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7 PACIFIC GAS AND ELECTRIC COMPANY

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 In re
13 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
14 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

16 Federal I.D. No. 94-0742640

18 DEBTOR'S SUPPLEMENTAL BRIEF RE
MOTION FOR ORDER AUTHORIZING
19 (1) CONTINUED USE OF CASH COLLATERAL IN WHICH GAS
SUPPLIERS HAVE A BENEFICIAL INTEREST, AND
20 (2) INCURRENCE OF POST-PETITION
SECURED DEBT TO GAS SUPPLIERS

21 [SUPPORTING DECLARATION OF
22 KENT HARVEY SUBMITTED SEPARATELY]

23 Pacific Gas and Electric Company, the debtor and debtor in possession in the above-
24 captioned Chapter 11 case (the "Debtor" or "PG&E"), hereby submits its Supplemental
25 Brief re Motion For Order Authorizing: (1) Continued Use Of Cash Collateral In Which
26 Gas Suppliers Have A Beneficial Interest; and (2) Incurrence Of Post-Petition Secured Debt
27 To Gas Suppliers. By this Supplemental Brief, PG&E seeks to supplement its Memorandum
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1 of Points and Authorities (the "MPA") submitted in support of that motion, including
2 addressing certain issues raised by the Court at the preliminary hearing on that motion.

3 I.

4 **FACTUAL BACKGROUND**

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

9 2. On the Petition Date, PG&E filed its Emergency Motion For Orders:

10 (1) Authorizing Interim Use Of Cash Collateral In Which Gas Suppliers Have A Beneficial
11 Interest; (2) Authorizing Incurrence Of Post-Petition Secured Debt On An Interim Basis;
12 (3) Scheduling And Establishing Deadlines Relating To A Final Hearing On Continued Use
13 Of Cash Collateral And Incurrence Of Post-Petition Secured Debt; and (4) After Conclusion
14 Of A Final Hearing, Authorizing Continued Use Of Cash Collateral And Incurrence Of Post-
15 Petition Secured Debt (the "Motion").

16 3. A preliminary hearing on the Motion was held before the Court on April 9, 2001
17 (the "Preliminary Hearing").

18 4. On April 9, 2001, the Court issued its Order (a) authorizing PG&E to use cash
19 collateral in which certain gas suppliers (the "Suppliers") have a beneficial interest ("Cash
20 Collateral") pursuant to the terms set forth in the Motion for Use of Cash Collateral, pending
21 a final hearing on the Motion, which was scheduled for 9:30 a.m. on May 9, 2001 (the "Final
22 Hearing"), (b) directed PG&E to file and serve any further papers with respect to the Motion
23 by April 20, 2001, and (c) directed that any opposition to the Motion be filed and served no
24 later by May 4, 2001.

25 5. At the Preliminary Hearing, the Court requested that PG&E clarify certain issues
26 discussed in the MPA and address certain matters raised by the Court with respect to the
27 Motion in the additional papers to be submitted by PG&E. These matters are discussed
28 below.

1 6. As set forth in the MPA, in early February 2001, the Debtor entered into a Gas
2 Supplier Security Agreement with the Suppliers, granting a security interest in certain of the
3 Debtor's gas-related assets (collectively, the "Suppliers' Collateral"), in order to induce the
4 Suppliers to supply gas to the Debtor for its "Core Customers." Pursuant to the Gas Supplier
5 Security Agreement, the Suppliers' Collateral secures PG&E's respective payment
6 obligations (collectively, the "Secured Obligations") under its Master Gas Purchase and Sale
7 Agreements with such Suppliers for natural gas deliveries made on behalf of PG&E's Core
8 Customers. The Gas Supplier Security Agreement requires that the aggregate value of the
9 Suppliers' Collateral exceed the aggregate amount of the Secured Obligations at all times.
10 See Supplemental Declaration of Kent Harvey in Support of Supplemental Brief re Motion
11 For Order Authorizing: (1) Continued Use Of Cash Collateral In Which Gas Suppliers Have
12 A Beneficial Interest; and (2) Incurrence Of Post-Petition Secured Debt To Gas Suppliers
13 ("Harvey Decl."), ¶ 3.

14 7. The aggregate amount of the Secured Obligations and the aggregate value of the
15 Suppliers' Collateral vary on a daily basis based on ongoing gas deliveries and payments.
16 For purposes of illustrating the relative amount of the Secured Obligations and the value of
17 the Suppliers' Collateral, as of April 13, 2001, the amount of the Secured Obligations was
18 approximately \$233 million and the value of the Suppliers' Collateral was approximately
19 \$639 million. Harvey Decl., ¶ 4.

20 8. Pursuant to the Court's direction at the Preliminary Hearing, as reflected in the
21 proposed order granting the Motion (attached hereto as Exhibit 1 hereto), the replacement
22 lien that PG&E proposes to grant to the Suppliers with the same extent and priority as their
23 pre-petition lien, in collateral of the same type as the Suppliers' Collateral that PG&E
24 acquires after the Petition Date, is in an amount equal to the difference between the Cash
25 Collateral used by the Debtor after the Petition Date and the Cash Collateral paid to the
26 Suppliers after the Petition Date to satisfy the Debtor's obligations to the Suppliers pursuant
27 to the Gas Supplier Security Agreement.

28 9. For purposes of clarifying certain liabilities of PG&E discussed in the MPA,
SUPPLEMENTAL BRIEF RE MOTION FOR USE OF GAS SUPPLIERS' CASH COLLATERAL, ETC.

1 PG&E notes that the amounts set forth in the last paragraph of page 11 of the MPA reflect
2 estimated monthly expenses for power purchases from the CDWR and QFs, while the
3 amounts set forth in the second paragraph of page 12 of the MPA reflect estimated liabilities
4 (including both pre-petition and post-petition liabilities) expected to be owing to such parties
5 (and other electricity suppliers) as of April 30, 2001. For example, the \$340 million that is
6 estimated to be owed to the QFs as of April 30, 2001 (as set forth in the second paragraph of
7 page 12 of the MPA) includes an estimated \$200 million that will be owed for April 2001
8 power purchases and approximately \$140 million for unpaid pre-petition power purchases.

9 II.

10 CONCLUSION

11 For all of the foregoing reasons, PG&E respectfully requests that this Court make and
12 enter its order (in the form attached hereto as Exhibit 1) granting the Motion.

13 DATED: April 20, 2001

14 HOWARD
RICE
NEMEROVSKI
CANADY
FALK
&
RABKIN

15 Respectfully,

16 HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
A Professional Corporation

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18 By: James L. Lopes
for JAMES L. LOPES

19
20 Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

21 WD 042001/1-1419910/912138/v1

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12 In re
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14 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

15 Federal I.D. No. 94-0742640
17
18 ORDER ON DEBTOR'S MOTION FOR ORDER AUTHORIZING CONTINUED USE OF
19 CASH COLLATERAL IN WHICH GAS SUPPLIERS HAVE A BENEFICIAL INTEREST
AND INCURRENCE OF POST-PETITION SECURED DEBT TO GAS SUPPLIERS

20
21 The Court, having considered the Emergency Motion For Orders:

- 22 (1) Authorizing Interim Use Of Cash Collateral In Which Gas Suppliers Have A Beneficial
23 Interest; (2) Authorizing Incurrence Of Post-Petition Secured Debt On An Interim Basis;
24 (3) Scheduling And Establishing Deadlines Relating To A Final Hearing On Continued Use
25 Of Cash Collateral And Incurrence Of Post-Petition Secured Debt; and (4) After Conclusion
26 Of A Final Hearing, Authorizing Continued Use Of Cash Collateral And Incurrence Of Post-
27 Petition Secured Debt (the "Motion") submitted by Pacific Gas and Electric Company, the
28 debtor and debtor in possession in the above-captioned Chapter 11 case (the "Debtor" or

ORDER RE USE OF GAS SUPPLIERS' CASH COLLATERAL & POST-PETITION SECURED DEBT

EXHIBIT -1-1

1 "PG&E"), and papers submitted in support thereof, any opposition to the Motion, the record
2 in this case, and any admissible evidence presented to the Court at or prior to the hearing on
3 the Motion, hereby finds as follows:

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

6 B. The Debtor is unable to obtain the credit that the Suppliers provide pursuant
7 to the Gas Supplier Security Agreement on an unsecured basis allowable under Section
8 503(b)(1) of the Bankruptcy Code as an administrative expense (as those capitalized terms
9 are defined in the Motion).

10 C. There is good cause for granting the Motion.

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

12 1. The Motion is GRANTED as provided herein.

13 2. The Debtor is authorized to use Cash Collateral in which the Suppliers have a
14 beneficial interest pursuant to the provisions of the Gas Supplier Security Agreement in the
15 ordinary course of its business during the pendency of this bankruptcy case (as those
16 capitalized terms are defined in the Motion). For purposes of providing adequate protection
17 of the Suppliers' interests with respect to the Debtor's use of the Suppliers' Cash Collateral,
18 the Suppliers shall have a replacement lien (the "Suppliers' Replacement Lien") of the same
19 extent and priority in collateral of the same type as the Suppliers' Collateral that the Debtor
20 acquires after the Petition Date, in an amount equal to the difference between the Cash
21 Collateral used by the Debtor after the Petition Date and the Cash Collateral paid to the
22 Suppliers after the Petition Date to satisfy the Debtor's Secured Obligations to the Suppliers
23 pursuant to the Gas Supplier Security Agreement (as those capitalized terms are defined in
24 the Motion).

25 3. The Debtor is authorized to execute or cause to be executed all financing
26 statements or other similar documents as the Suppliers may reasonably request to evidence
27 the Suppliers' Replacement Lien, and the automatic stay under Section 362 of the
28 Bankruptcy Code is modified to permit the Debtor to take such action.

1 4. The Debtor is authorized to incur post-petition secured debt in favor of the
2 Suppliers that sell gas on credit to the Debtor pursuant to the Gas Supplier Security
3 Agreement (as those capitalized terms are defined in the Motion), and to continue
4 performing all of its obligations pursuant to the Gas Supplier Security Agreement (including
5 making payments with respect to Secured Obligations incurred for gas delivered prior to the
6 Petition Date) until the scheduled termination of the Gas Supplier Security Agreement, and
7 any extensions of the Gas Supplier Security Agreement to which the Debtor and any
8 Supplier may agree, without further order of this Court.

9 5. The reversal of modification on appeal of the authorization for the Debtor to
10 incur post-petition secured debt to the Suppliers, or the lien granted to the Suppliers as
11 contained in the immediately preceding paragraph shall not affect the validity of any such
12 debt incurred to or any such lien granted to any Supplier who extends such credit in good
13 faith (whether or not such Supplier knows of the pendency of such appeal) unless such
14 authorization and the incurring of such debt or the granting of such lien is stayed pending
15 appeal.

16 DATED: _____

17
18 _____
19 HONORABLE DENNIS MONTALI
20 UNITED STATES BANKRUPTCY JUDGE

21 WD 042001/1-1419910/c/911580/v2
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