

50-275/323

1 DAVID L. NEALE (SBN 141225)
2 DANIEL H. REISS (SBN 150573)
3 LEVENE, NEALE, BENDER, RANKIN & BRILL L.L.P.,
4 1801 Avenue of the Stars, Suite 1120
5 Los Angeles, California 90067
6 Telephone: (310) 229-1234
7 Facsimile: (310) 229-1244

8 Attorneys for California Independent
9 System Operator, Inc.

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

13 In re) Case No. 01-30923 DM
14)
15 PACIFIC GAS & ELECTRIC) Chapter 11
16 COMPANY, a California)
17 corporation,)
18 Debtor.) OBJECTION BY CALIFORNIA
19) INDEPENDENT SYSTEM OPERATOR
20) CORPORATION TO DISCLOSURE
21) STATEMENT FOR PLAN OF
22 Federal I.D. No. 94-0742640) REORGANIZATION UNDER CHAPTER
23) 11 OF THE BANKRUPTCY CODE FOR
24) PACIFIC GAS AND ELECTRIC
25) COMPANY PROPOSED BY PACIFIC
26) GAS AND ELECTRIC COMPANY AND
27) PG&E CORPORATION
28)
29) Status Conference
30) Date: December 4, 2001
31) Time: 1:00 p.m.
32) Place: 235 Pine St., 22nd Floor
33) San Francisco, CA
34)
35) Disclosure Statement Hearing
36) Date: December 19, 2001
37) Time: 9:30 a.m.
38) Place: 235 Pine St., 22nd Floor
39) San Francisco, CA
40)

41 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY
42 JUDGE:

1 The California Independent System Operator Corporation
2 ("ISO") hereby submits its objection to the Disclosure Statement
3 (the "Disclosure Statement") for Plan of Reorganization (the
4 "Plan") Under Chapter 11 of the Bankruptcy Code for Pacific Gas
5 and Electric Company (the "Debtor") Proposed by Pacific Gas and
6 Electric Company and PG&E Corporation. Although lengthy, the
7 Disclosure Statement is devoid of critical information
8 concerning the anticipated operation of the companies proposed
9 to be created under the Plan. Of particular concern to the ISO
10 is the absence of any substantive discussion of the treatment of
11 the Debtor's contracts with the ISO and with other market
12 participants, or the consequences of the Debtor's rejection of
13 any such contracts, which could impact operation of the
14 transmission system and the ISO's ability to provide reliable
15 service to consumers in California.

16 Also absent is any substantive discussion of Debtor's
17 intention to continue its participation in the ISO in the near
18 term. The Plan discusses the future possibility of ETrans (the
19 proposed spin-off electric transmission business) joining a
20 Regional Transmission Organization ("RTO") and ending
21 participation in the ISO, but it does not expressly address the
22 intended relationship with the ISO prior to formation of an RTO.
23 Without an understanding of the Debtor's intentions with respect
24 to its relationship to the ISO post-reorganization, it is
25 impossible for the ISO and other creditors to evaluate the

001 Add: Rids Ogc Mail Center

1 feasibility of the Plan or the viability of the new entities the
2 Debtor proposes to create.

3 In further support of its objection, the ISO respectfully
4 represents as follows:

5 As a general proposition, the primary purpose of a
6 disclosure statement is to "give creditors the 'adequate
7 information' necessary for them to decide whether to accept a
8 proposed plan." In re Monroe Well Service, Inc., 80 B.R. 324,
9 330 (Bankr. E.D. Pa. 1987); In re Monnier Bros., 755 F.2d 1336
10 (8th Cir. 1985); In re Stanley Hotel, Inc., 13 B.R. 926 (Bankr.
11 D. Colo. 1981). Sufficient financial and other information must
12 be provided by a plan proponent so that a creditor (likened to a
13 "hypothetical reasonable investor") can make an "informed
14 judgment" whether to accept or reject the plan. In re Jeppson,
15 66 B.R. 269 (Bankr. D. Utah 1986); In re Civitella, 15 B.R. 206
16 (Bankr. E.D. Pa. 1981); In re Northwest Recreational Activities,
17 Inc., 8 B.R. 10 (Bankr. N.D. Ga. 1980). The determination as to
18 what constitutes adequate information for purposes of Section
19 1125 of the Bankruptcy Code in any given instance must be
20 determined by the Court on a case-by-case basis under the facts
21 and circumstances presented. In re Scioto Valley Mortg. Co., 88
22 B.R. 168, 170 (Bankr. S.D. Ohio 1988). Generally, the
23 disclosure statement should set forth "all those factors
24 presently known to the plan proponent that bear upon the success
25
26
27
28

1 or failure of the proposals contained in the plan." In re
2 Stanley Hotel, Inc., supra, 13 B.R. at 929.

3 Numerous cases have identified a list of the type of
4 information which typically should be included in a disclosure
5 statement. In re Metrocraft Publishing Servs., Inc., 39 B.R.
6 567 (Bankr. N.D. Ga. 1984); In re Cardinal Congregate I, 121
7 B.R. 760 (Bankr. S.D. Ohio 1990); In re Dakota Rail, Inc., 104
8 B.R. 138 (Bankr. D. Minn. 1989); In re Malek, 35 B.R. 443
9 (Bankr. E.D. Mich. 1983); In re Scioto Valley Mortg. Co., supra;
10 In re Reilly, 71 B.R. 132 (Bankr. D. Mont. 1987); In re A.C.
11 Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); In re Adana
12 Mortg. Bankers, Inc., 14 B.R. 29 (Bankr. N.D. Ga. 1981).
13 Relevant information presented in a disclosure statement has
14 been held include financial information, data, valuations or
15 projections relevant to the creditors' decision to accept or
16 reject the Chapter 11 plan, information relevant to the risks
17 posed to creditors under the plan, and the relationship between
18 the debtor and any affiliates. In re Metrocraft Publishing
19 Servs., Inc., supra, 39 B.R. at 568.

20 In this case, the Disclosure Statement, Section VI.B.,
21 describes the "spin off" of the assets associated with the
22 Debtor's electric transmission business into an entity referred
23 to as ETrans. The Debtor acknowledges its current status as a
24 "participating transmission owner" in the ISO, and the
25 Disclosure Statement provides that "the Debtor will assume and
26
27
28

1 assign to ETrans certain of its contractual obligations
2 associated with its participation as a transmission owner in the
3 ISO." Disclosure Statement, p. 71 (emphasis added). The
4 Disclosure Statement, however, nowhere elaborates upon what
5 contractual "obligations" with the ISO and other market
6 participants will be assumed and assigned to ETrans, what
7 contracts will be assumed and assigned to the other proposed
8 spin-off companies under the Plan and what contractual
9 obligations will be rejected. Without this specificity, the
10 Plan offers nothing upon which the ISO (or any creditor) can
11 assess whether such an assumption and assignment would be
12 permissible under applicable law and whether ETrans will be able
13 to demonstrate adequate assurance of future performance as
14 otherwise required under Section 365 of the Bankruptcy Code.

15
16 The Disclosure Statement likewise fails to address the
17 consequences should the Debtor decline to transfer, or be
18 incapable of transferring, its contract rights and assets with
19 respect to its electric transmission business. The potential
20 consequences to creditors and the public could be substantial
21 and could impact the provision of reliable electric service to
22 the Debtor's service area.
23

24
25 In addition, the Disclosure Statement fails to discuss
26 Debtor's intention to continue participation in the ISO prior to
27 formation of an RTO. Such information is necessary for the ISO
28 to plan to meet anticipated service needs and coordinate the

1 provision of electric transmission service in the Debtor's
2 service area and throughout California. Further, a large scale
3 coordination effort would be required to address the highly
4 complex technical and operational "seams" issues should Debtor
5 seek to end participation in the ISO.
6

7 The notes to the financial projections accompanying the
8 Disclosure Statement provide that ETrans "will not procure
9 electricity or ancillary services, except to the extent already
10 required under existing transmission contracts to be assumed by
11 ETrans and to meet any obligations under an ISO or RTO. ETrans'
12 transmission network capacity will be controlled by the
13 ISO/RTO." Disclosure Statement, Exhibit "C," p. 11. This
14 statement suggests that the financial projections included with
15 the Disclosure Statement are premised exclusively upon a
16 continuation of the existing relationship between ETrans (as
17 potential successor to the Debtor) and the ISO. Given the
18 representations contained elsewhere in the Disclosure Statement,
19 the financial projections supplied by the Debtor should include
20 information reflecting the anticipated impact upon the
21 reorganized Debtor should the Debtor be unable to assume and
22 assign contracts with the ISO to ETrans, or should the Debtor
23 elect to reject existing contracts with the ISO. Absent this
24 information, given the Debtor's inability or failure to state
25 with any certainty what its intentions are with respect to the
26 ISO and its contractual obligations with the ISO, the Disclosure
27
28

1 Statement provides a skewed and misleading picture of the
2 feasibility of the Plan and the prospects for the Debtor's
3 reorganization.

4 The ISO requests that the Debtor be required to address the
5 matters raised herein notwithstanding a meeting that occurred on
6 November 19, 2001 between Debtor and the ISO. The purpose of
7 the meeting was to discuss the Plan and the regulatory filings
8 to be made by Debtor to implement the Plan. At that meeting,
9 Debtor made oral representations that: it would assume all of
10 its contracts with the ISO and other market participants and
11 assign them either to Etrans, Genco, or Disco; and it intends to
12 continue its participation in the ISO. Since these
13 representations have been made, but not clearly articulated in
14 the Disclosure Statement, the Disclosure Statement should be
15 modified for the reasons discussed above.

16 WHEREFORE, the ISO respectfully requests that the Court
17 enter an order (i) disapproving the Disclosure Statement in its
18 current form; (ii) in the alternative, requiring the Debtor and
19 the other plan proponent to modify the Disclosure Statement and
20 continuing the hearing on the Disclosure Statement to allow
21 parties an opportunity to review any revised Disclosure
22
23
24
25
26
27
28

1 Statement submitted; and (iii) granting such other and further
2 relief as is just and proper under the circumstances.

3 Dated: November 27, 2001

CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

4
5
6 By: 

7 DAVID L. NEALE
8 LEVENE, NEALE, BENDER, RANKIN
9 & BRILL L.L.P.
10 Attorneys for California
11 Independent System Operator
12 Corporation
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28