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Oroville-Wyandotte Irrigation District,
Yuba County Water Agency,
Nevada Irrigation District
Merced Irrigation District, Solano Irrigation District,
and Tuolumne Utilities District

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

No. 01-30923 DM

Chapter 11

**IRRIGATION AND WATER DISTRICTS'
JOINT OBJECTION TO APPROVAL OF
DISCLOSURE STATEMENT FOR PLAN
OF REORGANIZATION FILED BY
CALIFORNIA PUBLIC UTILITIES
COMMISSION**

Date: May 9, 2002
Time: 9:30 a.m.
Place: Courtroom 22

Acc: Add: Rob Gorman Center

12295876.2

I. INTRODUCTION

Placer County Water Agency, Oroville-Wyandotte Irrigation District, Yuba County Water Agency, Nevada Irrigation District, Merced Irrigation District, Solano Irrigation District, and Tuolumne Utilities District (collectively the "Irrigation and Water Districts" or "Districts"), hereby submit this Joint Objection to Approval of the Disclosure Statement for Plan of Reorganization (the "Disclosure Statement") proposed by the California Public Utilities Commission in connection with the Bankruptcy case of Pacific Gas & Electric Company, debtor and debtor-in-possession herein ("Debtor"). The Irrigation and Water Districts are parties-in-interest and creditors holding contingent, unsecured claims, and/or administrative priority claims in this Bankruptcy case. The Irrigation and Water Districts object to approval of the Disclosure Statement on the grounds that it fails to provide adequate information (i) to creditors to enable them to make an informed decision about voting on the CPUC's proposed Plan of Reorganization (the "Plan") and (ii) to parties in interest who will be affected by the Plan.

The Irrigation and Water Districts are seven public entities which are parties to long-term hydroelectric Power Purchase Contracts ("PPCs"), water contracts, ("Water Contracts") and/or Qualified Facility Agreements ("QFs") with Debtor (collectively the "Contracts"). The PPC's and QF's allow the Irrigation and Water Districts to operate and to sell electricity as an important aspect of their business. The PPCs were entered into as part of a plan to construct and maintain the water-storage and energy-generating facilities. The Irrigation and Water Districts obtained funding for the construction of the facilities through public bonds which are repaid from the proceeds of the PPC's. Additional payments ("OMI Payments") are required from Debtor to operate, maintain and preserve the water-storage and energy-generating facilities.

However, the principal function of the Districts is the supply of water to hundreds of thousands of California consumers in Northern and Central California. Many of the Districts have intertwined relations with the Debtor some selling water to the Debtor, others buying water from the Debtor and others doing both. Some of the contracts are in writing; other contracts have arisen by custom and practice. Nevertheless, for each of these Districts the respective water

1 rights of the Debtor and the Districts are key to the operation of the Districts and are key to the
2 public health and safety of hundreds of thousands of consumers.

3 In addition the Districts believe that there are other water districts and irrigation
4 districts which are not joining in this Objection but which have similar relationships with the
5 Debtor.

6 The Disclosure Statement is deficient for several reasons.

7 First, it is missing a very important part. The Plan does not address or adequately
8 disclose how the Debtor's water rights and water contracts will be dealt with going forward under
9 the CPUC's Plan. Such treatment shall have a significant impact on the Irrigation and Water
10 Districts, on other parties similarly situated, and on the ultimate users of the water.

11 Second, the Plan proposes to have certain contracts assumed and other contracts
12 rejected. Therefore, the Plan does not clearly disclose which contracts will be assumed and which
13 will be rejected. Nor does it disclose how any defaults under those contracts will be cured. The
14 Disclosure Statement, thereby, fails to disclose to the Court and to the creditors whether their
15 contracts will be affected by the Plan.

16 Under these circumstances, the Disclosure Statement does not contain adequate
17 information that would enable creditors to make informed decisions about voting on the Plan.
18 The Plan Proponents should be required to amend the Disclosure Statement to remedy these
19 defects.

20 II. DISCLOSURE STATEMENT REQUIREMENTS

21 Section 1125 of the Bankruptcy Code (11 U.S.C. §1125) provides that acceptance
22 or rejection of a Plan of Reorganization may not be solicited from holders of claims and interests
23 after the commencement of a bankruptcy case unless the solicitation is accompanied or preceded
24 by a written, Court-approved Disclosure Statement containing adequate information. "Adequate
25 information" means:

26 "information of a kind, and in sufficient detail, as far as reasonably
27 practicable in light of the nature and history of the debtor and the
28 condition of the debtor's books and records, that would enable a
hypothetical, reasonable investor typical of holders of claims or

1 interests of the relevant class to make an informed judgment about
2 the plan...."

3 [11 U.S.C. § 1125(a)(1)]. See also *In re Dakota Rail, Inc.*, 104 B.R. 138, 143
4 (Bankr. D. Minn. 1989).

5 Several courts have described the type of information that should be included in a
6 disclosure statement so that it contains adequate information. This information includes: (1) the
7 amount of administrative expenses outstanding and accruing; (2) a complete description of the
8 debtor's assets and their value available to the creditors; (3) historical and financial information
9 regarding the debtor's revenues and profits; (4) a liquidation analysis discussing the likely return
10 to creditors if the bankruptcy case is converted to a case under Chapter 7 of the Bankruptcy Code;
11 (5) projections of the debtor's future performance; (6) insider or affiliate claims if any, and a
12 description of those claims; (7) identification of the source of the information and the disclosure
13 statement; (8) financial information, valuations, or *pro forma* projections that are relevant to the
14 creditors determination whether to accept or reject the Plan; (9) any undue benefit the plan
15 proponent plans to receive if a proposed plan is confirmed; (10) timetable for all relevant
16 deadlines and the contingencies associated with the plan; and (11) information relevant to the
17 risks and contingencies assumed by creditors and interest holders under the proposed plan.¹

18 III. THE DISTRICTS' OBJECTIONS TO THE DISCLOSURE STATEMENT

19 The Disclosure Statement does not provide adequate information to enable
20 creditors and holders of interests to make informed decisions about voting on the Plan. Among
21 other things, it does not adequately describe the risks and contingencies assumed by creditors and
22 interest holders under the Plan and the impact of the plan on the Irrigation and Water Districts and
23 on all parties in interest. The Irrigation and Water Districts request that the Court require Debtor
24

25
26 ¹ See, e.g., *In re Cardinal Cogeneration I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) (citing, *inter*
27 *alia*, *In re Metrocraft Publishing Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984)), *In re Oxford*
28 *Homes, Inc.*, 204 B.R. 264 (Bankr. D. Me. 1997), *In re U.S. Brass Corp.*, 194 B.R. 420, 424 (Bankr.
E. D. Tex. 1996), and *In re Mateck*, 35 B.R. 443 (Bankr. E.D. Mich. 1983)). See also *In re Scioto*
Valley Mortgage Co. 88 B.R. 168 (Bankr. S.D. Ohio 1985)

1 to amend the Disclosure Statement so that it would provide adequate information in the following
2 categories.

3 **A. The Disclosure Statement Does Not Adequately Disclose The Anticipated**
4 **Treatment Of Water Rights And Water Contracts And The Impact Of Such**
5 **Proposed Treatment**

6 There are various Water Contracts between several of the Irrigation and Water
7 Districts that address the relative water rights of Debtor and the respective Irrigation and Water
8 Districts. For example, there are the following contracts:

- 9 a. Consolidated Contract between Nevada Irrigation District and
10 Pacific Gas and Electric Company Part II dated July 12, 1963.
- 11 b. Coordinated Operations and Headwater Benefits Agreement among
12 PG&E and Yuba County Water Agency and PG&E corporation, dated August 8, 2000.
- 13 c. South Fork Contract between Oroville-Wyandotte Irrigation
14 District and Pacific Gas & Electric Company dated June 15, 1960.
- 15 d. Sly Creek Contract between Oroville-Wyandotte Irrigation District
16 and Pacific Gas and Electric Company dated February 10, 1981.
- 17 e. Water Supply Contract between Placer County Water Authority
18 dated June 8, 1968 scheduled to terminate May 1, 2013.
- 19 f. Water Supply Contract between Placer County Water Authority
20 dated November 17, 1982.

21 In addition there are other water contracts and water rights which have arisen
22 between the Debtor and several of the Districts over time.

23 These Water Contracts, directly and indirectly affect the water rights and the
24 availability of water to the hundreds of thousands of users within the various Irrigation and Water
25 Districts. Some of these contracts have a specified term; others do not.

26 The Bankruptcy Court should require the CPUC to clarify Debtor's plans in
27 connection with its water rights and the Water Contracts to avoid future confusion, and to clearly
28 identify what likely will result in a confirmation of the Plan both as to the Irrigation and Water
Districts and as to the CPUC and as to the water users. Without this information the Districts and

1 others similarly situated would not be able to determine whether their claims or interests would be
2 impaired under 11 U.S.C. § 1124.

3 **B. The Disclosure Statement Is Inadequate Because It Does Not Clearly Disclose The**
4 **Contracts That Debtor Proposes To Assume Or Reject Under The Plan and How**
5 **Any Defaults Under Such Contracts Will Be Handled**

6 The Bankruptcy Code requirements under Section 1125 are clear. The Plan and
7 Disclosure Statement must inform the creditors as to how they will be treated.

8 The Disclosure Statement does not clearly specify which executory contracts and
9 unexpired leases Debtor proposes to assume or reject under the Plan. The Disclosure Statement
10 states in essence that all executory contracts will be assumed except for those contracts which are
11 designated as not to be assumed.

12 The Disclosure Statement's brief statement raises several problems.

13 First, it takes away with one hand what it has given with the other. It basically
14 says that contracts will be assumed unless they are rejected. There should be more clarity and
15 there should be a statement which identifies the contracts which will be assumed

16 Second, the term "executory contracts" is extremely broad. Does the Plan truly
17 intend for all contracts which are deemed executory to be assumed, including the water contracts
18 written and unwritten? Will it also include contracts such as the two Memoranda of
19 Understanding which the Debtor had negotiated with Placer County Water Agency and the
20 Nevada Irrigation District prior to the Debtor's bankruptcy.

21 Third, if the Debtor is to assume all executory contracts, this would require the
22 Debtor to cure all defaults and assure the Debtor's future performance under the defaulted
23 contracts. See 11 U.S.C. §§365(d)(2) and (b)(1). There is at least one executory contract which
24 has been defaulted. Solano Irrigation District has a PPC with the Debtor which has not yet been
25 assumed. There are amounts past due under the contract as of the date of bankruptcy.

26 Despite this fact the Plan does not address how the defaulted contracts are to be
27 cured and what assurances for future performance will be provided.

1 Finally, to the extent that the CPUC plans to allow the Debtor an opportunity to
2 reject contracts, such rejection should provide the affected party sufficient advance warning so as
3 to enable it to make an informed vote on the Plan.

4 IV. CONCLUSION

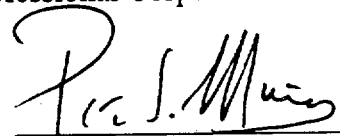
5 The absence of the information demonstrates that the Disclosure Statement, on its
6 face, does not contain the requisite adequate information that would enable creditors to make an
7 informed decision about voting on the Plan. In its present form the Disclosure Statement does not
8 and cannot contain "adequate information."

9 For the foregoing reasons, the Districts object to approval of the Disclosure
10 Statement.

11 DATED: May 2, 2002.

12 CROSBY, HEAFEY, ROACH & MAY
13 Professional Corporation

14 By



15 Peter S. Muñoz
16 Attorneys for Placer County Water
17 Agency, Oroville-Wyandotte
18 Irrigation District, Yuba County
19 Water Agency, Nevada Irrigation
20 District, Oakdale and South San
21 Joaquin Irrigation Districts, Merced
22 Irrigation District, and Solano
23 Irrigation District
24
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22 Debtor to cure all defaults and assure the Debtor's future performance under the defaulted
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27 cured and what assurances for future performance will be provided.

1 Finally, to the extent that the CPUC plans to allow the Debtor an opportunity to
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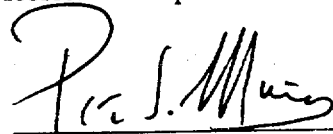
4 IV. CONCLUSION

5 The absence of the information demonstrates that the Disclosure Statement, on its
6 face, does not contain the requisite adequate information that would enable creditors to make an
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8 and cannot contain "adequate information."

9 For the foregoing reasons, the Districts object to approval of the Disclosure
10 Statement.

11 DATED: May 2, 2002.

12 CROSBY, HEAFEY, ROACH & MAY
13 Professional Corporation

14 By 

15 Peter S. Muñoz
16 Attorneys for Placer County Water
17 Agency, Oroville-Wyandotte
18 Irrigation District, Yuba County
19 Water Agency, Nevada Irrigation
20 District, Oakdale and South San
21 Joaquin Irrigation Districts, Merced
22 Irrigation District, and Solano
23 Irrigation District
24
25
26
27
28

PROOF OF SERVICE


I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is CROSBY, HEAFEY, ROACH & MAY Professional Corporation, Two Embarcadero Center, Suite 2000, San Francisco, CA 94111. On May 2, 2002, I served the following document(s) by the method indicated below:

**IRRIGATION AND WATER DISTRICTS' JOINT OBJECTION
TO APPROVAL OF DISCLOSURE STATEMENT FOR PLAN
OF REORGANIZATION FILED BY CALIFORNIA PUBLIC
UTILITIES COMMISSION**

- ☐ by transmitting via facsimile on this date from fax number (415) 391-8269 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 2, 2002, at San Francisco, California.


Sally Pincus

SPECIAL NOTICE LIST
As of April 23, 2002

Adam A. Lewis
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San Francisco, California 94105
[Counsel for El Paso, Idaho Power]

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[Counsel for Westcal, Inc.]

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[Counsel for Bankers Trust Company]

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Stroock & Stroock & Lavan LLP
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Pleasanton, California 94588

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[Counsel for Lehman Commercial Paper, Inc.]

Allan H. Ickowitz
Donna M. Balbin
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Los Angeles, California 90071
[Counsel for City of Redwood City, California]

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Attn: Sheri Levine
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[Counsel for U.S. Bank Trust National Association]

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and Angela Alioto
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