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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re	CASE NO. 01-30923 DM
PACIFIC GAS AND ELECTRIC COMPANY, a California corporation,	Chapter 11
Debtor.	DATE: June 18, 2001 TIME: 9:30 a.m. PLACE: 232 Pine St., 22nd Floor San Francisco, CA JUDGE: Honorable Dennis Montali
Tax Id # 94-0742640	

SAN FRANCISCO'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OBJECTIONS TO DEBTOR'S MOTION FOR ORDER AUTHORIZING (1) CONTINUATION OF PREPETITION EMPLOYEE SEVERANCE AND DISPLACEMENT PROGRAMS, (2) ESTABLISHMENT OF MANAGEMENT RETENTION PROGRAM, AND (3) HONORING OF CERTAIN PREPETITION EMPLOYEE COMPENSATION

A001 0/1 Add: Rids Ogc Mail Center

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE, THE DEBTOR AND OTHER INTERESTED PARTIES:

The City and County of San Francisco ("San Francisco") hereby request, pursuant to Rule 201 of the Federal Rules of Evidence, as incorporated by Rule 9017 of the Federal Rules of Bankruptcy Procedure, that this court take judicial notice of, without limitation, the following pleadings and documents which are from the Debtor's case.

1. The Court's tentative ruling and order to meet and confer following hearing on emergency motion of Mid-Set Cogeneration Co., et al., filed May16, 2001, and in particular pages 14 and 15, copies of which pages are attached hereto as Exhibit A.

2. Attached hereto as Exhibit B and incorporated herein by reference is a true and correct copy of the Debtor's voluntary petition.

3. Both documents are submitted in connection with the Debtor's allegation that it is solvent.

Respectfully submitted,

Louise H. Renne,
L. Joanne Sakai,
Theresa Mueller, and
D. Cameron Baker,

and

DATED: June 11, 2001

SULMEYER, KUPETZ, BAUMANN & ROTHMAN
A Professional Corporation

By: _____
Irving Sulmeyer
Attorneys for Creditors City and County of San Francisco

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EXHIBIT A

This is not just a technical issue. If PG&E's default to the QF's is close to $1 billion, as various counsel have claimed, then the interest alone will be very substantial. Consequential damages under state law could include not only damage to Mid-Set but also, if PG&E's non-payment under the PPAs forces Mid-Set to breach its own contracts with third parties, any damages from those breaches. See 1 Witkin, Sum. of Cal. Law, Contracts §§ 825 (future profits), 842 (attorneys' fees, including fees incurred in bringing or defending action against third person), 848 (consequential damages) (9th ed. & Supp. 2000).

Third, if PG&E eventually rejects the PPAs, PG&E might nevertheless still have to pay 100% of any consequential damages and interest. The Bankruptcy Code treats rejection of executory contracts as a pre-petition breach. 11 U.S.C. § 502(g). In general, the effect is that post-petition consequential damages are treated as unsecured, non-priority pre-petition claims. See Abercrombie v. Hayden Corp. (In re Abercrombie), 139 F.3d 755, 758-759 (9th Cir. 1998) (attorneys' fees incurred litigating post-petition bankruptcy issues treated as part of pre-petition unsecured claim). If PG&E were insolvent, those claims would be paid something less than their face value, without post-petition interest. 11 U.S.C. §§ 502(b)(2), 726(a)(5) and 1129(a)(7)(A)(ii).

PG&E claims, however, that it is solvent. PG&E's counsel has made numerous representations to the court to the effect that PG&E intends this case to be conducted on a "business as usual" basis and that all creditors will be paid in full. In addition, the information that accompanied the voluntary petition, while not

conclusive, leads the court to believe at this point that PG&E is solvent in a balance sheet sense. If PG&E is correct that it is solvent, pre-petition claims should receive payment in full with interest. 11 U.S.C. §§ 726(a)(5) and 1129(a)(7)(A)(ii). Indeed, this has led some courts to refuse to approve solvent debtors' motions to reject executory contracts, because the net effect would be worse for the bankruptcy estate than assuming the contracts. See Chi-Feng Huang, supra, 23 B.R. at 803 (if estate is solvent, rejection would "accomplish nothing for the general unsecured creditors" and "might only impose unwarranted administrative expenses or delay"); Bregman v. Meehan (In re Meehan), 59 B.R. 380 (E.D.N.Y. 1986) (bankruptcy court may decline to authorize rejection of contract in solvent estate because it will not benefit unsecured creditors).[11]

In other words, the longer PG&E takes to decide whether to

---

[11] Given the above analysis it might seem that it makes economic sense for PG&E to assume all its executory contracts. Moreover, it seems likely that PG&E will want to assume Mid-Set's PPAs, both because they appear to be below-market at present and because if PG&E rejects the PPAs it might be required by the Federal Power Act to enter into a new PPA with Mid-Set (possibly at a higher rate). See generally 16 U.S.C. § 824i and 824k and 18 C.F.R. § 292.303 and 292.304 (1982) (utilities' obligation to purchase from QFs). See also American Paper Institute, Inc. v. American Elec. Power Service Corp., 461 U.S. 402 (1983) (upholding validity of rules). The court notes that a delay in assuming or rejecting an executory contract can be at least temporarily beneficial to debtors but might ultimately be detrimental to the bankruptcy estate. See R and O Elevator Co., Inc. v. Harmon, 93 B.R. 667 (D. Minn. 1988) (debtor did not move to assume or reject executory contract with former president until plan confirmation, thereby benefitting from non-competition agreement without having to assume contract and pay cure, but president was therefore under no duty to mitigate damages). Nonetheless, the court recognizes that there may be many valid business reasons for PG&E to defer the decision whether to assume or reject its executory contracts, not least of which are shifting regulatory and economic circumstances.

EXHIBIT B

(Official Form 1) (9/97)

FORM B1

United States Bankruptcy Court
Northern District of California

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse)(Last, First, Middle):
Pacific Gas and Electric Company	
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all): **94-0742640**	Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): **77 Beale Street San Francisco, CA 94120**	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: **San Francisco**	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): **P.O. Box 7442 San Francisco, CA 94120**	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- ☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- ☐ Individual(s)
- ☐ Corporation
- ☐ Partnership
- ☐ Other _____
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 9
- ☑ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

- ☐ Consumer/Non-Business
- ☑ Business

Filing Fee (Check one box)

- ☑ Full Filing Fee Attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

- ☑ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	☐	☐	☐	☐	☐	☑

Estimated Assets	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☑

Estimated Debts	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☑

UNITED STATES BA
NORTHERN DISTRI
Case # 01-30923 Chapter 11
Filed: 09:04 AM, 04/06/01 San Francisco

Judge: Dennis Montali
Trustee:
Debtor(s):
Pacific Gas and Electric Co.

First Meeting of Creditors
10:00 AM, May 08, 2001
San Francisco UST Office
250 Montgomery Street
Suite 1010
San Francisco, CA 94104-3410

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s): **Pacific Gas and Electric Company**	FORM B1, Page 2

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed: NONE	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor: NONE	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X Not Applicable
Signature of Debtor

X Not Applicable
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X [signature]
Signature of Authorized Individual

ROBERT D. GLYNN, JR
Printed Name of Authorized Individual

CHAIRMAN OF THE BOARD
Title of Authorized Individual

APRIL 6, 2001
Date

Signature of Attorney

X [signature]
Signature of Attorney for Debtor(s)

JAMES L. LOPES 63678
Printed Name of Attorney for Debtor(s) / Bar No.

Howard, Rice, Nemerovski et al.
Firm Name

3 Embarcadero Center, 7th Floor
Address

San Francisco, CA 94111

415-434-1600
Telephone Number

Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Not Applicable
Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X Not Applicable
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☑ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X
Signature of Attorney for Debtor(s) Date

Name of Debtors: Pa[illegible] and Electric Company

Case Number:

NAME(S) OF ATTORNEY(S) DESIGNATED TO REPRESENT DEBTOR	
JAMES L. LOPES	63678
JEFFREY L. SCHAFFER	91404
JANET A. NEXON	104747
WILLIAM J. LAFFERTY	120814

FORM B1, Exh.A (9/97)

[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act pf 1934 and is requesting relief under chapter 11 of the Code, this Exhibit "A" shall be completed and attached to the petition.]

UNITED STATE BANKRUPTCY COURT

Northern District of California

In re Pacific Gas and Electric Company, Debtor

Case No. _____

Chapter Eleven

Exhibit "A" to Voluntary Petition

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is 1-2348.

2. The following financial data is the latest available information and refers to the debtor's condition on September 30, 2000[1]

			Approximate number of holders
a	Total assets	$24,183,000,000	
a	Total debts	$18,400,000,000	
c.	Debt securities held by more than 500 holders.		
	secured / / unsecured / / subordinated / /	$ 3,032,501,000	unavailable
	secured / / unsecured / / subordinated / /	$ 5,951,603,900[2]	unavailable
	secured / / unsecured / / subordinated / /	$	
	secured / / unsecured / / subordinated / /	$	
	secured / / unsecured / / subordinated / /	$	
d.	Number of shares of preferred stock	17,258,280	unavailable
e.	Number of shares of common stock	326,926,667	2

comments, if any: _____

3. Brief description of debtor's business: Electric and gas utility providing electric and gas services to Northern and Central California.

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor. PG&E Corporation

[1] Based on most recent publicly filed financial statements. Will be amended upon issuance of updated financial statements. Does not inc debts incurred since September 30, 2000.

[2] Amounts as of January 22, 2001