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7 PACIFIC GAS AND ELECTRIC COMPANY

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

12
13 In re
14 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
15 Debtor.

Case No. 01-30923 DM
Chapter 11 Case
Date: January 22, 2003
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

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17 Federal I.D. No. 94-0742640

18
19 PACIFIC GAS & ELECTRIC COMPANY'S NOTICE OF MOTION
20 AND MOTION FOR ORDER FURTHER EXTENDING
21 EXCLUSIVITY PERIOD FOR PLAN OF REORGANIZATION;
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

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& RABKIN
A Professional Corporation

1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that on January 22, 2003, 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 (the
6 "Debtor" or "PG&E"), will and hereby does move the Court for entry of an order pursuant to
7 Bankruptcy Code Section 1121(d) further extending, from December 31, 2002 until April
8 30, 2003 (or such later date as the Court may hereafter order based upon a subsequent
9 motion filed on or before April 30, 2003), the period during which PG&E maintains "plan
10 exclusivity" (except with respect to the California Public Utilities Commission ("CPUC")
11 and the Official Committee of Unsecured Creditors ("Committee")) pursuant to Bankruptcy
12 Code Section 1121(c)(3) (the "Motion"). As set forth below, PG&E submits that there is
13 "cause" to grant the requested extensions pursuant to Bankruptcy Code Section 1121(d).

14 This Motion is based on the facts and law set forth herein, the record of this case
15 and any evidence presented at or prior to the hearing on this Motion.

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

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HOWARD
RICE
NEMEROVSKI
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FALK
& RABIKIN
A Professional Corporation

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 FACTUAL BACKGROUND.

4 1. On April 6, 2001 (the "Petition Date"), PG&E filed a voluntary petition under
5 Chapter 11 of the Bankruptcy Code. PG&E continues to manage and operate its business
6 and property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy
7 Code. No trustee has been appointed.

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

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

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

25 5. On September 20, 2001, PG&E (and co-proponent PG&E Corporation, PG&E's

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 parent company) filed the "Plan of Reorganization under Chapter 11 of the Bankruptcy Code
2 for Pacific Gas and Electric Company" (as amended from time to time, the "PG&E Plan"),
3 and an accompanying Disclosure Statement (as amended from time to time, the "PG&E
4 Disclosure Statement").

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

9 7. By its "Amended Order Further Extending Exclusivity Period for Plan of
10 Reorganization" filed on February 4, 2002, this Court extended the period during which the
11 Debtor maintains plan exclusivity (except with respect to the CPUC, as further discussed
12 below) pursuant to Section 1121(c)(3) of the Bankruptcy Code until June 30, 2002, or such
13 later date as the Court might order based upon a subsequent motion filed on or before June
14 30, 2002.²

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

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

25 10. By its Order filed on April 24, 2002, the Court approved the PG&E 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.

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

4 12. By its "Order Approving . . . Voting Solicitation Procedures . . ." filed on May
5 20, 2002, the Court established June 17, 2002 as the first date for soliciting acceptances or
6 rejections with respect to the PG&E Plan and the CPUC Plan. Pursuant to the Court's
7 Order, the last day to submit voting ballots on the PG&E Plan and CPUC Plan was August
8 12, 2002.

9 13. By its "Order Further Extending Exclusivity Period for Plan of Reorganization"
10 filed on July 9, 2002, the Court extended the period during which the Debtor maintains plan
11 exclusivity (except with respect to the CPUC and the Committee) pursuant to Section
12 1121(c)(3) of the Bankruptcy Code until December 31, 2002, or such later date as the Court
13 might order based upon a subsequent motion filed on or before December 31, 2002. That
14 Order provides (at ¶ 3) that "[w]ith respect to the Committee, exclusivity pursuant to
15 Bankruptcy Code Section 1121(c)(3) is terminated, effective as of July 1, 2002.

16 14. On or about August 23, 2002, the Committee became a co-proponent of the
17 CPUC Plan.

18 15. Pursuant to various scheduling orders issued by the Court, the confirmation
19 hearing with respect to the CPUC Plan commenced on November 18, 2002, and the
20 confirmation hearing with respect to the PG&E Plan commenced on December 16, 2002,
21 and is scheduled to run through February 27, 2003.

22 16. By this Motion, PG&E requests that the Court enter an order pursuant to
23 Bankruptcy Code Section 1121(d) further extending, from December 31, 2002 until April
24 30, 2003 (or such later date as the Court may hereafter order based upon a subsequent
25 motion filed on or before April 30, 2003), the period during which PG&E maintains plan
26 exclusivity (except with respect to the CPUC and the Committee) pursuant to Bankruptcy
27 Code Section 1121(c)(3).

28 17. As discussed above, there are now two Chapter 11 Plans for which the Court has
PG&E's MOTION TO FURTHER EXTEND EXCLUSIVITY PERIOD FOR REORGANIZATION PLAN

1 approved the respective Disclosure Statements, for which balloting has been completed, and
2 for which the confirmation hearing has been completed or is underway. The three primary
3 parties in this case (PG&E, the Committee and the CPUC) are each proponents of one of the
4 Plans, and no other party has formally sought to file a competing Chapter 11 plan for the
5 Debtor. If another party were to file a plan at this time, it would be both confusing and
6 counterproductive.³ Among other things, it would be impossible for such a plan to be
7 included on the same time track as the PG&E Plan and CPUC Plan, and would serve no
8 useful purpose.

9
10 II.

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

14 A. Section 1121(d) Permits A Court To Extend, For Cause, The Exclusivity Periods
15 For The Debtor's Filing Of A Reorganization Plan Beyond The Initial 120 Day
16 And 180 Day Periods Provided Therein.

17 Pursuant to Bankruptcy Code Section 1121, Congress provided Chapter 11
18 debtors with time to attempt to reach agreement with their creditors, leaving to the
19 bankruptcy court the discretion as to how much time should be allowed. Section 1121(b)
20 establishes an initial period of 120 days after the order for relief during which only the
21 debtor may file a plan.⁴ If the debtor files a plan within the 120-day period, Section

22 ³ Indeed, as the Court stated at the June 27, 2002 hearing on the Debtor's most recent
23 motion to extend exclusivity:

24 "I do think there would be some unnecessary disruption and confusion to have a
25 wholesale invitation for anyone to file a plan who feels a need to do so And
26 so I think I will leave the burden on other plan proponents at this time to come to
27 court and show why they—it or they ought to be entitled to break the exclusivity
28 that I will continue for the debtor [I]f there is a serious proponent who wishes
to file a plan, I will be willing to take a request to break exclusivity on an
expedited basis." (*Id.* at 54)

⁴ Section 1121(b) provides that "[e]xcept as otherwise provided in this section, only the
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
(continued . . .)

1 1121(c)(3) allows an additional 60 days during which only the debtor may obtain
2 acceptances of the plan.⁵

3 Bankruptcy Code Section 1121(d) provides that the Court may extend both such
4 exclusivity periods for “cause.”⁶ 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).

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21
22
23 (. . . continued)
24 relief was entered on the Petition Date.

25 ⁵ Section 1121(c)(3), provides, in relevant part, that non-debtor parties in interest may
26 file a plan “if and only if . . . the debtor has not filed a plan that has been accepted, before
27 180 days after the date of the order for relief under this chapter, by each class of claims or
28 interests that is impaired under the plan.” 11 U.S.C. §1121(c)(3).

⁶ Section 1121(d) provides, in relevant part, that “[o]n request of a party in interest . . .
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).

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

3 Although the Bankruptcy Code does not define the circumstances that constitute
4 “cause” to extend the exclusivity periods contained in Bankruptcy Code Section 1121, the
5 legislative history makes clear that the initial 120-day period established by Section 1121(b)
6 merely represents a baseline from which the Court is free to deviate, particularly in large and
7 complex cases such as PG&E’s Chapter 11 case:

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

12 Thus, bankruptcy courts frequently identify the size and complexity of a Chapter
13 11 case as “cause” to warrant extension of the exclusivity periods. See, e.g., In re Dow
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
Texaco, Inc., 76 B.R. 322, 325-27 (Bankr. S.D.N.Y. 1987); In re Perkins, 71 B.R. at 297-
15 300; In re Pine Run Trust, Inc., 67 B.R. 432, 434-36 (Bankr. E.D. Pa. 1986); In re United
Press Int’l, Inc., 60 B.R. 265, 270 (Bankr. D.D.C. 1986).

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19 In Perkins, 71 B.R. at 296-300, for example, the court held that a case involving
20 approximately \$13 million in assets and claims held by about 100 creditors was sufficiently
21 “large and complex” to justify an exclusivity period of over 800 days. See also In re Public
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

27 The present case is of a much larger size and complexity than the foregoing
28 cases, involving tens of billions of dollars of assets, and claims of more than 13,000

1 creditors. In addition to the sheer size of this case, it is exceedingly complex, based on, inter
2 alia, PG&E's status as a utility company subject to a myriad of state and federal statutes,
3 rules and regulations, and the fact that PG&E continues to grapple with the effects of an
4 unprecedented energy crisis.

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

7
8 C. Courts Have Found Cause To Extend Exclusivity Periods In Circumstances Such
9 As These Where The Debtor Has Made Substantial Progress Toward A
10 Successful Reorganization.

11 The legislative history and the case law interpreting Section 1121 have
12 established that exclusivity period extensions are appropriate where the debtor displays some
13 likelihood of a successful, consensual reorganization. Senate Report, at 118, 1978
14 U.S.C.C.A.N. at 5904 ("the granted extension should be based on a showing of some
15 promise of probable success"). Thus, in evaluating whether there is cause for extending the
16 exclusivity periods under Section 1121, courts have examined whether the debtor has made
17 good-faith progress toward reorganization, including the status of negotiations between the
18 debtor and third parties, which, if successful, would enable the debtor to file a viable plan.
19 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
20 Nicolet, Inc., 80 B.R. 733, 741-42 (Bankr. E.D. Pa. 1987); In re Perkins, 71 B.R. at 298.

21 For example, in In re Pine Run Trust, 67 B.R. at 435, the court granted a 90-day
22 extension of both plan exclusivity periods where "substantial progress had been made in
23 negotiations [between the debtors and the creditors' committee] that, all concede, are critical
24 to a successful reorganization [and] there was no evidence presented that the debtors sought
25 this additional extension in order to pressure their creditors to accede to their reorganization
26 demands"). See also In re McLean Indus., 87 B.R. at 833-35 ("a finding that the debtor is
27 not seeking to extend exclusivity to pressure creditors to accede to [the debtor's]
28 reorganization demands . . . and the fact that the debtor is paying its [postpetition] bills as
they come due" provided "cause" to extend the exclusivity periods) (citations and internal

1 quotation marks omitted); In re Homestead Partners, Ltd., 197 B.R. 706, 720 (Bankr. N.D.
2 Ga. 1996) (cause exists to extend exclusivity where the debtor has made substantial progress
3 toward gaining acceptance of a plan, recalcitrance of certain creditors has posed a significant
4 hurdle to timely plan development and presence of complex legal issues has occupied much
5 of debtor's plan-making opportunity).

6 As discussed above, PG&E has already made substantial efforts towards a
7 successful reorganization. Indeed, in view of the size and complexity of this case, it is
8 unprecedented that in approximately the first year of this case, PG&E had already obtained
9 approval of the PG&E Disclosure Statement with respect to the PG&E Plan. In addition, the
10 PG&E Plan enjoys broad creditor support, and has been accepted by all but one class of
11 creditors who voted on the PG&E Plan.

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

18
19 III.

20 CONCLUSION.

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

- 22 1. Determining that notice of the Motion was appropriate under the
23 circumstances;
24 2. Granting the Motion;
25 3. Extending, from December 31, 2002 until April 30, 2003 (or such later date
26

27 ⁷ 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.

1 as the Court hereafter may order based upon a subsequent motion filed on or before April
2 30, 2003), the period during which PG&E maintains plan exclusivity (except with respect to
3 the CPUC and the Committee) pursuant to Bankruptcy Code Section 1121(c)(3); and

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

5 DATED: December 20, 2002.

6 Respectfully,

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

10 By:  _____
11 GARY M. KAPLAN

12 Attorneys for Debtor and Debtor in Possession
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