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

14 In re Case No. 01-30923 DM
15 PACIFIC GAS & ELECTRIC Chapter 11
16 COMPANY, a California corporation,
17 Debtor.
18 Federal I.D. No. 94-0742640
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OBJECTION BY CALIFORNIA
INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION BY DEBTOR
FOR ORDER ESTABLISHING
PROCEDURES AND DEADLINES FOR
FILING CERTAIN ADMINISTRATIVE
CLAIMS; DECLARATION OF SPENCE
GERBER
Date: August 7, 2001
Time: 9:30 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, CA

29 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY
30 JUDGE:
31
32 The California Independent System Operator Corporation
33 ("ISO") hereby submits its objection to the Motion ("Motion")
34 filed by Pacific Gas and Electric Company, debtor and debtor in
35 possession in the above-captioned Chapter 11 case ("PG&E" or

1 "Debtor"), for an order establishing procedures and deadlines
2 for filing certain administrative claims as follows:

3 I. INTRODUCTION

4 In its Motion, PG&E requests that the Court set special bar
5 dates for the filing of Administrative Claims by the ISO and the
6 Department of Water Resources ("DWR"). Specifically, PG&E
7 requests that September 10, 2001 be established as the bar date
8 for Administrative Claims arising between April 6 and May 31,
9 2001, and that all such claims arising after May 31, 2001 be
10 filed no later than three months after the end of the applicable
11 month.

12 In support of its Motion, PG&E states that:

13 It is critically important to PG&E's ability to
14 reorganize to ensure that it is not incurring
15 significant administrative claims for the purchase of
16 energy or services by or through the ISO or by the
17 DWR, including power sold by third party suppliers.

18 From this statement, and the remainder of the Motion, it is
19 clear that the target of the Motion is the cost of the electric
20 energy and related services purchased from third parties to
21 cover what is referred to as the "net short" position, which is
22 the power provided to PG&E retail customers in excess of PG&E's
23 scheduled generation and third-party contracts. What is not
24 clear is why PG&E has included the ISO in its Motion.

25 The ISO has publicly and unequivocally stated that it does
26 not intend to file an Administrative Claim against the Debtor's
27 estate with respect to costs incurred by the ISO to procure
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1 power to cover its "net short" position. In fact, this issue has
2 already been the subject of litigation between the Debtor and
3 the ISO, and has resulted in a preliminary injunction
4 prohibiting the ISO from asserting these claims against PG&E.

5 The ISO is not prohibited from asserting certain other
6 claims against the Debtor's estate, including the Grid
7 Management Charge, Transmission Access Charge, Reliability Must-
8 Run service costs, Federal Energy Regulatory Commission ("FERC")
9 fees, and other charges not covered by the FERC
10 "creditworthiness" orders issued to date. The ISO's
11 administrative claims will be limited to those types of non-
12 market costs. Accordingly, there is no rational basis to
13 subject such costs to the stringent bar dates PG&E proposes.

14 With respect to these administrative costs that are not the
15 subject of the Preliminary Injunction, the time limits in the
16 Motion are completely unreasonable in light of the process by
17 which invoices are computed and delivered to the Debtor by the
18 ISO - a process controlled in some large part by PG&E. Further,
19 the Motion is premature because it requests a bar date in
20 advance of dates already set in this case for other claims,
21 including those of governmental entities.

22 Rather than a well thought-out approach to creating
23 certainty regarding administrative expense priority, the Motion
24 seems to be yet another thinly-veiled attempt to induce the
25 Department of Water Resources ("DWR") to take a position in this

1 case and waive its Eleventh Amendment sovereign immunity. In
2 any event, as set forth below, the procedures set forth in the
3 Motion will not generate the relief ostensibly requested by the
4 Debtor, and the Motion should be denied.

5 In further support of its objection, the ISO respectfully
6 represents as follows:

7 *A. The Motion is Premature.*

8 The Motion requests the Court to set an administrative
9 claims bar date of September 10, 2001 for post-petition expenses
10 arising from April 6 through May 31, 2001. Ostensibly, PG&E
11 seeks this bar date to achieve certainty in the amount of claims
12 made against its estate. However, the Court has already fixed
13 bar dates for parties to file proofs of claim in this case.
14 Creditors must file their proofs of claim for pre-petition
15 claims by September 5, 2001, with the exception of governmental
16 units, which are permitted to file claims through and including
17 October 3, 2001. There appears to be no need, therefore, to
18 have another bar date prior to October 3, 2001, to achieve the
19 "certainty" sought by the Debtor.

20 Rather, there may be an additional motivation for PG&E to
21 seek an intervening bar date. The Motion appears calculated by
22 the Debtor to induce DWR to appear in the bankruptcy case by way
23 of an asserted administrative expense claim. Apparently, the
24 Debtor is seeking to exploit the Court's general power to set
25 bar dates for claims to force the hand of the DWR regarding the

1 potential waiver of sovereign immunity.¹ While it is not the
2 ISO's function nor intention to advance arguments on behalf of
3 DWR, the foregoing suggests that the Motion is premature and
4 should be considered at a later date.

5 By October 3, 2001, the DWR will have either filed a proof
6 of claim or foregone its opportunity to do so. Under either
7 circumstance, the "certainty" that the Debtor alleges in the
8 Motion is so important to the plan process will be greatly
9 enhanced. Undoubtedly, if DWR files a proof of claim, the
10 Debtor will argue that the DWR has waived its sovereign
11 immunity, and the Debtor will thereafter pursue all of its
12 rights and claims against DWR.

13 Under these circumstances, the ISO believes that
14 consideration of the Motion should be deferred until the October
15 3, 2001 bar date has passed. At that point, the parties will
16 know whether DWR has elected to actively participate in this
17 case and the Motion may be considered in that context. Given
18 that the Debtor has now requested an extension of its
19 exclusivity period for filing a plan of reorganization through
20 December 2001, suggesting that no plan will be filed prior to

21 ¹ Indeed, the Court has previously commented in the Adversary Proceeding on
22 the absence of DWR, and the ISO believes that it has been treated,
23 improperly, by the Debtor as the DWR's surrogate in the Adversary Proceeding.
24 The Debtor has clearly been frustrated in its efforts to drag the DWR into
25 this case and the Adversary Proceeding, and the Motion is just another clever
26 effort by the Debtor to achieve a result it has thus far been unable to
27 achieve.
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1 that time frame, the Debtor would not be prejudiced by deferring
2 consideration of the Motion to a date in mid-October.

3 *B. The Relief Requested in the Motion Ignores The Claims
4 Settlement Process as Between the ISO and the Debtor, and Is
5 Procedurally Unworkable.*

6 As stated above, the ISO reserves its rights to assert an
7 administrative claim related to various fees and charges,
8 including but not limited to, the Grid Management Charge, the
9 Transmission Access Charge, Reliability Must-Run service costs,
10 the FERC fee, and other similar non-market charges which are not
11 covered by FERC's creditworthiness orders. The ISO does not
12 dispute the general proposition that the Court has the authority
13 to fix a bar date for the filing of these administrative expense
14 priority claims. However, in the Motion, the Debtor studiously
15 ignores the length of actual process for settling claims and
16 proposes a 90-day bar date, which is too early in the ISO's
17 settlements process to produce amounts with certainty or that
18 will likely not be adjusted as the process is completed.

19 Under the ISO Tariff and the ISO's Settlement and Billing
20 Protocol, on a monthly basis, the ISO is charged with the
21 responsibility of calculating the amount due from (or to, as the
22 case may be) each Scheduling Coordinator for Grid Management
23 Charges, grid operations charges, ancillary services, imbalance
24 energy, usage charges and other amounts relating to the
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1 provision of electricity service. The Debtor is a Scheduling
2 Coordinator. One source of the data used by the ISO to perform
3 its calculations is the actual meter read data collected and
4 provided to the ISO by Scheduling Coordinator's, including the
5 Debtor. Under the ISO's Payment Calendar, the Debtor has 45
6 calendar days following an operating day within which to deliver
7 preliminary meter read data, and 49 business days to submit
8 corrected meter read data (approximately 70 calendar days) to
9 the ISO to enable the ISO to generate daily preliminary and
10 final statements. It is not at all unusual for Scheduling
11 Coordinators such as the Debtor to miss the deadline for
12 providing the meter read data.

14 Once the meter read data is provided to the ISO, the ISO
15 prepares a preliminary settlement statement which is delivered
16 to each Scheduling Coordinator 38 business days (approximately
17 51 calendar days) after the particular operating date. The
18 Scheduling Coordinator then has the opportunity to review,
19 validate and confirm the preliminary statement. Scheduling
20 Coordinators such as the Debtor have the opportunity to provide
21 notice of a dispute regarding the statement delivered within 0
22 days following the delivery of a preliminary statement. At that
23 time, a Scheduling Coordinator may request a re-run of a
24 settlement statement and, if granted, may be set aside for an
25 indeterminate period of time until such dates can be included in
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1 a market rerun. In sum, the timing of further processing of the
2 statement is out of the control of the ISO.

3 Once that process is complete, which may include
4 adjustments to the Debtors statement, the ISO delivers a final
5 settlement statement to the Scheduling Coordinator. Preliminary
6 and final statements are not invoices.

7 Preliminary and final invoices are not delivered to the
8 Debtor until the final statement for the last day of the month
9 is processed. For preliminary billing this is approximately 84
10 calendar days after the first day of the month invoiced and for
11 final billings, the process is completed approximately 102
12 calendar days after the first day of the month invoiced.

14 Even after a "final" invoice is generated, the various
15 charges may be subject to further substantial adjustment. These
16 adjustments are due to a variety of factors which are unique to
17 the ISO's function in the energy market. For example,
18 adjustments may arise from miscalculations or errors in any
19 aspect of the voluminous cost and meter data each Scheduling
20 Coordinator submits to the ISO, the settlement of outstanding
21 billing disputes (which number in the thousands per year), or an
22 order by FERC. Any of these occurrences may result in a
23 determination that one or more Scheduling Coordinators have been
24 over or undercharged, which necessitates a re-run or
25 recalculation of the entire market to adjust the charges and/or
26 payments so that all Scheduling Coordinators are billed
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1 appropriate amounts. Therefore, due to circumstances beyond the
2 control of the ISO, it is impossible for the ISO to determine
3 with reasonable certainty the accuracy of any "final" invoice
4 for several months. In fact, the ISO is currently rerunning the
5 market for 2001, which takes considerable time. The month of
6 May 2001 will not be re-run for approximately two months.
7

8 As the foregoing abbreviated description of the settlement
9 process illustrates, the 90-day period proposed by the Debtor
10 within which the ISO would be required to compute and assert
11 administrative expense priority claims against the Debtor is
12 totally unworkable. If PG&E's proposed bar date schedule is
13 adopted, the effect in all likelihood would be that the ISO at
14 the end of 90 days would only be able to assert a placeholder
15 claim to preserve the right to assert its administrative expense
16 claims when known. Claims submitted at the 90-day demarcation
17 would be inaccurate, subject to significant adjustment and,
18 ultimately, unreliable.
19

20 If the Court is otherwise inclined to set a bar date for
21 the filing of administrative expense priority claims, such date
22 should be fixed 180 days following the end of any given billing
23 period. Thus, in lieu of the September 10, 2001 bar date
24 proposed by the Debtor for the claims arising during the period
25 from April 6, 2001 through May 31, 2001, the Court should fix
26 November 30, 2001 as the bar date for that period. Thereafter,
27 administrative claims arising in this case would be filed by not
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1 later than 180 days following the end of any given month. In
2 this manner, there is a reasonable opportunity for the ISO to
3 generate reliable and accurate settlement data for invoicing
4 purposes, and the claims asserted would not likely be subject to
5 further significant adjustment, which would provide the
6 certainty PG&E purportedly seeks.
7

8 WHEREFORE, the ISO respectfully requests that the Court
9 enter an order (i) denying the Motion in its entirety; (ii) in
10 the alternative, continuing the hearing on the Motion to a date
11 in mid-October 2001 after the governmental unit's claims bar
12 date, as the Court's calendar may permit; (iii) alternatively,
13 setting an initial bar date of November 30, 2001 for
14 administrative claims arising from the petition date through and
15 including May 31, 2001, and requiring the filing of
16 administrative claims within 180 days following the end of any
17 given billing cycle thereafter; and (iv) granting such other and
18 further relief as is just and proper under the circumstances.
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20 Dated: August 2, 2001

CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

21
22 By: /s/

23 DAVID L. NEALE
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25 LEVENE, NEALE, BENDER, RANKIN
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27 Attorneys for California
28 Independent System Operator
Corporation

1 invoiced and for final billings, the process is completed
2 approximately 102 calendar days after the first day of the month
3 invoiced.

4 6. Even after a "final" invoice is generated, the various
5 charges may be subject to further substantial adjustment. These
6 adjustments are due to a variety of factors which are unique to
7 the ISO's function in the energy market. For example,
8 adjustments may arise from miscalculations or errors in any
9 aspect of the voluminous cost and meter data each Scheduling
10 Coordinator submits to the ISO, the settlement of outstanding
11 billing disputes (which number in the thousands per year), or an
12 order by FERC. Any of these occurrences may result in a
13 determination that one or more Scheduling Coordinators have been
14 over or undercharged, which necessitates a re-run or
15 recalculation of the entire market to adjust the charges and/or
16 payments so that all Scheduling Coordinators are billed
17 appropriate amounts. Therefore, due to circumstances beyond the
18 control of the ISO, it is impossible for the ISO to determine
19 with reasonable certainty the accuracy of any "final" invoice
20 for several months. In fact, the ISO is currently rerunning the
21 market for 2000 and 2001, which takes considerable time. The
22 month of May 2001 will not be re-run for approximately two
23 months.

24 7. As the foregoing abbreviated description of the
25 settlement process illustrates, the 90-day period proposed by
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27
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1 the Debtor within which the ISO would be required to compute and
2 assert administrative expense priority claims against the Debtor
3 is totally unworkable. If PG&E's proposed bar date schedule is
4 adopted, the effect in all likelihood would be that the ISO at
5 the end of 90 days would only be able to assert a placeholder
6 claim to preserve the right to assert its administrative expense
7 claims when known. Claims submitted at the 90-day demarcation
8 would be inaccurate, subject to significant adjustment and,
9 ultimately, unreliable.

10 8. If the Court is otherwise inclined to set a bar date
11 for the filing of administrative expense priority claims, such
12 date should be fixed 180 days following the end of any given
13 billing period. Thus, in lieu of the September 10, 2001 bar
14 date proposed by the Debtor for the claims arising during the
15 period from April 6, 2001 through May 31, 2001, the Court should
16 fix November 30, 2001 as the bar date for that period.
17 Thereafter, administrative claims arising in this case would be
18 filed by not later than 180 days following the end of any given
19 month. In this manner, there is a reasonable opportunity for
20 the ISO to generate reliable and accurate settlement data for
21 invoicing purposes, and the claims asserted would not likely be

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