

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
) No. 01-30923 SFM
PACIFIC GAS AND ELECTRIC)
COMPANY, a California Corporation,) Chapter 11
)
Debtor.)
_____)

CONFIRMATION TRIAL SCHEDULING ORDER

This order governs the trials on confirmation of two separate plans of reorganization filed in the bankruptcy case of Pacific Gas & Electric Company ("PG&E"). The court shall first conduct trial on the plan of reorganization (the "CPUC Plan") filed by the California Public Utilities Commission ("CPUC"). The Official Committee of Unsecured Creditors (the "Committee") has joined as a proponent of the CPUC Plan. The CPUC and Committee are collectively referred to as the "CPUC Plan Proponents." The court will thereafter proceed to trial on the confirmation of the plan of reorganization ("PG&E Plan"), filed by PG&E and its co-proponent, PG&E Corporation (collectively with PG&E, the "PG&E Plan Proponents"). The PG&E Plan Proponents and the CPUC Plan Proponents are collectively referred to as "Proponents." Certain persons or entities -- other than the Proponents -- timely filed and served objections to the PG&E Plan

1 or the CPUC Plan or both (the "Objectors"). The Proponents, the
2 Objectors and the United States Trustees are collectively
3 referred to herein as the "Parties," or a "Party." It is

4 ORDERED:

5 I. DATES AND TIMES OF TRIALS

6 1. Trial on confirmation of the CPUC Plan ("CPUC Trial")
7 shall commence on November 18, 2002 at 9:30 a.m., at the United
8 States Bankruptcy Court, 235 Pine Street, Twenty-Second Floor,
9 San Francisco, CA 94104. The trial on confirmation of the PG&E
10 Plan ("PG&E Trial") shall follow the CPUC Trial (although some
11 objections common to both plans may be tried during the PG&E
12 Trial).¹ The CPUC Trial and the PG&E Trial shall collectively be
13 referred to as the "Trial."

14 Tentatively the CPUC Trial shall be completed by December 5,
15 and the PG&E Trial shall start on December 16. The four trial
16 days of December 9-12 shall be held available in case the court
17 permits the CPUC Trial to run longer, or directs the PG&E Trial
18 to start earlier.

19 2. Unless otherwise ordered, the court will conduct the
20 Trial from 9:30 a.m. through 12:30 p.m. and 1:30 p.m. through

21
22 ¹With respect to such common objections, the Objectors shall
23 follow the rules applicable to the PG&E Plan as if the CPUC Plan
24 were being tried concurrently with the PG&E Plan instead of
25 before the PG&E Plan, and the common objections, evidence,
26 filings, and positions of the Objectors with respect to the PG&E
27 Plan shall automatically apply equally to the CPUC Plan.
28 Objectors with such common objections and the Proponents shall
meet and confer in order to make arrangements necessary to avoid
duplication of trial on common issues. This court will
separately resolve any disagreements between such Objectors and
the Proponents, if necessary, on application by any of them after
such meet and confer efforts.

1 4:30 p.m. (with fifteen minute breaks in the morning and
2 afternoon). If necessary, the times may be adjusted to
3 facilitate completion of testimony of witnesses. The court will
4 conduct trial on the following dates in 2002:²

5 ! Monday, November 18 through Friday, November 22
6 ! Monday, November 25 and Tuesday, November 26
7 ! Monday, December 2 through Thursday, December 5
8 ! Monday, December 9 through Thursday, December 12
9 ! Monday, December 16 through Friday, December 20 (excluding
10 the afternoon of Thursday, December 19)

11 II. PROPOSED FINDINGS OF FACT

12 3. All proposed findings and counter-findings shall be
13 simple, declarative, non-argumentative, and consecutively
14 numbered; supported by citations to or identification of the
15 witnesses, declarations, documents or other evidence which shall
16 support that finding; categorized by issue or elements of proof
17 (i.e., facts supporting conclusion that a particular plan is
18 feasible, that a particular plan has been filed in good faith,
19 etc.); captioned to identify the party submitting them, the
20 appropriate plan, and the date of the submission (e.g., "Proposed
21 Counter-Findings of Fact (PG&E Plan - CCSF - 12-9-02)"); served
22 on all Proponents and Objectors; filed in a hard copy form; and
23 e-mailed (preferably, but optionally, in WordPerfect format) with
24 the title "Proposed Findings" to Peggy Brister, Judge Montali's
25 law clerk, at Peggy_Brister@canb.uscourts.gov.

26 The CPUC Trial

27 4. On or before November 1, 2002, the CPUC Plan Proponents
28 shall file and serve proposed findings of fact in support of

²The court will add dates for 2003 by subsequent order after conferring with counsel during the Trial.

1 their case in chief. The CPUC Plan Proponents shall, based on
2 their good-faith belief, identify each proposed finding as
3 disputed or undisputed.

4 5. On or before November 8, 2002, the PG&E Plan Proponents
5 shall file and serve counter-findings. Unless the PG&E Plan
6 Proponents specifically dispute a finding labeled as "undisputed"
7 by the CPUC Plan Proponents, that finding will be deemed
8 undisputed. The PG&E Plan Proponents should propose any findings
9 that may be contrary to or in addition to those proposed by the
10 CPUC Plan Proponents.

11 6. On or before November 15, 2002, the Objectors shall
12 file and serve counter-findings. An Objector should not propose
13 counter-findings if the PG&E Plan Proponents have already
14 disputed a CPUC finding and proposed a counter-finding supported
15 by evidence acceptable to the Objector. Unless the Objectors
16 specifically dispute a finding that is (1) labelled as
17 "undisputed" by the CPUC Plan Proponents and (2) not opposed by
18 the PG&E Plan Proponents, that finding will be deemed
19 uncontested.

20 The PG&E Trial

21 7. On or before November 20, 2002, the PG&E Plan
22 Proponents shall file and serve proposed findings of fact in
23 support of their case in chief. Other than the deadline
24 described therein, the PG&E Plan Proponents should comply with
25 paragraph 4 above.

26 8. On or before December 4, 2002, the CPUC Plan Proponents
27 shall file and serve counter-findings. Other than the deadline
28 described therein, the CPUC Plan Proponents should comply with

1 paragraph 5 above.

2 9. On or before December 11, 2002, the Objectors shall file
3 and serve counter-findings. Other than the deadline described
4 therein, Objectors should comply with paragraph 6.

5 III. TRIAL BRIEFS

6 10. Proponents' trial briefs in support of their own plans
7 shall not exceed 45 pages; their responsive briefs shall not
8 exceed 25 pages; Objectors' trial briefs shall not exceed 15
9 pages and shall not repeat legal arguments made by the Proponents
10 in their briefs. Objectors may incorporate and join Proponents'
11 arguments in a footnote. The page limitation may be adjusted for
12 any Party only upon the receipt of prior permission from this
13 court.

14 11. With respect to the CPUC Trial, the CPUC Plan
15 Proponents shall file and serve their trial brief in support of
16 their case-in-chief on or before November 1, 2002; the PG&E Plan
17 Proponents shall file and serve any responsive trial brief on or
18 before November 8, 2002; and the Objectors shall file and serve
19 their respective trial briefs on or before November 15, 2002.

20 12. With respect to the PG&E Trial, the PG&E Plan
21 Proponents shall file and serve their trial brief in support of
22 their case-in-chief on or before November 20, 2002; the CPUC Plan
23 Proponents shall file and serve any responsive trial brief on or
24 before December 4, 2002; and the Objectors shall file and serve
25 their respective trial briefs on or before December 11, 2002.

26 IV. SUPPLEMENTAL OBJECTIONS

27 13. Within two weeks of the date of this order, Objectors
28 and the Proponents may file and serve supplemental bullet-point

1 objections to the PG&E Plan, the CPUC Plan or both. These
2 supplemental objections should succinctly identify grounds for
3 denying confirmation that were not available prior to the
4 previous deadline for filing objections.

5 V. EXPERT DECLARATIONS

6 14. Direct expert testimony shall be presented by
7 declarations. To cross-examine any of the expert declarants, a
8 Party shall notify the Party who has filed the expert
9 declaration, in which case the declarant will be required to
10 attend the Trial. Any Party who requests the right to cross-
11 examine and then does not do so will be expected to reimburse the
12 opposing Party no less than the expenses incurred in producing
13 the declarant at the Trial, unless another Party has cross-
14 examined the witness as well. If no cross-examination is
15 requested, the declaration and testimony will be deemed submitted
16 and the declarant will not be required to appear at trial. If
17 cross-examination is requested, live testimony shall begin with a
18 cross-examination by the opposing Party or Parties, followed by
19 re-direct examination by the Party offering the witness.³

20 15. With respect to the CPUC Trial, the CPUC Proponents,
21 the PG&E Proponents and the Objectors shall file and serve
22 experts' declarations no later than November 1, 2002. Any Party
23 wishing to cross-examine a declarant must notify the Party
24

25 ³A Party may also submit written declarations of its fact
26 witnesses in lieu of live direct testimony, as long as the Party
27 complies with the procedures and deadlines set forth in
28 paragraphs 14-16; provided, however, declarations of fact
witnesses for the CPUC Trial must be filed and served no later
than October 21, 2002.

1 offering the declarant no later than November 8, 2002.

2 16. With respect to the PG&E Trial, the PG&E Proponents,
3 the CPUC Proponents and the Objectors shall file and serve
4 experts' declarations no later than November 13, 2002. Any Party
5 wishing to cross-examine a declarant must notify the Party
6 offering the declarant no later than November 20, 2002.

7 VI. EXCHANGE OF WITNESS LISTS

8 17. By the deadlines set forth in paragraph 18, all Parties
9 shall serve and file their list of trial witnesses, excluding
10 those to be called purely for rebuttal or impeachment. The
11 presence of a witness' name on the witness list is to alert the
12 court and the other side that the witness may be called. It does
13 not mean that a particular person will be called. Accordingly,
14 each Party is responsible for ensuring the attendance of every
15 witness the Party intends to call, whether or not named by the
16 other side. Except in exceptional circumstances, and absent
17 consent by the other side, a Party will not be allowed to call a
18 witness not named on that Party's witness list. Counsel will be
19 expected to advise the court during the Trial about those
20 witnesses they expect to call in the following days.

21 18. With respect to the CPUC Trial, all Parties shall serve
22 their list of trial witnesses no later than November 1, 2002.
23 With respect to the PG&E Trial, all Parties shall serve their
24 list of witnesses no later than November 27, 2002.

25 VII. EXCHANGE OF EXHIBITS AND EXHIBIT LISTS

26 19. Exhibit Lists: With respect to the CPUC Trial, all
27 parties shall file and serve by November 1, 2002, their lists
28 identifying exhibits they intend to introduce or use at trial,

1 excluding exhibits to be presented for impeachment or rebuttal
2 purposes. With respect to the PG&E Trial, all
3 parties shall file and serve by November 27, 2002, their lists
4 identifying exhibits they intend to introduce or use at trial,
5 excluding exhibits to be presented for impeachment or rebuttal
6 purposes.

7 20. Exhibits: By the deadlines set forth in paragraphs 23
8 and 24, all Parties shall make available their exhibits to
9 Proponents, the Committee, and any Objector who requests in
10 writing copies of the trial exhibits. The exhibits shall be
11 exchanged in the form and format in which they will be used at
12 trial, unless the Parties agree otherwise. All Parties shall
13 provide to the court -- but not file -- two hard-copy sets of
14 binders, tabbed and with numbered pages, containing the
15 documentary exhibits to be introduced.⁴ All exhibits shall be
16 numbered, preceded by an easily identifiable abbreviation for
17 each Party. For example, the PG&E Proponents should identify
18 their exhibits as "PG&E #." Any paper(s) in the court's file
19 of which a Party intends the court to take judicial notice must
20 be copied and included as an exhibit(s). All declarations and
21 supporting reports shall be pre-marked as exhibits.

22 21. In the event a Party objects to another Party's
23 exhibit, the Parties must meet and confer before Trial to attempt

24
25 ⁴Parties who intend to present exhibits electronically or
26 digitally at trial are encouraged, but not required, to provide
27 the court with three sets of compact discs with electronic
28 versions of the documents. Parties are encouraged to consult
with counsel for the PG&E Proponents to coordinate formats (e.g.,
TIFF or PDF) and to facilitate compatibility and use of courtroom
technology.

1 to reach agreement regarding admissibility. The court expects
2 the Parties to make good faith efforts to resolve all evidentiary
3 issues. By the deadlines set forth in paragraphs 23 and 24
4 below, the Parties should file and serve any objections they may
5 have with respect to admission of another Party's evidence or
6 with respect to another Party's witness. Objections to evidence
7 not raised in this form, other than objections under Fed. R.
8 Evid. 402 and 403, shall be waived.

9 22. At the commencement of Trial, the Parties shall be
10 prepared to stipulate into evidence all exhibits that are
11 admissible for at least one purpose. Bona-fide objections may be
12 reserved, with the issue of admissibility deferred until the
13 exhibit is offered into evidence.

14 23. CPUC Trial: With respect to the CPUC Trial, the
15 Parties shall exchange their exhibits no later than November 1,
16 2002. No later than November 15, all Parties should provide the
17 court with the binders described in paragraph 20. Any Party
18 objecting to any exhibits should file and serve such objections
19 by November 8, 2002 (in accordance with the procedures described
20 in paragraph 21) and the Party offering the exhibit should file a
21 response by November 15, 2002.

22 24. PG&E Trial: With respect to the PG&E Trial, the
23 Parties shall exchange their exhibits no later than November 27,
24 2002. No later than December 6, 2002, all Parties should provide
25 the court with the binders described in paragraph 20. Any Party
26 objecting to any exhibits should file and serve such objections
27 by December 4, 2002 (in accordance with the procedures described
28 in paragraph 21) and the Party offering the exhibit should file a

1 response by December 11, 2002.

2 VIII. CROSS-EXAMINATION BY OBJECTORS

3 25. The court expects counsel for Objectors to confer and
4 coordinate their cross-examination to minimize duplication and
5 maximize efficiency.

6 IX. TRIAL OBJECTIONS

7 26. Any objections during trial as to the admissibility of
8 exhibits or regarding the questioning of a witness will be deemed
9 joined by all other opposing Parties, unless an opposing Party
10 specifically opts out of that objection.

11 X. COURT SECURITY

12 27. All persons (counsel, witnesses and others) who intend
13 to appear at court must show some type of governmental
14 identification with picture to the marshals before going through
15 security. Any person without such identification will not be
16 allowed to go to the courtroom.

17 XI. PARTICIPATION BY TELEPHONE

18 28. Parties may monitor the Trial by telephone in the same
19 manner as they have throughout this case, but they will not be
20 permitted to examine witnesses by telephone.

21

22

23 Dated: October 1, 2002

24 s/ _____
25 DENNIS MONTALI
26 UNITED STATES BANKRUPTCY JUDGE

25

26

27

28