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50-275/323

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12 PACIFIC GAS AND ELECTRIC COMPANY

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re
17 PACIFIC GAS AND ELECTRIC
18 COMPANY, a California corporation,
19 Debtor.

Case No. 01-30923 DM

Chapter 11

HEARING

Date: May 9, 2001

Time: 9:30 a.m.

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

Federal I.D. No. 94-0742640

20 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
21 DEBTOR'S MOTION FOR ORDER APPROVING STIPULATION:
22 (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO
23 11 U.S.C. § 363 AND BANKRUPTCY RULE 4001 AND (II) GRANTING
24 ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363

25 Pacific Gas and Electric Company, the debtor and debtor in possession in the above-
26 captioned Chapter 11 case (the "Debtor" or "PG&E"), hereby submits its Memorandum of
27 Points and Authorities in support of its motion (the "Motion") for approval of Stipulation: (I)
28 Authorizing and Restricting Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and
Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361
and 363 (the "Stipulation").

100/11

1 I.

2 INTRODUCTION

3 By this Motion, PG&E seeks approval from the Court to enter into and perform its
4 obligations under a proposed Stipulation with BNY Western Trust Company, as successor
5 trustee (the "Indenture Trustee") pursuant to that certain indenture dated December 1, 1920
6 with respect to certain mortgage bonds (collectively the "Bonds") issued by PG&E, which
7 indenture has been supplemented by fourteen supplemental indentures (collectively, the
8 "Indenture"). If the Court authorizes PG&E's entry into and performance under the
9 Stipulation, that would presumably resolve PG&E's pending motion to use cash collateral in
10 which such bondholders (the "Bondholders") have a beneficial interest. If the Court fails to
11 authorize PG&E's entry into and performance under the Stipulation, PG&E renews its
12 request for the Court to grant its pending motion for use of such cash collateral without the
13 Bondholders' consent.

14 II.

15 FACTUAL BACKGROUND

16 1. On April 6, 2001 (the "Petition Date"), PG&E filed a voluntary petition under
17 Chapter 11 of the Bankruptcy Code. PG&E continues to manage and operate its business
18 and property as a debtor in possession pursuant to Sections 1107 and 1108 of the United
19 States Bankruptcy Code (11 U.S.C. §§1107-1108).

20 2. On the Petition Date, PG&E filed its Emergency Motion for Orders: (1)
21 Authorizing Interim Use Of Cash Collateral In Which Mortgage Bondholders Have A
22 Beneficial Interest; (2) Scheduling And Establishing Deadlines Relating To A Final Hearing
23 On Continued Use Of Cash Collateral; and (3) After Conclusion Of A Final Hearing,
24 Authorizing Continued Use Of Cash Collateral filed with the Court on April 6, 2001 (the
25 "Motion for Use of Cash Collateral").

26 3. A preliminary hearing on the Motion for Use of Cash Collateral was held before
27 the Court on April 9, 2001 (the "Preliminary Hearing").

28 4. At the Preliminary Hearing, the Indenture Trustee consented to PG&E's request

1 for authority to use the Bondholders' cash collateral on an interim basis, pending a final
2 hearing on the Motion for Use of Cash Collateral, which was scheduled for 9:30 a.m. on
3 May 9, 2001 (the "Final Hearing").

4 5. On April 9, 2001, the Court issued its Order (a) authorizing PG&E to use cash
5 collateral in which the Bondholders have a beneficial interest ("Cash Collateral") pursuant to
6 the terms set forth in the Motion for Use of Cash Collateral, pending the Final Hearing, (b)
7 directed PG&E to file and serve any further papers with respect to the Motion for Use of
8 Cash Collateral by April 20, 2001, and (c) directed that any opposition to the Motion for Use
9 of Cash Collateral be filed and served no later by May 4, 2001.

10 III.

11 THE PROPOSED STIPULATION

12 The Stipulation (a copy of which is attached to the supporting Declaration of Kent
13 Harvey submitted herewith)¹ contains the following material provisions:

14 1. PG&E acknowledges (without prejudice to the rights of any third party acting on
15 its own behalf or derivatively through the Debtor) that as of the Petition Date: (a) the
16 amount owed by PG&E with respect to the Bonds (the "Pre-Petition Indebtedness") is
17 approximately \$3.7 billion, which constitutes legal, valid, binding and enforceable
18 obligations of PG&E, (b) the Bonds are secured by first-priority security interests and liens
19 (the "Pre-Petition Bondholder Liens) on virtually all of PG&E's existing and after-acquired
20 real and personal property (the "Pre-Petition Collateral"), (c) the Pre-Petition Bondholder
21 Liens are legal, valid, binding, perfected and enforceable, not subject to avoidance, defense,
22 objection, action, counterclaim, setoff or subordination, except that such liens and security
23 interests are junior and subordinate to liens and security interests that were senior to the Pre-
24 Petition Bondholder Liens ("Senior Liens") as of the Petition Date, (d) the Indenture
25 Trustee's and the Bondholders pre-petition claims in the amount of the Pre-Petition

26 _____
27 ¹ Since certain terms of the Stipulation are still being negotiated, the form of the
28 Stipulation which the Court will be requested to approve may vary slightly from the form
attached to the Harvey Declaration.

1 Indebtedness are allowed and are valid and enforceable, not subject to avoidance, defense,
2 objection, action, counterclaim, setoff or subordination, and (e) PG&E does not possess,
3 may not assert and has waived any claim, objection, action, counterclaim, set-off or defense
4 of any kind or nature which could affect the validity, priority, enforceability and
5 nonavoidability of the Pre-Petition Indebtedness or the Pre-Petition Bondholder Liens, or
6 which would reduce or affect the obligation of PG&E to pay the Pre-Petition Indebtedness.

7 2. To the extent that the use of the Cash Collateral results in a decrease in the value
8 of the Indenture Trustee's and the Bondholder's interests in the Cash Collateral, and as
9 adequate protection for the use by PG&E of the Cash Collateral, the Indenture Trustee and
10 the Bondholders are granted a lien and security interest (the "Pre-Petition Bondholder
11 Replacement Liens") of the same extent, priority and validity as the Pre-Petition Bondholder
12 Liens on all property of the same type and kind as the Pre-Petition Collateral acquired by
13 PG&E after the Petition Date (the "Post-Petition Collateral"), except for any claims for relief
14 arising under the Bankruptcy Code (including, without limitation, claims arising under
15 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code).. .

16 3. The Pre-Petition Bondholder Replacement Liens is deemed perfected as of the
17 Petition Date, is not be subject to or pari passu with any lien or security interest existing as
18 of the Petition Date or granted or arising thereafter, other than the Senior Liens, and, except
19 as otherwise specifically provided in the Stipulation, is valid and enforceable against any
20 trustee appointed in this Chapter 11 case or in a subsequent proceeding upon the conversion
21 of this case to a case under Chapter 7 of the Bankruptcy Code.

22 4. The stay imposed by Section 362(a) of the Bankruptcy Code is modified to the
23 extent necessary to allow the filing and recording of a copy of the Stipulation or any
24 financing statements, notices of lien, mortgages, deeds of trust or similar instruments
25 evidencing the Pre-Petition Bondholder Replacement Liens and to make the payments
26 provided for herein.

27 5. As additional adequate protection for PG&E's use of the Cash Collateral, the
28 Indenture Trustee and the Bondholders are entitled to the continued payment of interest and

1 sinking fund payments pursuant to the Indenture, including any accrued and unpaid interest
2 and sinking fund payments due under the Indenture on or prior to the Petition Date.²

3 6. As additional adequate protection for PG&E's use of the Cash Collateral, the
4 Indenture Trustee is, subject to the following procedures, entitled to reimbursement by the
5 Debtor, without the necessity of the filing of fee applications or obtaining the prior approval
6 of the Court, of all fees provided from the Indenture and all reasonable costs and expenses
7 incurred both before and after the Petition Date, in connection with (i) the Indenture
8 Trustee's and the Bondholders' claims and liens and (ii) actions to preserve, protect and/or
9 enforce the rights and remedies under, and to administer, the Indenture, including reasonable
10 counsel fees and disbursements, filing fees, audit expenses, field examination expenses and
11 reasonable fees and disbursements of accountants and/or financial advisors. The Indenture
12 Trustee must serve copies of its invoices and the invoices of any professionals retained by
13 the Indenture Trustee upon the Debtor, its counsel, counsel to the Official Committee of
14 Unsecured Creditors (the "Committee") and the United States Trustee's Office. If any such
15 party believes that all or a portion of the fees reflected in any invoice are unreasonable (an
16 "Objecting Party"), such Objecting Party must provide written notice thereof to the
17 Indenture Trustee or the applicable professional retained by the Indenture Trustee within 20
18 days of receipt of the invoice in question (with a copy to the Debtor and its counsel).
19 Promptly after the expiration of such 20 day period, the Debtor must pay any undisputed
20 portion of such invoices, and retain the balance thereof pending resolution of any dispute
21

22 ² As noted in the Memorandum of Points and Authorities in support of the Motion for
23 Use of Cash Collateral, courts have established that an oversecured creditor is not
24 necessarily entitled as of right to *current payment* of post-petition interest as an element of
25 adequate protection. See, e.g., *Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re*
26 *Delta Resources, Inc.)*, 54 F.3d 722, 727-730 (11th Cir. 1995), cert. den., 516 U.S. 980
27 (1995); *In re M4 Enter.*, 183 B.R. 981, 985-986 (Bankr. N.D. Ga. 1995). However, the
28 Debtor has agreed in the Stipulation (subject to the Court's approval) to provide
Bondholders with current post-petition interest and sinking fund payments as additional
adequate protection since the Bondholders would ultimately be entitled to post-petition
interest and other charges on the Bonds as provided in the Indenture pursuant to
Section 506(b) of the Bankruptcy Code because the value of the Pre-Petition Collateral is
greatly in excess of the amount of the Pre-Petition Indebtedness.

1 with an Objecting Party, or, if any such dispute cannot be consensually resolved, upon
2 approval of any disputed portion by the Court. The payment of any amounts to the
3 Indenture Trustee or any professionals retained by the Indenture Trustee pursuant to this
4 paragraph are expressly subject to disallowance by the Court, and the Indenture Trustee or
5 such professional (as the case may be) must promptly disgorge to the Debtor any amounts so
6 disallowed.

7 7. In the event and to the extent that the use of the Cash Collateral results in a
8 decrease in the value of the Indenture Trustee's and the Bondholders' interest in the Cash
9 Collateral after the Petition Date such that the claim of the Indenture Trustee and the
10 Bondholders fails to be fully secured notwithstanding the other adequate protection provided
11 in the Stipulation, the Indenture Trustee and the Bondholders are allowed administrative
12 expense claims pursuant to Section 507(b) of the Bankruptcy Code, with priority in payment
13 over all administrative expense claims and unsecured claims against the Debtor, other than
14 the administrative expenses of any superseding Chapter 7 Case (the "Pre-Petition
15 Bondholder Superpriority Claims").

16 8. Except for transactions in the ordinary course of its business or except as
17 otherwise permitted in the Indenture or authorized by an order of this Court, PG&E may not
18 shall sell, transfer, lease, encumber or otherwise dispose of any Pre-Petition Collateral or
19 Post-Petition Collateral without the prior written consent of the Indenture Trustee. PG&E is
20 expressly authorized to sell assets pursuant to Section 363(f) of the Bankruptcy Code free
21 and clear of any liens, claims or encumbrances of the Indenture Trustee to the extent such
22 sales are permitted by the Indenture, with the liens, claims or encumbrances of the Indenture
23 Trustee to attach to the proceeds of such sales with the same validity and priority as the
24 liens, claims and encumbrances of the Indenture Trustee in the assets subject to such sales.

25 9. Any of the following events constitutes a "Termination Event":

26 (a) this Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the
27 Bankruptcy Code; or a Chapter 11 trustee is appointed;

28 (b) the Court grants relief from the automatic stay applicable under Section 362 of the

1 Bankruptcy Code to the holder(s) of any security interests in assets of PG&E allowing such
2 holder(s) to foreclose or otherwise realize upon any such security interests, which assets
3 have (individually or together with any previous orders granting such relief) an aggregate
4 value in excess of \$100 million;

5 (c) the Court enters an order amending, supplementing, staying, vacating, reversing,
6 revoking, rescinding or otherwise modifying the Stipulation (unless such modification is not
7 adverse, in the reasonable judgment of the Indenture Trustee, to the rights and interests of
8 the Bondholders under the Stipulation);

9 (d) the Court enters an order granting any lien or security interest in any property of the
10 Debtor or granting a claim in favor of any party other than the holder of a Senior Lien, that is
11 pari passu with or senior to the liens, security interests and claims granted to the Indenture
12 Trustee and the Bondholders pursuant to this Stipulation;

13 (e) PG&E seeks, consents to or supports in writing any other person's motion as to,
14 any of the matters set forth in paragraphs (a) through (d) above;

15 (f) PG&E make any payment in respect of any pre-Petition Date indebtedness or
16 obligations other than (i) the Pre-Petition Indebtedness or other amounts that become due
17 pursuant to the Indenture or the Stipulation after the Petition Date, (ii) as permitted under
18 this Stipulation or authorized by the Court, (iii) sales taxes, employee withholding taxes and
19 similar "trust account" items which have been collected by PG&E but not yet paid, (iv) as
20 required under Section 365(b) (in connection with the assumption of unexpired leases or
21 executory contracts) or other provisions of the Bankruptcy Code, and (v) Senior Liens;

22 (g) PG&E fails to comply with the terms of the Stipulation in any material respect;

23 (h) PG&E seeks to, or supports in writing any other person's motion to, disallow or
24 subordinate any Bondholder's claim in respect of the Pre-Petition Indebtedness or any other
25 amounts that become due pursuant to the Indenture or the Stipulation after the Petition Date
26 or to challenge the validity, enforceability, perfection or priority of the liens in favor of the
27 Indenture Trustee or any Bondholder; or

28 (i) the filing of any motion to obtain credit from any party unless the liens and/or

1 super-priority claims to be granted in connection therewith are junior to the liens and super-
2 priority claims granted in the Stipulation.

3 10. PG&E's right to use the Cash Collateral automatically terminates on the fifth
4 Court Day after receipt of written notice from the Indenture Trustee by PG&E and its
5 counsel, counsel to the Committee, and the Office of the United States Trustee of the
6 occurrence of any Termination Event, unless prior to the expiration of such period the Court
7 has entered an order authorizing PG&E's continued use of Cash Collateral.

8 11. The provisions of the Stipulation and any actions taken pursuant thereto survive
9 the conversion of this case to a Chapter 7 case or the dismissal of this case. The provisions
10 of the Stipulation and the claims, liens and security interests granted to the Indenture Trustee
11 and Bondholders pursuant to the Stipulation and the Indenture continue in full force and
12 effect until all of the Pre-Petition Indebtedness (and any amounts that may become due and
13 under the Indenture or the Stipulation after the Petition Date) is indefeasibly paid in full in
14 cash or satisfied pursuant to a Chapter 11 plan confirmed by the Court.

15 12. Any party in interest (other than PG&E, who expressly waives its rights to do so
16 under the Stipulation) must commence any adversary proceeding or contested matter
17 challenging the validity, enforceability or priority of the Pre-Petition Indebtedness (including
18 any claim that the Pre-Petition Indebtedness should be subordinated) or the Indenture
19 Trustee's and the Bondholders' liens on or security interests in the Pre-Petition Collateral
20 within 120 days after entry of an order approving the Stipulation. However, any trustee or
21 other fiduciary subsequently appointed in this case as a legal representative of the Debtor or
22 the Debtor's estate or any committee subsequently appointed must commence such
23 proceeding by the later of (a) 90 days after their appointment, or (b) 120 days after entry of
24 an order approving the Stipulation.

25 13. No Cash Collateral may be used to investigate, object to, contest, or otherwise
26 challenge the Stipulation, the validity, perfection, priority or enforceability of the Pre-
27 Petition Indebtedness or any liens or security interests securing the Pre-Petition
28 Indebtedness, except that the Committee may utilize the Cash Collateral to investigate any

1 such matters up to and including the point of formal discovery.

2 14. The provisions of the Stipulation are binding upon the parties' respective
3 successors and assigns, including any trustee or other fiduciary appointed in this case or in
4 any superseding Chapter 7 case as a legal representative of the Debtor or the Debtor's estate.

5 15. For so long as PG&E is authorized to use the Cash Collateral pursuant to the
6 Stipulation, PG&E is not entitled to assert a claim under Section 506(c) of the Bankruptcy
7 Code for any costs and expenses incurred in connection with the preservation, protection,
8 disposition or enhancement of the Pre-Petition Collateral or the Post-Petition Collateral.

9 **IV.**

10 **COMPLIANCE WITH THE COURT'S GUIDELINES FOR**
11 **CASH COLLATERAL STIPULATION**

12 The Stipulation contains certain provisions that the Court will not normally approve,
13 pursuant to its Guidelines for Cash Collateral and Financing Stipulations. Such provisions,
14 and the justification therefor are discussed below.

15 1. As discussed in part III., ¶¶1, 3 and 11 above, the Stipulation contains provisions
16 that bind the Debtor and its successors in interest (including any Chapter 11 trustee or
17 Chapter 7 trustee) with respect to the amount of the Pre-Petition Indebtedness and the
18 validity, perfection and priority of the Pre-Petition Bondholder Liens. The justification for
19 PG&E agreeing to such provisions is that counsel for PG&E has previously opined (in
20 connection with issuance of certain of the Bonds) that the Indenture constitutes a valid first
21 lien upon all real property and a perfected security interest in substantially all personal
22 property owned by PG&E, with certain limited exceptions.

23 2. As discussed in part III., ¶1 above, the Stipulation contains provisions waiving
24 PG&E's ability to assert any claim, defense, objection, action, counterclaim, setoff,
25 avoidance, or subordination with respect to the Pre-Petition Indebtedness or the Pre-Petition
26 Bondholder Liens. The justification for PG&E agreeing to such provisions is set forth in the
27 immediately preceding paragraph. In addition, as discussed in part III., ¶12 above, the
28 Stipulation contains provisions limiting the time during which other parties in interest may

1 seek to challenge the validity, enforceability or priority of the Pre-Petition Indebtedness
2 (including any claim that the Pre-Petition Indebtedness should be subordinated) or the Pre-
3 Petition Bondholder Liens. Also, as discussed in part III., ¶13 above, no Cash Collateral
4 may be used to investigate, object to, contest, or otherwise challenge the Stipulation, the
5 validity, perfection, priority or enforceability of the Pre-Petition Indebtedness or any liens or
6 security interests securing the Pre-Petition Indebtedness, except that the Committee may
7 utilize Cash Collateral to investigate any such matters up to the point of formal discovery.

8 **V.**

9 **THE COURT SHOULD AUTHORIZE THE DEBTOR'S ENTRY**
10 **INTO AND PERFORMANCE OF STIPULATION**

11 Bankruptcy Code Section 363(c)(2) provides that:

12 "The trustee may not use, sell or lease cash collateral under paragraph (1) of this
13 subsection unless--

14 (A) each entity that has an interest in such cash collateral consents; or

15 (B) the court, after notice and a hearing, authorizes such use, sale, or lease in
accordance with the provisions of this section." (11 U.S.C. § 363(c)(2))

16 Pursuant to the Stipulation, the Indenture Trustee has consented to PG&E's use of
17 Cash Collateral. Thus, under Section 363(c)(2), PG&E is authorized to use the Cash
18 Collateral. Accordingly, this Court should authorize PG&E's entry into and performance
19 under the Stipulation. Alternatively, if the Court is not inclined to approve the Stipulation,
20 PG&E renews its request for the Court to grant its pending Motion for Use of Cash
21 Collateral without the Bondholders' consent.

22 **VI.**

23 **CONCLUSION**

24 For all of the foregoing reasons, PG&E respectfully requests that this Court make and
25 enter its order (in the form attached hereto as Exhibit A) granting the Motion. Alternatively,
26 PG&E requests that this Court enter its order granting its Motion for Use of Cash Collateral.

1 DATED: April 20, 2001

Respectfully,

2 HOWARD, RICE, NEMEROVSKI, CANADY,
3 FALK & RABKIN
4 A Professional Corporation

5 By: *James Lopez*
6 for JAMES L. LOPES

7 Attorneys for Debtor and Debtor in Possession
8 PACIFIC GAS AND ELECTRIC COMPANY

9 WD 041901/1-1419910/912003/v1

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7 PACIFIC GAS AND ELECTRIC COMPANY

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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12 In re

13 PACIFIC GAS AND ELECTRIC
COMPANY, a California Corporation,

14 Debtor.

15 Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11

HEARING

Date: May 9, 2001

Time: 9:30 a.m.

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

17
18 ORDER ON DEBTOR'S MOTION FOR ORDER APPROVING STIPULATION:
19 (I) AUTHORIZING AND RESTRICTING USE OF CASH COLLATERAL PURSUANT
20 TO 11 U.S.C. § 363 AND BANKRUPTCY RULE 4001 AND (II) GRANTING
ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363

21 The Court, having considered the motion (the "Motion") submitted by Pacific
22 Gas and Electric Company, the debtor and debtor in possession in the above-captioned
23 Chapter 11 case (the "Debtor" or "PG&E") for approval of Stipulation: (I) Authorizing and
24 Restricting Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 4001
25 and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 (the
26 "Stipulation"), and papers submitted in support thereof, any opposition to the Motion, the
27 record in this case, and any admissible evidence presented to the Court at or prior to the
28 hearing on the Motion, hereby finds as follows:

ORDER RE APPROVAL OF STIPULATION AUTHORIZING USE OF BONDHOLDERS' CASH COLLATERAL

1 A. Adequate notice of this proceeding was given to parties in interest as
2 appropriate under the circumstances.

3 B. There is good cause for granting the Motion.

4 Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

5 1. The Motion is GRANTED as provided herein.

6 2. The Debtor is authorized to enter into and perform its obligations under the
7 Stipulation, in substantially the form attached hereto as Exhibit 1.

8 3. The Debtor is authorized to use Cash Collateral in which the Indenture
9 Trustee and the Bondholders have an interest pursuant to the Indenture (as those capitalized
10 terms are defined in the Stipulation) subject to and in accordance with the provisions of the
11 Stipulation.

12 4. As more fully set forth in the Stipulation, to the extent that the Cash Collateral
13 results in a decrease in the value of the Indenture Trustee's and the Bondholder's interests in
14 the Cash Collateral, and as adequate protection for the use by the Debtor of the Cash
15 Collateral, the Indenture Trustee and Bondholders shall have and are hereby granted a lien
16 and security interest (the "Pre-Petition Bondholder Replacement Liens") of the same extent,
17 priority and validity as the Pre-Petition Bondholder Liens in all property of the same type
18 and kind as the Pre-Petition Collateral acquired by the Debtor after the Petition Date (as
19 those capitalized terms are defined in the Stipulation), except for any claims for relief arising
20 under the Bankruptcy Code (including, without limitation, claims arising under 506(c), 544,
21 545, 547, 548, 549 and 550 of the Bankruptcy Code).

22 5. As more fully set forth in the Stipulation, the stay imposed by Section 362(a)
23 of the Bankruptcy Code is modified to the extent necessary to allow the filing and recording
24 of a copy of the Stipulation or any financing statements, notices of lien, mortgages, deeds of
25 trust or similar instruments evidencing the Pre-Petition Bondholder Replacement Liens, and
26 to permit the Debtor to make the payments provided for herein.

27 6. As more fully set forth in the Stipulation, the Pre-Petition Bondholder
28 Replacement Liens shall be deemed perfected as of the commencement of the Chapter 11

ORDER RE APPROVAL OF STIPULATION AUTHORIZING USE OF BONDHOLDERS' CASH COLLATERAL

1 Cases, shall not be subject to or pari passu with any lien or security interest existing as of the
2 Petition Date or granted or arising thereafter, other than the Senior Liens, if any, and, except
3 as otherwise specifically provided in the Stipulation, shall be valid and enforceable against
4 any trustee appointed in the Chapter 11 Case or in a subsequent proceeding upon the
5 conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code (as
6 those capitalized terms are defined in the Stipulation).

7 7. As more fully set forth in the Stipulation, as additional adequate protection for
8 the Debtor's use of the Cash Collateral, the Indenture Trustee and the Bondholders shall be
9 entitled to the continued payment of interest and sinking fund payments pursuant to the
10 provisions of the Indenture, including any accrued and unpaid interest and sinking fund
11 payments due and payable under the Indenture on or prior to the Petition Date (as those
12 capitalized terms are defined in the Stipulation).

13 8. As more fully set forth in the Stipulation, in the event and to the extent that
14 the use of the Cash Collateral results in a decrease in the value of the Indenture Trustee's
15 and the Bondholders' interest in the Cash Collateral after the Petition Date such that the
16 claim of the Indenture Trustee and the Bondholders fails to be fully secured notwithstanding
17 the other adequate protection provided in the Stipulation, the Indenture Trustee and the
18 Bondholders shall have allowed administrative expense claims pursuant to Section 507(b) of
19 the Bankruptcy Code, with priority in payment over all administrative expense claims and
20 unsecured claims against the Debtor now existing or hereinafter arising of any kind or
21 nature, other than the administrative expenses of any superseding Chapter 7 case (as those
22 capitalized terms are defined in the Stipulation).

23 9. As more fully set forth in the Stipulation, as additional adequate protection for
24 the Debtor's use of the Cash Collateral, the Indenture Trustee shall, subject to the following
25 procedures, be entitled to reimbursement by the Debtor, without the necessity of the filing of
26 fee applications or obtaining the prior approval of this Court with respect thereto, of all fees
27 provided under the Indenture and all reasonable costs and expenses incurred both before and
28 after the Petition Date, in connection with (i) the Indenture Trustee's and the Bondholders'

1 claims and liens and (ii) actions to preserve, protect and/or enforce the rights and remedies
2 under, and to administer, the Indenture, including reasonable counsel fees and
3 disbursements, filing fees, audit expenses, field examination expenses and reasonable fees
4 and disbursements of accountants and/or financial advisors. The Indenture Trustee shall
5 serve copies of its invoices and the invoices of any professionals retained by the Indenture
6 Trustee upon the Debtor, its counsel, counsel to the Committee and the United States
7 Trustee's Office. If any such party believes that all or a portion of the amounts reflected in
8 any invoice are unreasonable (an "Objecting Party"), such Objecting Party shall provide
9 written notice thereof to the Indenture Trustee or the applicable professional retained by the
10 Indenture Trustee within 20 days of receipt of the invoice in question (with a copy to the
11 Debtor and its counsel). Promptly after the expiration of such 20 day period, the Debtor
12 shall pay any undisputed portion of such invoices, and retain the balance thereof pending
13 resolution of any dispute with an Objecting Party, or, if any such dispute cannot be
14 consensually resolved, upon approval of any disputed portion by this Court. The payment of
15 any amounts to the Indenture Trustee or any professionals retained by the Indenture Trustee
16 pursuant to this paragraph are expressly subject to disallowance by this Court, and the
17 Indenture Trustee or such professional (as the case may be) shall promptly disgorge to the
18 Debtor any amounts so disallowed.

19 10. As more fully set forth in the Stipulation, for so long as the Debtor is
20 authorized to use the Cash Collateral pursuant to this Stipulation the Debtor shall not be
21 entitled to assert a claim under Section 506(c) of the Bankruptcy Code for any costs and
22 expenses incurred in connection with the preservation, protection, disposition or
23 enhancement of the Pre-Petition Collateral or the Post-Petition Collateral.

24 11. As more fully set forth in the Stipulation, any party in interest in this
25 bankruptcy case (other than the Debtor, who expressly waives its rights to do so as provided
26 in the Stipulation), including the Committee, must commence any adversary proceeding or
27 contested matter challenging the validity, enforceability or priority of the Pre-Petition
28 Indebtedness (including any claim by such party that the Pre-Petition Indebtedness should be

1 subordinated) or, to the extent they secure the Pre-Petition Indebtedness, the Indenture
2 Trustee's and the Bondholders' liens on or security interests in the Pre-Petition Collateral no
3 later than the date that is one hundred and twenty (120) days after entry of this Order, or, in
4 the case of any trustee or other fiduciary hereafter appointed in the Chapter 11 Case or in
5 any superseding Chapter 7 case as a legal representative of the Debtor or the Debtor's estate,
6 or any committee hereafter appointed in the Chapter 11 Case pursuant to Bankruptcy Code
7 Section 1102, the later of (a) ninety (90) days after the appointment of the applicable entity,
8 or (b) the date that is one hundred and twenty (120) days after entry of this Order (as those
9 capitalized terms are defined in the Stipulation).

10 12. Except as otherwise specifically provided in the Stipulation, the Stipulation
11 shall not prejudice any all rights, remedies, claims or causes of action which the Indenture
12 Trustee, any Bondholder or the Debtor may have against the other party to the Stipulation or
13 any third parties.

14 DATED: _____

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16 _____
17 HONORABLE DENNIS MONTALI
18 UNITED STATES BANKRUPTCY JUDGE

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