50-275/323

JAMES L. LOPES (No. 63678)
JEFFREY L. SCHAFFER (No. 91404)
GARY M. KAPLAN (No. 155530)
HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4065
Telephone: 415/434-1600
Facsimile: 415/217-5910

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.

Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11 Case

Date: January 16, 2002
Time: 9:30 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

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PACIFIC GAS & ELECTRIC COMPANY'S NOTICE OF MOTION AND MOTION FOR ORDER FURTHER EXTENDING EXCLUSIVITY PERIOD FOR PLAN OF REORGANIZATION; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on January 16, 2001, at 9:30 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case (the "Debtor" or "PG&E"), will and hereby does move the Court for entry of an order pursuant to Bankruptcy Code Section 1121(d) further extending, from February 4, 2002 until June 30, 2002 (or such later date as the Court may hereafter order based upon a subsequent motion filed on or before June 30, 2002), the period during which PG&E maintains "plan exclusivity" pursuant to Bankruptcy Code Section 1121(c)(3) (the "Motion"). As set forth below, PG&E submits that there is "cause" to grant the requested extensions pursuant to Bankruptcy Code Section 1121(d).

This Motion is based on the facts and law set forth herein, the record of this case and any evidence presented at or prior to the hearing on this Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9014-1(c)(2) of the Bankruptcy Local Rules of the United States District Court for the Northern District of California, any opposition to the Motion and the relief requested herein must be filed with the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E) at least five (5) days prior to the scheduled hearing date. If there is no timely objection to the requested relief, the Court may enter an order granting such relief without further hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION.

PG&E is an investor-owned utility providing electric and gas services to millions of California residents and businesses. Beginning in approximately May 2000, as a result of the partial deregulation of the power industry, PG&E was forced to pay dramatically increased wholesale prices for electricity. PG&E has, however, been prevented from

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passing these costs on to retail customers, resulting in a staggering financial shortfall. In the face of the deterioration in PG&E's financial condition, and with little progress having been made toward a resolution of the crisis, PG&E by early April 2001 determined that a Chapter 11 reorganization offered the best prospects for protecting the interests of its creditors, customers, employees and shareholders alike. Accordingly, on April 6, 2001 (the "Petition Date"), PG&E filed a voluntary petition under Chapter 11 of the Bankruptcy Code. PG&E continues to manage and operate its business and property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee has been appointed.

II.

FACTUAL BACKGROUND.

1. As set forth in previous papers filed with the Court, PG&E has reported assets of tens of billions of dollars and more than thirteen thousand creditors. In addition to the sheer size of this case, it is exceedingly complex, based on, inter alia, PG&E's status as a utility company subject to a myriad of state and federal statutes, rules and regulations. PG&E also continues to grapple with an unprecedented energy crisis.

2. Pursuant to Bankruptcy Code Sections 1121(b) and (c), PG&E had the exclusive right to file a plan for 120 days after the Petition Date (i.e., until August 6, 2001[1]), and, if it filed a plan by such time, an additional sixty days during which it would maintain plan exclusivity (i.e., until October 3, 2001).

3. By its Order Extending Exclusivity Period filed on July 20, 2001, this Court (a) extended the exclusive period under Section 1121 during which only the Debtor may file a plan by four months, until December 6, 2001, and (b) in the event that the Debtor filed a plan by December 6, 2001, extended the period during which the Debtor maintains plan exclusivity pursuant to Section 1121(c)(3) by four months, until February 4, 2002. That Order expressly authorized PG&E to seek further extension of these time periods by filing a

[1] The 120th day after the Petition Date was actually August 4, 2001. Since that date fell on a Saturday, pursuant to Federal Rule of Bankruptcy Procedure 9006(a), the 120-day period expired on Monday, August 6, 2001.

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subsequent motion on or before December 6, 2001 and February 4, 2002, respectively.

4. On September 20, 2001, PG&E (and co-proponent PG&E Corporation, PG&E's parent company) filed the "Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company" (as amended from time to time, the "Plan"), and an accompanying Disclosure Statement (as amended from time to time, the "Disclosure Statement").

5. By filing the Plan prior to December 6, 2001, pursuant to the Court's July 20, 2001 Order, the Debtor maintains plan exclusivity pursuant to Section 1121(c)(3) until February 4, 2002, or such later date as the Court may order based on motion filed by February 4, 2002.

6. By its Order Rescheduling Hearing on Approval of Disclosure Statement filed on December 5, 2001 (memorializing a status conference with respect to the Disclosure Statement held on December 4, 2001), the Court: (a) directed the Debtor to file an amended Plan and Disclosure Statement by December 19, 2001 and serve it upon parties who had submitted objections to the Disclosure Statement; (b) scheduled a hearing for January 14, 2002 on approval of the Disclosure Statement, except for matters with respect to whether the amended Plan is facially invalid based on sovereign immunity and/or preemption grounds; (c) scheduled a hearing for January 25, 2002 on whether the amended Plan is facially invalid based on sovereign immunity and/or preemption grounds; and (d) established briefing schedules with respect to the foregoing.

7. By this Motion, PG&E requests that the Court enter an order pursuant to Bankruptcy Code Section 1121(d) further extending, from February 4, 2002 until June 30, 2002 (or such later date as the Court may hereafter order based upon a subsequent motion filed on or before June 30, 2002), the period during which PG&E maintains plan exclusivity pursuant to Bankruptcy Code Section 1121(c)(3).

8. Although the Plan has broad creditor support, including the Official Committee of Unsecured Creditors (the "Committee") and other creditor constituencies, approximately 70 parties have filed objections to the Disclosure Statement, many of which also reflect

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opposition to the Plan. While PG&E anticipates resolving a great deal of these objections through revisions to the Plan and Disclosure Statement, and will continue to seek prompt resolution or adjudication of remaining unresolved issues, in view of the sheer number and complexity of the issues involved, it may take months to fully resolve these matters and obtain confirmation of the Plan. For example, based on a number of objections raised by interested parties on sovereign immunity and preemption grounds, as discussed above, the Court has scheduled a hearing and separate briefing on these relatively complicated issues. In addition, the objections submitted to the Disclosure Statement provide a preview of dozens of contested issues with respect to confirmation of the Plan, many of which are likely to be quite time-consuming to resolve or adjudicate.

9. PG&E submits that its efforts to file and confirm its Plan on a "fast track" is unprecedented under the circumstances. In the absence of a pre-negotiated or prepackaged Chapter 11 plan, it is commonplace for one or more years to elapse before a large corporate debtor even files a plan, while still maintaining exclusivity. This is one of the largest and perhaps most complex Chapter 11 cases ever commenced, yet PG&E has, within the early months of the case, already filed the Plan and is in the process of obtaining approval of the Disclosure Statement. PG&E clearly has no intent to delay the case, which costs the estate literally millions of dollars per week in fees, costs and interest accruals with respect to creditor claims. Indeed, PG&E is diligently working the plan process through a fast track, and trying to accelerate the resolution of this case for creditors and other interested parties as quickly as possible. In fact, PG&E has substantially revised the Plan and Disclosure Statement to address concerns raised by interested parties, continues to meet and confer with parties who oppose the Disclosure Statement and Plan, and will continue to seek prompt adjudication of disputed issues. The requested extension will protect this process while the Plan efforts are concluded expeditiously. By contrast, a failure to extend exclusivity will create needless confusion and conflict that will presumably prejudice all parties.

10. The requested extension of the exclusivity period under Section 1121(c)(3) should allow a reasonable and adequate time for obtaining confirmation of the Plan, after

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approval of the Disclosure Statement. The requested extension date of June 30, 2002 is consistent with the Support Agreement between PG&E and PG&E Corporation, the co-Proponents of the Plan, and the Committee with respect to the Plan (on file with the Court) and the Plan itself, which both envision confirmation of the Plan by June 30, 2002.

11. Based on the foregoing, PG&E submits that there is "cause" to grant the requested extension pursuant to Bankruptcy Code Section 1121(d).

III.

CAUSE EXISTS UNDER BANKRUPTCY CODE SECTION 1121(d) TO EXTEND THE EXCLUSIVE TIME PERIOD UNDER SECTION 1121(c)(3) FOR PG&E'S PLAN.

A. Section 1121(d) Permits A Court To Extend, For Cause, The Exclusivity Periods For The Debtor's Filing Of A Reorganization Plan Beyond The Initial 120 Day And 180 Day Periods Provided Therein.

The United States Supreme Court and Congress have both recognized that the principal goal of Chapter 11 is the successful rehabilitation of the debtor's business. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 527 (1984); United States v. Whiting Pools, Inc., 462 U.S. 198, 203 (1983); see also H.R. Rep. No. 95-595, at 220 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6179-80 (hereinafter "House Report"). Rehabilitation preserves and generates going concern value and increases the pool of assets available for distribution to creditors. Id.; see also In re Lange, 75 B.R. 154, 156 (Bankr. N.D. Ohio 1987) ("[t]he purpose of a Chapter 11 reorganization is to assist financially distressed business entities by providing them temporary relief from creditors while they attempt to successfully restructure themselves to a viable status") (citing In re Winshall Settlor's Trust, 758 F.2d 1136, 1137 (6th Cir. 1985)).

Pursuant to Bankruptcy Code Section 1121, Congress provided Chapter 11 debtors with time to attempt to reach agreement with its creditors, leaving to the Bankruptcy Court the discretion as to how much time should be allowed. Section 1121(b) establishes an initial period of 120 days after the order for relief during which only the debtor may file a

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plan.[2] If the debtor files a plan within the 120-day period, Section 1121(c)(3) allows an additional 60 days during which only the debtor may obtain acceptances of the plan.[3]

Bankruptcy Code Section 1121(d) provides that the Court may extend both such exclusivity periods for "cause."[4] Although the Bankruptcy Code does not define "cause" for purposes of Section 1121(d) or establish formal criteria for an extension of the exclusivity periods, Congress recognized that the debtor should be given a meaningful opportunity to formulate and negotiate a plan. House Report, at 231-32, 1978 U.S.C.C.A.N. at 6191. At the same time, Congress recognized that an open-ended exclusivity period could encourage a debtor to stall in order to exact undue concessions from creditors and could unnecessarily delay creditors. S. Rep. No. 95-989, at 118 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5904 (hereinafter, "Senate Report"). Thus, the courts must necessarily strike an appropriate balance.

To achieve this objective, cause "is to be viewed flexibly in order to allow the debtor to reach an agreement." In re McLean Indus., Inc., 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (internal quotation marks omitted); Gaines v. Perkins (In re Perkins), 71 B.R. 294, 297 (W.D. Tenn. 1987) ("[t]he hallmark of [Section 1121(d)] is flexibility"). This standard allows the court "maximum flexibility to suit various types of reorganization proceedings." In re Public Serv. Co., 88 B.R. 521, 534 (Bankr. D.N.H. 1988); accord In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989).

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[2] Section 1121(b) provides that "[e]xcept as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter." 11 U.S.C. §1121(b). Pursuant to Bankruptcy Code Section 301, the order for relief was entered on the Petition Date.

[3] Section 1121(c)(3), provides, in relevant part, that non-debtor parties in interest may file a plan "if and only if . . . the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan." 11 U.S.C. §1121(c)(3).

[4] Section 1121(d) provides, in relevant part, that "[o]n request of a party in interest . . . the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. §1121(d) (emphasis added).

B. Congress And Courts Have Recognized That The Size and Complexity Of A Chapter 11 Case Provide Cause For Extending The Plan Exclusivity Periods.

Although the Bankruptcy Code does not define the circumstances that constitute "cause" to extend the exclusivity periods contained in Bankruptcy Code Section 1121, the legislative history makes clear that the initial 120-day period established by Section 1121(b) merely represents a baseline from which the Court is free to deviate, particularly in large and complex cases such as PG&E's Chapter 11 case:

> "In most cases, 120 days will give the debtor adequate time to negotiate a settlement, without unduly delaying creditors. The court is given the power, though, to increase or reduce the 120-day period depending on the circumstances of the case. For example, if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement." (House Report, at 232, 1978 U.S.C.C.A.N. at 6191 (emphasis added) (footnote omitted))

Thus, bankruptcy courts frequently identify the size and complexity of a Chapter 11 case as "cause" to warrant extension of the exclusivity periods. See, e.g., In re Dow Corning Corp., 208 B.R. 661, 665 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re Public Serv. Co., 88 B.R. at 534-35; In re Texaco, Inc., 76 B.R. 322, 325-27 (Bankr. S.D.N.Y. 1987); In re Perkins, 71 B.R. at 297-300; In re Pine Run Trust, Inc., 67 B.R. 432, 434-36 (Bankr. E.D. Pa. 1986); In re United Press Int'l, Inc., 60 B.R. 265, 270 (Bankr. D.D.C. 1986).

In Perkins, 71 B.R. at 296-300, for example, the court held that a case involving approximately $13 million in assets and claims held by about 100 creditors was sufficiently "large and complex" to justify an exclusivity period of over 800 days. See also In re Public Serv. Co., 88 B.R. at 537 (granting a seven-month extension due to size and complexity of case); In re United Press Int'l., Inc., 60 B.R. at 270 ("[i]n many much smaller cases, involving far less complications, two or three years go by before the debtor is in a position to file a plan"); In re Express One Int'l, Inc., 194 B.R. at 100-01 (allowing exclusivity period of one year based on, inter alia, size and complexity of case).

The present case is of a much larger size and complexity than the foregoing cases, involving tens of billions of dollars of assets, and claims of more than 13,000

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creditors. In addition to the sheer size of this case, it is exceedingly complex, based on, inter alia, PG&E's status as a utility company subject to a myriad of state and federal statutes, rules and regulations, and the fact that PG&E continues to grapple with an unprecedented energy crisis.

On these facts, the additional extension of almost five months of the plan exclusivity period under Section 1121(c)(3) is both reasonable and appropriate.

C. Courts Have Found Cause To Extend Exclusivity Periods In Circumstances Such As These Where The Debtor Has Made Substantial Progress Toward A Successful Reorganization.

The legislative history and the case law interpreting Section 1121 have established that exclusivity period extensions are appropriate where the debtor displays some likelihood of a successful, consensual reorganization. Senate Report, at 118, 1978 U.S.C.C.A.N. at 5904 ("the granted extension should be based on a showing of some promise of probable success"). Thus, in evaluating whether there is cause for extending the exclusivity periods under Section 1121, courts have examined whether the debtor has made good-faith progress toward reorganization, including the status of negotiations between the debtor and third parties, which, if successful, would enable the debtor to file a viable plan. See, e.g., In re McLean Indus., 87 B.R. at 834; In re United Press Int'l, 60 B.R. at 269; In re Nicolet, Inc., 80 B.R. 733, 741-42 (Bankr. E.D. Pa. 1987); In re Perkins, 71 B.R. at 298.

For example, in In re Pine Run Trust, 67 B.R. at 435, the court granted a 90-day extension of both plan exclusivity periods where "substantial progress had been made in negotiations [between the debtors and the creditors' committee] that, all concede, are critical to a successful reorganization [and] there was no evidence presented that the debtors sought this additional extension in order to pressure their creditors to accede to their reorganization demands"). Similarly, the court in In re Swatara Coal Co., 49 B.R. 898, 899-900 (Bankr. E.D. Pa. 1985), granted a five-month extension of each of the Section 1121 exclusivity periods based on the debtor's ongoing negotiations with a potential joint venturer. See also In re McLean Indus., 87 B.R. at 833-35 ("a finding that the debtor is not seeking to extend exclusivity to pressure creditors to accede to [the debtor's] reorganization demands . . . and

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the fact that the debtor is paying its [postpetition] bills as they come due" provided "cause" to extend the exclusivity periods) (citations and internal quotation marks omitted); In re Homestead Partners, Ltd., 197 B.R. 706, 720 (Bankr. N.D. Ga. 1996) (cause exists to extend exclusivity where the debtor has made substantial progress toward gaining acceptance of a plan, recalcitrance of certain creditors has posed a significant hurdle to timely plan development and presence of complex legal issues has occupied much of debtor's plan-making opportunity); In re Gibson & Cushman Dredging Corp., 101 B.R. at 409-10 (considering the debtor's "continued attempts to negotiate with the creditor's committee," "the Debtor's ability to carry on business during the bankruptcy proceeding," the fact "that there was no danger of dissipation of assets to the creditor's detriment," and the fact that "the debtor's assets were not only being preserved, but augmented" in extending exclusivity); In re Trainer's Inc., 17 B.R. 246, 247 (Bankr. E.D. Pa. 1982) (cause to grant extension existed where debtors had made "substantial efforts" towards reorganization through sale of their primary asset and further negotiations were required; extension denied on other grounds).

As discussed above, PG&E has already made substantial efforts towards a successful reorganization. Indeed, in view of the size and complexity of this case, it is unprecedented that in the early months of this case, PG&E has already filed the Disclosure Statement and Plan, which enjoys broad creditor support (including by the Committee and other creditor constituencies), and is in the process of obtaining approval of the Disclosure Statement.

Furthermore, there is nothing to suggest that PG&E seeks the requested extensions in order to pressure its creditors to accede to its reorganization demands. Rather, as discussed above, PG&E is diligently working the plan process through a fast track, and trying to accelerate the resolution of this case for creditors and other interested parties as quickly as possible. In fact, PG&E has substantially revised the Plan and Disclosure Statement to address concerns raised by interested parties, continues to meet and confer with parties who oppose the Disclosure Statement and Plan, and will continue to seek prompt

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adjudication of disputed issues. The requested extension will protect this process while the Plan efforts are concluded expeditiously.

IV.

CONCLUSION.

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

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

2. Granting the Motion;

3. Extending, from February 4, 2002 until June 30, 2002 (or such later date as the Court hereafter may order based upon a subsequent motion filed on or before June 30, 2002), the period during which PG&E maintains plan exclusivity pursuant to Bankruptcy Code Section 1121(c)(3); and

4. For such other relief as this Court determines to be equitable and just.

DATED: December 19, 2001.

Respectfully,

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

By: _____
GARY M. KAPLAN

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

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
A Professional Corporation