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12 PACIFIC GAS AND ELECTRIC COMPANY

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

16 In re

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

19 Debtor.

20 Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11 Case

Date: May 16, 2001

Time: 9:30 a.m.

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

21 REPLY BRIEF IN SUPPORT OF MOTION FOR ORDER AUTHORIZING
22 DEBTOR TO PAY CERTAIN PRE-PETITION PROPERTY TAXES

23 Pacific Gas and Electric Company, the debtor and debtor in possession in the above-
24 captioned case (the "Debtor" or "PG&E"), respectfully submits this Reply Brief in Support
25 of its Motion for Order Authorizing the Debtor to Pay Certain Pre-Petition Property Taxes
26 (the "Motion"), in response to the "Limited Objection to Debtor's Motion for Authority to
27 Pay Pre-Petition Property Taxes by Secured Creditors California County Taxing
28 Authorities," filed by certain Counties,¹ and the "California Counties Response to Debtor's

¹The "Limited Objection" filed by Martha E. Romero states that a list of participating Counties will be filed separately; however, PG&E has not yet received such filing.

1 Motion for Authority to Pay Pre-Petition Property Taxes,” filed herein by thirteen Counties
2 (collectively, the “Objecting Counties”).²

3 The Objecting Counties seek this Court’s order authorizing the payment of the Pre-
4 Petition Taxes, as requested in PG&E’s Motion, but with significant strings attached. In one
5 case, the Counties seek payment of the Pre-Petition Taxes plus the 10% delinquency
6 penalties and redemption fees imposed by the California Revenue and Taxation Code (the
7 “Penalties”), and in another, the Counties seek payment of the Pre-Petition Taxes, but with
8 their right to claim the Penalties preserved. In either case, a benefit would be conferred on
9 the Counties which would be inappropriate under the circumstances.

10 In filing the Motion, PG&E was trying to expedite payment of certain real property
11 secured taxes to 49 counties in California, so that the filing of its chapter 11 petition would
12 not impose an unintended hardship on the Counties. Not satisfied with this, certain
13 Objecting Counties are asking that the Penalties be paid in addition to the taxes, thereby
14 enriching the Objecting Counties beyond what they normally could have hoped for. PG&E
15 did not intend, by this Motion, to bestow a windfall on the Counties of immediate payment,
16 less than six weeks after the delinquency date, prior to payment of its other creditors, of a
17 10% penalty which would result in an effective interest rate on the unpaid balance of the
18 installment of approximately 152%.

19 Moreover, in its Motion, PG&E did not seek an order of this Court determining
20 whether the penalties were in fact allowable secured claims under the Bankruptcy Code.
21 That issue is not before the Court.³

22 PG&E noted in its Motion that the Counties have the authority under Section 4985.2 of
23 the California Revenue and Tax Code voluntarily to waive payment of the penalty. They
24

25 ²PG&E has also received a “Response and Points and Authorities by the County of
26 Nevada,” which joins in the California Counties Response pleading.

27 ³PG&E notes that, were this issue before the Court, recovery of these statutory
28 penalties would not be allowed, under United States v. Ron Pair Enterprises, Inc., 489 U.S.
235, 241 (1989). See also In re Parr Meadows Racing Association, Inc., 880 F.2d 1540,
1549 (2nd Cir. 1989); In re Brentwood Outpatient, Ltd., 43 F.3d 256, 262-3 (6th Cir. 1994).

1 may choose not to do so, and PG&E's Motion, as formulated, would not compel such
2 waiver. Those Counties who do not wish to accept the earlier payment and prefer to litigate
3 the issue of whether penalties are in fact payable on the Pre-Petition Taxes may do so—
4 however, in such event, they will have to wait until a later date, such as the date of
5 confirmation of a plan of reorganization, to receive payment of those taxes and any penalty
6 ultimately determined to be allowable.

7 For the foregoing reasons, PG&E respectfully requests that the Court grant the Motion,
8 authorizing PG&E to pay the Pre-Petition Taxes to those Counties that waive the Penalties.

9
10 DATED: May 14, 2001

11 Respectfully,

12 HOWARD, RICE, NEMEROVSKI, CANADY,
13 FALK & RABKIN
14 A Professional Corporation

15 By: Janet A. Nexon
16 JANET A. NEXON

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