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12 PACIFIC GAS AND ELECTRIC COMPANY

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re
17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California corporation,
19 Debtor.
20 Federal I.D. No. 94-0742640

Case No. 01 30923 DM

Chapter 11 Case

Date: June 27, 2002

Time: 1:30 p.m.

Place: 235 Pine Street, 22nd Floor
San Francisco, California

21 NOTICE OF MOTION AND MOTION OF PACIFIC GAS AND ELECTRIC
22 COMPANY FOR CLARIFICATION OF ORDER AUTHORIZING DEBTOR
23 TO PAY CERTAIN CATEGORIES OF PRE-PETITION CLAIMS;
24 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

25 [SUPPORTING DECLARATION OF LESSLY ANN WIKLE FILED
26 CONCURRENTLY HEREWITH]

27 *001 Add: Rids/OGC Mail Center*

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on June 27, 2002, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali,
4 located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric
5 Company, the debtor and debtor in possession in the above-captioned Chapter 11 case
6 ("PG&E" or the "Debtor"), will and hereby does move the Court (the "Motion") for entry of
7 an order clarifying this Court's Order entered on March 29, 2002 authorizing the Debtor to
8 expeditiously pay certain pre-petition claims, including allowed claims of \$5,000 or less,
9 upon terms set forth in PG&E's motion filed herein on March 5, 2002 (the "Original
10 Motion").

11 The Motion is based on this Notice of Motion and Motion, the accompanying
12 Memorandum of Points and Authorities in support thereof, the Declaration of Lessly Ann
13 Wikle filed concurrently herewith, the record of this case and any evidence presented at or
14 prior to the hearing on this Motion.

15 PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9014-1(c)(2) of the
16 Bankruptcy Local Rules for the United States District Court for the Northern District of
17 California, any written opposition to the Motion and the relief requested therein must be
18 filed with the Bankruptcy Court and served upon appropriate parties (including counsel for
19 PG&E, the Office of the United States Trustee and the Official Committee of Unsecured
20 Creditors) at least five (5) days prior to the scheduled hearing date. If there is no timely
21 opposition to the requested relief, the Court may enter an order granting such relief without
22 further hearing.

23
24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I.**

26 **INTRODUCTION**

27 On March 29, 2002, the Court entered its order granting PG&E's Original Motion
28 seeking leave to pay certain pre-petition claims, and authorizing PG&E to pay undisputed

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1 claims of \$5,000 or less, among other claims, on an expedited basis (the "March 29 Order").
2 However, the Original Motion inadvertently failed to provide that claims of \$5,000 or less in
3 Class 8 (Environmental, Fire Suppression, Pending Litigation and Tort claims) and Class 12
4 (Workers' Compensation Claims) under the Plan of Reorganization Under Chapter 11 of the
5 Bankruptcy Code for Pacific Gas and Electric Company, dated April 19, 2002 (the "Plan")
6 would *not* be paid on such an expedited basis until they were resolved in an appropriate
7 form. The Plan provides that such classes of claims will "pass through" PG&E's bankruptcy
8 and be liquidated and paid as if PG&E's bankruptcy case had not been commenced.

9 While the Court has authorized PG&E to pay all claims of \$5,000 or less
10 regardless of their classification under the Plan, PG&E now seeks that the Court's March 29
11 Order be clarified to specify that such ruling does not extend to claims in Class 8 or Class
12 12, except to the extent that PG&E has already settled (or will settle in the future) such
13 claims for an amount of \$5,000 or less. This approach will obviate the otherwise necessary
14 step of filing objections to each of the disputed claims in Class 8 and Class 12, thereby
15 saving the estate and the claimants the needless effort and expense that would be incurred if
16 objections were required, as well as unnecessarily consuming scarce judicial resources.
17 Moreover, it will enable relatively small claims in Class 8 and Class 12 to be treated
18 consistently with all other similarly situated claims in such classes—that is, that they will
19 pass through PG&E's bankruptcy unaffected thereby and be satisfied as they are resolved
20 pursuant to litigation in the appropriate forum or by settlement. PG&E submits that this
21 practical and efficient approach will provide consistency in the treatment of Class 8 and
22 Class 12 claims, while not detracting from the overall efficiency promoted by the Court's
23 March 29 Order allowing early payment generally of certain claims.

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II.

FACTUAL AND PROCEDURAL BACKGROUND¹

As the Court is aware, over 13,000 proofs of claim have been filed in this case. In order to facilitate the efficient administration of the estate, PG&E sought and obtained the Court's authorization to pay certain categories of pre-petition claims in advance of plan confirmation and consummation by its Original Motion. Pursuant to the March 29, 2002 Order,² the Court authorized PG&E to pay, on or before July 31, 2002, allowed pre-petition claims of \$5,000 or less (or which were voluntarily reduced by the claimant to \$5,000), undisputed mechanics' lien and reclamation claims, on and subject to the terms set forth in the Original Motion.³

In the Original Motion, PG&E sought to pay all "undisputed claims" of \$5,000 or less—i.e., those that were not subject to a pending objection. The Original Motion did not distinguish between claims of \$5000 or less in Class 8 and/or Class 12 under the Plan (i.e. Environmental, Fire Suppression, Pending Litigation and Tort claims and Workers' Compensation claims, respectively) and claims of \$5,000 or less classified in all other

¹The evidentiary basis and support for the facts set forth in this Motion are contained in the Declaration of Lessly Ann Wikle filed concurrently herewith. Docket numbers are provided for all referenced documents that have been filed herein and are available on the Court's website.

²The March 29 Order provides in full: "PG&E is authorized to pay allowed pre-petition claims of \$5000 or less (or which are voluntarily reduced by the claimant to \$5000), undisputed mechanics' lien claims, and undisputed reclamation claims, on or before July 31, 2002, on and subject to the terms set forth in the Motion." (Docket No. 5592). PG&E does not seek that the Court clarify its March 29 Order with respect to the treatment of mechanics' lien or reclamation claims.

³In the Original Motion, PG&E proposed that it would pay all undisputed claims of \$5,000 or less, as well as valid reclamation and mechanics' lien claims, on or before July 31, 2002, together with post-petition interest at the federal judgment rate in effect on April 6, 2001 (the date of the filing of PG&E's Chapter 11 petition)—4.19% per annum—accrued on the allowed amount of such claims from April 6, 2001 through June 30, 2002. With respect to disputed claims, upon the resolution of such claims, either by Court order or settlement, PG&E proposed to pay the allowed amount of those claims, plus interest at the federal judgment rate (4.19% per annum), accrued from April 6, 2001 through the date of payment. Such payments were proposed on a monthly basis from and after August 1, 2002, with respect to those claims that had been resolved during the prior month. Original Mot. at 6 (Docket No. 5011).

1 classes, which are not “pass through” claims. To the extent that the March 29 Order is not
2 clarified, PG&E faces the prospect of being required to file objections to those Class 8 and
3 Class 12 claims that PG&E believes are invalid, even though the Plan contemplates that any
4 disputes with respect to such claims will be determined in the appropriate non-bankruptcy
5 forum.⁴

6 Accordingly, PG&E now seeks a clarification of the March 29 Order with respect
7 to Class 8 and Class 12 claims. PG&E proposes that all Class 8 claims and Class 12 claims
8 will not be adjudicated or paid pursuant to the bankruptcy proceedings, but rather will pass
9 through PG&E’s bankruptcy and be liquidated in the appropriate forum. PG&E requests,
10 however, that the Court’s order on this Motion not affect PG&E’s authority to pay such
11 claims to the extent that they are resolved prior to the Effective Date.⁵

12
13 **III.**
14 **DISCUSSION**

15 Section 105(a) of the Bankruptcy Code vests this Court with authority to “issue
16 any order . . . that is necessary or appropriate to carry out the provisions of this title.”⁶ The
17 purpose of Section 105 is “to assure the bankruptcy court’s power to take whatever action is
18 appropriate or necessary in aid of the exercise of its jurisdiction.” 2 Lawrence P. King,
19 Collier on Bankruptcy ¶105.01, at 105-106 (15th ed. rev. 2000). It is well established that
20 Section 105 authorizes the Court to clarify and amend its orders where necessary. See, e.g., .
21

22 ⁴PG&E’s claims analysis shows that there are 577 Class 8 claims that are \$5,000 or
23 under, and there are 27 such claims in Class 12.

24 ⁵PG&E proposes that the Court’s Order amending the March 29 Order provide as
25 follows: “PG&E is authorized to pay allowed pre-petition claims of \$5,000 or less (or which
26 are voluntarily reduced by the claimant to \$5,000), undisputed mechanics’ lien claims, and
undisputed reclamation claims, on or before July 31, 2002, on and subject to the terms set
forth in the Motions filed March 5, 2002 and June 6, 2002.” (amended language
emphasized)

27 ⁶Section 105(a) states in pertinent part: “The court may issue any order, process, or
28 judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C.
§105(a).

1 Maryland Hotel Supply Co. v. Seats (In re Seats), 537 F.2d 1176, 1177 (4th Cir. 1976)
2 (“[r]equests to reopen estates or to modify or vacate orders lie within the sound discretion of
3 the bankruptcy court”). See also In re Thornburg, 2002 WL 958389 at *1 (Bankr. E.D. Tex.
4 March 12, 2002) (bankruptcy court has jurisdiction to clarify and enforce its own orders in a
5 core proceeding).

6 Moreover, under Section 105(a), this Court has the inherent power to amend its
7 March 29 Order to reflect PG&E’s suggested changes for the purpose of ensuring judicial
8 efficiency and to do justice. See Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)
9 (discussing courts’ inherent authority). Bankruptcy courts likewise have inherent power to
10 manage their own proceedings. See Caldwell v. Unified Capital Corp. (In re Rainbow
11 Magazine, Inc.), 77 F.3d 278, 284 (9th Cir. 1996) (Section 105 is “intended to imbue the
12 bankruptcy courts with the inherent powers recognized by the Supreme Court in Chambers”)
13 (citation omitted); Levander v. Prober (In re Levander), 180 F.3d 1114, 1118 (9th Cir. 1999)
14 (holding bankruptcy court had inherent power to amend judgment); Johnson v. McDow (In
15 re Johnson), 236 B.R. 510, 521 (D.D.C. 1999) (bankruptcy court has inherent power to strike
16 irrelevant allegations). As the Johnson court explained:

17 Section 105 specifically codifies what are traditionally called
18 “inherent powers” to give the Bankruptcy Courts the necessary ability
19 to manage the cases on their docket. It is imperative that courts have
20 the necessary authority to manage the arguments and conduct of
21 parties to ensure judicial efficiency and to do justice Inherent
22 powers take into account the fact that legislatures cannot foresee the
23 infinite circumstances of life and all the necessary orders that courts
24 may have to issue to do justice. (Id. (citation omitted))

25 In the interests of the efficient administration of the estate, it would be fair and
26 reasonable to treat similarly situated Class 8 and Class 12 claims alike. Moreover, such an
27 approach would obviate the otherwise needed step of filing objections to each of the 577
28 Class 8 and 27 Class 12 claims thereby saving the resources of the estate and the court alike,
without detracting from the overall efficiency promoted by the March 29 Order. Thus,
granting PG&E’s request for the clarification of the Court’s March 29 Order is consistent
with the exercise of this Court’s inherent power to manage PG&E’s Chapter 11 case, and

1 should be permitted.

2 IV.

3 CONCLUSION

4 For all of the foregoing reasons, PG&E respectfully requests that this Court enter
5 its Amended Order clarifying its March 29 Order and granting such other and further relief
6 as the Court deems just and appropriate.

7 DATED: June 7, 2002.

8 Respectfully,

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

11 By: Janet Nexon
12 JANET A. NEXON

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

15 WD 060602/1-1419913/997265/v3

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