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U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
SAN FRANCISCO, CA.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re)
PACIFIC GAS AND ELECTRIC)
COMPANY,)
Debtor.)
Federal I.D. No. 94-0742640)

Case No. 01-30923 DM
Chapter 11 Case
PROTECTIVE ORDER

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I.

DEFINITIONS

A. "Action" shall refer only to the plan confirmation proceedings in the above-entitled Chapter 11 case in the United States Bankruptcy Court for the Northern District of California regarding the "Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company," propounded by the Debtor and its parent company, and the "California Public Utilities Commission's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company," including any amendments to said plans.

B. Pacific Gas and Electric Company, PG&E Corporation, the California Public Utilities Commission ("CPUC"), the Official Committee of Unsecured Creditors, the United States Trustee and any other person or entity who timely filed and served objections to confirmation of either or both the PG&E Plan or the CPUC Plan in compliance with this Court's May 20, 2002 Scheduling Order are collectively referred to herein as the "Parties." Any one of the Parties shall be referred to herein as a "Party."

C. "Furnished Material" shall mean documents, information, and other material produced or furnished during the course of the Action pursuant to the Federal Rules of Bankruptcy Procedure ("FRBP"), the Federal Rules of Civil Procedure ("FRCP"), the Bankruptcy Local Rules of the Northern District of California ("Local Rules"), or through an informal production, including, without limitation, documents and other information produced pursuant to FRBP 7026(a), documents produced in response to requests for production, responses to requests for admissions, responses to written interrogatories, depositions, and other discovery taken and disclosures made pursuant to the FRBP, as well as pleadings, briefs, memoranda, testimony adduced at trial, materials introduced in evidence, and all other information produced or furnished by or on behalf of any Party or any other person or entity.

D. "Furnishing Entity" shall mean a Party or any other person or entity on behalf of which Furnished Materials are furnished or produced during the course of the Action pursuant

1 to the FRBP, FRCP or the Local Rules, whether voluntarily or in response to requests or
2 subpoenas for production of documents, requests for admissions, depositions, or any other
3 request for discovery, or in the form of pleadings, briefs, memoranda, testimony adduced at
4 trial, materials introduced into evidence, or other forms of information produced or furnished
5 by or on behalf of such a person or entity.

6 E. "Receiving Entity" shall mean a Party or any other person or entity to which
7 Furnished Materials are furnished or produced, whether voluntarily or in response to a request
8 for discovery or court order, and all officers, directors or employees of such person or entity.

9 F. "Confidential Information" shall mean information subject to protection under
10 section 107(b)(1) of the Bankruptcy Code, FRBP 9018, FRCP 26(c)(7) and 45(c)(3)(B)(i) or
11 relevant or applicable federal or state law, and that is designated as such by the Furnishing
12 Entity pursuant to Section III hereof, including, without limitation, (1) a trade secret or other
13 confidential research, development or commercial information, (2) scandalous or defamatory
14 matter contained in any paper filed in a case under the Bankruptcy Code, or (3) information
15 with respect to government matters that are made confidential by statute or regulation or are
16 subject to the deliberative process of a government agency (to the extent, if any, that such
17 deliberative process information is not properly withheld as immune from discovery).

18 G. "Counsel" shall mean all attorneys, law firms or governmental agencies providing
19 legal services to a Party or other person or entity, including without limitation the United
20 States Department of Justice and its various divisions and offices, and including both in-house
21 and outside counsel, as well as all secretarial, clerical and paralegal personnel assisting or
22 employed by such attorneys, law firms or governmental agencies.

23 H. "Technical Advisor" shall mean any person other than Counsel who is employed,
24 retained or sought to be retained or otherwise used by or on behalf of a Party to advise or
25 assist in the preparation or presentation of the Party's case in this matter, including but not
26 limited to expert witnesses and consultants, and all secretarial and clerical personnel assisting
27 such persons.

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1 I. "Governmental Unit" shall have the meaning set forth in section 101(27) of the
2 Bankruptcy Code (11 U.S.C. § 101(27)) and shall include any government agency, whether
3 federal, state or local.

4 **II.**

5 **SCOPE**

6 This Protective Order shall be applicable to and govern all Furnished Material.

7 **III.**

8 **DESIGNATION OF CONFIDENTIAL INFORMATION**

9 A. Furnished Material may be designated as containing Confidential Information,
10 prior to producing or furnishing the documents or things, by placing on each page and each
11 thing to which the designation applies a legend substantially as follows:

12 **CONFIDENTIAL**

13 *In Re Pacific Gas and Electric Co., No. 01 30923 DM (Bankr. N.D. Cal.)*

14 With respect to information produced in electronic form, substantially the same designation
15 shall be affixed to the medium on which the information is provided.

16 This designation shall be made by the Furnishing Entity based on its good faith
17 determination that such designation applies.

18 B. If the Furnishing Entity makes original documents or other material available for
19 inspection and copying, it shall have the option to require that such documents and things or
20 portions thereof be treated as Confidential Information during inspection and to make its
21 designations of particular documents and things pursuant to paragraph A of this Section at the
22 time copies of documents and any other materials are produced or furnished.

23 C. For information presented orally at deposition or at trial, the designation may be
24 made on the record through the Furnishing Entity's request that specific information in
25 response to questions be designated by the Court, or the deposition reporter, as "Confidential
26 Information – Subject to Protective Order." In the event that a Receiving Entity or Party
27 contests such designation, the Furnishing Entity is entitled to the protections offered in
28 Section VIII below. Furthermore, each transcript of a deposition session shall be considered

1 Confidential Information under this Protective Order for 21 days after receipt of the
2 deposition transcript by the Furnishing Entity to permit the Furnishing Entity to review the
3 transcript and designate any information disclosed therein as Confidential Information;
4 provided, however, that if such transcript of a deposition is needed by any Party at trial,
5 hearings or in depositions in this Action prior to the expiration of said 21 days, such Party
6 may request appropriate expedited relief from this Court. After the expiration of said 21-day
7 period, the transcript will no longer be deemed Confidential Information for purposes of this
8 Protective Order, except to the extent so designated at the deposition or in a written notice
9 transmitted to all parties within such 21-day period. Where any portion of a transcript is
10 designated as Confidential Information the Furnishing Entity shall, where practicable, inform
11 the reporter precisely which portions of the transcript should be marked accordingly.

12 IV.

13 DISCLOSURE OF CONFIDENTIAL INFORMATION

14 A. Except as provided under paragraph B of this Section IV or by further order of this
15 Court, Confidential Information may be disclosed to the Receiving Entity, a Party (i.e., for a
16 Receiving Entity or a Party, the persons listed in subparagraph IV.A(2) below), the Receiving
17 Entity's Counsel and a Party's Counsel, and each of the foregoing may disclose only to:

18 (1) Technical Advisors of the Receiving Entity or the Party who agree, prior to
19 such disclosure, to be bound by the terms of this Protective Order and so agree by executing
20 and delivering to Counsel for such Receiving Entity or Party the original executed copy of the
21 Agreement to Be Bound by Protective Order attached hereto as "Exhibit A";

22 (2) Officers, directors, and employees of the Receiving Entity or the Party who
23 have a need for access to such Confidential Information related to: (a) the litigation of this
24 Action, (b) in the case of Parties who are Governmental Units, duly authorized law
25 enforcement or regulatory purposes, or (c) in the case of Parties who are Governmental Units,
26 any proceeding in which Pacific Gas and Electric Company and/or PG&E Corporation or
27 their affiliates or successors are parties.
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1 (3) Independent contractors engaged in one or more aspects of organizing,
2 copying, imaging, filing, coding, converting, storing or retrieving data, documents, or other
3 information, or designing programs for handling data connected with the litigation of this
4 Action, provided that any such persons agree, prior to such disclosure, to be bound by the
5 terms of this Order and so agree by executing and delivering to Counsel for such Receiving
6 Entity or Party the original executed copy of the Agreement to Be Bound by Protective Order
7 attached hereto as "Exhibit A";

8 (4) The Court and members of the staff of the Court whose functions
9 necessitate access to Confidential Information, subject to the procedures set forth in
10 paragraphs V.A through D, inclusive, hereof; and

11 (5) Qualified court reporters taking testimony in the above-captioned
12 proceedings, and necessary stenographic and clerical personnel thereof.

13 The execution of an Agreement to Be Bound by Protective Order by any officer or employee
14 of the CPUC, any other agency of the state of California or other public entity and the consent
15 by any such officer or employee to personal jurisdiction by the Court for purposes of
16 enforcing this Protective Order shall not be deemed to be a waiver of any rights under the
17 Eleventh Amendment of the United States Constitution.

18 B. No person to whom Confidential Information has been provided pursuant to the
19 provisions of this Protective Order may disclose such Confidential Information to any
20 persons, or use such Confidential Information, except as expressly permitted by Sections IV
21 and V hereof, by a Court order, or by a stipulation by the Furnishing Entity in writing.

22 **V.**

23 **USE OF CONFIDENTIAL INFORMATION**

24 A. In the event that a brief, memorandum, or other paper to be filed or served by or on
25 behalf of a Receiving Entity in this Action contains Confidential Information, Counsel for the
26 Receiving Entity shall mark the caption page and all pages of the brief, memorandum or other
27 paper containing such information with the appropriate legend as set forth in paragraph III.A
28 hereof, and if the brief, memorandum or other paper is filed with this Court, it shall be filed

1 under seal. Notwithstanding the foregoing and paragraph V.F hereof, reference in any such
2 brief, memorandum or paper to the existence, title or general subject matter of Confidential
3 Information (without disclosing any Confidential Information) shall be permitted without
4 inclusion of said legend and without the need to file under seal.

5 B. All documents and other material filed with or maintained in the custody of the
6 Court, including, without limitation, discovery responses, deposition transcripts, trial exhibits,
7 demonstrative exhibits, trial transcripts, pleadings, briefs, and memoranda, which contain
8 Confidential Information of any party shall have the legend set forth in paragraph III.A hereof
9 placed on the caption page and all pages containing such information and shall be filed in
10 sealed containers labeled with a statement substantially in the following form:

11 **CONFIDENTIAL INFORMATION**
12 **SUBJECT TO PROTECTIVE ORDER**
13 **In Re Pacific Gas and Electric Company**
14 **Case No. 01 30923 DM, United States Bankruptcy Court**
15 **Northern District of California**
16 **THE DOCUMENTS CONTAINED HEREIN MUST BE**
17 **RETURNED TO THIS CONTAINER AFTER USE**

18 C. Portions of discovery materials, deposition transcripts, trial exhibits, demonstrative
19 exhibits, trial testimony, briefs, memoranda, and all other documents and things filed with the
20 Court or presented at trial that contain Confidential Information shall become part of the in-
21 camera record and shall not be made part of the public record in the Action, unless the Court
22 determines otherwise after providing an opportunity for the Furnishing Entity to argue in
23 favor of maintaining its confidentiality.

24 D. In the event that any Confidential Information is used in any hearing or trial in this
25 Action, the Parties shall take all reasonable steps to protect its confidentiality during such use.

26 E. Notwithstanding any other provision of this Protective Order, nothing in this
27 Protective Order entitles a Party or other Producing Entity either (1) to deny a Party the right
28 to use Confidential Information at any hearing or trial in this Action or pursuant to paragraph
V.K hereof, or (2) to close portions of any hearing or trial in this Action to the public.

1 F. All documents and copies of documents, made, drafted and prepared by or on
2 behalf of a Receiving Entity, including, without limitation, attorney notes or abstracts or other
3 derivative documents or things that contain Confidential Information, shall be handled as if
4 they were designated pursuant to Section III.A hereof.

5 G. All Parties and any other persons or entities receiving Confidential Information (1)
6 shall employ reasonable security measures to prevent access to Confidential Information by
7 persons not authorized under this Protective Order to receive such information; (2) shall take
8 reasonable steps to ensure that such information is not disclosed to such other persons; and (3)
9 shall not use such information for any commercial purpose whatsoever. Nothing in this
10 Section V shall be read to allow disclosure of any Confidential Information to any person or
11 entity not entitled to receive Confidential Information pursuant to Sections IV and V hereof.

12 H. The production of Confidential Information in this Action shall not constitute an
13 admission with respect to (or be otherwise, in any way, indicative of) the scope of discovery
14 in any other proceeding or the admissibility of such information in this Action or any other
15 proceeding.

16 I. Confidential Information shall not be copied or reproduced for use in this Action
17 except to the extent such copying or reproduction is reasonably necessary to the conduct of
18 this Action, and all such copies or reproductions shall be subject to the terms of this Order. If
19 the duplicating process by which copies or reproductions of Confidential Information are
20 made does not preserve the confidentiality designation that appears on the original documents,
21 all such copies of reproductions shall be stamped with the designation prescribed in
22 paragraph III.A hereof.

23 J. Documents and any other materials containing Confidential Information may be
24 shown to a witness to examine or cross-examine the witness during a deposition or trial in
25 circumstances only where the disclosure of the Confidential Information is relevant to the
26 subject of examination, but the witness shall not be permitted to retain any such documents or
27 things or any copies thereof (except for the purpose of reviewing the transcript of his or her
28 deposition in connection with its correction or execution), unless the witness is otherwise

1 authorized under Sections IV or V hereof to receive such information or signs an undertaking
2 substantially in the form of Exhibit A hereto agreeing to abide by the terms of this Protective
3 Order.

4 K. In addition to the disclosure of Confidential Information to the employees and
5 counsel of a Governmental Unit that is permitted by paragraph IV.A hereof, Governmental
6 Units that are Receiving Entities may use Confidential Information for duly authorized law
7 enforcement or regulatory purposes or in any proceeding in which Pacific Gas and Electric
8 Company and/or PG&E Corporation or their affiliates or successors are parties, subject only
9 to the following restrictions:

10 (1) To the extent the Governmental Unit deems it necessary to disclose
11 Confidential Information in any public filing before a court or regulatory body, the
12 Governmental Unit shall, before such filing occurs: (a) move or apply in such proceeding for
13 a protective order that has substantially the same effect as this Protective Order (unless the
14 forum already has an order or rule in place that permits a confidentiality designation that
15 affords protection substantially the same as, or better than, this Protective Order, and the
16 Governmental Unit so designates the Confidential Information in accordance with such order
17 or rule); (b) provide the Furnishing Entity's Counsel of record in this Action written notice of
18 such use or intended use by fax on the day such motion or application for a protective order is
19 filed; and (c) otherwise take reasonable steps to ensure that such Confidential Information is
20 protected in such proceeding in a manner substantially similar to the protection provided by
21 this Protective Order. As an alternative to the foregoing procedure, a Governmental Unit that
22 finds it necessary to disclose Confidential Information in a public filing before a court or
23 regulatory body may do the following: (x) file a motion or request to submit the Confidential
24 Information under seal for a minimum of ten (10) business days; (y) provide the Furnishing
25 Entity's counsel of record in this Action written notice by fax on the day such motion or
26 request is filed so as to allow the Furnishing Entity an opportunity to request that the filing
27 remain under seal; and (z) maintain the filing under seal for ten (10) business days, unless the
28 applicable court or regulatory body orders otherwise.

1 L. Confidential Information produced under this Protective Order shall be deemed
2 information exempt from public disclosure under those provisions of federal, state and local
3 laws that exempt trade secrets and other privileged or confidential commercial and financial
4 information from public review (including, without limitation the Freedom of Information Act
5 (5 U.S.C. § 552(b)(4)), the California Public Records Act (California Government Code §
6 6254(k)), and the San Francisco Sunshine Ordinance (San Francisco Administrative Code,
7 Chapter 67)). If a Governmental Unit receives a request for disclosure of Confidential
8 Information under a statute, rule, regulation or ordinance governing public access to
9 governmental records, and if the Governmental Unit determines that disclosure may be
10 required pursuant to that request, the Governmental Unit will provide the Furnishing Entity of
11 such Confidential Information written notice of such request in sufficient time to allow the
12 Furnishing Entity to take action to protect the Confidential Information from such disclosure.

13 M. In the event of an inadvertent disclosure of Confidential Information of another
14 Party, the Receiving Entity or Party making the inadvertent disclosure shall upon learning of
15 the disclosure:

16 (1) immediately notify the person or entity to whom the disclosure was made
17 that it contains Confidential Information subject to this Protective Order;

18 (2) immediately make all reasonable efforts to retrieve such Confidential
19 Information from, and to preclude dissemination or use by, the person or entity to whom
20 disclosure was inadvertently made; and

21 (3) immediately notify the Furnishing Entity of the identity of the person(s) or
22 entity to whom disclosure was inadvertently made, the circumstances of the disclosure, and
23 the steps taken to prevent the dissemination or use of the Information.

24 Nothing in this Protective Order shall be construed to require sanctions or
25 punishment for any inadvertent disclosure of such information designated as Confidential
26 Information.

27 **VI.**

28 **INADVERTENT FAILURE TO DESIGNATE**

1 Entity's claim of privilege, either as to the specific information disclosed or as to any other
2 information relating thereto, on the same or related subject matter. Upon notice by the
3 Furnishing Entity, such inadvertently produced Privileged Documents shall be returned (along
4 with all copies) to the Furnishing Entity.

5 VIII.

6 DISPUTES

7 A. If any dispute arises concerning this Protective Order, the parties shall try first to
8 resolve such dispute in good faith on an informal basis. If the dispute cannot be so resolved,
9 the Furnishing Entity seeking to designate Furnished Material as Confidential Information, or
10 any Party otherwise seeking relief, may request the Court to schedule a telephonic conference
11 concerning the dispute. A Party requesting such conference should contact Virginia Belli,
12 Judge Montali's Courtroom Depute (415-268-2323), to obtain a date and time. Any dispute
13 arising from October 4 to 18, 2002 will be handled by Chief Judge Edward Jellen. A Party
14 requesting a telephonic conference during that time period should contact Raenna Abreu,
15 Chief Judge Jellen's Judicial Assistant (510-879-3525).

16 B. As soon as a telephonic conference is scheduled, the Party requesting the
17 conference shall provide the Court (and Chief Judge Jellen at U.S. Bankruptcy Court, 1300
18 Clay Street, Second Floor, Oakland, CA 94612, during the dates indicated above) with a
19 written summary of the dispute and a confirmation of the date and time of the telephonic
20 conference, with copies served promptly on all other Parties by email or fax. If a Party
21 desires to transmit the letter to the Court by fax, the Party should request from the Courtroom
22 Depute or Judicial Assistant permission to fax the letter directly to chambers.

23 C. The Court will make telephonic conference arrangements with the Court
24 Conference Center and all Parties desiring to participate on the conference should follow the
25 procedures for telephonic conferences as published on the Court's website at
26 <http://www.canb.uscourts.gov>, click on Pacific Gas and Electric Company Chapter 11 Case,
27 then Instructions for Telephonic Appearances.
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1 D. A Furnishing Entity seeking to designate information as Confidential Information
2 bears the burden of establishing the entitlement to such designation. Prior to the Court's
3 resolution of the dispute, the disputed information shall be treated by the parties as though it
4 were Confidential Information.

5 E. Nothing contained herein shall constitute an admission by any Party that any
6 information designated by another person or entity as Confidential Information is in fact
7 confidential information.

8 F. The restrictions with respect to Confidential Information set out in this Protective
9 Order shall not apply to any information which:

- 10 (1) at the time of the disclosure hereunder was available to the public;
- 11 (2) after disclosure hereunder becomes available to the public through no act
12 or failure to act of any Receiving Entity; or
- 13 (3) the Receiving Entity can show:
- 14 a. was independently developed by the Receiving Entity from a source
15 other than the Furnishing Entity; or
- 16 b. was received by the Receiving Entity, after the time of receipt
17 hereunder, from a third party having the right to make such disclosure; or
- 18 c. was already known to or previously discovered by the Receiving
19 Entity.

20 IX.

21 CONCLUSION OF LITIGATION

22 A. Each Party or other person or entity subject to the terms of this Protective Order
23 shall, upon written request of the Furnishing Entity, use its best efforts either (1) to return all
24 Confidential Information still in its possession to each Furnishing Entity (except to the extent
25 such designated information is maintained on electronic media, and cannot be returned, in
26 which case such designated information shall be erased or otherwise destroyed), or (2) to
27 destroy all Confidential Information produced by other parties in the Action still in its
28 possession; provided, however, that (1) no such request shall require the return or destruction

1 of such Confidential Information prior to 180 days after the final termination of the Action,
2 including the expiration of any time to appeal and the exhaustion of any appeals and cross-
3 appeals, and (2) any Party may move this Court to allow it to retain Confidential Information
4 beyond the time permitted pursuant to this paragraph IX.A, and such relief shall be granted
5 upon reasonable and appropriate notice and a showing of good cause. Any such destruction
6 of Confidential Information shall be confirmed in writing within six (6) months of the later of
7 (a) the date of the written request for return or destruction or (b) the date marking 180 days
8 after the final termination of the Action, including the expiration of any time to appeal and the
9 exhaustion of any appeals and cross-appeals. Notwithstanding the foregoing, nothing herein
10 shall obligate any person or party to destroy (i) attorney work product, including, without
11 limitation, attorney notes or memos; (ii) any transcript of any deposition, hearing, or trial
12 proceeding; or (iii) any pleading or paper served on another party or filed with the Court in
13 the Action. This Court shall retain jurisdiction over the Action, following its termination
14 (whether by judgment, settlement or otherwise) for the purpose of enforcing this Protective
15 Order.

16 **X.**

17 **AMENDMENTS OR MODIFICATIONS**

18 A. This Protective Order may be amended by agreement of counsel and approval of
19 the Court, in the form of a stipulation that shall be filed with the Court. Any Party may
20 request amendment or modification of this Protective Order and such request shall be granted
21 by the Court upon reasonable and appropriate notice and a showing of good cause.

22 B. Nothing in this Protective Order is intended to, or shall, preclude the entry of
23 additional protective orders in the Action, if such additional protective orders are necessary.

24 C. Nothing in this Protective Order is intended to, or shall, affect the CPUC's or any
25 other public entity's legal rights of access to and use of information in fulfilling its

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1 constitutional and statutory duties, where such information was and is obtained outside the
2 context of the Action.

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4 IT IS SO ORDERED

5 Date: September 10, 2002

DENNIS MONTALI

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Honorable Dennis Montali
7 UNITED STATES BANKRUPTCY JUDGE
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1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3 I, the undersigned, _____ (print or type
4 name), of _____ (business/residence
5 address) hereby acknowledge that I have received a copy of the Protective Order (the
6 "Order") entered on _____, 2002, in the matter entitled *In Re Pacific Gas and*
7 *Electric Company*, United States Bankruptcy Court, Northern District of California (the
8 "Court"), Case No. 01 30923 DM. I have read and understand the Order and agree to be
9 bound by all the provisions thereof, and to hold in confidence any information disclosed to me
10 pursuant to the terms of the Order.

11 I consent to personal jurisdiction over me by the Court for purposes of
12 enforcing the Order. My consent to personal jurisdiction over me by the Court for purposes
13 of enforcing the Order shall not be deemed to be a waiver of any rights of any public entity,
14 me or any officer or employee of any public entity under the Eleventh Amendment of the
15 United States Constitution.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct, and that this Agreement was executed on this ____ day of
18 _____, 2002, at _____.

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23 WD 090902/1-1419972/1017686/v8
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