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CITY AND COUNTY OF SAN FRANCISCO

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

In re

PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation,

Debtor.

Tax Id # 94-0742640

CASE NO. 01-30923 DM

Chapter 11

DATE: June 18, 2001

TIME: 9:30 a.m.

PLACE: 232 Pine St., 22nd Floor

San Francisco, CA

JUDGE: Honorable Dennis Montali

**SAN FRANCISCO'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
OBJECTIONS TO DEBTOR'S MOTION FOR ORDER AUTHORIZING (1)  
CONTINUATION OF PREPETITION EMPLOYEE SEVERANCE AND  
DISPLACEMENT PROGRAMS, (2) ESTABLISHMENT OF MANAGEMENT  
RETENTION PROGRAM, AND (3) HONORING OF CERTAIN PREPETITION  
EMPLOYEE COMPENSATION**

*Filed 6/11/01 Add: Kids Cge Mail Center*

1 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE,  
2 THE DEBTOR AND OTHER INTERESTED PARTIES:

3 The City and County of San Francisco ("San Francisco") hereby request, pursuant  
4 to Rule 201 of the Federal Rules of Evidence, as incorporated by Rule 9017 of the Federal Rules  
5 of Bankruptcy Procedure, that this court take judicial notice of, without limitation, the following  
6 pleadings and documents which are from the Debtor's case.

7 1. The Court's tentative ruling and order to meet and confer following hearing  
8 on emergency motion of Mid-Set Cogeneration Co., et al., filed May 16, 2001, and in particular  
9 pages 14 and 15, copies of which pages are attached hereto as Exhibit A.

10 2. Attached hereto as Exhibit B and incorporated herein by reference is a true  
11 and correct copy of the Debtor's voluntary petition.

12 3. Both documents are submitted in connection with the Debtor's allegation  
13 that it is solvent.

14  
15 Respectfully submitted,

16  
17 Louise H. Renne,  
18 L. Joanne Sakai,  
19 Theresa Mueller, and  
20 D. Cameron Baker,

21 and

22 DATED: June 11, 2001

23 SULMEYER, KUPETZ, BAUMANN & ROTHMAN  
24 A Professional Corporation

25 By: 

Irving Sulmeyer

26 Attorneys for Creditors City and County of San  
27 Francisco  
28

EXHIBIT A

1        This is not just a technical issue. If PG&E's default to the  
2 QF's is close to \$1 billion, as various counsel have claimed, then  
3 the interest alone will be very substantial. Consequential  
4 damages under state law could include not only damage to Mid-Set  
5 but also, if PG&E's non-payment under the PPAs forces Mid-Set to  
6 breach its own contracts with third parties, any damages from  
7 those breaches. See 1 Witkin, Sum. of Cal. Law, Contracts §§ 825  
8 (future profits), 842 (attorneys' fees, including fees incurred in  
9 bringing or defending action against third person), 848  
10 (consequential damages) (9th ed. & Supp. 2000).

11        Third, if PG&E eventually rejects the PPAs, PG&E might  
12 nevertheless still have to pay 100% of any consequential damages  
13 and interest. The Bankruptcy Code treats rejection of executory  
14 contracts as a pre-petition breach. 11 U.S.C. § 502(g). In  
15 general, the effect is that post-petition consequential damages  
16 are treated as unsecured, non-priority pre-petition claims. See  
17 Abercrombie v. Hayden Corp. (In re Abercrombie), 139 F.3d 755,  
18 758-759 (9th Cir. 1998) (attorneys' fees incurred litigating post-  
19 petition bankruptcy issues treated as part of pre-petition  
20 unsecured claim). If PG&E were insolvent, those claims would be  
21 paid something less than their face value, without post-petition  
22 interest. 11 U.S.C. §§ 502(b)(2), 726(a)(5) and  
23 1129(a)(7)(A)(ii).

24        PG&E claims, however, that it is solvent. PG&E's counsel has  
25 made numerous representations to the court to the effect that PG&E  
26 intends this case to be conducted on a "business as usual" basis  
27 and that all creditors will be paid in full. In addition, the  
28 information that accompanied the voluntary petition, while not

1 conclusive, leads the court to believe at this point that PG&E is  
2 solvent in a balance sheet sense. If PG&E is correct that it is  
3 solvent, pre-petition claims should receive payment in full with  
4 interest. 11 U.S.C. §§ 726(a)(5) and 1129(a)(7)(A)(ii). Indeed,  
5 this has led some courts to refuse to approve solvent debtors'  
6 motions to reject executory contracts, because the net effect  
7 would be worse for the bankruptcy estate than assuming the  
8 contracts. See Chi-Feng Huang, supra, 23 B.R. at 803 (if estate  
9 is solvent, rejection would "accomplish nothing for the general  
10 unsecured creditors" and "might only impose unwarranted  
11 administrative expenses or delay"); Bregman v. Meehan (In re  
12 Meehan), 59 B.R. 380 (E.D.N.Y. 1986) (bankruptcy court may decline  
13 to authorize rejection of contract in solvent estate because it  
14 will not benefit unsecured creditors).<sup>11</sup>

15 In other words, the longer PG&E takes to decide whether to  
16

17 <sup>11</sup> Given the above analysis it might seem that it makes  
18 economic sense for PG&E to assume all its executory contracts.  
19 Moreover, it seems likely that PG&E will want to assume Mid-Set's  
20 PPAs, both because they appear to be below-market at present and  
21 because if PG&E rejects the PPAs it might be required by the  
22 Federal Power Act to enter into a new PPA with Mid-Set (possibly  
23 at a higher rate). See generally 16 U.S.C. §§ 824i and 824k and 18  
24 C.F.R. § 292.303 and 292.304 (1982) (utilities' obligation to  
25 purchase from QFs). See also American Paper Institute, Inc. v.  
26 American Elec. Power Service Corp., 461 U.S. 402 (1983) (upholding  
27 validity of rules). The court notes that a delay in assuming or  
28 rejecting an executory contract can be at least temporarily  
beneficial to debtors but might ultimately be detrimental to the  
bankruptcy estate. See R and O Elevator Co., Inc. v. Harmon, 93  
B.R. 667 (D. Minn. 1988) (debtor did not move to assume or reject  
executory contract with former president until plan confirmation,  
thereby benefitting from non-competition agreement without having  
to assume contract and pay cure, but president was therefore under  
no duty to mitigate damages). Nonetheless, the court recognizes  
that there may be many valid business reasons for PG&E to defer  
the decision whether to assume or reject its executory contracts,  
not least of which are shifting regulatory and economic  
circumstances.

**EXHIBIT B**

FORM B1

# United States Bankruptcy Court Northern District of California

## Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):

Pacific Gas and Electric Company

Name of Joint Debtor (Spouse) (Last, First, Middle):

All Other Names used by the Debtor in the last 6 years  
(include married, maiden, and trade names):All Other Names used by the Joint Debtor in the last 6 years  
(include married, maiden, and trade names):

Soc. Sec./Tax I.D. No. (if more than one, state all):

94-0742640

Soc. Sec./Tax I.D. No. (if more than one, state all):

Street Address of Debtor (No. &amp; Street, City, State &amp; Zip Code):

77 Beale Street  
San Francisco, CA 94120

Street Address of Joint Debtor (No. &amp; Street, City, State &amp; Zip Code):

County of Residence or of the  
Principal Place of Business: San FranciscoCounty of Residence or of the  
Principal Place of Business:

Mailing Address of Debtor (if different from street address):

P.O. Box 7442  
San Francisco, CA 94120

Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor  
(if different from street address above):

### Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- ☐ Individual(s)  
☐ Corporation  
☐ Partnership  
☐ Other \_\_\_\_\_
- ☐ Railroad  
☐ Stockbroker  
☐ Commodity Broker

Chapter or Section of Bankruptcy Code Under Which  
the Petition is Filed (Check one box)

- ☐ Chapter 7  
☐ Chapter 9  
☐ Sec. 304 - Case ancillary to foreign proceeding
- ☒ Chapter 11  
☐ Chapter 12  
☐ Chapter 13

Nature of Debts (Check one box)

- ☐ Consumer/Non-Business  
☒ Business

Filing Fee (Check one box)

- ☒ Full Filing Fee Attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only)  
Must attach signed application for the court's consideration certifying  
that the debtor is unable to pay fee except in installments.  
Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under  
11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

- ☒ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will  
be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-15      16-49      50-99      100-199      200-999      1000-over

☐      ☐      ☐      ☐      ☐      ☒

Estimated Assets

\$0 to \$50,000      \$50,001 to \$100,000      \$100,001 to \$500,000      \$500,001 to \$1 million      \$1,000,001 to \$10 million      \$10,000,001 to \$50 million      \$50,000,001 to \$100 million      More than \$100 million

☐      ☐      ☐      ☐      ☐      ☐      ☐      ☒

Estimated Debts

\$0 to \$50,000      \$50,001 to \$100,000      \$100,001 to \$500,000      \$500,001 to \$1 million      \$1,000,001 to \$10 million      \$10,000,001 to \$50 million      \$50,000,001 to \$100 million      More than \$100 million

☐      ☐      ☐      ☐      ☐      ☐      ☐      ☒

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case # 01-30923

Chapter 11

Filed: 09:04 AM, 04/06/01 San Francisco

Judge: Dennis Montali

Trustee:

Debtor(s):

Pacific Gas and Electric Co.

First Meeting of Creditors

10:00 AM, May 08, 2001

San Francisco UST Office

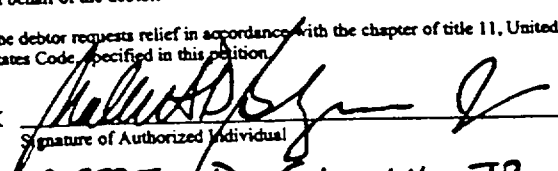
250 Montgomery Street

Suite 1010


San Francisco, CA 94104-3410

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): <b>Pacific Gas and Electric Company</b>	
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)			
Location Where Filed: <b>NONE</b>	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: <b>NONE</b>	Case Number:	Date Filed:	
District:	Relationship:	Judge:	

Signatures	
<p style="text-align: center;"><b>Signature(s) of Debtor(s) (Individual/Joint)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.          [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7, I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.          I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p><input checked="" type="checkbox"/> <b>Not Applicable</b>          Signature of Debtor</p> <p><input checked="" type="checkbox"/> <b>Not Applicable</b>          Signature of Joint Debtor</p> <p>Telephone Number (If not represented by attorney)</p> <p>Date</p>	<p style="text-align: center;"><b>Signature of Debtor (Corporation/Partnership)</b></p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X           Signature of Authorized Individual</p> <p><b>ROBERT D. GWYNN, JR</b>          Printed Name of Authorized Individual</p> <p><b>CHAIRMAN OF THE BOARD</b>          Title of Authorized Individual</p> <p><b>APRIL 6, 2001</b>          Date</p>

<p style="text-align: center;"><b>Signature of Attorney</b></p> <p>X           Signature of Attorney for Debtor(s)</p> <p><b>JAMES L. LOPES 63678</b>          Printed Name of Attorney for Debtor(s) / Bar No.</p> <p><b>Howard, Rice, Nemerovski et al.</b>          Firm Name</p> <p><b>3 Embarcadero Center, 7th Floor</b>          Address</p> <p><b>San Francisco, CA 94111</b></p> <p><b>415-434-1600</b>          Telephone Number</p> <p>Date</p>	<p style="text-align: center;"><b>Signature of Non-Attorney Petition Preparer</b></p> <p>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.</p> <p><b>Not Applicable</b>          Printed Name of Bankruptcy Petition Preparer</p> <p>Social Security Number</p> <p>Address</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p>X <b>Not Applicable</b>          Signature of Bankruptcy Petition Preparer</p> <p>Date</p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</p>
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<p style="text-align: center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)</p> <p><input checked="" type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p style="text-align: center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.</p> <p>X _____          Signature of Attorney for Debtor(s)</p> <p>_____ Date</p>
---	---



Name of Debtors: Pa: and Electric Company

Case Number:

NAME(S) OF ATTORNEY(S) DESIGNATED TO REPRESENT DEBTOR

JAMES L. LOPES

63678

JEFFREY L. SCHAFER

91404

JANET A. NEXON

104747

WILLIAM J. LAFFERTY

120814

[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Code, this Exhibit "A" shall be completed and attached to the petition.]

## UNITED STATE BANKRUPTCY COURT

Northern District of California

In re Pacific Gas and Electric Company  
Debtor

Case No. \_\_\_\_\_  
Chapter Eleven

## Exhibit "A" to Voluntary Petition

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is 1-2348.

2. The following financial data is the latest available information and refers to the debtor's condition on September 30, 2000<sup>1</sup>

a	Total assets	<u>\$24,183,000,000</u>	
a	Total debts	<u>\$18,400,000,000</u>	
			Approximate number of holders
c.	Debt securities held by more than 500 holders.		
	<u>secured</u> / / <u>unsecured</u> / / <u>subordinated</u> / /	<u>\$ 3,032,501,000</u>	<u>unavailable</u>
	<u>secured</u> / / <u>unsecured</u> / / <u>subordinated</u> / /	<u>\$ 5,951,603,900</u> <sup>2</sup>	<u>unavailable</u>
	<u>secured</u> / / <u>unsecured</u> / / <u>subordinated</u> / /	<u>\$</u>	<u></u>
	<u>secured</u> / / <u>unsecured</u> / / <u>subordinated</u> / /	<u>\$</u>	<u></u>
	<u>secured</u> / / <u>unsecured</u> / / <u>subordinated</u> / /	<u>\$</u>	<u></u>
d.	Number of shares of preferred stock	<u>17,258,280</u>	<u>unavailable</u>
e.	Number of shares of common stock	<u>326,926,667</u>	<u>2</u>
	comments, if any: _____		
	_____		
	_____		

3. Brief description of debtor's business: Electric and gas utility providing electric and gas services to Northern and Central California.

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor. PG&E Corporation

<sup>1</sup>Based on most recent publicly filed financial statements. Will be amended upon issuance of updated financial statements. Does not include debts incurred since September 30, 2000.  
<sup>2</sup>Amounts as of January 22, 2001