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PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

In re
PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
Debtor.
Federal I.D. No. 94-0742640

Case No. 01-30923 DM
Chapter 11
HEARING
Date: August 7, 2001
Time: 9:30 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

DECLARATION OF KENT M. HARVEY IN SUPPORT OF DEBTOR'S
MOTION FOR ORDER ESTABLISHING PROCEDURES AND DEADLINES
FOR FILING CERTAIN ADMINISTRATIVE CLAIMS

I, Kent M. Harvey, declare as follows:

1. I am the chief financial officer of Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E" or the "Debtor"). This Declaration is based on my personal knowledge of PG&E's financial position, general operations and practices and policies, and upon my review of PG&E's records concerning the matters stated herein. If called as a witness, I could and would testify competently to the facts stated herein.

-1- Add lids age mail/cover ADD

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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

Case No. 01-30923 DM

Chapter 11

HEARING

Date: August 7, 2001
Time: 9:30 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

21 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER ESTABLISHING
22 PROCEDURES AND DEADLINES FOR FILING CERTAIN ADMINISTRATIVE
23 CLAIMS; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

24 [DECLARATION OF KENT M. HARVEY FILED SEPARATELY]

25
26
27
28 DEBTOR'S MOTION FOR ORDER ESTABLISHING ADMIN. CLAIMS DEADLINES AND PROCEDURES

1 NOTICE OF MOTION AND MOTION

2 PLEASE TAKE NOTICE that on August 7, 2001, at 9:30 a.m., or as soon
3 thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali,
4 located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric
5 Company, the debtor and debtor in possession in the above-captioned Chapter 11 case
6 ("PG&E"), will and hereby does move the Court for entry of an order pursuant to Section
7 503(a) of the Bankruptcy Code (11 U.S.C. §503(a)): (1) establishing deadlines for parties
8 requesting payment of administrative expenses arising from the sale of electric energy or
9 services for PG&E's customers by or through the California Independent System Operator
10 Corporation (the "ISO") or from the sale of electric energy or services by the California
11 Department of Water Resources (the "DWR") (collectively, "ISO/DWR Administrative
12 Claims"); (2) establishing procedures for filing ISO/DWR Administrative Claims; and
13 (3) determining that failure to comply with the applicable procedures and deadlines will
14 result in a bar to any such claims in the future.

15 The Motion seeks to establish a deadline of September 10, 2001 for filing
16 ISO/DWR Administrative Claims arising between April 6, 2001 (the date of PG&E's
17 Chapter 11 petition) and May 31, 2001, and subsequent deadlines for filing ISO/DWR
18 Administrative Claims arising after May 31, 2001, three months after the end of the
19 applicable month (e.g., a deadline of September 30, 2001 for claims arising through June 30,
20 2001). **THIS MOTION ONLY APPLIES TO ADMINISTRATIVE CLAIMS OF THE
21 ISO, THE DWR AND THOSE PARTIES LISTED ON EXHIBIT "B" ATTACHED
22 HERETO AND DOES NOT APPLY TO ANY OTHER ADMINISTRATIVE
23 CLAIMS.**

24 This Motion is based on the facts and law set forth herein, the Declaration of
25 Kent M. Harvey ("Harvey Decl.") in support of the Motion filed concurrently herewith, the
26 record of this case and any evidence presented at or prior to the hearing on this Motion.

27 PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9014-1(c)(2) of the
28 Bankruptcy Local Rules of the United States District Court for the Northern District of

1 California, any opposition to the Motion and the relief requested herein must be filed with
2 the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E) at
3 least five (5) days prior to the scheduled hearing date. If there is no timely objection to the
4 requested relief, the Court may enter an order granting such relief without further hearing.

5 6 MEMORANDUM OF POINTS AND AUTHORITIES

7 I.

8 INTRODUCTION

9 PG&E is an investor-owned utility providing electric and gas services to millions
10 of California residents and businesses. Beginning approximately last summer, as a result of
11 the partial deregulation of the power industry, PG&E was forced to pay dramatically
12 increased wholesale prices for electricity. PG&E has, at the same time, been prevented by
13 the California Public Utilities Commission ("CPUC") from passing these costs on to retail
14 customers, resulting in a staggering financial shortfall. In the face of the deterioration in
15 PG&E's financial condition, and with little progress having been made toward a resolution
16 of the crisis, PG&E by early April 2001 determined that a Chapter 11 reorganization offered
17 the best prospects for protecting the interests of its customers, creditors, employees, and
18 shareholders. Accordingly, on April 6, 2001, PG&E filed a voluntary petition under
19 Chapter 11 of the Bankruptcy Code. PG&E continues to manage and operate its business
20 and property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy
21 Code (11 U.S.C. §§1107-1108).

22 II.

23 FACTUAL BACKGROUND

24 Under the restructuring of California's electricity industry, the ISO exercises
25 centralized operational control of the statewide transmission grid to ensure electric reliability
26 for the state. See Cal. Pub. Util. Code §345. As a general matter, when the ISO procures
27 electric energy or services from third parties with respect to PG&E's service territory, it bills
28 PG&E for such costs to the extent permitted by ISO tariffs approved by the Federal Energy

1 Regulatory Commission. Harvey Decl. ¶3.

2 Pursuant to executive order and subsequent legislation ("AB 1X"), since
3 approximately mid-January of 2001, the DWR has been purchasing wholesale electric power
4 from third parties to be sold directly to customers in PG&E's service territory. Harvey Decl.
5 ¶4. Pursuant to such order, legislation, and decisions issued by the CPUC, PG&E and other
6 utilities are required to collect from their customers and remit funds to the DWR for electric
7 power purchased by the DWR and sold to their customers. Id.

8 To make up the shortfall that results whenever customer demand exceeds the
9 supply that PG&E can provide (i.e., with its own retained generation and third party
10 contracts), third parties may have been selling electric energy and related services to or
11 through the ISO and/or the DWR. Id. ¶5.

12 Thus, since approximately mid-January of 2001, the ISO and the DWR have been
13 two of the three sources of wholesale electricity available for meeting the demand for power
14 in PG&E's service territory (the third source being PG&E's own retained generation and
15 third party contracts).

16 It is critically important to PG&E's ability to reorganize to ensure that it is not
17 incurring significant administrative claims for the purchase of energy or services by or
18 through the ISO or by the DWR, including power sold by third party suppliers. Id. ¶6.
19 Although the Court, pursuant to its Order Regarding Application for Preliminary Injunction
20 filed on June 26, 2001 in an adversary proceeding commenced by PG&E against the ISO
21 (Adv. Proc. No. 01-3086), has preliminarily enjoined the ISO from engaging in third-party
22 power transactions on PG&E's behalf in violation of existing FERC orders, the preliminary
23 injunction does not cover potential claims against PG&E for power supplied by third parties
24 by or through the ISO. In particular, the Court preliminarily enjoined the ISO from filing
25 certain administrative claims against PG&E's estate, but expressly left open the possibility
26 that other parties might file such claims. That proceeding, moreover, is still pending and no
27 final determination of PG&E's respective rights and obligations with respect to third party
28 purchases by the ISO has yet been made.

1 Furthermore, to the extent that the DWR has been purchasing power on behalf of
2 the customers of PG&E pursuant to AB 1X, PG&E believes it is not liable to the DWR for
3 DWR's procurement and related costs, because AB 1X makes quite clear that payment for
4 such electricity and services is a direct obligation between customer end-users and the DWR.

5 Because of the importance of these issues in this bankruptcy case, including the
6 potential impact on PG&E's reorganization plan, it is imperative for PG&E to determine the
7 extent of the ISO/DWR Administrative Claims. PG&E's inability to recover its wholesale
8 power procurement costs in retail electricity rates was the primary cause of its Chapter 11
9 filing. The issue of PG&E's ongoing power procurement costs must be resolved in order for
10 PG&E to emerge from Chapter 11, which it endeavors to do expeditiously. Accordingly, by
11 this Motion, PG&E seeks to determine the scope of ISO/DWR Administrative Claims to aid
12 in its reorganization efforts.

13 III.

14 DISCUSSION

15 A. Bankruptcy Courts Have Broad Discretion To Establish Deadlines And
16 Procedures For The Filing Of Administrative Claims.

17 Section 503(a) of the Bankruptcy Code provides that "[a]n entity may timely file
18 a request for payment of an administrative expense, or may tardily file such request if
19 permitted by the court for cause." 11 U.S.C. §503(a). The legislative history of Section
20 503(a) indicates that Congress intended for the Federal Rules of Bankruptcy Procedure to
21 "specify the time, the form, and the method of such a filing." H.R. Rep. No. 595, at 355
22 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6311. The Rules do not, however, "give the
23 guidance Congress had hoped they would. In fact, they give no guidance at all." In re
24 McDonald, 128 B.R. 161, 165 n.5 (Bankr. W.D. Tex. 1991); see, e.g., Hall Fin. Group, Inc.
25 v. DP Partners, Ltd. P'ship (In re DP Partners Ltd. P'ship), 106 F.3d 667, 672 (5th Cir.
26 1997); Polysat, Inc. v. Union Tank Car Co. (In re Polysat, Inc.), 152 B.R. 886, 895-96
27 (Bankr. E.D. Pa. 1993).

28 As a result, under Section 503(a), "bankruptcy judges have, for some time, been
DEBTOR'S MOTION FOR ORDER ESTABLISHING ADMIN. CLAIMS DEADLINES AND PROCEDURES

1 accorded discretion in setting administrative-claim bar-dates.” DP Partners, 106 F.3d at 672;
2 see, e.g., Polystat, 152 B.R. at 895-96 (“a bankruptcy court has the general authority to
3 impose an administrative bar date”); 4 Lawrence P. King, Collier on Bankruptcy ¶503.02[2],
4 at 503-9 (15th ed. rev. 1998) (“Section 503(a) thus provides courts with the statutory
5 authority to set and enforce administrative claim bar dates. Neither the Bankruptcy Code
6 nor the Federal Rules of Bankruptcy Procedure sets forth a specific limitation period for the
7 filing of administrative expense claims, so courts can exercise their discretion in setting bar
8 dates according to the circumstances of each case”).

9
10 B. Proposed Deadlines And Procedures For ISO/DWR Administrative Claims.

11 PG&E requests that the Court establish the following deadlines and procedures
12 for the filing of ISO/DWR Administrative Claims:

13 (a) Bar Dates: Any and all requests for payment of ISO/DWR Administrative
14 Claims arising between April 6 and May 31, 2001 must be filed with the Court and served
15 upon PG&E in the manner set forth below no later than September 10, 2001. Any and all
16 requests for payment of ISO/DWR Administrative Claims arising after May 31, 2001 must
17 be filed with the Court and served upon PG&E in the manner set forth below no later than
18 three (3) months after the end of the applicable month. For example, claims arising through
19 June 30, 2001 must be filed and served no later than September 30, 2001, and claims arising
20 through July 31, 2001 must be filed and served no later than October 31, 2001.

21 (b) Notice Procedures: PG&E shall give notice of the bar dates for ISO/DWR
22 Administrative Claims set forth in the immediately preceding paragraph no later than
23 August 10, 2001. The notice shall be in the form attached hereto as Exhibit “A” and shall be
24 served on the DWR, the ISO and those parties listed on Exhibit “B” hereto. The bar date for
25 ISO/DWR Administrative Claims shall only apply to the DWR, the ISO and those parties
26 listed on Exhibit “B.”

1 (c) Filing And Service Procedures: Any and all requests for payment of
2 ISO/DWR Administrative Claims must be filed with the Clerk of the Bankruptcy Court by
3 mail, hand delivery or overnight courier at the following address:

4 Clerk, United States Bankruptcy Court
5 Attention: Administrative Claims
6 235 Pine Street, 19th Floor
7 San Francisco, California 94104

8 In addition, a copy of any and all requests for payment of ISO/DWR Administrative Claims
9 must be served upon counsel for PG&E at the following address:

10 James L. Lopes, Esq.
11 Howard, Rice, Nemerovski, Canady, Falk & Rabkin
12 A Professional Corporation
13 Three Embarcadero Center, 7th Floor
14 San Francisco, California 94111-4065

15 A request for payment of an ISO/DWR Administrative Claim shall not be deemed timely
16 filed unless the original of such request is actually received by the Clerk of the Court by the
17 applicable claims bar date. The Clerk of the Court shall not accept a request for payment
18 transmitted by facsimile, electronic means or other means not expressly provided above.

19 In order to give effect to the above-noted procedures and deadlines, PG&E
20 requests that the Court further order that any entity that is required to but does not file a
21 request for payment of an ISO/DWR Administrative Claim in compliance with the foregoing
22 procedures and deadlines shall be forever barred from participating in PG&E's estate with
23 respect to such ISO/DWR Administrative Claim. PG&E believes that the proposed
24 procedures provide ample notice and time within which to file a request for payment of a
25 ISO/DWR Administrative Claim, and are appropriate and fair to all affected parties.

26 IV.

27 CONCLUSION.

28 Wherefore, PG&E respectfully requests that this Court enter its Order:

1. Determining that notice of the Motion was appropriate under the
circumstances;

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- 2. Granting the Motion;
- 3. Establishing a deadline of September 10, 2001 for filing ISO/DWR Administrative Claims arising between April 6, 2001 and May 31, 2001;
- 4. Establishing subsequent deadlines for filing ISO/DWR Administrative Claims arising after May 31, 2001 three months after the end of the applicable month;
- 5. Adopting the procedures proposed above for PG&E providing notice of the foregoing deadlines and for the filing and service of ISO/DWR Administrative Claims;
- 6. Providing that any entity that asserts an ISO/DWR Administrative Claim but fails to timely submit such a claim in compliance with such procedures and deadlines shall be forever barred from participating in PG&E's estate with respect to such Claim; and
- 7. For such other relief as this Court determines to be equitable and just.

DATED: July 17, 2001.

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

Respectfully,
HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
A Professional Corporation

By: *Gary M. Kaplan*
GARY M. KAPLAN

Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
Debtor.

Chapter 11
Case No. 01-30923 DM

**NOTICE OF DEADLINES AND PROCEDURES FOR
FILING CERTAIN ADMINISTRATIVE CLAIMS**

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") ARISING ON OR AFTER APRIL 6, 2001 FROM THE SALE OF ELECTRIC POWER FOR PG&E'S CUSTOMERS BY OR THROUGH THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION (THE "ISO") OR BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES (THE "DWR"):

PLEASE TAKE NOTICE that on August __, 2001, the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court") entered its Order Establishing Procedures And Deadlines For Filing Certain Administrative Claims in the above-captioned Chapter 11 case which, among other things, establishes the following deadlines and procedures with respect to administrative expense claims pursuant to Section 503(a) of the Bankruptcy Code (11 U.S.C. §503(a)) arising on or after April 6, 2001 from the sale of electric energy or services for PG&E's customers by or through the ISO or from the sale of electric energy or services by the DWR (collectively, "ISO/DWR Administrative Claims"):

Bar Dates: Any and all requests for payment of ISO/DWR Administrative Claims arising between April 6 and May 31, 2001 must be filed with the Court and served upon PG&E in the manner set forth below no later than September 10, 2001. Any and all requests for payment of ISO/DWR Administrative Claims arising after May 31, 2001 must be filed with the Court and served upon PG&E in the manner set forth below no later than three (3) months after the end of the applicable month. For example, claims arising through June 30, 2001 must be filed and served no later than September 30, 2001, and claims arising through July 31, 2001 must be filed and served no later than October 31, 2001.

Filing And Service Procedures: Any and all requests for payment of ISO/DWR Administrative Claims must be filed with the Clerk of the Bankruptcy Court by mail, hand delivery or overnight courier at the following address:

Clerk, United States Bankruptcy Court
Attention: Administrative Claims
235 Pine Street, 19th Floor
San Francisco, California 94104

In addition, a copy of any and all requests for payment of ISO/DWR Administrative Claims must be served upon counsel for PG&E at the following address:

James L. Lopes, Esq.
Howard, Rice, Nemerovski, Canady, Falk & Rabkin
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4065

A request for payment of an ISO/DWR Administrative Claim shall not be deemed timely filed unless the original of such request is actually received by the Clerk of Court by the applicable claims bar date. The Clerk of the Court shall not accept a request for payment transmitted by facsimile, electronic means or other means not expressly provided above.

Any entity that is required to but does not file a request for payment of an ISO/DWR Administrative Claim in compliance with the foregoing procedures and deadlines shall be forever barred from participating in PG&E's estate with respect to such ISO/DWR Administrative Claim.

THE FOREGOING DEADLINES AND PROCEDURES DO NOT APPLY TO ANY CLAIMS OTHER THAN ISO/DWR ADMINISTRATIVE CLAIMS

PG&E expressly reserves the right to dispute, object to or assert offsets or defenses against any request for payment of an ISO/DWR Administrative Claim.

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