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with Claims against Pacific Gas & Electric Co.

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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)**

11
12 In re
13 Pacific Gas & Electric Co.,
14 Debtor.
15 Federal I.D. No. 94-0742640

CASE NO. 01-30923

Chapter 11

**CALIFORNIA COUNTIES RESPONSE TO
DEBTOR'S MOTION FOR AUTHORITY
TO PAY PRE-PETITION PROPERTY
TAXES**

Date: May 16, 2001
Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

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21 **The City and County of San Francisco, and the counties of Alameda, Fresno,**
22 **Kern, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Sonoma, Stanislaus, Trinity,**
23 **Tulare and Tuolumne (collectively "California Counties") respond to the Debtor's Motion for**
24 **Authority to Pay Pre-petition Property Taxes (Debtor's Motion") as follows:**

25 1. The amounts shown on Exhibit A attached to the Declaration of Charles M.
26 Marre in support of Debtor's Motion are accurate statements of the principal due on account of
27 unpaid real property taxes owed by the Debtor to California Counties, but the assessed values
28 shown thereon are not accurate with respect to twelve (12) counties.

ADD: Eids Use Mail Center
RESPONSE TO DEBTOR'S MOTION

2. California Counties admit and allege that the failure to pay the unpaid real property taxes is causing undue hardship to the California Counties and other local entities, including schools and cities, which have ongoing obligations to pay for public services, including police, public safety, public health, and education etc. California Counties admit and allege that they and the local entities that receive portions of the property tax depend on such taxes paid by Pacific Gas and Electric Co. ("PG&E") to fund the delivery of essential goods and services to their residents. California Counties also admit that their county budgets assume timely receipt of the pre-petition taxes. California Counties further admit the allegations of the Debtor in its Memorandum of Points and Authorities (page 2, lines 2 through 5): (1) that the claims for such taxes are fully secured claims; (2) that the immediate payments of such claims will reduce the estate's liability for late payment penalties; (3) that the payment and claims for taxes does not prejudice any other creditors; and (4) the failure to pay unpaid real property tax claims would impose undue hardship on the California Counties which depend on taxes paid by PG&E to fund essential services.

3. The failure of the Debtor to pay unpaid real property taxes in a timely fashion is neither explained, nor justified, in the Debtor's Motion. However, the Debtor's Motion does set forth valid and subsisting grounds for the prompt payment of the delinquent property taxes. Those grounds apply with equal force whether delinquent penalties are waived, compromised or paid in full. If payment is not made on or before July 1, 2001, redemption penalties, which under California Law constitute the assessment of interest, will attach at the rate of one and one-half percent (1 1/2%) per month until paid. See Revenue and Taxation Code §4103(a).

4. The Debtor is absolutely correct when it states that no one will be prejudiced by payments of the delinquent secured real property taxes. The failure to make payment before July 1, 2001, will not only continue to impose hardship on California Counties, and other local entities, without economic benefit to any of the other creditors of the estate, but will also impose the substantial and on-going obligations for redemption penalties.

1 5. California Counties strongly dispute the Debtor's Motion, so far as it seeks
2 to limit payment of taxes to only those California Counties "who agree to waive all late payment
3 fees and penalties associated with such taxes", because it is unfair and discriminatory. The Debtor
4 does not dispute that penalties and costs are due, or that the Debtor could have avoided the
5 attaching of penalties either by paying the tax before it filed Chapter 11 relief, or in the alternative,
6 by filing a first day motion to pay the taxes prior to 5:00 p.m. on April 10th, 2001. If the Debtor
7 has reasonable cause and circumstances for not paying the county taxes in a timely manner, it can
8 fairly negotiate those issues with the individual counties on a county by county basis and allow
9 county officials to properly exercise their discretion to consider the cancellation of penalties and
10 costs as provided in Revenue and Taxation Code §4985.2.

11 6. It is improper for the Debtor to attempt to force the county officials to
12 waive delinquent penalties by threatening to withhold payment of delinquent taxes. This Court
13 should not assist the Debtor in applying such leverage. Avoiding the commencement of
14 redemption penalties at one and one-half percent (1 1/2%) per month should constitute sufficient
15 incentive to make payment now. The fact that the creditors and the Debtor would be economically
16 benefited by making the tax payments now, and the fact that failure to make the tax payments now
17 is imposing unnecessary hardship on the affected counties, provides adequate equitable grounds
18 for the Court to order the Debtor to pay all delinquent taxes now regardless of whether or not the
19 counties waive delinquent penalties and costs.

20 7. If the Debtor is opposed to paying the delinquent penalty along with the
21 delinquent tax principal, the issue of the payment of the delinquent penalty and statutory costs
22 should be severed and reserved for hearing and determination by the Court at a later date. That is
23 a fair, equitable and reasonable resolution of the delinquency penalty problems.

24 **WHEREFORE**, California Counties pray that the Debtor's Motion be granted in modified
25 form, to wit, that the Court make an order in the form attached hereto authorizing and directing
26 the Debtor to immediately pay all delinquent secured real property taxes exclusive of delinquent
27 penalties and costs without prejudice to the rights of the affected California Counties to receive
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delinquent penalties and statutory costs, which issue should be reserved for later decision by the Court.

DATED: May 10, 2001

By: Irving Sulmeyer
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