

CHRISTOPHER MURRAY
WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036
Telephone: (212) 819-8200
Facsimile: (212) 354-8113

DENISE MILTON
MANWELL & SCHWARTZ
20 California Street, Third Floor
San Francisco, California 94111
Telephone: 415-362-2375
Facsimile: (415) 362-1010

Attorneys for THE BANK OF NEW YORK, AS INDENTURE TRUSTEE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor

Federal I.D. No. 94-0742640

Case No. 01 30923 SFM 11

Chapter 11 Case

**OBJECTION OF THE BANK OF NEW
YORK, AS INDENTURE TRUSTEE,
TO DEBTOR'S DISCLOSURE
STATEMENT FOR PLAN OF
REORGANIZATION UNDER
CHAPTER 11 OF THE BANKRUPTCY
CODE**

Date: December 19, 2001

Time: 9:30 a.m.

Place: 235 Pine Street
San Francisco, California

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE,
AND ALL PARTIES IN INTEREST:

The Bank of New York (the "Indenture Trustee"), indenture trustee under the
Indenture (defined below), by and through its attorneys, White & Case LLP, hereby objects to the

add: Eids Dge Mail Center
Rec'd 01/23/02 ADD

1 Disclosure Statement for Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the
2 "Disclosure Statement") proposed by Pacific Gas and Electric Company (the "Debtor") and its
3 parent company, PG&E Corporation (collectively, the "Proponents"), and respectfully states as
4 follows:

5
6 I.
7 INTRODUCTION

8 1. The Disclosure Statement does not satisfy the requirements of Section 1125 of the
9 Bankruptcy Code¹ and should not be approved absent modification. The Disclosure Statement
10 does not provide adequate information for creditors and interest holders to make an informed
11 decision regarding the Proponents' proposed plan of reorganization (the "Plan"). Among other
12 omissions, the Disclosure Statement does not provide adequate information regarding;
13

- 14 - Events that would result in the recharacterization of postpetition interest payments;
15 - The failure of the Plan to provide for the termination of the indenture governing certain
16 mortgage bonds that are to be canceled on the Effective Date.

17 II.
18 FACTUAL BACKGROUND

19
20 2. The Indenture Trustee is the indenture trustee under that certain Indenture, dated as
21 of September 1, 1987, as supplemented by two supplemental indentures (collectively, the
22 "Indenture"), among the Debtor and the Indenture Trustee. There are currently five series of notes
23 (the "Notes", and the holders thereof, the "Noteholders") outstanding under the Indenture. The
24 Notes are unsecured. As of the Petition Date the Debtor was, and still is, indebted to the Indenture
25 Trustee and the Noteholders for the following amounts: (a) in the aggregate liquidated amount of
26 \$2,207,250,000.00 on account of outstanding principal consisting of: (i) \$680,000,000.00
27

28 ¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

1 aggregate principal amount of 7.375% Senior Notes due 11/1/2005, (ii) \$1,240,000,000.00
2 aggregate principal amount of floating rate notes due 10/31/01, (iii) \$147,250,000.00 aggregate
3 principal amount of Medium Term Notes, Series B, (iv) \$76,000,000.00 aggregate principal
4 amount of Medium Term Notes, Series C and (v) \$64,000,000.00 aggregate principal amount of
5 Medium Term Notes, Series D; and (b) in an aggregate liquidated amount of \$40,361,072.64 on
6 account of outstanding interest as of the petition date. The Indenture Trustee timely filed a proof
7 of claim on behalf of the Noteholders on or about August 27, 2001.
8

9
10 3. The Debtor commenced its chapter 11 case on April 6, 2001. The Debtor's
11 bankruptcy filing triggered an event of default under the Indenture which created a conflict of
12 interest for the Indenture Trustee under the Trust Indenture Act of 1939, as amended by the Trust
13 Indenture Reform Act of 1990 (the "Trust Indenture Act"). On July 3, 2001, the Indenture Trustee
14 provided written notice of its resignation as Indenture Trustee to the Debtor. The resignation of
15 the Indenture Trustee will become effective upon the appointment of a successor trustee.
16

17 4. The Proponents filed the Plan and Disclosure Statement on September 20, 2001.
18 The Notes are classified in Class 5 of the Plan as general unsecured claims. The Plan provides for
19 distributions to Class 5 creditors of (i) cash in an amount equal to sixty percent of their allowed
20 claim and (ii) long terms notes having an aggregate face value equal to forty percent of their
21 allowed claim. Class 5 creditors will also share pro rata a \$40 million placement fee with creditors
22 in Class 5, 6, 7 and 9a. See Plan, § 4.14.
23
24
25
26
27
28

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

III.
ARGUMENT

The Disclosure Statement Fails to Provide Adequate Information.

5. The Disclosure Statement fails to satisfy the requirements for approval of disclosure statements set forth in Section 1125 of the Bankruptcy Code because it does not contain "adequate information". See 11 U.S.C. § 1125; In re Unichem Corp., 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987)("The purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan"). The failure to provide adequate information is fatal to the confirmation process. Without adequate information, creditors and interest holders are unable to assess, among other things, whether the Plan is feasible or offered in good faith, or whether their treatment under the Plan is reasonable. Courts have strictly enforced the requirement that disclosure statements contain adequate information. See Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.), 848 F.2d 414, 417 (3d Cir. 1988)("[W]e cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information'"); In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990)("Given the . . . paramount position section 1125 occupies in the Chapter 11 process, there is little, if any, room for harmless error").

6. The Bankruptcy Code does not set forth specific categories of information that the disclosure statements must include because Congress intended that "adequate information in any particular instance [would] develop in a case-by-case basis". H.R. Rep. No. 95-595; 95th Cong. 1st Sess. 408 (1977). Congress left to the Court's discretion the determination of adequate information. See In re Cardinal Congregate I, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990)("Congress left vague the standard for evaluating what constitutes adequate information so as

1 to permit a case-by-case determination based on the prevailing facts and circumstances"); In re
2 Dakota Rail, Inc., 104 B.R. 138, 142 (Bankr. D. Minn. 1989)(nonexclusive list of 19 types of
3 general information that should be included in a disclosure statement).
4

5 7. The Disclosure Statement does not contain adequate information for the following
6 reasons;
7

8 A. There is No Discussion of the Basis for the
9 Recharacterization of Post-Petition Interest Payments

10 8. Section 4.1 of the Plan provides for the payment of accrued prepetition interest and
11 postpetition interest through the Effective Date to holders of allowed claims. Section 4.2 of the
12 Plan, which governs the timing of payments and distributions under the Plan, provides that
13 amounts paid under the Plan on account of postpetition interest "may be recharacterized, in the
14 sole discretion of the Proponents, in the event certain events occur". See Plan, § 4.2(a).
15

16 9. The Disclosure Statement fails to adequately disclose those events that may lead to
17 recharaterization of post-petition interest. The mere assertion that the payments may be
18 recharacterized is valueless without more detailed disclosure. The Noteholders have significant
19 unpaid pospetition interest claims. The Noteholders will be unable to make an informed judgment
20 regarding their treatment under the Plan unless there is adequate disclosure of the provision. The
21 Disclosure Statement must address what "events" could trigger such recharacterization.
22

23
24 E. There is no Discussion of the Cancellation of the Indenture

25 10. The Disclosure Statement and the Plan should be modified to provide for the
26 cancellation of the Indenture upon the completion of the distributions contemplated under the Plan
27 and the payment of the costs and expense of the Indenture Trustee. The Disclosure Statement
28 explains that on the Effective Date, all prepetition promissory notes, bonds, debentures and debt

1 instruments, other than those reinstated or renewed pursuant to the Plan will be deemed canceled.
2 See Disclosure Statement, p. 127. However, the Disclosure Statement and the Plan fail to provide
3 for the termination of the indentures that govern such instruments. The Proponents offer no basis
4 for the continued existence of such indentures beyond the Effective Date. The Disclosure
5 Statement and Plan must be modified to provide for the cancellation of such indentures.
6

7
8 IV.

9 RESERVATION OF RIGHTS

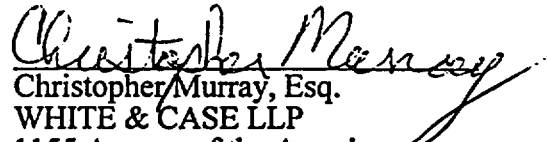
10 The Indenture Trustee expressly reserves the right to supplement these objections at the
11 hearing to consider approval of the Disclosure Statement, and to assert these or any other
12 objections in connection with any hearing to consider confirmation of the Plan.
13

14 V.

15 CONCLUSION

16 For the foregoing reasons, the Indenture Trustee respectfully requests that the Court direct
17 the Proponents to modify the Disclosure Statement to address the objections contained herein, and
18 grant such other and further relief as is just and proper.
19

20 Dated: New York, New York
21 November __, 2001

22 
23 Christopher Murray, Esq.
24 WHITE & CASE LLP
25 1155 Avenue of the Americas
26 New York, NY 10036

27 Denise Milton, Esq.
28 MANWELL & SCHWARTZ
20 California Street, Third Floor
San Francisco, California 94111
Counsel for The Bank of New York

1 CHRISTOPHER MURRAY
2 WHITE & CASE LLP
3 1155 Avenue of the Americas
4 New York, New York 10035
Telephone: 212/819-8200
Facsimile: 212/354-8113

5 DENISE MILTON
6 MANWELL & SCHWARTZ
7 20 California Street, Third Floor
San Francisco, California 94111
Telephone: (415) 362-2375
Facsimile: (415) 362-1010

8
9 Attorneys for THE BANK OF NEW YORK, AS INDENTURE TRUSTEE

10
11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14			
15	In re)	Case No. 01 30923 SFM 11
16	PACIFIC GAS AND ELECTRIC)	
17	COMPANY, a California corporation,)	Chapter 11 Case
18)	Date: December 19, 2001
19	Debtor)	Time: 9:30 a.m.
20)	Place: 235 Pine Street,
21)	San Francisco, California
22	Federal I.D. No. 94-0742640)	
23)	
24)	
25)	
26)	
27)	
28)	

22 DECLARATION OF GARY BUSH IN SUPPORT OF OBJECTION
23 OF THE BANK OF NEW YORK, AS INDENTURE TRUSTEE,
24 TO DEBTOR'S DISCLOSURE STATEMENT FOR PLAN OF
25 REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE
26
27
28

1 I, Gary Bush, declare as follows:

2 1. I am a Vice President of The Bank of New York (the "Indenture Trustee"), the
3 indenture trustee under that certain Indenture, dated as of September 1, 1987, as supplemented
4 by two supplemental indentures (collectively, the "Indenture"), among Pacific Gas & Electric
5 Company (the "Debtor") and the Indenture Trustee. This Declaration is based on my personal
6 knowledge of the Indenture, the Indenture Trustee's general operations, practices and policies,
7 and upon my review of the Indenture Trustee's records concerning the matters stated herein. If
8 called as a witness, I could and would testify competently to the facts stated herein.
9

10 2. I make this declaration in support of the Objection of The Bank of New York, as
11 Indenture Trustee, to Debtor's Disclosure Statement for Plan of Reorganization (the
12 "Objection").
13

14 3. There are currently five series of notes (the "Notes", and the holders thereof, the
15 "Noteholders") outstanding under the Indenture. The Notes are unsecured. As of the Petition
16 Date (defined below) the Debtor was, and still is, indebted to the Indenture Trustee and the
17 Noteholders for the following amounts: (a) in the aggregate liquidated amount of
18 \$2,207,250,000.00 on account of outstanding principal consisting of: (i) \$680,000,000.00
19 aggregate principal amount of 7.375% Senior Notes due 11/1/2005, (ii) \$1,240,000,000.00
20 aggregate principal amount of floating rate notes due 10/31/01, (iii) \$147,250,000.00 aggregate
21 principal amount of Medium Term Notes, Series B, (iv) \$76,000,000.00 aggregate principal
22 amount of Medium Term Notes, Series C and (v) \$64,000,000.00 aggregate principal amount of
23 Medium Term Notes, Series D; and (b) in an aggregate liquidated amount of \$40,361,072.64 on
24 account of outstanding interest as of the petition date. The Indenture Trustee filed a proof of
25 claim on behalf of the Noteholders on or about August 27, 2001.
26
27
28

1 4. I understand that the Debtor commenced a voluntary bankruptcy case on April 6,
2 2001 (the "Petition Date"). The Debtor's bankruptcy filing triggered an event of default under
3 the Indenture which created a conflict of interest for the Indenture Trustee under the Trust
4 Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990 (the "Trust
5 Indenture Act"). It is my understanding that under the Trust Indenture Act, an indenture trustee
6 has a conflict of interest if securities issued pursuant to an indenture are in default and the
7 indenture trustee is trustee under another indenture with the obligor. BNY Western Trust
8 Company, an affiliate of the Indenture Trustee, is the successor trustee pursuant to that Certain
9 First and Refunding Mortgage, dated December 1, 1920, creating the conflict of interest. On
10 July 3, 2001, the Indenture Trustee provided written notice of its resignation as Indenture Trustee
11 to the Debtor. The Indenture Trustee's resignation will become effective upon the appointment
12 of a successor trustee.
13

14 5. I understand that the Debtor and its parent company, PG&E Corp. (collectively,
15 the "Proponents") filed the Disclosure Statement for Plan of Reorganization Under Chapter 11 of
16 the Bankruptcy Code (the "Disclosure Statement") and the accompanying plan of reorganization
17 (the "Plan") on September 20, 2001. I have reviewed the Disclosure Statement and the Exhibits
18 thereto. My review has led me to believe that the Disclosure Statement does not contain
19 sufficient information in several key areas. Therefore, the Indenture Trustee requests that the
20 Disclosure Statement be modified to address the issues raised in the Objection so as to enable the
21 Noteholders to make an informed vote on the Plan.
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed this 23rd day of November, 2001 at New York, New York.



Gary Bush, Vice President