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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re	§	CASE NO. SF 01-30923 DM
	§	
PACIFIC GAS AND ELECTRIC COMPANY, a California corporation,	§	CHAPTER 11
	§	
	§	OBJECTION OF CORAL POWER, L.L.C.
Debtor	§	TO DISCLOSURE STATEMENT FOR
	§	PLAN OF REORGANIZATION OF
Federal I.D. No. 94-0742640	§	PACIFIC GAS AND ELECTRIC
	§	COMPANY PROPOSED BY PACIFIC GAS
	§	AND ELECTRIC COMPANY AND PG&E
	§	CORPORATION
	§	
	§	Date: December 19, 2001
	§	Time: 9:30 a.m.
	§	Place: 235 Pine Street, 22nd Floor
	§	San Francisco, California
	§	

Coral Power, L.L.C. ("Coral") objects to the Disclosure Statement ("Disclosure Statement") filed by Pacific Gas and Electric Company ("Debtor") and PG&E Corporation (collectively "PG&E") in connection with the Plan of Reorganization ("Plan") of the Debtor, for the following reasons:

1. Coral is a creditor of Pacific Gas and Electric Company, as evidenced by the proof of claim filed by Coral on September 5, 2001, in the amount of at least $43,403,912.91.

2. Coral does not have information of a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of PG&E and the condition of PG&E's books and records, that would enable Coral to make an informed judgment about the Plan.

3. Coral is entitled to, and therefore requests, additional information concerning the treatment of disputed claims, the reserves for disputed claims, and the interest rate to be paid on Class 6 claims, as set forth below.

4. Coral is entitled to, and therefore requests, additional information concerning the transfers from the Debtor to PG&E Corporation during the four years prior to the filing of the Debtor's chapter 11 case and the releases to be provided to the officers, directors and affiliates of the Debtor. The information contained in the Disclosure Statement does not provide information sufficient to enable Coral to determine that the Plan satisfies the absolute priority rule requiring unsecured creditors to be paid in full in order for affiliates of the Debtor to receive or retain property and property rights.

JOINDER IN OBJECTION FILED BY

THE OFFICIAL COMMITTEE OF PARTICIPANT CREDITORS OF

CALIFORNIA POWER EXCHANGE ("PARTICIPANTS COMMITTEE")

5. Coral adopts the objections filed by the Participants Committee, set forth substantially as follows:

1. Debtor's Disclosure Statement should not be approved because it (1) lacks adequate information regarding how unsecured creditors' claims will be paid in full if they are unsuccessfully disputed by the Debtor, and (2) fails to provide material information concerning the amount of Class 6 claims, the voting procedures to be applied to those claims, the interest rate to be applied to those claims, and the distribution of proceeds from

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litigation by the Debtor against the State of California. As set forth in detail below, the Disclosure Statement is defective as presented and should not be approved.

2. On September 20, 2001, the Debtor (also referred to as "PG&E") filed its Disclosure Statement and Plan. These documents propose that the Debtor will be "spun off" as a publicly traded electric and gas distribution company with no affiliation to its parent, PG&E Corporation. However, Debtor's existing generation and electric and gas transmission operations will be reorganized and will operate as separate subsidiaries of PG&E Corporation, with the reorganization of these assets to occur "on or about the Effective Date."[1] Accordingly, these valuable assets will not be available to satisfy the claims of Debtor's creditors.

3. At the same time, the Disclosure Statement indicates that all valid claims will be paid in full, with interest, using cash and notes. However, the Debtor has not provided a reserve for holders of claims that are unsuccessfully disputed by PG&E. Specifically, with respect to Class 6 Claims, the Debtor estimates the amount of allowable claims at a much lower figure than the amount of claims actually filed, thus indicating that it intends to dispute many, if not all, of these claims. Disclosure Statement at 19. Given the number of these claims, it likely will take months (if not years) to resolve them. Since such resolution necessarily will take place after the Debtor has transferred all of its assets pursuant to the Plan – and there is no provision for a reserve – there is no guarantee that Debtor will

[1]The Effective Date "means thirty (30) days after the later of (a) the date on which the Confirmation Order is entered and (b) the date on which the conditions specified in Section 8.2 of the Plan [Conditions Precedent to Effectiveness] have been satisfied or waived by the Proponents." Plan at 9.

have the resources to pay in full *any* of the Class 6 claims that it unsuccessfully disputes.

4. As set forth below, the Disclosure Statement lacks the requisite information respecting disputed claims, including what they are, how and when they will be disputed, when claims that are unsuccessfully disputed by PG&E will be paid, and what contingencies exist to receiving payment. To address these concerns, PG&E should establish a disputed claims reserve. The cash and notes to be distributed under the Plan should be placed in a segregated interest-bearing disputed claims reserve escrow account, into which both interest payments and any payments on notes should be made.

5. Pursuant to 11 U.S.C. 1125(a)(1), a disclosure statement may not be approved if it lacks adequate information. In this Circuit, adequate information means information of a kind, and in sufficient detail, to enable a reasonable investor typical of holders or claims or interests of the relevant class to make an informed judgment about the plan. *See In Re California Fidelity*, 198 B.R. 567, 571 (9th Cir. BAP 1996). Thus, bankruptcy courts require that a proper disclosure statement clearly and succinctly inform the average unsecured creditor (1) what it is going to get; (2) when it is going to get it; and (3) what contingencies there are to getting its distribution. *In Re Ferretti*, 128 B.R. at 19. Debtor's Disclosure Statement fails in all three regards.

6. The Disclosure Statement lacks information regarding what unsecured creditors are going to receive under the Plan. The Disclosure Statement provides that:

> The Debtor shall have the exclusive right to make and file objections to Disputed Administrative Claims and Disputed Claims. On and after the Effective Date, the Debtor shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to the Administrative Expense Claims and Claims and compromise, settle or otherwise resolve Disputed Administrative Expense Claims and Disputed Claims without approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Debtor shall file all objections to Administrative Expense Claims that are the subject of proofs of claim or requests for payment filed with the Bankruptcy Court (other than applications for allowances of compensation and reimbursement of expenses) and Claims and serve such objections upon the holder of the Administrative Expense Claim or Claim as to which the objection is made as soon as is practicable, but in no event later than 180 days after the Effective Date.

Disclosure Statement at 121-22.

7. Because the Debtor has 180 days after the Effective Date to dispute any particular claim, there is no way to know what disputed claims will exist, or how much money is at stake. Indeed, there is no mention of the total dollar amounts projected for undisputed claims, nor is there a total dollar amount projected for the disputed claims, should they be allowed over objections. As a result, unsecured creditors cannot determine what they are going to receive under the Plan. The Disclosure Statement therefore lacks adequate information. *In re Ferretti*, 128 B.R. at 19.

8. Furthermore, even if creditors could determine the scope of the claims likely to be disputed, the Disclosure Statement does not indicate when, if ever, claims unsuccessfully disputed by PG&E will be paid. The Debtor need not even *begin* the resolution process until six months after the Effective Date, and there is no provision for a reserve. Thus, because the Disclosure Statement does not indicate when claims will be disputed, or if

and when disputed claims will be paid, creditors may be misled into accepting the Plan on the basis of false information.

9. This inadequacy of information necessarily affects how creditors will vote on the Plan and, by extension, the grounds upon which creditors might object to the Plan. Knowing if and when a claim will be disputed affects a creditor's vote on the Plan. For instance, holders of claims that are deemed allowed at the time of the Confirmation Hearing may vote to accept the Plan based on their misguided belief that their claims will be paid in full on the Effective Date. However, if their claims are disputed after the Confirmation Hearing, such claims in fact may not be paid in full. Under these circumstances, creditors would have been misled into voting for the Plan based on an incorrect assumption that they would receive full payment. Such inadequate disclosure is grounds for disapproving the Plan. *See In Re Perez*, 30 F.3d 10209, 1217 (9th Cir. 1994) (warning that inadequate disclosure could lead voters to be tricked).

10. Additionally, by failing to disclose when claims will be disputed or paid, the Disclosure Statement denies creditors information they could otherwise use to persuade other creditors to vote against the Plan. *Id.* That is the case here. For these reasons, at a minimum, additional information regarding the process, timing and likelihood of full payment of disputed claims is essential to ensure a fair and equitable voting process.

11. Finally, creditors need information regarding when their claims will be disputed to determine whether or not there are grounds to object to the Plan. The Disclosure Statement fails to provide such information. For example, the Plan calls for a complex asset transfer and dividend payment

to shareholders on or around the time of the Effective Date. Disclosure Statement at 5. But the debtor need not decide on the Effective Date whether and to what extent it will object to a creditor's claim. Thus, creditors may be entitled to receive payment on claims that are unsuccessfully disputed by PG&E only after the asset transfer and the dividend payment occur. Under such circumstances, without a reserve, creditors may not be paid in full and a violation of the absolute priority rule[2] would occur since shareholders would have received payment before creditors. *See Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 391 U.S. 909, 88 S.Ct. 1147, 1160 (1968) ("in any plan of corporate reorganization unsecured creditors . . . entitled to priority over stockholders to the full extent of their debts"); 11 U.S.C. 1129(b)(2)(B)(ii). Yet, precisely because of the lack of information in the Disclosure Statement, creditors would not even be aware of the basis for this objection. For this reason alone, the Disclosure Statement should not be approved.

12. The Disclosure Statement lacks adequate information as to the contingencies and risks of distribution. There is an obvious risk that creditors will not receive full payment at all for claims unsuccessfully disputed by PG&E, since the Plan lacks a reserve clause or a statement providing contingencies for holders of such claims, including information as to precisely how these claims will be paid. Thus, the Disclosure Statement lacks the requisite information concerning the contingencies and

[2]The absolute priority rule is codified at 11 U.S.C. 1129(b)(2)(B) and requires that, with respect to a class of unsecured claims, "the holder of any claim or interest that is junior to the claims for such class will not receive or retain under the plan on account of such junior claim or interest any property."

risks of distribution under the Plan. *See In re Weiss-Wolf, Inc.*, 59 B.R. 653, 655 (Bankr. S.D.N.Y. 1986) (stating that a debtor must make provision for payment of disputed claims). Indeed, the Debtor's failure to elaborate on the payment of successfully disputed claims could lead to the inexorable conclusion that its intent is to leave holders of disputed claims with "an empty bag." *See id.* at 655 (denying approval of disclosure statement where Debtor proposed to distribute key assets prior to resolution of disputed claims).

13. The Disclosure Statement should not be approved because it fails to provide material information regarding payment of Class 6 claims. The Disclosure Statement fails to provide information concerning payment of Class 6 claims, including the actual amount of such claims, the voting procedures to applied to those claims, the interest rate to be applied to payment of those claims, and the distribution to creditors of proceeds from litigation by PG&E against the State of California. The issues affect the feasibility of the Plan and should be addressed in the Disclosure Statement.

14. First, PG&E estimates the amount of allowed Class 6 claims at $1,060,000,000. Disclosure Statement at 19-20. PG&E acknowledges that "the aggregate amount of claims filed ISO, PX and Generator Claims . . . is materially higher," but omits pertinent information regarding the actual amount. The California Power Exchange Corporation ("CalPX") filed two proofs of claim, one in the amount of $1,729,688,561.23, and another separate claim in the amount of $628,972,582.21. With respect to the first claim, PG&E never mentions this claim and fails to disclose that its estimate is based on a reduction resulting from existing settlements with

one or more creditors who are participants in the markets operated by CalPX. Nor does PG&E discuss the basis for its assumption incorporated in its estimate that proceedings before the Federal Energy Regulatory Commission ("FERC") will result in a further approximately $500 million reduction in its debt to Class 6 claimants. If the Debtor is wrong in its assumptions, creditors will believe they are voting for a plan that provides for 100 percent payment, when, in fact, the Plan does not provide the money needed for such payment.

15. With respect to the $638 million claim, never mentioned in the Disclosure Statement, this contingent claim was filed by CalPX as a result of its continuing role as a Scheduling Coordinator for PG&E after January 17, 2001, the date on which PG&E ceased its purchases in the markets operated by CalPX. PG&E fails to provide for payment of this claim. PG&E has therefore omitted information that clearly may affect the feasibility of its Plan, and the Disclosure Statement should not be approved.

16. The Disclosure Statement does not address voting rights of individual CalPX market participants. The Plan and Disclosure Statement provide that each holder of an Allowed ISO, PX, or Generator Claim is entitled to vote or reject the Plan. The Plan and Disclosure Statement do not however, address the relationship between individual energy sellers and CalPX in connection with the Plan's voting mechanism. While the Plan and Disclosure Statement clearly provide that each individual seller with an Allowed Claim has the right to vote on the Plan, the Plan does not indicate whether CalPX has the right to vote on behalf of an energy seller that did not file a claim or exercise its right to vote. The Plan and Disclosure

statement should clarify that individual sellers may or may not exercise their individual rights to file claims and to vote, and if such rights are not exercised, CalPX will retain the voting right on behalf of that seller.

17. Further, because several individual sellers may have filed claims against PG&E for the aggregate sum owed to them by both PG&E and Southern California Edison ("SCE"),[2] the Plan and Disclosure Statement should address the manner in which votes will be weighted in connection with the amount of each individual claim. In its Offer of Settlement filed before FERC, the Participants' Committee and several holders of Class 6 claims proposed a method of distributing available cash to participants in markets operated by CalPX based on the net amounts owing to CalPX for the benefit of those participants by PG&E and SCE for all periods combined through the date of distribution ("Net Receivable Formula"). In contrast, PG&E proposes no methodology to account for individual sellers' claims that are based on an aggregate sum owed by both utilities. The Disclosure Statement should not be approved without addressing this issue.

18. Interest on Class 6 Claims should be paid in accordance with the applicable tariff. The Plan provides for payment of interest but does not disclose the appropriate rate of interest for Class 6 claimants. The Plan provides:

> Except as otherwise provided herein, any interest payable under this Section 4.1 shall be calculated at the lowest non-default rate specified in the applicable indenture or instrument governing such Allowed Claim. If no such instrument exists, or if the applicable instrument does not specify a non-default rate of interest, interest shall be paid

[2] In most cases, energy sellers cannot determine which portion of the amount they are owed is owed by PG&E or SCE.

on the principal amount of such Allowed Claim at the Federal Judgment Rate.

Plan, § 4.1. For example, with respect to Class CalPX market participants, CalPX FERC Electric Service Tariff No. 2 ("FERC No. 2") sets forth the applicable interest rate. FERC No. 2 provides that "[i]nterest shall be calculated in accordance with the methodology specified for interest on refunds in the regulations of FERC at 18 C.F.R. § 35.19(a)(2)(iii)(1996)." [4] *Id.* at p. 221.

19. The Disclosure Statement refers to PG&E's claim against the State for seizure of the Block Forward Market ("BFM") contracts, Disclosure Statement at 67, but does not give a current description of the litigation or provide for the distribution of proceeds recovered in that litigation if there is a recovery prior to the Effective Date. PG&E should update its description of the litigation to describe recent activity before the Victims Compensation and Government Claims Board and in the coordinated proceedings now assigned to the Sacramento Superior Court.

20. Further, with regard to proceeds from the litigation received prior to the Effective Date, any recovery from the State should be distributed to CalPX for distribution to the market participants, in accordance with the applicable tariffs, or pursuant to any order by FERC made in connection with CalPX's Offer of Settlement. In connection with the distribution to CalPX, PG&E would receive a dollar for dollar reduction in CalPX's claim (or the claims of individual participants) against PG&E.

[4] 18 C.F.R. § 35.19(a)(iii) provides that interest shall be paid: (iii)(A) At an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates or charges) on or after October 1, 1979. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's "Selected Interest Rates" . . . for the fourth, third, and second months preceding the first month of the calendar quarter.

DATED: November 27, 2001

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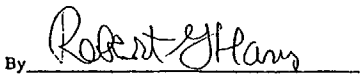
By 
ROBERT G. HARRIS

Attorneys for Creditors

VERIFICATION

I, ROBERT G. HARRIS ESQ., attorney for the above-listed clients, certify under penalty of perjury that the foregoing Rule 2019 Statement is true and correct to the best of my knowledge, information and belief.

Executed this 27th day of November, 2001, at California.

ROBERT G. HARRIS