

50-275/923

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

12 In re
13 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
14 Debtor.

No. 01 30923 DM
Chapter 11 Case
Date: June 26, 2001
Time: 9:30 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

15 Federal I.D. No. 94-0742640
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19 DECLARATION OF ROBERT C. DOSS IN SUPPORT OF DEBTOR'S
20 MOTION FOR AUTHORIZATION TO CONTINUE ITS
HAZARDOUS SUBSTANCES CLEANUP PROGRAMS

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26 *Atty Add: Rids Oger Mail Center*
27 *of*
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1 I, Robert C. Doss, declare as follows:

2 1. I am employed by Pacific Gas and Electric Company ("PG&E") as its
3 Principal Consultant, Site Remediation, in connection with PG&E's environmental
4 remediation programs. In such capacity, I am familiar with and knowledgeable about
5 PG&E's policies and practices regarding environmental remediation and the details of such
6 programs. I make this Declaration in support of the Debtor's Motion For Authorization To
7 Continue Its Hazardous Substances Cleanup Programs (the "Motion"). This Declaration is
8 based upon my personal knowledge (except as to any matters stated on information and
9 belief, and as to such matters I am informed and believe they are true), and, if called as a
10 witness, I could and would testify competently to the facts stated herein.

11 2. PG&E has a long history of operations. PG&E or its predecessors have
12 been in existence since the mid-1850s. Its operations include or have included manufactured
13 gas plant sites, natural gas gathering system sites, natural gas compressor station sites,
14 electric transmission and distribution facilities, steam-electric power plant sites,
15 hydroelectric power plant sites, nuclear power plant sites and service centers. PG&E owns
16 numerous separate parcels of real property and is a tenant under more than 250 leases. As a
17 necessary part of its business, PG&E has used and continues to use a variety of different
18 hazardous materials in a number of its sites. Given the size of PG&E's business operations,
19 its long operating history, and the many properties PG&E owns and leases, the cleanup of
20 sites containing hazardous substances is an ordinary and recurring part of PG&E's business
21 and will be for many years to come.

22 3. The development of PG&E's hazardous substances cleanup programs
23 largely parallels, and is in response to, the emergence of environmental laws which govern
24 the management and cleanup of hazardous wastes and hazardous substances. With the
25 promulgation of federal Resource Conservation and Recovery Act regulations in 1979,
26 PG&E began an overall examination of its operations to determine which facilities may
27 contain historic sites of waste disposal. This effort was intensified in the early 1980s upon
28 discovery of residues from gas manufacturing operations at two PG&E properties. During

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1 the same period, the promulgation of a major regulatory program under the Toxic
2 Substances Control Act regarding the use and disposal of polychlorinated biphenyls
3 ("PCBs") led to PG&E's implementation of voluntary programs to replace the two major
4 categories of PCB-containing electrical equipment on its system, and placed increasing
5 emphasis on the cleanup of releases from in-service equipment and from historic discharges.
6 California's regulations regarding testing, upgrading and cleanup of releases from
7 underground tanks which store hazardous substances led to a major PG&E program to
8 remove over 500 such tanks from service, and to conduct investigations and, where
9 appropriate, remedial actions to mitigate the effects of any historic leaks or releases from the
10 tanks. Finally, the development of regulatory programs under the federal Comprehensive
11 Environmental Response, Compensation and Liability Act of 1980 (commonly referred to as
12 "CERCLA" and the federal "Superfund" statute) and similar state statutes enacted under the
13 California Health and Safety Code have led PG&E to develop a comprehensive program,
14 operating under state and federal regulatory oversight, to evaluate known sites of historical
15 operations and potential releases, and to perform remedial measures at sites where necessary
16 to address ongoing or potential exposure risks.

17 4. PG&E maintains a staff of environmental professionals to manage its
18 hazardous substance cleanup programs. These include professional engineers, registered
19 geologists, certified engineering geologists, and personnel with training or certification in
20 related environmental fields. The large number of sites involved, as well as the specialized
21 expertise mandated in site investigations, requires that the PG&E staff serve as "project
22 managers," setting the technical framework for site investigations, serving as the liaison with
23 regulatory agencies, local officials and the public, directing the performance of the
24 investigations and remedial actions, and managing all aspects of contracting, budgeting and
25 cost reporting. By and large, PG&E uses the services of environmental consulting firms to
26 perform site investigations, conduct human health and ecological assessments, and to design
27 and implement any required remedial measures. From time to time, specialized
28 environmental services are obtained, such as studies of biological habitat and development

1 of measures to provide protection of endangered or threatened species, or forensic analyses
2 of residues to obtain information on their possible sources.

3 5. PG&E's environmental professionals are supported in these programs by
4 internal PG&E legal counsel, who assist in the development of environmental policies,
5 provide guidance and direction on legal and regulatory issues, and manage regulatory and
6 third-party claims with respect to environmental issues. Where appropriate, PG&E counsel
7 utilize the services of outside legal firms to assist in responding to claims.

8 6. PG&E's overall approach to the cleanup of hazardous substances sites is
9 predicated on full compliance with all applicable environmental laws. Remedial measures
10 are developed with the oversight of local, state or federal environmental regulatory agencies.
11 Sites which present an ongoing exposure risk to human health or the environment are, of
12 course, given first priority in investigation and remedial action. PG&E's policy is to provide
13 full notice to all involved regulatory agencies of the existence of such sites, and to work
14 cooperatively with the agencies, and under their oversight, throughout all phases of
15 investigation and cleanup.

16 7. PG&E's approach to hazardous substance cleanup claims made by third
17 parties is to first ascertain whether the claims arise from conditions which are, or could be,
18 due to operations for which PG&E is responsible. For those sites where PG&E determines it
19 may be responsible for the environmental conditions, its preference is to work cooperatively
20 with the claimant in investigating site conditions and developing a mutually agreeable plan
21 for remedial actions. Under certain circumstances, PG&E will agree to share in financing
22 the costs of investigation and cleanup that meet the requirements of the overseeing
23 environmental agency, or will agree to a negotiated, fair and equitable allocation of costs
24 already incurred. This approach avoids the inefficiencies and extra cost involved in
25 litigating site cleanup responsibility, while at the same time providing some reasonable
26 assurance that PG&E is assuming responsibility only for those conditions brought about by
27 its operations. In those instances where an equitable allocation based on current California
28 and federal law cannot be reached, PG&E will litigate the claim.

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1 8. Although sites rarely qualify as "typical" in all respects, the following is a
2 brief discussion of the most common study and mitigation elements of a cleanup program at
3 sites where releases of hazardous substances have occurred.

4 a. Preliminary Studies. A site whose operations potentially could have
5 contributed to hazardous substances contamination typically first undergoes one or more
6 preliminary studies, termed preliminary assessments or Phase 1 environmental site
7 assessments. In these studies, site operations are summarized and the potential for chemical
8 release is evaluated, spills or other known releases are identified, known disposal
9 repositories are identified and described, interviews are conducted with former employees or
10 local officials to determine the likelihood that a release of a hazardous substance occurred on
11 the site, and nearby sites of known hazardous substance releases are identified. These
12 assessments generally include a review of public documents in the files of environmental
13 regulatory agencies.

14 b. Sampling Of Environmental Media. The chemical data that forms the core of
15 the site investigation process is obtained through remedial, or Phase 2, investigations, which
16 involve the sampling of environmental media (soils, sediments, groundwater, surface water,
17 air) to determine the nature and extent of chemical contamination on a site. These
18 investigations also require that site hydrologic, geologic and geochemical conditions are
19 defined, so that the fate and transport of chemical contaminants can be assessed.

20 c. Human Health And Environmental Risk Assessments. Using data obtained
21 during the remedial investigation, an assessment may be made of the extent of risk posed by
22 chemicals present at a site to human health or to ecological receptors, such as indigenous
23 plant or animal species. These assessments seek to determine the theoretical increase in the
24 probability of developing disease from exposure to the chemical at the site under study. The
25 use of theoretical risk studies to assess the likelihood of adverse human health effects is
26 widely accepted in both federal and state regulatory programs. So-called "risk-based
27 cleanups" represent a scientifically defensible, and health-protective, means of establishing
28 how "clean" a site must be made for a given purpose.

1 d. Other Specialized Studies. The investigation of a site may involve the conduct
2 of highly specialized studies necessary to establish the historical framework for site
3 responsibility or to ascertain specific data on biological or cultural resources. Historical
4 studies of all site operations, as well as site ownership, are often necessary to determine
5 whether or not, or to what extent, materials present at a site are the responsibility of PG&E,
6 and whether operations of others may be responsible for site conditions. Forensic chemical
7 analysis is often useful in establishing the likely origins of hazardous substances, particularly
8 organic substances. Species diversity and habitat studies help identify sites where threatened
9 or endangered species issues may arise.

10 e. Feasibility Studies. A feasibility study is a formal evaluation of all alternatives
11 (including taking no action), which may be employed at a site to achieve remedial goals.
12 Remedial goals may include the reduction of human health risk to a level below an
13 established threshold and/or the reduction in concentration of a chemical to a level below an
14 adopted standard. Alternative actions are identified and described in the feasibility study,
15 and are evaluated on the basis of diverse criteria including efficacy in achieving remedial
16 goals, effects of the action on public health and safety, effects of the action on beneficial
17 uses of resources, cost, ease of implementation, and permanence. The feasibility study
18 concludes with a description of the recommended remedial alternative, based on the detailed
19 analysis and ranking of the range of remedial alternatives available.

20 f. Remedial Action Plans. A remedial action plan is a conceptual design-level
21 plan for responding to exposure risks posed by hazardous substances at a site. When
22 prepared following a feasibility study, a remedial action plan will be concerned with the
23 recommended remedial option identified in the feasibility study. In cases where no
24 feasibility study has been prepared (as in the case of relatively uncomplicated sites where
25 cleanup is expected to be below certain statutorily established cost thresholds) a "remedial
26 action workplan" may be prepared, which combines a brief analysis of a limited range of
27 remedial measures with the identification and conceptual design of a preferred alternative.
28 Remedial action plans are adopted as part of a public notice and hearing process conducted

1 by environmental regulatory agencies. Following a public hearing to introduce and receive
2 comments on a remedial action plan, a formal comment and response period will commence.
3 At the conclusion of that period, the plan may be adopted by the agency as a final plan.

4 g. Remedial Design Documents. Upon adoption of a final remedial action plan, a
5 detailed engineering design must be prepared to implement the approved remedial measures.
6 In addition, and depending on the types of remedial measures proposed, workplans may be
7 required for various elements of the remedial measures, including the transportation of
8 wastes and materials to or from the site, the protection of on-site workers and the public
9 during implementation of the remedial measures, and the monitoring of ambient air, water or
10 soil during the remedial actions to ensure that hazardous substances are not dispersed by the
11 remedial actions.

12 h. Remedial Actions. Upon the conclusion of the investigation phase at a
13 hazardous substance release site (as represented by the various activities described above),
14 remedial measures are implemented in accordance with the approved plans. The basic
15 remedial options are: (1) containment of hazardous substances to eliminate future human
16 health or environmental exposure risks, (2) removal of hazardous substances to an
17 appropriate disposal or treatment facility, and (3) treatment of hazardous substances in-situ
18 to reduce their quantity, mobility, or toxicity.

19 i. Post-Remedial Measures. Following implementation of remedial measures at
20 a site, a number of post-remedial actions are generally required. Active remedial systems,
21 such as groundwater control, extraction and treatment systems, must be maintained
22 throughout their operating lives (which can range to 30 years or more). Passive remedial
23 facilities, such as soil caps or hydraulic slurry walls, must undergo regular inspections to
24 ensure their continued efficacy. Groundwater monitoring often must continue at a site, and
25 in the vicinity of that site, to ensure the containment and/or reduction of groundwater
26 contamination continues according to the remedial plans. Access restrictions must be
27 maintained at sites where such restrictions are a feature of the remedial measures.

28 9. PG&E's hazardous substances cleanup programs generally involve sites that

1 can be broadly grouped into the following three categories:

- 2 (1) PG&E-owned sites at which there are active operations;
- 3 (2) PG&E-owned sites at which there are no active
- 4 operations; and,
- 5 (3) Third-party owned sites.

6
7 10. Pending the Court's hearing and ruling on the Motion, PG&E has
8 suspended its hazardous materials cleanup programs on properties falling within the third
9 category referenced above due to the concern that continuing with such programs may
10 involve the payment of a prepetition claim and may be deemed not to benefit the bankruptcy
11 estate.

12 11. PG&E incurred expenditures of approximately \$16 million for its hazardous
13 substances cleanup programs in calendar year 1999 and approximately \$18.5 million in
14 calendar year 2000. PG&E has budgeted expenditures of approximately \$20.6 million for its
15 hazardous substances cleanup programs in calendar year 2001, of which \$2.3 million has
16 been spent to date.

17 12. As may be expected, the anticipated costs for these programs overall can be
18 highly variable. Unanticipated discoveries at sites not currently in the programs, or new
19 claims relating to formerly owned sites, can add significant costs to a given year's budget.
20 Information gathered during site investigations and from historical or forensic studies can
21 affect dramatically the degree to which PG&E's operations can be considered to have
22 resulted in the presence of hazardous materials at a site, and thus may necessitate a revision
23 of PG&E's estimated cleanup liability at that site.

24 13. There is a benefit to the estate in avoiding any prolonged work stoppage at
25 PG&E's cleanup sites. A prolonged stoppage may result in the loss of important consultants
26 and contractors who may have to move on to other projects. It may also increase the costs of
27 cleanup, particularly where the contamination is migrating. In allowing PG&E to continue
28 its cleanup programs with minimal interruption, PG&E not only can avoid unproductive and

1 lengthy squabbles with governmental agencies and third parties, it can better control the
2 costs of the cleanup. PG&E is also benefited by cleaning up its non-operating properties in
3 that it will be able to sell such properties at a higher price in the future. PG&E believes that
4 in most instances the cost of the cleanup is less than the added value it brings to the property.
5 Also, cleaning up the property minimizes the potential for a lawsuit from the buyer or
6 subsequent owners of the property in the future.

7 14. The magnitude of the costs for which PG&E seeks Court authorization in
8 the Motion is relatively modest in light of PG&E's overall operations and the total assets and
9 liabilities of the estate. PG&E's request for authorization to expend up to \$22 million
10 annually in environmental remediation costs is a small fraction of PG&E's total annual
11 operating expenditures, which exceeded \$7 billion per year in each of the three most recent
12 calendar years and which averaged over \$9 billion per year during such three-year period.
13 The estimated total assets and liabilities of PG&E as set forth in Exhibit "A" to the
14 Voluntary Petition filed in the above-captioned case, are approximately \$24.2 billion and
15 \$18.4 billion, respectively.

16 I declare under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct. Executed this 5th day of June, 2001, at San Francisco,
18 California.

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21 _____
22 ROBERT C. DOSS

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