

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JAMES L. LOPES (No. 63678)
WILLIAM J. LAFFERTY (No. 120814)
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

50. 275/323

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.

Case No. 01-30923 DM

Chapter 11 Case

Date: June 27, 2002
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

Federal I.D. No. 94-0742640

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

A001 Add: Rids Ogmail Center

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 Code. No trustee has been appointed.

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

7 3. Pursuant to Bankruptcy Code Sections 1121(b) and (c), PG&E had the exclusive
8 right to file a plan for 120 days after the Petition Date (i.e., until August 6, 2001¹), and, if it
9 filed a plan by such time, an additional sixty days during which it would maintain plan
10 exclusivity (i.e., until October 3, 2001).

11 4. By its "Order Extending Exclusivity Period" filed on July 20, 2001, this Court (a)
12 extended the exclusive period under Section 1121 during which only the Debtor could file a
13 plan by four months, until December 6, 2001, and (b) in the event that the Debtor filed a
14 plan by December 6, 2001, extended the period during which the Debtor maintained plan
15 exclusivity pursuant to Section 1121(c)(3) by four months, until February 4, 2002. That
16 Order expressly authorized PG&E to seek further extension of these time periods by filing a
17 subsequent motion on or before December 6, 2001 and February 4, 2002, respectively.

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

23 6. By filing the PG&E Plan prior to December 6, 2001, pursuant to the Court's July
24 20, 2001 Order, the Debtor maintained plan exclusivity pursuant to Section 1121(c)(3) until
25 February 4, 2002, or such later date as the Court might order based on motion filed by

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

1 February 4, 2002.

2 7. By its "Amended Order Further Extending Exclusivity Period for Plan of
3 Reorganization" filed on February 4, 2002, this Court extended the period during which the
4 Debtor maintains plan exclusivity (except with respect to the CPUC, as further discussed
5 below) pursuant to Section 1121(c)(3) of the Bankruptcy Code until June 30, 2002, or such
6 later date as the Court might order based upon a subsequent motion filed on or before June
7 30, 2002.²

8 8. By its "Order Terminating Plan Exclusivity with Respect to the California Public
9 Utilities Commission and Authorizing the California Public Utilities Commission to File an
10 Alternate Plan of Reorganization" filed on March 22, 2002, the Court terminated the
11 Debtor's exclusivity with respect to the CPUC effective as of February 27, 2002 and
12 authorized the CPUC to file an alternative plan and disclosure statement by April 15, 2002.

13 9. On April 15, 2002, the CPUC filed the "California Public Utilities Commission's
14 Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and
15 Electric Company" (as amended from time to time, the "CPUC Plan"), and an
16 accompanying Disclosure Statement (as amended from time to time, the "CPUC Disclosure
17 Statement").

18 10. By its Order filed on April 24, 2002, the Court approved the PG&E Disclosure
19 Statement.

20 11. By its Order filed on May 17, 2002, the Court approved the CPUC Disclosure
21 Statement.

22 12. By its "Order Approving . . . Voting Solicitation Procedures . . ." filed on May
23 20, 2002, the Court established June 17, 2002 as the first date for soliciting acceptances or
24 rejections with respect to the PG&E Plan and the CPUC Plan.

25 13. By its "Scheduling Order Supplementing Orders Approving Disclosure
26

27 ² Pursuant to Federal Rule of Bankruptcy Procedure 9006(a), since June 30, 2002 falls
28 on a Sunday, the applicable date is actually July 1, 2002.

1 Statement . . . ” filed on May 20, 2002, the Court ordered the hearing on confirmation of the
2 PG&E Plan and the CPUC Plan to commence (with a status conference) on August 1, 2002.

3 14. By this Motion, PG&E requests that the Court enter an order pursuant to
4 Bankruptcy Code Section 1121(d) further extending, from June 30, 2002 until December 31,
5 2002 (or such later date as the Court may hereafter order based upon a subsequent motion
6 filed on or before December 31, 2002), the period during which PG&E maintains plan
7 exclusivity (except with respect to the CPUC) pursuant to Bankruptcy Code Section
8 1121(c)(3).

9 15. As discussed above, there are now two Chapter 11 Plans for which the Court has
10 approved the respective Disclosure Statements, and for which balloting will soon commence
11 (prior to the scheduled hearing on this Motion). If another party were to file a plan at this
12 time, it would be both confusing and counterproductive. Among other things, it would be
13 impossible for such a plan to be included on the same time track as the PG&E Plan and
14 CPUC Plan, and would serve no useful purpose.

15 II.

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

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

22 Pursuant to Bankruptcy Code Section 1121, Congress provided Chapter 11
23 debtors with time to attempt to reach agreement with their creditors, leaving to the
24 bankruptcy court the discretion as to how much time should be allowed. Section 1121(b)
25 establishes an initial period of 120 days after the order for relief during which only the
26 debtor may file a plan.³ If the debtor files a plan within the 120-day period, Section

27 ³ Section 1121(b) provides that “[e]xcept as otherwise provided in this section, only the
28 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.

1 1121(c)(3) allows an additional 60 days during which only the debtor may obtain
2 acceptances of the plan.⁴

3 Bankruptcy Code Section 1121(d) provides that the Court may extend both such
4 exclusivity periods for “cause.”⁵ Although the Bankruptcy Code does not define “cause” for
5 purposes of Section 1121(d) or establish formal criteria for an extension of the exclusivity
6 periods, Congress recognized that the debtor should be given a meaningful opportunity to
7 formulate and negotiate a plan. H.R. Rep. No. 95-595, at 231-32 (1977), reprinted in 1978
8 U.S.C.C.A.N. 5963, 6191 (hereinafter “House Report”). At the same time, Congress
9 recognized that an open-ended exclusivity period could encourage a debtor to stall in order
10 to exact undue concessions from creditors and could unnecessarily delay creditors. S. Rep.
11 No. 95-989, at 118 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5904 (hereinafter, “Senate
12 Report”). Thus, the courts must necessarily strike an appropriate balance.

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

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

22 Although the Bankruptcy Code does not define the circumstances that constitute
23 “cause” to extend the exclusivity periods contained in Bankruptcy Code Section 1121, the

24 ⁴ Section 1121(c)(3), provides, in relevant part, that non-debtor parties in interest may
25 file a plan “if and only if . . . the debtor has not filed a plan that has been accepted, before
26 180 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).

27 ⁵ Section 1121(d) provides, in relevant part, that “[o]n request of a party in interest . . .
28 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).

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 legislative history makes clear that the initial 120-day period established by Section 1121(b)
2 merely represents a baseline from which the Court is free to deviate, particularly in large and
3 complex cases such as PG&E's Chapter 11 case:

4 "In most cases, 120 days will give the debtor adequate time to negotiate a
5 settlement, without unduly delaying creditors. The court is given the power,
6 though, to increase or reduce the 120-day period depending on the circumstances
7 of the case. For example, if an unusually large company were to seek
8 reorganization under chapter 11, the court would probably need to extend the
9 time in order to allow the debtor to reach an agreement." (House Report, at 232,
10 1978 U.S.C.C.A.N. at 6191 (emphasis added) (footnote omitted))

11 Thus, bankruptcy courts frequently identify the size and complexity of a Chapter
12 11 case as "cause" to warrant extension of the exclusivity periods. See, e.g., In re Dow
13 Corning Corp., 208 B.R. 661, 665 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc.,
14 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re Public Serv. Co., 88 B.R. at 534-35; In re
15 Texaco, Inc., 76 B.R. 322, 325-27 (Bankr. S.D.N.Y. 1987); In re Perkins, 71 B.R. at 297-
16 300; In re Pine Run Trust, Inc., 67 B.R. 432, 434-36 (Bankr. E.D. Pa. 1986); In re United
17 Press Int'l, Inc., 60 B.R. 265, 270 (Bankr. D.D.C. 1986).

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

26 The present case is of a much larger size and complexity than the foregoing
27 cases, involving tens of billions of dollars of assets, and claims of more than 13,000
28 creditors. In addition to the sheer size of this case, it is exceedingly complex, based on, inter
29 alia, PG&E's status as a utility company subject to a myriad of state and federal statutes,
30 rules and regulations, and the fact that PG&E continues to grapple with an unprecedented
31 energy crisis.

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

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

6 The legislative history and the case law interpreting Section 1121 have
7 established that exclusivity period extensions are appropriate where the debtor displays some
8 likelihood of a successful, consensual reorganization. Senate Report, at 118, 1978
9 U.S.C.C.A.N. at 5904 (“the granted extension should be based on a showing of some
10 promise of probable success”). Thus, in evaluating whether there is cause for extending the
11 exclusivity periods under Section 1121, courts have examined whether the debtor has made
12 good-faith progress toward reorganization, including the status of negotiations between the
13 debtor and third parties, which, if successful, would enable the debtor to file a viable plan.
14 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
15 Nicolet, Inc., 80 B.R. 733, 741-42 (Bankr. E.D. Pa. 1987); In re Perkins, 71 B.R. at 298.

16 For example, in In re Pine Run Trust, 67 B.R. at 435, the court granted a 90-day
17 extension of both plan exclusivity periods where “substantial progress had been made in
18 negotiations [between the debtors and the creditors’ committee] that, all concede, are critical
19 to a successful reorganization [and] there was no evidence presented that the debtors sought
20 this additional extension in order to pressure their creditors to accede to their reorganization
21 demands”). See also In re McLean Indus., 87 B.R. at 833-35 (“a finding that the debtor is
22 not seeking to extend exclusivity to pressure creditors to accede to [the debtor’s]
23 reorganization demands . . . and the fact that the debtor is paying its [postpetition] bills as
24 they come due” provided “cause” to extend the exclusivity periods) (citations and internal
25 quotation marks omitted); In re Homestead Partners, Ltd., 197 B.R. 706, 720 (Bankr. N.D.
26 Ga. 1996) (cause exists to extend exclusivity where the debtor has made substantial progress
27 toward gaining acceptance of a plan, recalcitrance of certain creditors has posed a significant
28 hurdle to timely plan development and presence of complex legal issues has occupied much
of debtor’s plan-making opportunity).

1 As discussed above, PG&E has already made substantial efforts towards a
2 successful reorganization. Indeed, in view of the size and complexity of this case, it is
3 unprecedented that in approximately the first year of this case, PG&E has already obtained
4 approval of the PG&E Disclosure Statement with respect to the PG&E Plan, which enjoys
5 broad creditor support (including by the Committee and other creditor constituencies).

6 Furthermore, there is nothing to suggest that PG&E seeks the requested
7 extensions in order to pressure its creditors to accede to its reorganization demands.⁶ Rather,
8 PG&E has continued to diligently work the plan confirmation process through a fast track, in
9 an effort to accelerate the resolution of this case for creditors and other interested parties as
10 quickly as possible. The requested extension will protect this process while the PG&E Plan
11 confirmation efforts are concluded, which could take several months.

12 III.

13 CONCLUSION.

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

- 15 1. Determining that notice of the Motion was appropriate under the
16 circumstances;
- 17 2. Granting the Motion;
- 18 3. Extending, from June 30, 2002 until December 31, 2002 (or such later date
19 as the Court hereafter may order based upon a subsequent motion filed on or before
20 December 31, 2002), the period during which PG&E maintains plan exclusivity (except with
21 respect to the CPUC) pursuant to Bankruptcy Code Section 1121(c)(3); and

22 ///

23 ///

24 ///

25 ///

26 _____
27 ⁶ Indeed, in view of the alternate CPUC Plan, PG&E would have difficulty pressuring
28 its creditors to accede to its reorganization demands in any event.

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

DATED: June 7, 2002.

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