate assurance of future performance under the Contract.
2 See *Id.* See also *Superior Toy, supra.*

3 Here, Debtor's motion again contains conclusory statements that it will
4 have available cash to make all future payments under the Contract, and that it
5 intends to make such payments. Debtor's MPA at 11:3-17. Again, while these
6 statements may be accurate, Mr. Livingston's Declaration does not establish these
7 necessary evidentiary facts, and says nothing about future performance of Debtor's
8 non-monetary obligations under the Contract. MID is entitled to this evidence.

9 Debtor's other proposed form of adequate assurance is also
10 unsupported. Debtor asserts that a "court-ordered liquidation of these contracts,"
11 or an independent sale of the subject hydroelectricity would yield sufficient cash to
12 cover MID's damages from breach. Any breach by Debtor, however, would result
13 in delayed payments to MID, which, in turn, would result in defaults by MID on its
14 bond obligations that could have a negative long-term impact on MID's bond rating
15 and ability to obtain financing. This delay undercuts any claim of adequate
16 assurance of future performance by Debtor as performance, in fact, would be
17 altered to the detriment of MID.

18 **IV CONCLUSION**

19 Based on the foregoing, MID requests that the Court condition any
20 order approving Debtor's assumption of the Contract on Debtor specifying in
21 greater detail the contracts to be assumed, curing all defaults under the Contract,
22 and establishing adequate assurances of future performance under the Contract.
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26 lease, the trustee -

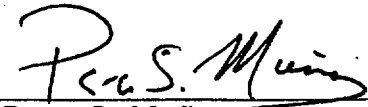
27 (C) provides adequate assurance of future performance of such contract or lease.

28 11 U.S.C. § 365(a) and (b)(1)(C).

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DATED: May 11, 2001.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By 
Peter S. Muñoz
Attorneys for
Merced Irrigation District

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

1. Peter S. Muñoz (State Bar No. 66942)
2. Gregg M. Ficks (State Bar No. 148093)
3. CROSBY, HEAFEY, ROACH & MAY
4. Professional Corporation
5. Two Embarcadero Center
6. San Francisco, CA 94111

Mailing Address:
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San Francisco, CA 94120-7936

Telephone: (415) 543-8700
Facsimile: (415) 391-8269

Attorneys for Merced Irrigation District

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS & ELECTRIC
COMPANY, a California
corporation,

Debtor.

Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

**DECLARATION OF ROSS ROGERS IN SUPPORT OF MERCED IRRIGATION
DISTRICT'S QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER
AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER
PURCHASE CONTRACTS**

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I, Ross Rogers, declare:

1. I am General Manager of Merced Irrigation District ("MID"). I make this Declaration in support of MID's Qualified Opposition to Debtor's Motion for Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts. Unless otherwise stated, I have personal knowledge of the matters set forth herein and if called as a witness would testify to them.

2. Based on my review of MID's business records kept in the ordinary course of business, MID and Debtor executed the Merced River Development Project Contract in 1964 (the "Contract"), a copy of which is attached as Exhibit 5 to the Declaration of Randal S. Livingston filed by Pacific Gas & Electric Company ("PG&E" or "Debtor").

3. Since Debtor filed this bankruptcy case on April 6, 2001 (and for some time before), Debtor has not made any payments under the Contract. Debtor owes the following amounts for Operating and Maintenance expenses under the Contract pursuant to Withdrawal Requests submitted by MID to the Trustee under the Contract:

DATE	REQUEST NUMBER	AMOUNT
March 28, 2001	678	\$340,354.00
March 28, 2001	679	\$91,176.36
April 25, 2001	680	\$185,270.35
April 25, 2001	681	\$100,000.00 (Advance Withdrawal Request)
TOTAL		\$716,800.71

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

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4. In addition, Debtor owes a semi-annual payments under Paragraph 9(a) of the Contract in the sum of \$813,716.00 as of the recited date of July 1, 2001. The semi-annual payments are used by MID to make the semi-annual payments owed under a number of long-term revenue bonds issued by PCWA. Debtor has asserted that it intends to pay only a *pro rata* portion of this payments based on the April 6, 2001 bankruptcy petition date in this case in the sum of \$384,861.11. It has been the custom, practice, and agreement of the parties to the Contract that Debtor make to these payments approximately forty-five (45) days before its semi-annual due date, and Debtor has indicated it will not make the full payment within that time. If Debtor fails to make the semi-annual payment, MID will be in default under those bonds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th of May, 2001, at State line, California.


Ross Rogers

1 Peter S. Muñoz (State Bar No. 66942)
2 Gregg M. Ficks (State Bar No. 148093)
3 CROSBY, HEAFEY, ROACH & MAY
4 Professional Corporation
5 Two Embarcadero Center
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7 **Mailing Address:**
8 P.O. Box 7936
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10 Telephone: (415) 543-8700
11 Facsimile: (415) 391-8269

12 Attorneys for Oakdale and
13 South San Joaquin Irrigation Districts

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

17 In re
18 PACIFIC GAS & ELECTRIC
19 COMPANY, a California
20 corporation,
21 Debtor.
22 Federal I.D. No. 94-0742640

No. 01-30923 DM
Chapter 11
Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

23 **OAKDALE AND SOUTH SAN JOAQUIN IRRIGATION DISTRICTS' QUALIFIED**
24 **OPPOSITION TO DEBTOR'S MOTION FOR ORDER AUTHORIZING ASSUMPTION**
25 **OF EXECUTORY HYDROELECTRIC POWER PURCHASE CONTRACTS**

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I INTRODUCTION

Oakdale and South San Joaquin Irrigation Districts (collectively "Oakdale") hereby submits its Qualified Opposition ("Opposition") to the Motion For Order Authorizing Assumption of Executory Hydroelectric Power Purchase Contracts ("Motion to Assume") filed by Pacific Gas & Electric Company ("PG&E" or Debtor).

Oakdale does not object in principle to the concept of the Motion to Assume. However, since Oakdale is a public agency and since the risks to Oakdale are potentially severe if Debtor should default in performance of its contractual obligations, Oakdale seeks to insure that Debtor, as required by the provisions of 11 U.S.C. 365: (i) will immediately cure all existing defaults under the Tri-Dam Project Contract ("Contract") which Debtor seeks to assume; (ii) will be financially able to perform under the Contract and can provide adequate assurance of its ability to perform under the Contract; and (iii) will, in fact, perform all of the terms of the Contract.

In addition, Oakdale wants to insure that if Debtor is to assume the Contract that the assumption occurs as soon as possible to avoid an impending default on Oakdale's bonds.

Finally, Oakdale also requests clarification from Debtor as to which "ancillary agreements and amendments" it seeks to assume under the Motion.

II. SUMMARY OF FACTS

A. BACKGROUND

Oakdale is a public water agency providing water resources to the public in the Oakdale and South San Joaquin areas.

In 1952, Oakdale and Debtor entered into the Contract. [See Exhibit 1 to Declaration of Randall S. Livingston filed by Debtor in support of the Motion.]

1 The Contract was part of a set of interrelated transactions whereby
2 Oakdale would be able to construct, maintain and operate a facility ("Facility") to
3 provide residents of Oakdale and South San Joaquin areas with energy and water.
4 As an integral part of the transaction, Oakdale issued public revenue to bonds
5 ("Bonds").

6 The Contract imposed on Oakdale the burden of financing, building,
7 maintaining and operating the Facility and all related licenses, permits and contracts
8 (subject to certain limitations and conditions) and imposed on Debtor the obligation
9 of paying fixed amounts which were calculated to allow Oakdale to retire the Bonds
10 and the obligation of paying all expenses of maintaining and operating the Facility
11 and all related licenses, permits and contracts.

12 The Contract provided in essence for two types of payments after the
13 Facility had been completed. First under Section 12 of the Contract, Debtor was to
14 make semi-annual payments in specified amounts which were calculated to match
15 the payments owed by Oakdale under its Bonds (collectively the "Section 12
16 Payments"). Second, under Section 13 of the Contract, Debtor was to pay a set
17 amount subject to escalation according to an inflation index; this amount was to
18 pay for the expenses of maintaining and operating the Facility together with other
19 related expenses (collectively the "Section 13 Payments").

20 In addition it should be noted that the Section 12 Payments were
21 determined based upon the payments on the Bonds and the due dates were set to
22 allow for payments on the Bonds. The Section 12 Payments were not calculated or
23 tied in any way to the receipt of electrical power by Debtor from Oakdale. Debtor
24 was obligated to make the Section 12 Payments on the dates specified even if the
25 Facility was not in operation and no electrical power was being generated. Pro-
26 rations were allowed under the Contract only for the first payments made when
27 construction of the Facility had been completed. Prior to the full completion date,
28 Debtor under Sections 9, 10 and 11 was to make certain other payments to

1 Oakdale. The pro-ration allowed for the change of payment procedures from that
2 under Sections 9, 10 and 11 to that under Sections 12 and 13.

3 In Debtor's Motion to Assume, Debtor explains to the Court that the
4 Contract provides low cost energy to Debtor; the Motion to Assume even specifies
5 a per unit price. However nothing in the Contract sets any price. The Contract
6 calls for the Section 12 and the Section 13 payments following completion of the
7 Facility. Debtor's calculations are presumably determined by estimating the energy
8 to be provided by the Facility and computing a per unit price based upon an
9 estimate of the anticipated Section 12 Payments and the Section 13 Payments.

10 **B. RISKS TO Oakdale**

11 Debtor's Motion to Assume glosses over the potential risks to Oakdale
12 which are potentially severe. If the Contract payments are not made on a timely
13 basis, Oakdale would be required to use other budgeted funds to operate the
14 Facility or to allow the operation to cease, in which case Oakdale would be left
15 with a defunct operation.

16 Debtor's Motion to Assume also implies that any negative impact on
17 Oakdale would be minimal since it could look for any alternate buyer for its electric
18 power. While it is true that Oakdale could ultimately find an alternate buyer,
19 Oakdale would still suffer harm in such a situation. There would be extensive
20 startup expenses (if the Facility were to shut down) in addition to the ordinary and
21 customary operating maintenance expenses. All of these expenses Oakdale would
22 have to pay with its own funds at a time when Oakdale would be losing the
23 revenues which otherwise would have been paid by Debtor.

24 **III QUALIFIED OPPOSITION**

25 **A. Debtor Should Specify in Greater Detail the Contracts To Be Assumed**

26 The Motion to Assume states that Debtor is seeking to assume certain
27 specified agreements which are listed in the Motion to Assume; it also states that
28 Debtor will assume certain "ancillary agreements and amendments".

1 As mentioned above, the Contract between Debtor and Oakdale are
2 part of a number of contracts which are related to some extent more or less.
3 Debtor should be required to specify the "ancillary agreements and amendments"
4 with more particularity so that the parties to said contracts can determine whether
5 there are defaults under those contracts and require compliance therewith.

6 **B. The Court Should Grant Debtor's Motion Only If Debtor Cures All Defaults**
7 **Under The Contract**

8 Bankruptcy Code Section 365 (11 U.S.C. § 365) permits Debtor to
9 assume the Contract only if it cures all defaults. 11 U.S.C. § 365(a) and (b)(1)(A)
10 and (B).¹ Debtor has the burden to prove its ability to satisfy these obligations.
11 See *Id.* See also *Superior Toy and Manuf. Co.*, 78 F. 3d 1169, 1172 (7th Cir.
12 1996).

13 Debtor does not recognize any specific defaults in its motion, but
14 instead refers almost exclusively to an "aggregate" monetary default of
15 "approximately \$1.62 million" under all of the hydroelectric power contracts that it
16 presently seeks to assume. Debtor's MPA at 10:27-28. Debtor then asserts,
17 without evidentiary support, that it has more than adequate cash reserves to cure
18 the arrears. *Id.* at 11:2. While this statement may be true, Debtor has not met its
19 evidentiary burden on this motion. Oakdale seeks testimony or a verified statement

20 _____
21 ¹ These subsections provide:
22 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
23 this section, the trustee, subject to the court's approval, may assume or reject any executory
24 contract or unexpired lease of the debtor.
25 (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of the assumption of such
27 contract or lease, the trustee -
28 (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a
party other than the debtor to such contract or lease, for any actual pecuniary loss to such party
resulting from such default; 11 U.S.C. § 365(a) and (b)(1)(A) and (B).

1 from an authorized agent of Debtor that Debtor: (1) has the ability to cure any
2 defaults; and (2) will, in fact, cure all such defaults immediately upon, or promptly
3 upon, entry of any order granting this motion. Debtor cannot meet its burden on
4 this Motion without this evidence, and has not provided it in Mr. Livingston's
5 Declaration. Oakdale requests that the Court not grant Debtor's motion until
6 Debtor provides this evidence.

7 **C. The Court Should Only Grant Debtor's Motion If Debtor Provides Adequate**
8 **Assurance Of Future Performance Under The Contract**

9 Bankruptcy Code Section 365(b) (11 U.S.C. § 365(b)) also provides
10 that Debtor must provide adequate assurances of future performance under the
11 Contract in order to assume it. 11 U.S.C. § 365(a) and (b)(1)(C).² Debtor has the
12 burden of providing adequate assurance of future performance under the Contract.
13 See *Id.* See also *Superior Toy, supra.*

14 Here, Debtor's motion again contains conclusory statements that it will
15 have available cash to make all future payments under the Contract, and that it
16 intends to make such payments. Debtor's MPA at 11:3-17. Again, while these
17 statements may be accurate, Mr. Livingston's Declaration does not establish these
18 necessary evidentiary facts, and says nothing about future performance of Debtor's
19 non-monetary obligations under the Contract. Oakdale is entitled to this evidence.

20
21 _____
22 ² These subsections provide:

23 (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of
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contract or unexpired lease of the debtor.

25 (b)(1) If there has been a default in the executory contract or unexpired lease of the debtor, the
26 trustee may not assume such contract or lease unless, at the time of assumption of such contract or
lease, the trustee –

27 (C) provides adequate assurance of future performance of such contract or lease.

28 11 U.S.C. § 365(a) and (b)(1)(C).

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Debtor's other proposed form of adequate assurance is also unsupported. Debtor asserts that a "court-ordered liquidation of these contracts," or an independent sale of the subject hydroelectricity would yield sufficient cash to cover Oakdale's damages from breach. Any breach by Debtor, however, would result in delayed payments to Oakdale, which, in turn, would result in defaults by Oakdale on its bond obligations that could have a negative long-term impact on Oakdale's bond rating and ability to obtain financing. This delay undercuts any claim of adequate assurance of future performance by Debtor as performance, in fact, would be altered to the detriment of Oakdale.

IV CONCLUSION

Based on the foregoing, Oakdale requests that the Court condition any order approving Debtor's assumption of the Contract on Debtor specifying in greater detail the contracts to be assumed, curing all defaults under the Contract and establishing adequate assurances of future performance.

DATED: May 11, 2001.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By 
Peter S. Muñoz
Attorneys for
Oakdale and South San Joaquin
Irrigation Districts

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

In re

PACIFIC GAS & ELECTRIC
COMPANY, a California
corporation,

Debtor.

Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11

Date: May 25, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Fl.,
San Francisco, CA 94111
Judge: Honorable Dennis Montali

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a
3 party to the within action. I am employed in the office of a member of the bar of this court at
4 whose direction the service was made. My business address is CROSBY, HEAFEY, ROACH &
5 MAY Professional Corporation, Two Embarcadero Center, Suite 2000, San Francisco, CA
6 94111. On May 11, 2001, I caused to be served the following document(s) by the method
7 indicated below:

8 OROVILLE-WYANDOTTE IRRIGATION DISTRICT'S
9 QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR
10 ORDER AUTHORIZING ASSUMPTION OF EXECUTORY
11 HYDROELECTRIC POWER PURCHASE CONTRACTS;

12 DECLARATION OF PATRICIA A. SANDS IN SUPPORT OF
13 OROVILLE-WYANDOTTE IRRIGATION DISTRICT'S
14 QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR
15 ORDER AUTHORIZING ASSUMPTION OF EXECUTORY
16 HYDROELECTRIC POWER PURCHASE CONTRACTS;

17 YUBA COUNTY WATER AGENCY'S QUALIFIED
18 OPPOSITION TO DEBTOR'S MOTION FOR ORDER
19 AUTHORIZING ASSUMPTION OF EXECUTORY
20 HYDROELECTRIC POWER PURCHASE CONTRACTS;

21 DECLARATION OF CURT AIKINS IN SUPPORT OF YUBA
22 COUNTY WATER AGENCY'S QUALIFIED OPPOSITION TO
23 DEBTOR'S MOTION FOR ORDER AUTHORIZING
24 ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER
25 PURCHASE CONTRACTS;

26 NEVADA IRRIGATION DISTRICT'S QUALIFIED
27 OPPOSITION TO DEBTOR'S MOTION FOR ORDER
28 AUTHORIZING ASSUMPTION OF EXECUTORY
HYDROELECTRIC POWER PURCHASE CONTRACTS;

DECLARATION OF JAMES CHATIGNY IN SUPPORT OF
NEVADA IRRIGATION DISTRICT'S QUALIFIED
OPPOSITION TO DEBTOR'S MOTION FOR ORDER
AUTHORIZING ASSUMPTION OF EXECUTORY
HYDROELECTRIC POWER PURCHASE CONTRACTS;

MERCED IRRIGATION DISTRICT'S QUALIFIED OPPOSITION TO
DEBTOR'S MOTION FOR ORDER AUTHORIZING ASSUMPTION OF
EXECUTORY HYDROELECTRIC POWER PURCHASE CONTRACTS;

DECLARATION OF ROSS ROGERS IN SUPPORT OF MERCED
IRRIGATION DISTRICT'S QUALIFIED OPPOSITION TO DEBTOR'S
MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY
HYDROELECTRIC POWER PURCHASE CONTRACTS;

OAKDALE AND SOUTH SAN JOAQUIN IRRIGATION DISTRICTS'
QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER
AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC
POWER PURCHASE CONTRACTS;

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

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PLACER COUNTY WATER AGENCY'S QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER PURCHASE CONTRACTS;

DECLARATION OF PATRICIA A. ANDERS IN SUPPORT OF PLACER COUNTY WATER AGENCY'S QUALIFIED OPPOSITION TO DEBTOR'S MOTION FOR ORDER AUTHORIZING ASSUMPTION OF EXECUTORY HYDROELECTRIC POWER PURCHASE CONTRACTS;

- by transmitting via facsimile on this date from fax number (415) 391-8269 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on May 11, 2001, at San Francisco, California.



 Sally N. Pincus

SPECIAL NOTICE LIST

As of May 11, 2001

Debtor:

PACIFIC GAS & ELECTRIC CO.
P.O. Box 7442
San Francisco, CA 94120

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al.
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Special Counsel for Debtor:

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San Francisco, CA 94111

U.S. Trustee:

Stephen L. Johnson
Office of the U.S. Trustee
250 Montgomery Street #1000
San Francisco, CA 94104

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Morrison & Foerster
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[Counsel for El Paso]

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[Counsel for Phil Franey, Treasurer/Tax
Collector for Kern County]

Bank of America National Trust and
Savings Association
Attn: Peggie Sanders
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Bank of America National Trust and
Savings Association
CA5-705-12-10
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Bank of America
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Mail Code CA9-706-11-21
Los Angeles, CA 90071

Bank of America, Admin. Agent
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Admin. Agent
Kathrine Kemerait
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Corporate Trust Administration
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Mail Code IL1-0126
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
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