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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13
14 In re
15 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
16
17 Debtor.
18 Federal I.D. No. 94-0742640

Case No. 01 30923 DM

Chapter 11 Case

Date: December 27, 2001

Time: 1:30 p.m.

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

19 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER
20 (1) AUTHORIZING DEBTOR TO FILE CERTAIN PRELIMINARY
OMNIBUS OBJECTIONS TO CLAIMS WITHOUT PREJUDICE TO RIGHT
21 TO FILE SUBSEQUENT OBJECTIONS THERETO AND (2) WAIVING
COMPLIANCE WITH FEDERAL RULES OF CIVIL PROCEDURE 26(a)
22 AND (f) IN CERTAIN CLAIMS OBJECTION PROCEEDINGS;
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

23 [SUPPORTING REQUEST FOR JUDICIAL NOTICE AND DECLARATION OF
24 KEVIN J. DOWD FILED SEPARATELY]
25

26 *Appl*
27 *Add: Rids Pgc Mail Center*
28

MOTION FOR AUTHORIZATION TO FILE CERTAIN OMNIBUS OBJECTIONS TO CLAIMS

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on December 27, 2001, 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 for entry of an Order
7 (1) Authorizing PG&E to File Certain Preliminary Omnibus Objections to Claims Without
8 Prejudice to PG&E's Right to File Subsequent Objections Thereto and (2) Waiving
9 Compliance with Rule 26(a) and (f) of the Federal Rules of Civil Procedure (made
10 applicable to this matter by Rules 7026 and 9014 of the Federal Rules of Bankruptcy
11 Procedure) in Certain Claims Objection Proceedings in this case (the "Motion").

12 This Motion is based on the facts and law set forth herein (including the
13 accompanying Memorandum of Points and Authorities beginning on the next page), the
14 Request for Judicial Notice and Declaration of Kevin J. Dowd filed concurrently herewith,
15 the record of this case 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 for the Northern District of California, any written opposition to the
18 Motion and the relief requested therein must be filed with the Bankruptcy Court and served
19 upon appropriate parties (including counsel for PG&E, the Office of the United States
20 Trustee and the Official Committee of Unsecured Creditors) at least five (5) days prior to the
21 scheduled hearing date. If there is no timely objection to the requested relief, the Court may
22 enter an order granting such relief without further hearing.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION AND GENERAL BACKGROUND:**

4 Pacific Gas and Electric Company, the debtor and debtor in possession in the
5 above-captioned Chapter 11 case ("PG&E" or the "Debtor"), submits this Memorandum of
6 Points and Authorities In Support Of Debtor's Motion For (1) Authorization to File Certain
7 Preliminary Omnibus Objections to Claims Without Prejudice to Debtor's Right to File
8 Subsequent Objections Thereto and (2) an Order Waiving Compliance with Rule 26(a) and
9 (f) of the Federal Rules of Civil Procedure in Certain Claims Objection Proceedings in this
10 case (the "Motion").

11 It is axiomatic that the best interests of the Debtor, creditors and the public are
12 served by bringing PG&E's bankruptcy case to as swift a resolution as possible. This Court
13 must determine the true value of the large number of disputed claims against PG&E's estate
14 for allowance and other purposes. In view of the number and magnitude of the claims, the
15 claims resolution process has the potential to consume enormous amounts of court time and
16 party resources (at a time when substantial PG&E resources will need to be devoted to the
17 reorganization process) and greatly delay the resolution of PG&E's case. By this Motion,
18 PG&E seeks the Court's approval to bifurcate the claims objection process. PG&E seeks to
19 file and seek adjudication of certain preliminary "omnibus" or grouped objections to claims
20 on preliminary but potentially dispositive grounds that can be addressed with a minimum
21 expenditure of judicial time and estate resources, without waiving the right to assert
22 subsequent substantive objections to the same claim if necessary. For example, PG&E
23 anticipates asserting preliminary objections on the grounds, *inter alia*, that (1) certain claims
24 are duplicative; (2) certain claims have been satisfied or otherwise resolved; and (3) certain
25 claims are time-barred.

26 Such a procedure is essential in the context of this very large and complex case.

Over 12,800 proofs of claim have been filed totaling many billions of dollars.¹ Many of these claims are duplicative, exaggerated and unsubstantiated and will, PG&E believes, be disallowed by the Court. PG&E's current analysis, while no means complete, demonstrates that billions of dollars of the claims filed against PG&E's estate are duplicative and unsubstantiated²:

- Identical duplicates. Over \$1 billion worth of claims are exact duplicates of other filed claims—identical in amount, claimant and supporting papers—yet appear twice on the claims register. All such claims are redundant.
- Amended or superseded claims. Certain claims are amendments to previously filed claims, but the original and amended claim both appear on the claims register. The redundancy is over \$1 billion.
- Bondholders' claims. Indenture trustees under various indentures for holders of pollution control bonds, mortgage bonds, and medium term notes, among others, have filed billions of dollars in claims on behalf of the holders under such indentures. However, the individual bondholders and mortgage holders have, in many cases, also filed claims based on the same financial instruments. The redundancy is over \$3 billion.
- Multiple Claimants Asserting Duplicative Identical Claims in Separate Proofs of Claim. Multiple proofs of claim have been filed by multiple claimants in respect of the same claim. For example, 33 claimants with an underlying claim of \$1 million per claimant individually filed claims each seeking \$33 million: the entire amount of the claim for all claimants. Thirty-three claims for \$33 million each were filed and have been acknowledged to be

¹The evidentiary basis and support for the facts set forth in this Motion are contained in the Declaration of Kevin J. Dowd, and PG&E's Request for Judicial Notice filed concurrently herewith.

²All calculations referred to in this Motion are approximate; they represent PG&E's current knowledge and, PG&E expects, will be subsequently refined as PG&E's analysis of the very large number of claims filed against its estate continues.

1 duplicative. In fact, counsel for these claimants has recently agreed to
2 stipulate to the withdrawal of 32 of the 33 claims, thereby reducing the total
3 claim amount by over \$1 billion.

- 4 • Electric Generation Claims. The Independent System Operator ("ISO"), the
5 California Power Exchange ("PX"), and many generators participating in
6 those markets have filed billions of dollars in claims for electricity allegedly
7 provided to PG&E pre- and post-petition. However, many of these claims are
8 duplications—both multiple claims by the same entity and claims by the PX
9 on behalf of generators, which also filed individual claims. The duplication is
10 at least \$4 billion.

11 Furthermore, and while this process is in its initial stages, PG&E has filed
12 objections to various large categories of claims that include significant duplication. For
13 example, PG&E has filed objections to approximately 1,250 claims totaling over \$500
14 million for personal injury allegedly arising out of exposure to Chromium (VI). The
15 objections are based, inter alia, on the duplicative and unsubstantiated nature of the claims.
16 Approximately 200 of the claims are exact duplicates (i.e., one claim signed by the claimant
17 and an identical claim signed by the claimant's attorney). Most are unsubstantiated,
18 including no description of the nature of the claims, the alleged route of exposure or any
19 description of the alleged illness resulting therefrom. PG&E has also objected to the
20 completely unsubstantiated one-page handwritten claim of Baldwin Associates Inc., which
21 claims \$5 billion on the stated grounds of "taxes" and "economic and personal injury." The
22 claim contains no further explanation or description or supporting documentation.

23 PG&E's analysis is in its preliminary stages. However, the examples above
24 demonstrate that, at the very least, significant duplication exists in many categories of the
25 claims filed with this Court. The proposed claims objection procedure would allow the
26 efficient and rapid determination of certain preliminary objections, such as objections based
27 on duplication. Such objections can be quickly adjudicated and will be dispositive in many
28 cases. PG&E submits that the procedures proposed in this Motion would facilitate the

1 efficient resolution of claims aggregating many billions of dollars without a lengthy hearing
2 on the merits.

3 In addition, PG&E seeks an order waiving compliance with Federal Rule of Civil
4 Procedure Rule 26(a) and (f). In a case with over 12,800 separate claims, strict compliance
5 with these discovery rules is burdensome, unnecessary and impractical in the context of the
6 vast majority of claims objection proceedings. This Court has the power to waive
7 compliance and should do so, on the basis that the relief sought by PG&E will substantially
8 assist in the efficient administration of this exceptionally large and complex case, and
9 conserve judicial, estate, and party resources.³

10 II.

11 DISCUSSION.

12 A. The Court Has The Power To Determine Bifurcated Claim Objections, And 13 Doing So Would Facilitate The Efficient Administration Of The Estate And Promote Judicial Economy.

14 1. The Court May Order Adjudication Of Preliminary Objections To 15 Claims Under Section 105(a) Of The Bankruptcy Code.

16 Section 105(a) of the Bankruptcy Code vests this Court with authority to "issue
17 any order . . . that is necessary or appropriate to carry out the provisions of this title."⁴

18 It is well established that the equitable powers of the Court pursuant to
19 Section 105 must be exercised consistent with and within the confines of the Code. See
20 Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988). Here, the Court's exercise
21 of its power under Section 105(a) to make appropriate orders would be consistent with and
22 appropriate to the exercise of its powers under Section 502 to allow claims and determine

23 ³The Debtor reserves its right to seek a further Order from this Court (if appropriate)
24 imposing the disclosure, conference, and other requirements of Rule 26(a) and (f) with
25 respect to objection proceedings for particular claims. For example, such procedures may be
26 appropriate in connection with the determination of objections to certain particularly large
and/or complex claims. However, such compliance is not generally appropriate for the
potentially thousands of other claims objections that must be adjudicated.

27 ⁴Section 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 objections. This Motion seeks a more efficient procedure for the hearing and determination
2 of objections to the multitude of claims filed in this case.

3 Furthermore, filing "full-blown" objections to potentially thousands of claims
4 would require an enormous effort on the part of the Debtor's business and legal teams.
5 Without the approval sought herein, the Debtor would be burdened with having to prepare,
6 Claimants would be forced to respond to, and the Court would be saddled with adjudicating
7 all grounds for objection with respect to each of thousands of claims. Such a procedure
8 would be unnecessarily wasteful and inefficient, as the Debtor submits that claims worth
9 billions of dollars could be summarily resolved on certain preliminary grounds, such as
10 claims that are clearly duplicative, are time-barred, or have already been satisfied or
11 resolved. However, to the extent that a claim which PG&E asserts is duplicative is found to
12 be a separate, non-duplicative claim, without clear authority from this Court, it may be
13 claimed that PG&E arguably risks waiving other substantive objections to such a claim.
14 Accordingly, authorizing the suggested approach to claims objections makes eminent sense
15 from a legal, economic and practical perspective and is well within the power of this Court
16 under Section 105(a).

17
18 **2. The Court Has Inherent Power To Manage Its Own Procedures.**

19 In addition to its broad statutory powers under Section 105(a), this Court has the
20 inherent power to utilize procedures such as those requested by this Motion to ensure
21 judicial efficiency and do justice. See Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)
22 (discussing courts' inherent authority to sanction). The Supreme Court in Chambers
23 described the nature of the inherent power as follows:

24 It has long been understood that "[c]ertain implied powers must
25 necessarily result to our Courts of justice from the nature of their
26 institution," powers "which cannot be dispensed with in a Court,
27 because they are necessary to the exercise of all others." These
28 powers are "governed not by rule or statute but by the control
necessarily vested in courts to manage their own affairs so as to
achieve the orderly and expeditious disposition of cases." (Chambers,
501 U.S. at 43 (citations omitted))

1 Bankruptcy courts likewise have inherent power to manage their own proceedings. See
2 Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278, 284 (9th
3 Cir. 1996) (holding that the bankruptcy court had inherent power to impose sanctions against
4 debtor's principal for orchestrating a bad faith filing: Section 105 is "intended to imbue the
5 bankruptcy courts with the inherent powers recognized by the Supreme Court in Chambers")
6 (citation omitted); Levander v. Prober (In re Levander), 180 F.3d 1114, 1118 (9th Cir. 1999)
7 (holding bankruptcy court had inherent power to amend judgment when obtained through
8 fraud on the court: "The inherent power[] of federal courts . . . (which is based on
9 equity) . . . springs forth from courts' traditional power 'to manage their own affairs so as to
10 achieve the orderly and expeditious disposition of cases'" (citations and some internal
11 punctuation omitted); Johnson v. McDow (In re Johnson), 236 B.R. 510, 521 (D.D.C. 1999)
12 (bankruptcy court has inherent power to strike debtor's irrelevant vituperative allegations
13 against the United States Trustee contained in debtor's opposition). As the Johnson court
14 explained:

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

23 Granting PG&E's request for streamlined objection procedures is an archetypal
24 exercise of this Court's inherent power to manage its own docket.

25 3. The Court May Bifurcate Hearings On Claims Objections Under 26 Bankruptcy Rule 7042(b).

27 In addition to the powers it possesses under Bankruptcy Code Section 105(a), the
28 Court is authorized to bifurcate claim objection hearings under Federal Rule of Civil
Procedure 42(b) (incorporated in contested matters, such as claim objection proceedings,
pursuant to Federal Rules of Bankruptcy Procedure 9014 and 7042), which provides that

1 "[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will
2 be conducive to expedition and economy, may order a separate trial of any claim"⁵

3 Rule 42(b) permits a bankruptcy court to bifurcate a trial and/or discovery where,
4 inter alia, "a particular issue is so complex that it would best serve judicial economy to risk
5 holding two separate trials in the hopes of avoiding that issue entirely." In re Koger, 261
6 B.R. 528, 532 (Bankr. M.D. Fla. 2001).

7 Relevant factors to be considered in deciding whether bifurcation is appropriate
8 are "(1) [s]eparability of issues; (2) [s]implification of discovery and the conservation of
9 resources; (3) [p]rejudice to parties; and (4) [s]uitability of bifurcating trial but not
10 discovery." In re Koger, 261 B.R. at 532. "The separability inquiry involves measurement
11 of the degree of evidentiary entanglement among the issues to be bifurcated." Id.

12 "Generally, if an 'evidentiary overlap' exists, then any overlapping issues should not be
13 bifurcated." Id. (citation omitted). Accordingly, in Koger, the court refused to allow the
14 debtor to bifurcate the hearing of its objections against a tax claim made against the estate by
15 the Internal Revenue Service by first determining the debtor's statute of limitations defense
16 as a preliminary matter, on the basis that there was "evidentiary overlap" between the statute
17 of limitations issue and other issues relating to the validity of the debtor's objections to the
18 IRS's claim. The simplification of discovery and conservation of resources factor requires
19 "[a] measurement of a case's supposedly unique and compelling complexity." Id.; see also
20 Yadkin Valley Bank & Trust Co. v. McGee (In re Hutchinson), 5 F.3d 750, 758 (4th Cir.
21 1993) (bifurcation decision reviewed on abuse of discretion standard; bankruptcy court did
22 not abuse its discretion in bifurcating stay violation issue from breach of trustee duty claim).

23 ⁵Federal Rule of Civil Procedure 42(b) states in full:

24 (b) Separate Trials. The court, in furtherance of convenience or to avoid
25 prejudice, or when separate trials will be conducive to expedition and economy,
26 may order a separate trial of any claim, cross-claim, counterclaim, or third-party
27 claim, or of any separate issue or of any number of claims, cross-claims,
28 counterclaims, third-party claims, or issues, always preserving inviolate the right
of trial by jury as declared by the Seventh Amendment to the Constitution or as
given by a statute of the United States. (Fed. R. Civ. P. 42(b) (emphasis
omitted))

The bifurcation provisions of Rule 42(b) apply to the resolution of preliminary objections to claims. See Falbaum v. Leslie Fay Cos. (In re Leslie Fay Cos.), 222 B.R. 718, 720 (S.D.N.Y. 1998) (district court upheld bankruptcy judge's decision to, *inter alia*, bifurcate hearing of Chapter 11 debtors' objections to proofs of claim filed by employee-creditors, so that issue of whether debtors' former employees' claims were barred by releases could be determined on a preliminary basis: "such bifurcation, which rested within the sound discretion of the Bankruptcy Court, appropriately narrowed the issues and promoted judicial economy, and thus was altogether proper").

The Koger factors are clearly applicable here. The preliminary objections that PG&E seeks to bring—such as whether claims are duplicative, are time-barred, or have been satisfied—are severable from the individual and potentially complex issues implicated by the merits of such claims. Logically, there will be little if any evidentiary overlap between such straightforward preliminary issues and more complex merits-based inquiries. Efficiency and the conservation of resources will be strongly promoted if such potentially dispositive issues are adjudicated as a preliminary matter. Furthermore, claimants will not be prejudiced as a result of this proposed procedure.

In this particularly large and complex case, bifurcating objections to claims as requested by this Motion will facilitate the efficient administration of this estate by streamlining the claims objection process, and will avoid unnecessary consumption of judicial, estate, and creditor resources.

B. Compliance With Federal Rule Of Civil Procedure 26(a) And (f) Should Be Waived As Compliance Would Be Impractical And Time-Consuming In View Of The Large Numbers Of Claims And The Nature Of Claim Objections Proceedings.

Federal Rule of Civil Procedure 26(a) and (f) prescribes detailed disclosure and conference requirements in connection with the discovery process. Although Bankruptcy Rules 9014 and 7026 make Rule 26(a) and (f) applicable to contested matters, such as claim objection proceedings, PG&E submits that compliance under the circumstances of this case

1 should be waived, except to the extent the Court may otherwise order with respect to certain
2 complex claims. In light of the multiplicity of claims involved and relatively small amounts
3 at issue as to the vast majority of claims, the Debtor submits that formal compliance with
4 Rule 26(a) and (f) would be impractical, unnecessarily time-consuming and wasteful of the
5 estate's resources. Moreover, the joint meeting of all parties or separate meetings by PG&E
6 with each claimant as prescribed by Rule 26(f) would be extremely impractical in light of
7 the large number of claims involved. For these reasons, PG&E respectfully requests the
8 Court to exercise the discretion granted it by Rule 26(a) and (f) and excuse PG&E (and the
9 respective claimants) from formal compliance with those provisions, unless otherwise
10 ordered in connection with particular claim objections.⁶

12 CONCLUSION

13 For all of the foregoing reasons, PG&E respectfully requests that this Court grant
14 the Motion, and enter an Order: (1) authorizing PG&E to make preliminary omnibus
15 objections to claims and have such objections determined by the Court without prejudice to
16 PG&E's right subsequently to assert other objections to such claims without further Order of
17 this Court; (2) relieving PG&E and claimants from any requirement to comply with Federal
18 Civil Procedure Rule 26(a) and (f) in claims objection proceedings, unless otherwise ordered

27 ⁶Federal Rule of Civil Procedure 26(a)(1) provides that the disclosures specified
28 therein must be made except as "otherwise stipulated or directed by order." Likewise, Rule
26(f) provides for parties to confer as specified therein except "when otherwise ordered."

1 by this Court; and (3) for such other and further relief as the Court deems just and
2 appropriate.

3 DATED: December 7, 2001.

4 Respectfully,

5 HOWARD, RICE, NEMEROVSKI, CANADY,
6 FALK & RABKIN
7 A Professional Corporation

8 By: Janet A. Nexon
9 JANET A. NEXON

10 Attorneys for Debtor and Debtor in Possession
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