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

14 In re:
15 PG&E CORPORATION,
16 -and-
17 PACIFIC GAS & ELECTRIC
COMPANY,
18 Debtors.

Case No. 19-30088 (DM)
Chapter 11 Lead Case
(Jointly Administered)

OBJECTION OF GOVERNOR GAVIN NEWSOM TO DEBTORS' AMENDED MOTION FOR ENTRY OF ORDERS (I) APPROVING TERMS OF, AND DEBTORS' ENTRY INTO AND PERFORMANCE UNDER, EQUITY BACKSTOP COMMITMENT LETTERS, (II) APPROVING TERMS OF, AND DEBTORS' ENTRY INTO AND PERFORMANCE UNDER, DEBT FINANCING COMMITMENT LETTERS AND (III) AUTHORIZING INCURRENCE, PAYMENT AND ALLOWANCE OF RELATED FEES AND/OR PREMIUMS, INDEMNITIES, COSTS AND EXPENSES AS ADMINISTRATIVE EXPENSE CLAIMS

- 25 Affects PG&E Corporation
26 Affects Pacific Gas & Electric Company
27 Affects both Debtors

28 **All papers shall be filed in the Lead Case, No. 19-30088 (DM)*

[Related to Docket No. 5267]

Date: January 29, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

1 Governor Gavin Newsom, by and through his counsel, O’Melveny & Myers LLP,
2 respectfully submits this objection (the “**Objection**”) in response to the *Debtors’ Amended Motion*
3 *for Entry of Orders (I) Approving Terms of, and Debtors’ Entry into and Performance Under,*
4 *Equity Backstop Commitment Letters, (II) Approving Terms of, and Debtors’ Entry into and*
5 *Performance Under, Debt Financing Commitment Letters and (III) Authorizing Incurrence,*
6 *Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses as*
7 *Administrative Expense Claims* [Docket No. 5267] (the “**Plan Funding Motion**).¹ Governor
8 Newsom files this Objection in his official capacity as Governor of the State of California, but not
9 on behalf of any agency, department, unit or entity of the State of California.² In support of the
10 Objection, Governor Newsom respectfully states as follows:

11 1. The state of California’s objectives remain clear: (i) Californians must have access
12 to safe, reliable and affordable service; (ii) wildfire victims must be treated fairly; and
13 (iii) California must continue to make progress on its climate change goals. PG&E’s historical
14 failures—including decades of mismanagement and inadequate investments in fire safety and fire
15 prevention—require that any plan of reorganization must position the reorganized entity for
16 transformation, include stringent governance and management requirements and enforcement
17 mechanisms, and provide for a capital structure that allows the reorganized entity to undertake
18 critical safety investments. In his December 13, 2019 letter to PG&E [Docket No. 5138-1] (the
19 “**December 13 Letter**”), Governor Newsom made clear that the Debtors’ Plan, and the
20 restructuring transactions contemplated therein, did not, in his judgment, result in a reorganized
21 utility capable of satisfying the requirements of Assembly Bill 1054 (Holden, Chapter 79, Statutes
22 of 2019) (“**AB 1054**”).

23 2. Since the December 13 Letter, the Governor’s staff—through numerous discussions
24 and meetings with the Debtors’ advisors—provided the Debtors clear guidance on modifications
25 that, in the Governor’s judgment, would align the Debtors’ Plan more closely with the requirements
26 set forth in AB 1054. The modifications required for the Debtors’ Plan to meet AB 1054 are not

27 ¹ Capitalized terms used but not defined herein have the meaning given to such terms in the Plan Funding Motion.

28 ² The Attorney General has appeared in these proceedings on behalf of certain agencies and departments of the State of California. The Governor does not take a position on the issues raised in those filings in this pleading.

1 insubstantial or cosmetic. The Governor’s expectation is that the Debtors’ Plan must be materially
2 amended to incorporate necessary changes to the governance and management provisions,
3 enforcement mechanisms and proposed capital structure to allow the necessary transformation of
4 the Utility.

5 3. The Debtors and the shareholder proponents are well aware that the Debtors’ Plan
6 must comply with AB 1054 for the emerging utility to have access to the fund provided in the
7 statute (the “**Wildfire Fund**”). In fact, absent AB 1054 the Debtors appear to lack a path to a
8 feasible plan. Yet, despite the Governor’s unequivocal statements, and continuous engagement by
9 the Governor’s advisors, the Debtors and the shareholder proponents have yet to make a single
10 modification to the Debtors’ Plan as filed with this Court to address its many deficiencies. It seems
11 clear that rather than amend the Debtors’ Plan to incorporate the necessary changes, the Debtors
12 instead intend to try to leverage the chapter 11 process to force the California Public Utilities
13 Commission (the “**CPUC**”) to approve—and the state of California to accept—a sub-optimal plan.
14 Allowing the Debtors to enter into the Exit Financing Commitments will only further embolden the
15 Debtors’ strategy.

16 4. While AB 1054 provides the Debtors a path to resolve the Chapter 11 Cases, the
17 statute is explicit that the Debtors benefit from the Wildfire Fund only if they meet the obligations
18 to the people of California as set forth in the statute. Given the Debtors continue to refuse to
19 implement the changes to the Debtors’ Plan necessary to effect the required transformation and
20 satisfy AB 1054, the Governor is pursuing strategies to protect California’s interests through further
21 intervention, including a state takeover of the Utility.

22 5. Against that backdrop, the Debtors seek the Court’s approval of Exit Financing
23 Commitments that would obligate the Debtors, or any other plan proponent—including, arguably,
24 under a plan that advances public ownership—to pay fees that could exceed \$1 billion to support a
25 capital structure that the Governor already stated does not comply with AB 1054. Indeed, the
26 capital structure contemplated in the Exit Financing Commitments is *exactly* the same as the
27 proposed capital structure the Governor rejected in the December 13 Letter. The Debtors’ Plan
28 continues to rely on substantial debt at the holding company, secured debt, and expensive short-

1 term bridge financing—all issues the Governor specifically referenced in the December 13 Letter—
2 and that taken together, leave the reorganized entity with insufficient financial flexibility to make
3 billions of dollars in critically needed safety investments.³

4 6. Despite the reality that the Debtors' Plan requires substantial amendments to satisfy
5 AB 1054, the Exit Financing Commitments Letters contain provisions that provide the Exit
6 Commitment Parties with the right to terminate their commitments if the Debtors' Plan is amended.
7 The inclusion of these provisions render these very expensive commitments illusory as they provide
8 the Exit Commitment Parties what is essentially a one-way option given that substantial
9 amendments to the Debtors Plan are inevitable.

10 7. Specifically, the Equity Financing Commitment Letters contain provisions that
11 allow the Equity Backstop Parties to walk away from their commitments. *See* Equity Backstop
12 Commitment Letters § 4(c) (conditioning the commitments on the Confirmation Order approving
13 the December 12, 2019 plan with only amendments modifications, changes and consents approved
14 by a majority of the Aggregate Backstop Commitments); Equity Backstop Commitment Letters §§
15 5(a), 5(d)(i) (providing termination rights for certain amendments, modifications of changes to the
16 Debtors' Plan); Equity Backstop Commitment Letters § 5(d)(ii) (providing termination rights if the
17 Plan Supplement or any Plan Document is finalized or finalized without the consent of a majority
18 of the Aggregate Backstop Commitments); Equity Backstop Commitment Letters §§ 5(k), 5(o)
19 (providing for termination if the terms of the CPUC approval of the Debtors' Plan are not acceptable
20 to the majority of the Aggregate Backstop Commitments).

21 8. The Debt Financing Commitment Letters similarly contain provisions that afford
22 the Debt Backstop Parties a one-way option. *See* Debt Commitment Letters, Annex B § 1(a)(y)
23 (conditioning the commitments on the Confirmation Order approving the December 12, 2019 plan
24 in form and substance reasonably satisfactory to the Required Commitment Parties; Debt
25 Commitment Letters, Annex B § 1(b) (conditioning the commitments on the requirement that none
26 of the Plan, Confirmation or Approval Order have been amended or modified or any conditions
27

28 ³ It is noteworthy that the Debt Commitment Letters support the short-term bridge financing that the December 13 Letter indicated is a source of concern.

1 contained therein waived without the consent of the Required Commitment Parties); Debt
2 Commitment Letters, Annex B § 1(f) (conditioning the commitments on the requirement that all
3 documents necessary to implement the Plan and the financings and distributions contemplated
4 thereunder shall be in form and substance reasonably acceptable to the Required Commitment
5 Parties and which shall not be adverse to the interests of the Commitment Parties); Debt
6 Commitment Letters, Annex B § 14 (conditioning the commitments on the Utility satisfying the
7 conditions to participate in the Wildfire Fund); Debt Commitment Letters, § 11(iv)(B) (providing
8 for termination of the commitments if any Plan Supplement or Plan Document that is adverse to
9 the interests of the Commitment Parties is filed or finalized without the consent of the Required
10 Commitment Parties); Debt Commitment Letters, § 11(xv) (providing for termination of the
11 commitments if the Debtors do not receive all necessary CPUC approvals, authorizations and final
12 orders to implement the Plan and participate in the Wildfire Fund); and Debt Commitment Letters,
13 § 11 (xvii) (providing for termination of the commitments if the Plan, any Plan Supplement or any
14 Plan Document is amended, modified or changed without the consent of the Required Commitment
15 Parties to include a process for transferring the license and operating assets of the Utility to the
16 state of California or a third party).⁴

17 9. In support of the Plan Funding Motion, the Debtors assert that the Exit Financing
18 Commitment Letters “*benefit the estates and all stakeholders* by providing assurances of the
19 Debtors’ ability to fund the distributions contemplated by the Debtors’ Plan and the Debtors’ timely
20 emergence from chapter 11” and argue the Court should approve the commitments as an exercise
21 of the Debtors’ sound business judgment. Plan Funding Motion at 8 (emphasis added). That cannot
22 be the case where the Exit Financing Commitments obligate the Debtors’ estates to incur substantial
23 fees and expenses to support a plan that does not satisfy AB 1054 and those commitments may not
24 remain in effect if the Debtor’s Plan is amended to meet the requirements of the statute.

25
26 _____
27 ⁴ The Exit Financing Commitment Letters attempt to mitigate the impact of these provisions by providing throughout
28 that any consent shall not be unreasonably withheld, conditioned, or delayed by the consenting parties. This qualifying
language does nothing to address the fundamental issue underlying this Objection because the question is not whether
a consent is appropriate, but whether the inevitable but necessary material amendments to the Debtors’ Plan make the
commitments effectively illusory or provide a one-way option for the Backstop Commitment Parties.

1 10. While the Debtors’ business judgment is ordinarily entitled to substantial deference,
2 “in the face of opposition by creditors, the requirement of court approval means the responsibility
3 ultimately is the court’s.” *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288-
4 89 (9th Cir. BAP 2005). Additionally, while the decision of a debtor-in-possession to obtain
5 financing commitments is entitled to deference under the business judgment rule, “bankruptcy
6 courts do not allow terms in financing arrangements that convert the bankruptcy process from one
7 designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition
8 lender Courts look to whether the proposed terms would prejudice the powers and rights the
9 Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the
10 lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties
11 in interest.” *Resolution Trust Corp. v. Official Unsecured Creditors Comm. (In re Defender Drug
12 Stores, Inc.)*, 145 B.R. 312, 317 (9th Cir. BAP 1992). In this instance, the Court should not afford
13 Debtors the deference afforded by the business judgment rule as the Exit Financing Commitments
14 allow the Exit Commitment Parties to walk away from their commitments given extensive
15 amendments to the Debtors’ Plan are inevitable to satisfy the requirements of AB 1054.

16 11. In addition, the Debtors should not be afforded the deference of the business
17 judgment rule because the Exit Financing Commitments grant the Exit Commitment Parties
18 excessive control over the Debtors, hinder the development of other plans (including increasing the
19 cost of a potential public takeover), and contain provisions that conflict with the December 13
20 Letter and the requirements of AB 1054. The Court should consider approval of these Exit
21 Financing Commitments in the overall context of these Chapter 11 Cases. Cases in which the
22 Debtors, with the support of the shareholder proponents, reconstituted their board of directors with
23 significant representation from the fund community. Following the reconstitution of the board of
24 directors, the Debtors and the shareholder proponents entered into restructuring support agreements
25 that were limited only to plans supported by the shareholder proponents. Now, the Debtors seek the
26 approval of Exit Financing Commitments that enrich the shareholder proponents who are
27 participating in the Equity Backstop Commitments while expressly permitting the Equity Backstop
28 Parties to terminate their commitments if the Debtors’ Plan is not acceptable to the shareholder

1 proponents or does not include the shareholder proponents as plan proponents. Therefore, given the
2 significant influence, involvement and control afforded the shareholder proponents in these Chapter
3 11 Cases, the Court should carefully scrutinize and evaluate the fairness and appropriateness of the
4 transactions proposed by the Plan Funding Motion.

5 12. The Governor does not believe that as drafted the Debtors' Plan meets the
6 requirements of AB 1054, and thus it will not afford the reorganized entity access to the Wildfire
7 Fund. Without the Wildfire Fund, the Debtors' Plan does not appear to be feasible. As the Governor
8 has repeatedly made clear, it is essential that upon exit of these Chapter 11 Cases the reorganized
9 entity be positioned for transformation to provide safe, reliable and affordable power for
10 Californians.

11 13. For the foregoing reasons, the Plan Funding Motion should either be adjourned until
12 the Debtors' Plan is amended to be consistent with AB 1054 and it is clear that the relief requested
13 therein is necessary or appropriate, or the Plan Funding Motion should be denied.

14
15 Dated: January 22, 2020

O'MELVENY & MYERS LLP

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17 By: /s/ Jacob T. Beiswenger

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19
20 By: /s/ Nancy A. Mitchell

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