

1 ADAM A. LEWIS (Bar No. 88736)
MORRISON & FOERSTER LLP
2 425 Market Street
San Francisco, CA 94105-2482
3 Telephone: (415) 268-7000
Fax: (415) 268-7522

50-275/323

4 LARREN M. NASHESKY (*Pro Hac Vice*)
5 MARK B. JOACHIM (*Pro Hac Vice*)
STEPHEN M. TANNENBAUM (*Pro Hac Vice*)
6 MORRISON & FOERSTER LLP
1290 Avenue of the Americas
7 New York, New York 10104
Telephone: (212) 468-8000
8 Facsimile: (212) 468-7900

9 Attorneys for El Paso Merchant Energy, L.P.

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

12 In re:
13 PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,
14
Debtor.
15
16 Federal I.D. No. 94-0742640

Case No. 01-30923 (DM)
Chapter 11
Date: May 9, 2001
Time: 9:30 a.m.
Place: Hon. Dennis Montali
235 Pine Street, 22nd Floor
San Francisco, CA 94104

17 RESPONSE OF EL PASO MERCHANT ENERGY, L.P. TO DEBTOR'S
18 EMERGENCY MOTION FOR ORDERS: (1) AUTHORIZING INTERIM
USE OF CASH COLLATERAL IN WHICH GAS SUPPLIERS HAVE
19 A BENEFICIAL INTEREST; (2) AUTHORIZING INCURRENCE
OR POST-PETITION SECURED DEBT ON AN INTERIM BASIS;
20 (3) SCHEDULING AND ESTABLISHING DEADLINES RELATING
TO A FINAL HEARING ON CONTINUED USE OF CASH COLLATERAL
21 AND INCURRENCE OF POST-PETITION SECURED DEBT; AND (4) AFTER CONCLUSION
OF A FINAL HEARING, AUTHORIZING CONTINUED USE OF CASH COLLATERAL AND
22 INCURRENCE OF POST-PETITION SECURED DEBT

23 El Paso Merchant Energy, L.P. ("El Paso"), one of the gas suppliers (collectively, the
24 "Suppliers") that hold a security interest in certain assets of Pacific Gas and Electric Company, a
25 California corporation, and a debtor and debtor-in-possession (the "Debtor") pursuant to that certain
26 Gas Supplier Security Agreement, dated on or about February 7, 2001, among the Debtor, the
27 Suppliers, and U.S. Trust Company, National Association, as collateral agent (in such capacity, the
28 "Agent") for the Suppliers (the "Gas Suppliers Security Agreement"), hereby submits its Response

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1 (this "Response") to the Debtor's Motion for Orders (1) Authorizing Interim Use of Cash Collateral
2 in which Gas Suppliers have a Beneficial Interest; (2) Authorizing Incurrence of Post-Petition
3 Secured Debt on an Interim Basis; (3) Scheduling and Establishing Deadlines Relating to a Final
4 Hearing on Continued Use of Cash Collateral and Incurrence of Post-Petition Secured Debt; and (4)
5 After Conclusion of a Final Hearing, Authorizing Continued Use of Cash Collateral and Incurrence
6 of Post-Petition Secured Debt (the "Cash Collateral Motion"). By this Response, El Paso does *not*
7 request that the Court prohibit the Debtor from using the Cash Collateral (as defined below). Rather,
8 El Paso respectfully requests that the Court, pursuant to Sections 363(c) and (e) of title 11 of the
9 United States Code (the "Bankruptcy Code"), condition the Debtor's use of the Cash Collateral on
10 the provision of "adequate protection" of the Agent's and the Suppliers' interests in the Cash
11 Collateral.

12 I. FACTUAL BACKGROUND

13
14 1. On April 6, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief
15 with this Court under Chapter 11 of the Bankruptcy Code (Case No. 01-30923 (DM) (the "Chapter 11
16 Case"). The Debtor is authorized to continue to operate its business and manage its property as a
17 debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

18 2. On the Petition Date, the Debtor filed the Motion. A preliminary hearing on the Cash
19 Collateral Motion was held before the Court on April 9, 2001 (the "Preliminary Hearing").

20 3. Counsel for certain of the Suppliers (including El Paso) appeared at the Preliminary
21 Hearing and consented to the Debtor's request for authority to use the Suppliers' cash collateral, on
22 an interim basis, pending a final hearing, which hearing was scheduled for 9:30 a.m. (prevailing
23 pacific coast time) on May 9, 2001 (the "Final Hearing").

24 4. No trustee or examiner has been appointed in the Chapter 11 Case nor has a request
25 for the appointment of a trustee or examiner been made. On April 11, 2001, the Office of the United
26 States Trustee appointed an official committee of unsecured creditors of the Debtor (the
27 "Committee") and the Committee retained counsel.

28

1 9. On or about April 12, 2001, the Debtor filed with the Court a proposed form of final
2 Order with respect to the Cash Collateral, which proposed form of order purports to adequately
3 protect the interests of the Agent and the Suppliers in the Cash Collateral. El Paso submits that the
4 Debtors' proposed form of order is wholly insufficient in that it does not provide the Agent and the
5 Suppliers with any of the protections, rights and remedies normally required to be provided to parties
6 with an interest in cash collateral.

7 10. In fact, the Debtor has filed with the Court a form of stipulation (the "Bondholder
8 Stipulation") that the Debtor proposes to enter into with BNY Western Trust Company, as Successor
9 Trustee (the "Indenture Trustee") pursuant to that certain indenture dated December 1, 1920 entered
10 into by the Debtor with respect to certain mortgage bonds (collectively, the "Bonds"). The
11 Bondholders claim an interest in, among other things, the same cash collateral in which the Agent
12 and the Suppliers hold an interest. The proposed Bondholder Stipulation, which the Debtor has
13 finalized with the Indenture Trustee, provides the Indenture Trustee and the Bondholders with many
14 of the usual and customary protections, rights, and remedies for a holder of an interest in cash
15 collateral.

16 11. Attached to this Response as Exhibit A is a draft proposed stipulation (the "Supplier
17 Stipulation") which El Paso has prepared. The Supplier Stipulation is substantially the same as the
18 Bondholder Stipulation (with some necessary conforming changes that are indicated in the black-
19 lined version attached hereto as Exhibit B). El Paso would consent to the Debtor's use of the Cash
20 Collateral if the Court enters an order approving the Supplier Stipulation.

21 12. El Paso submits that, given that the Indenture Trustee and the Bondholders, on the one
22 hand, and the Agent and the Suppliers, on the other hand, claim an interest in certain of the same cash
23 collateral, there is absolutely no reason why the Agent and Suppliers are not entitled to the same
24 protections being proposed for the Indenture Trustee and the Bondholders with respect to the
25 Debtor's use of that cash collateral. Moreover, even if the Debtor were not proposing to enter into
26 the Bondholder Stipulation with the Indenture Trustee, absent the protections, rights and remedies
27 provided for in the Supplier Stipulation, El Paso (and, upon information and belief, the Agent and the
28 other Suppliers) would object to the Debtor's use of the Cash Collateral.

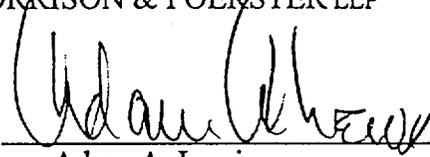
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III. CONCLUSION

For all of the foregoing reasons, El Paso respectfully requests that the Court enter an order authorizing and directing the Debtor to enter into the Supplier Stipulation and granting such other and further relief as the Court deems just and proper.

Dated: May 4, 2001

ADAM A. LEWIS
MORRISON & FOERSTER LLP

By:  _____

Adam A. Lewis

Attorneys for El Paso Merchant Energy, L.P.

PROOF OF SERVICE BY MAIL
FRCivP 5(b)

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

Response of El Paso Merchant Energy, L.P. to Debtor's Emergency Motion for Orders: (1) Authorizing Interim Use of Cash Collateral in Which Gas Suppliers Have a Beneficial Interest; (2) Authorizing Incurrence or Post-Petition Secured Debt on an Interim Basis; (3) Scheduling and Establishing Deadlines Relating to a Final Hearing on Continued Use of Cash Collateral and Incurrence of Post-Petition Secured Debt; and (4) After Conclusion of a Final Hearing, Authorizing Continued Use of Cash Collateral and Incurrence of Post-Petition Secured Debt

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

See attached Service List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 4th day of May, 2001.

Jeannie Baker-Sanders
(typed)

Jeannie Baker-Sanders
(signature)

California Power Exchange
Attn: Lynn Miller
2000 S. Los Robles Avenue
Suite 400
Pasadena, CA 91101-2482

California Power Exchange
Attn: Don Deach
100 S. Fremont Ave., Bldg. A9
Alhambra, CA 91803-4737

Ben Whitwell
Whitwell & Emhoff LLP
202 N. Canon Drive
Beverly Hills, California 90210

California Public Utilities Comm.
Attn: General Counsel
505 Van Ness Avenue
San Francisco, CA 94102

California Public Utilities Comm.
Alan Kornberg, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064
(Attorney for California Public Utilities
Commission)

Secretary of Treasury
15th & Pennsylvania Avenue
Washington, D.C. 20549

Securities Exchange Commission
Attn: Sandra W. Lavigna
5670 Wilshire Blvd., 11th Fl.
Los Angeles, CA 90036

California State Board of Equalization
PO Box 942879
Sacramento, CA 94279-8063

Department of Justice
U.S. Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

Joseph A. Eisenberg, Esq.
Jeffer, Mangels, Butler & Marmaro
2121 Avenue of the Stars, 10th Fl.
Los Angeles, CA 90067
(Attorney for California Power Exchange)

Fernando De Leon
Attorney at Law
California Energy Commission
1516 9th Street, MS-14
Sacramento, California 95814

California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, California 95833

Louis Renne
City Attorney
City and County of San Francisco,
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Internal Revenue Service
Fresno, CA 93888

Internal Revenue Service
Spec Proc / Bankruptcy
1301 Clay Street, Suite 1400
Oakland, CA 94612

Steve Johnson
Office of the U.S. Trustee
250 Montgomery Street, Suite 1000
San Francisco, CA 94104-3401

Region IV
U.S. Nuclear Regulatory Commission
Ellis W. Mershoff
Regional Administrator
611 Ryan Plaza Drive, suite 400
Arlington, TX 76011-8064

Mike R. Jaske
California Energy Commission
1516 Ninth Street, MS-22
Sacramento, California 95814

Mr. David Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1-A
Washington, DC 20246

State of California EDD
PO Box 826880
Sacramento, CA 94280

State of California
Office of the Attorney General
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102-3664

State of California
Dept. of Water Resources
c/o Chief – Energy Division
Attn: Dan Herdocia
1416 9th Street, Room 1640
Sacramento, CA 95814

Securities Exchange Commission
Attn: Sandra W. Lavigna
1416 9th Street, Room 1640
Sacramento, CA 95814

State of California
Office of the Attorney General
PO Box 94255
Sacramento, CA 94244-2550

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Steven H. Felderstein, Esq.
Felderstein, Willoughby & Pascuzzi
400 Capital Mall, Suite 1450
Sacramento, CA 95814-4434
(Attorney for State of California)

Franchise Tax Board
PO Box 942857
Sacramento, CA 94257-2021

California Independent System Operator
Attn: William Regan
4151 Blue Ravine Rd.
Folsom, CA 95630

Richard Wyron
Swidler Berlin Shereff Friedman LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
[Attorney for California Independent System
Operator]

David Neale
Levene, Neale, Bender, Rankin Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, California 90067
[Attorney for California Independent System
Operator]

Robert M. Blum
Thelen Reid & Priest LLP
101 Second Street, Suite 1800
San Francisco, California 94105
[Counsel for Davey Tree Surgery Company]

Don Gaffney
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004
[Counsel for Arizona Public Service Co.]

Bank of America
Attn: Clara Strand
555 South Flower Street
Mail Code CA9-706-11-21
Los Angeles, CA 90071

Bryant Danner
Southern California Edison
2244 Walnut Grove Ave.
Rosemead, CA 91770

Banque Nationale de Paris
San Francisco Branch
Attn: Debra Wright
180 Montgomery St., 4th Floor
San Francisco, CA 94104

Bank of America, Admin. Agent
Attn: Katherine Kemerait
Bank of America
555 California Street, 12th Floor
San Francisco, CA 94104-1502

Bank of America National Trust and Savings
Association
CA5-705-12-10
Attn: Adeline Tourunian
555 California Street, 12th Floor
San Francisco, CA 94104

Bank of America National Trust and Savings
Association
Attn: Peggie Sanders
1850 Gateway Boulevard
Concord, CA 94520

Bank One
Corporate Trust Administration
Attn: Janice Ott Rotunno
Mail Code IL1-0126
1 Bank One Plaza
Chicago, IL 60670-0126

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

White & Case, LLP
Attn: Neil Millard
633 West Fifth St., Suite 1900
Los Angeles, CA 90071-2007
(Attorney for Bank of New York)

Bankers Trust Company
Corporate Trust Services
Attn: Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

Bankers Trust Co. of California, NA
Structured Finance Group
Attn: Peter Becker
4 Albany St., 10th Floor
New York, NY 10006

The Bank of New York
Attn: Michael Pitflick, Corp. Trust Administration
101 Barclay Street – 21W
New York, NY 10286

BMO Nesbitt Burns
Attn: John Harche
700 Louisiana, Suite 4400
Houston, TX 77002

Deutsche Bank AG
New York Branch
Attn: E.S. Medla
31 West 52nd Street
New York, NY 10019

Deutsche Bank AG
New York Branch
Attn: John Quinn
31 West 52nd Street
New York, NY 10019

MBIA Insurance Corporation
Attn: IPM-PCF
113 King Street
Armonk, NY 10504

Mellon Bank, N.A.
Attn: L. Scott Sommers
400 So. Hope Street, 5th Floor
Los Angeles, CA 90071-2806

Merrill Lynch
Attn: Ahi Aharon
World Financial Ctr., North Tower
250 Vesey Street, 10th Floor
New York, NY 10281-1310

Morgan Guaranty Trust Company of New York
Attn: Carl J. Mehdau
60 Wall Street
New York, NY 10260

Rabobank Nederland
New York Branch
Attn: International Trade Services
245 Park Avenue
New York, NY 10167-0062

Rabobank Nederland
Attn: Tamira Treffers-Herrera
Three Embarcadero Center
Suite 930
San Francisco, CA 94111

The Fuji Bank, Limited
Attn: Jonathan Bigelow
333 So. Hope Street, 39th Floor
Los Angeles, CA 90071

KBC Bank
Attn: Daniel To
515 So. Figueroa St., Suite 1920
Los Angeles, CA 90071

Bryan Karkauer, Esq.
Sidley & Austin
One First National Plaza
Chicago, IL 60603
(Attorney for Bank of America, Admin. Agent)

The Sumitomo Bank Ltd.
Attn: Al Galluzzo
777 S. Figueroa St., Suite 2600
Los Angeles, CA 90017-3138

The Toronto Dominion Bank
Attn: F.B. Hawley
909 Fannin, Suite 1700
Houston, TX 77010

Union Bank of Switzerland
New York Branch
Attn: Paul Morrison
299 Park Avenue
New York, NY 10171

U.S. Bank
Corporate Trust Services
Attn: LaDonna Morrison
180 East Fifth St., 3rd Floor
St. Paul, MN 55170

U.S. Trust Company, National Association
One Embarcadero Center, Suite 2050
San Francisco, CA 94111-3709
Attn: Josephine Libunao

BP Energy Company
501 Westlake Park Boulevard
Houston, Texas 77079
Attn: Ken McClanahan

Dynergy Canada Marketing & Trade
350 – 7th Avenue S.W.
Calgary, Alberta
Canada, T2P 3N9
Attn: Steve Barron

Coast Energy Canada Inc.
444-7th Avenue S.W., Suite 700
Calgary, Alberta
Canada T2P 0X8
Attn: Caroline Pitre

Coast Energy Group, A Division of Cornerstone
Propane, L.P.
1600 Highway 6, Suite 400
Sugarland, TX 77478
Attn: Ruben Alonso

Cook Inlet Energy Supply
10100 Santa Monica Blvd., 25th Floor
Los Angeles, CA 90067
Attn: Hans O. Saeby

Dynergy Marketing & Trade
1100 Louisiana Street, Suite 5800
Houston, Texas 77002
Attn: Steve Barron

Robert A. Greenfield, Esq.
Stutman, Treister & Glatt
3699 Wilshire Blvd., #900
Los Angeles, CA 90010-2766

Texaco Canada Petroleum Inc.
2035 400 3rd Avenue, S.W.
Calgary, Alberta
Canada T2P 4H2
Attn: Bill Collier

ICC Energy Corporation
302 N. Market Street, Suite 500
Dallas, TX 75202-1846
Attn: Karl Butler

PanCanadian Energy Services Inc.
1200 Smith Street, Suite 900
Houston, TX 77002
Attn: Brian Redd

Southern California Gas Company
555 W. Fifth St.,
GT24E1
Los Angeles, CA 90013-1000
Attn: Jim Nakata

Texaco Natural Gas Inc.
1111 Bagby Street
Houston, Texas 77002
Attn: Bill Collier

TXU Energy Trading Canada Limited
1717 Main Street
Dallas, Texas 75201
Attn: Jeff Shorter

TXU Energy Trading Company
1717 Main Street
Dallas, Texas 75201
Attn: Jim Macredie

Williams Energy Marketing & Trading Co.
One Williams Center, 19th Floor
Department 558
P.O. Box 2848
Tulsa, Oklahoma 74172
Attn: Kelly Knowlton

Williams Energy Marketing & Trading Co.
(Canada)
One Williams Center, 19th Floor
Department 558
P.O. Box 2848
Tulsa, Oklahoma 74101
Attn: Kelly Knowlton

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Attn: Chaim J. Fortgang, Esq.
Richard G. Mason, Esq.
[Counsel for Unofficial Committee of Pacific Gas
& Electric Company First Mortgage Bondholders]

Richard A. Lapping
Louis J. Cisz, III
Thelen Reid & Priest LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3601
[Counsel for Creditor, Calpine Corporation and its
Affiliated Entities]

Keith R. Marshall
U.S. Bank
550 So. Hope Street, Suite 500
Los Angeles, California 90071
[Official Committee Of Unsecured Creditors]

David T. Biderman
Perkins Coie LLP
1620 26th Street, Sixth Floor
Santa Monica, CA 90404-4013
[Counsel for Bank of Montreal]

James E. Till, Esq.
Perkins Coie LLP
1211 SW Fifth Ave., Suite 1500
Portland, OR 97204
[Counsel for Bank of Montreal]

Michael E. Lurie
Merrill Lynch
: World Financial Center, #7
New York, NY 10281
Official Committee Of Unsecured Creditors]

Pillsbury Winthrop LLP
50 Fremont Street
San Francisco, CA 94105
Attn: Phillip S. Warden, Esq.
[Counsel to Parties in Interest: Dynergy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II, LLC, Dynergy Marketing & Trade LLC and West Coast Power, LLC]

Pillsbury Winthrop LLP
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Attn: Kenneth N. Russak, Esq.
[Counsel to Parties in Interest: Dynergy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II, LLC, Dynergy Marketing & Trade LLC and West Coast Power, LLC]

Marc S. Cohen
Jeffrey A. Krieger
Greenberg Glusker Fields Claman Machtinger & Kinsella
1900 Avenue of the Stars, Suite 2100
Los Angeles, California 90067
[Counsel for Official Committee of Participants' Creditors Claims]

Hydee R. Feldstein
Katherine A. Traxler
Kelly Aran
Paul, Hastings, Janofsky & Walker LLP
Twenty Third Floor
555 South Flower Street
Los Angeles, California 90071
[Counsel for Constellation Power Source, Inc.]

Phillip S. Warden
Pillsbury Winthrop LLP
50 Fremont Street
San Francisco, California 94105
[Counsel for Dynergy Power Marketing, Inc.; El Segundo Power LLC; Long Beach Generation LLC; Cabrillo Power I LLC; Cabrillo Power II, LLC; Dynergy Marketing & Trade LLC; West Coast LLC]

Kenneth N. Russak
Pillsbury Winthrop LLP
725 South Figueroa Street, Suite 2800
Los Angeles, California 90017
[Counsel for Dynergy Power Marketing, Inc.; El Segundo Power LLC; Long Beach Generation LLC; Cabrillo Power I LLC; Cabrillo Power II, LLC; Dynergy Marketing & Trade LLC; West Coast LLC]

Chaim J. Fortgang
Richard G. Mason
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
[Counsel for Unofficial Committee of PG&E First Mortgage Bondholder]

Richard W. Esterkin
Morgan, Lewis & Bockius LLP
300 South Grand Avenue
Los Angeles, California 90071
[Counsel for Fuji Bank, Limited]

David A. Gill
Richard K. Diamond
Danning, Gill, Diamond & Kollitz LLP
2029 Century Park East, Third Floor
Los Angeles, California 90067
[Counsel for Interested Party, Department of Water
and Power]

Bruce Bennett, Esq.
Bennett J. Murphy, Esq.
Hennigan & Bennett
601 South Figueroa St., Suite 3300
Los Angeles, California 90017
[Counsel for Sempra]

Thomas B. Walper, Esq.
Munger, Tolles & Olson LLP
355 South Grand Ave., Suite 3500
Los Angeles, CA 90071-1560
[Counsel for Southern California Edison]

Seth A. Ribner
Senior Counsel
Simpson Thacher & Bartlett
10 Universal City Plaza, Suite 1850
Los Angeles, California 91608

John T. Hansen
Deborah H. Beck
Nossaman, Guthner, Knox & Elliott
50 California Street, 34th Floor
San Francisco, California 94111
[Counsel for Committee of PG&E Retirees and
Survivors]

Peter J. Gurfein
Jeffrey C. Kraus
Gregory K. Jones
Akin, Gump, Strauss, Hauer & Feld
2029 Century Park East, Suite 2600
Los Angeles, California 90067
[Counsel for Creditor, Salton Sea Power
Generation]

G. Larry Engel
Roberto J. Kampfner
Brobeck, Phleger & Harrison LLP
One Market
Spear Street Tower
San Francisco, California 94105
[Counsel for City of Palo Alto and its municipality
utility]

Steve G. F. Polard
Perkins Coie LLP
1620-26th Street, Sixth Floor
Santa Monica, California 90404
[Counsel for Creditor Puget Sound Energy, Inc.]

William Weintraub
Pachulski Stang Ziehl Young & Jones
Three Embarcadero Center, Suite 1020
San Francisco, California 94111
[Counsel for PG&E Corp.]

Elaine M. Seid
McPharlin, Sprinkles & Thomas LLP
10 Almaden Boulevard, Suite 1460
San Jose, California 95113
[Counsel for City of Santa Clara]

Gary S. Bush, V.P.
The Bank of New York
Corporate Trust-Default Admin Group
101 Barclay Street, Floor 21W
New York, NY 10286
[Official Committee Of Unsecured Creditors]

Evan C. Hollander
Member
White & Case
1155 Avenue of the Americas
New York, New York 10036-2787
[Counsel for BNY Western Trust Company]

Jim Hinrichs
KES Kingburg L.P.
1210 Savoy Street
San Diego, California 92107
[Official Committee Of Unsecured Creditors]

Michael A. Tribolet
Enron Corp. & Affiliates
1400 Smith Street, EB 2855
Houston, TX 77002
[Official Committee Of Unsecured Creditors]

John C. Herbert
Dynergy Power Marketing Inc.
1000 Louisiana Street, Suite 5800
Houston, TX 77002
[Official Committee Of Unsecured Creditors]

Grant Kolling
City of Palo Alto
250 Hamilton Avenue
P.O. Box 10250
Palo Alto, California 94303
[Official Committee Of Unsecured Creditors]

Tom Milne
State of Tennessee
11th Floor, Andrew Jackson Building
Nashville, TN 37243
[Official Committee Of Unsecured Creditors]

David E. Adante
The Davey Tree Co.
1500 North Maniva
Kent, OH 44240
[Official Committee Of Unsecured Creditors]

Clara Strand
Bank of America, N.A.
CA9-706-11-21
555 South Flower Street, 11th Floor
Los Angeles, California 90071
[Official Committee Of Unsecured Creditors]

David A. Burns
Baker Botts LLP
One Shell Plaza
910 Louisiana
Houston, TX 77002
[Counsel for Reliant Energy, Inc.]

William Bates III
McCutchen, Doyle, Brown & Enersen, LLP
3150 Porter Drive
Palo Alto, California 94304
Tel: 650/849-4400
Fax: 650/849-4800
[Counsel for Reliant Energy, Inc.]

Robert S. Mueller, III
United States Attorney
Jay R. Weill
Asst. United States Attorney
Thomas MacKinson
160 Spear Street, Ninth Floor
San Francisco, California 94105
[Counsel for the United States of America]

Mark Finnemore
Internal Revenue Service
Small Business/Self-Employed Division Counsel
160 Spear Street, 9th Floor
San Francisco, California 94105

Richard C. Josephson
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
[Counsel for PacifiCorp and Crockett Cogen.]

Randy E. Michelson
McCutchen, Doyle, Brown & Enersen, LLP
Three Embarcadero Center
San Francisco, California 94111
[Counsel for Reliant Energy, Inc.]

Merle C. Meyers
Katherine D. Ray
Goldberg, Stinnett, Meyers & Davis
44 Montgomery Street, Suite 2900
San Francisco, California 94104
[Counsel for Modesto Irrigation District]

Thomas MacKinson
Internal Revenue Service
Small Business/Self-Employed Division
1301 Clay Street, Room 1400-S
Oakland, California 94105

Harold L. Kaplan
Jeffrey M. Schwartz
Mark F. Hebbeln
Gardner, Carton & Douglas
321 North Clark Street, 34th Floor
Chicago, IL 60610
[Counsel for Indenture Trustee for 7.90%
Deferrable Interest Subordinated Debendures
Series A]

Kevin K. Haah
Ervin, Cohen & Jessup LLP
9401 Wishire Boulevard, 9th Floor
Beverly Hills, California 90212
[Counsel for Ronald A. Katz Technology
Licensing L.P.]

Michael H. Ahrens, Esq.
Sheppard, Mullin
4 Embarcadero Center, 17th Floor
San Francisco, California 94111

James L. Lopes, Esq.
Jeffrey L. Schaffer, Esq.
Janet A. Nexon, Esq.
Howard, Rice, Nemerovski,
 Canady, Falk & Rabkin
3 Embarcadero Center, 7th Floor
San Francisco, California 94111-4065

Paul S. Aronzon, Esq.
Robert J. Moore, Esq.
Milbank, Tweed, Hadley & McCloy
601 South Figueroa Street, 30th Fl
Los Angeles, California 90017

William H. Kiekhofer III
Kelley Drye & Warren LLP
777 South Figueroa Street
Suite 2700
Los Angeles, CA 90017

1 ADAM A. LEWIS (Bar No. 88736)
MORRISON & FOERSTER LLP
2 425 Market Street
San Francisco, CA 94105-2482
3 Telephone: (415) 268-7000
Fax: (415) 268-7522

4 LARREN M. NASHESKY (*Pro Hac Vice*)
5 MARK B. JOACHIM (*Pro Hac Vice*)
STEPHEN M. TANNENBAUM (*Pro Hac Vice*)
6 MORRISON & FOERSTER LLP
1290 Avenue of the Americas
7 New York, New York 10104
Telephone: (212) 468-8000
8 Facsimile: (212) 468-7900

9 Attorneys for El Paso Merchant Energy, L.P.

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

12 In re:)	Case No. 01-30923 (DM)
)	Chapter 11 Case
13 PACIFIC GAS AND ELECTRIC COMPANY,)	
a California corporation,)	<u>HEARING</u>
)	Date: May 9, 2001
14 Debtor.)	Time: 9:30 a.m.
)	Place: 235 Pine Street, 22nd Floor
)	San Francisco, California
16 Federal I.D. No. 94-0742640)	

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

20 This Stipulation (the "Stipulation") is made by and among Pacific Gas and Electric
21 Company, a California corporation, and a debtor and debtor-in-possession (the "Debtor"), the Agent
22 (as defined below), and certain gas suppliers (the "Suppliers") that hold a security interest in certain
23 of the Debtor's assets (the "Suppliers' Pre-Petition Collateral") pursuant to that certain Gas Supplier
24 Security Agreement, dated as of February ___, 2001, among the Debtor, the Suppliers, and U.S. Trust
25 Company, National Association, as collateral agent for each of the Suppliers (in such capacity, the
26 "Agent") (the "Gas Supplier Security Agreement").

1 **WHEREAS:**

2 A. On April 6, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for
3 relief with this Court under Chapter 11 of the Bankruptcy Code (Case No. 01-30923 (DM) (the
4 "Chapter 11 Case"). The Debtor is authorized to continue to operate its business and manage its
5 property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

6 B. Also on the Petition Date, the Debtor filed an emergency motion for authority
7 to use the Suppliers' cash collateral (the "Cash Collateral Motion"). A preliminary hearing on the
8 Cash Collateral Motion was held before the Court on April 9, 2001 (the "Preliminary Hearing").

9 C. Counsel for certain of the Suppliers appeared at the Preliminary Hearing and
10 consented to the Debtor's request for authority to use the Suppliers' cash collateral, on an interim
11 basis, pending a final hearing, which hearing was scheduled for 9:30 a.m. (prevailing pacific coast
12 time) on May 9, 2001 (the "Final Hearing").

13 D. No trustee or examiner has been appointed in the Chapter 11 Case nor has a
14 request for the appointment of a trustee or examiner been made. On April 11, 2001, the Office of the
15 United States Trustee appointed an official committee of unsecured creditors of the Debtor (the
16 "Committee") and the Committee retained counsel.

17 E. The Debtor admits (without prejudice to the rights of any third party acting on
18 its own behalf or derivatively through the Debtor in accordance with paragraph 17) that, (i) as of the
19 Petition Date it owed an aggregate amount of approximately \$[] million to the Suppliers
20 on account of the Debtor's Master Gas Purchase and Sale Agreements with the Suppliers
21 (collectively, the "Master Gas Purchase Agreements") for natural gas deliveries made on behalf of
22 the Debtor's Core Customers (as defined in the Gas Supplier Security Agreement), (ii) such payment
23 obligations are secured by at least a second-priority security interest and lien upon the Suppliers' Pre-
24 Petition Collateral (as more fully described in the Gas Supplier Security Agreement), and (iii) as of
25 the Petition Date, the value of the Suppliers' Pre-Petition Collateral was approximately \$[]
26 million.

27 F. As of the Petition Date, the Debtor was indebted to the Agent and the Suppliers
28 in the aggregate sum of not less than \$[] million plus additional interest, costs,

1 fees and expenses thereon as provided in the Master Gas Purchase Agreements and the Gas Supplier
2 Security Agreement (the "Pre-Petition Indebtedness"). Without prejudice to the rights of any third
3 party acting on its own behalf or derivatively through the Debtor in accordance with paragraph 17,
4 the Debtor (a) admits, after due inquiry, the legality, validity and enforceability of the Pre-Petition
5 Indebtedness owing to the Agent and the Suppliers and (b) admits, after due inquiry, that the security
6 interests and liens held by the Agent and the Suppliers in and upon the Suppliers' Collateral (the
7 "Pre-Petition Suppliers' Liens") are duly perfected, legal, valid, binding and enforceable, at least,
8 second-priority liens and security interests on the Suppliers' Pre-Petition Collateral, not subject to
9 claim, avoidance defense, objection, action, counterclaim, setoff, recoupment or subordination under
10 the Bankruptcy Code or applicable non-bankruptcy law, except that such liens and security interests
11 are junior and subordinated to any pre-existing validly perfected and unavoidable liens and security
12 interests that were senior to the Pre-Petition Suppliers' Liens as of the Petition Date (the "Senior
13 Liens").

14 G. Without prejudice to the rights of any third party acting on its own behalf or
15 derivatively through the Debtor in accordance with paragraph 17, the Debtor further admits, after due
16 inquiry, (i) that the Suppliers' Pre-Petition Collateral includes, without limitation, certain accounts
17 receivable of the Debtor and related documents, instruments and chattel paper evidencing such
18 accounts receivable, whenever acquired, as well as (subject to the Senior Liens) all proceeds of the
19 Suppliers' Pre-Petition Collateral, whether existing before or after the commencement of the Chapter
20 11 Case, which items constitute the Agent's and the Suppliers' cash collateral within the meaning of
21 Section 363(a) of the Bankruptcy Code (the "Cash Collateral") and (ii) that the Agent and the
22 Suppliers are entitled, pursuant to Sections 361 and 363 of the Bankruptcy Code, to adequate
23 protection of their interests in the Cash Collateral, including adequate protection for any diminution
24 in the value of the Cash Collateral.

25 H. If not authorized to use the Cash Collateral, the Debtor will be unable to
26 purchase electricity and gas, meet its payroll or the other obligations necessary to operate its business.
27 The Debtor's need to access the Cash Collateral is immediate. In the absence of the proposed use of
28 the Cash Collateral, serious and irreparable harm will occur.

1 I. The Agent and the Suppliers will not consent to the use of the Cash Collateral
2 absent the approval of the terms and conditions set forth herein.

3 [J. The value of the Suppliers' Pre-Petition Collateral is greatly in excess of the
4 amount of the Pre-Petition Indebtedness. As such, the Debtor asserts that the Agent and the Suppliers
5 are entitled to their post-petition costs, fees and expenses, including reasonable attorneys fees and
6 costs, pursuant to the Master Gas Purchase Agreements and the Gas Supplier Security Agreement, as
7 provided by Section 506(b) of the Bankruptcy Code.]

8 K. The proposed use of the Cash Collateral has been negotiated in good faith and
9 at arms' length among the Debtor, the Agent and the Suppliers, with all parties represented by
10 counsel.

11 L. The proposed use of the Cash Collateral is fair and reasonable, reflects the
12 Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and is supported
13 by reasonably equivalent value and fair consideration.

14 M. Pursuant to the Bankruptcy Code, the Debtor is required to provide adequate
15 protection to the Agent and the Suppliers in respect and to the extent of, inter alia, any diminution of
16 the value of the Cash Collateral. Subject to paragraphs 12 and 18 of this Stipulation, the protections
17 provided pursuant to the terms and conditions of this Stipulation shall be deemed to constitute
18 adequate protection of the interests of the Agent and the Suppliers in the Cash Collateral for so long
19 as the Debtor shall be entitled to use the Cash Collateral pursuant to this Stipulation.

20 IT IS HEREBY STIPULATED, CONSENTED AND AGREED that:

21 Authorization

22 1. This Stipulation has no force or effect and the Debtor is not authorized to use
23 any of the Cash Collateral, unless and until this Stipulation is approved by the Court.

24 2. The Debtor shall use the Cash Collateral only on the terms and subject to the
25 conditions set forth in this Stipulation, the Master Gas Purchase Agreements and the Gas Supplier
26 Security Agreement. Notwithstanding the termination of the Debtor's authority to use the Cash
27 Collateral hereunder, all liens, priorities, rights and remedies provided to the Agent and the Suppliers
28 in this Stipulation shall survive such termination and remain in full force and effect with respect to

1 the Pre-Petition Indebtedness, and any other claims and obligations arising under the Gas Supplier
2 Security Agreement, the Master Gas Purchase Agreements or this Stipulation (including, without
3 limitation, the Post-Petition Indebtedness (as defined in paragraph 5 hereof), outstanding on such
4 termination date.

5 3. Notwithstanding anything herein to the contrary, no Cash Collateral may be
6 used to investigate, object to or contest in any manner, or otherwise challenge, this Stipulation, the
7 validity, perfection, priority or enforceability of the Pre-Petition Indebtedness or any liens or security
8 interests securing the Pre-Petition Indebtedness; provided, however, that the Committee may utilize
9 the Cash Collateral to investigate any such matters up to and including the point of formal discovery,
10 including, without limitation, any examination or request for production of documents pursuant to
11 Federal Rule of Bankruptcy Procedure 2004.

12 Acknowledgement of Claims, Liens and Security Interests

13 4. The Debtor has acknowledged and agreed (without prejudice and subject to the
14 rights of any third party acting on its own behalf or derivatively through the Debtor or its estate in
15 accordance with paragraph 17) for all purposes that as of the Petition Date: (a) the Pre-Petition
16 Indebtedness constituted legal, valid, binding and enforceable obligations of the Debtor, (b) the
17 amount of the Pre-Petition Indebtedness due and payable to the Agent and the Suppliers as of the
18 Petition Date is not less than \$[] million, being the amount due to the Agent and the Suppliers
19 according to the books and records of the [Agent/Debtor] as of the Petition Date, (c) the liens and
20 security interests of the Agent and the Suppliers upon the Pre-Petition Suppliers' Collateral are legal,
21 valid, binding, perfected and enforceable, not subject to claim, avoidance, defense, objection, action,
22 counterclaim, setoff, recoupment or subordination, except that such liens and security interests are
23 junior and subordinate to the Senior Liens, if any, (d) the Agent's and the Suppliers' pre-petition
24 claims against the Debtor and the estate of the Debtor with respect to the Pre-Petition Indebtedness
25 are allowed and are valid and enforceable, not subject to claim, avoidance, defense, objection, action,
26 counterclaim, setoff, recoupment or subordination, in the amount of the Pre-Petition Indebtedness,
27 and (e) the Debtor does not possess, may not assert and has waived any claim, objection, action,
28 counterclaim, setoff, recoupment or defense of any kind or nature which could in any way affect the

1 validity, priority, enforceability and nonavoidability of the Pre-Petition Indebtedness or the liens and
2 security interests of the Agent and the Suppliers upon the Pre-Petition Suppliers' Collateral or which
3 would reduce or affect the obligation of the Debtor to pay the Pre-Petition Indebtedness.

4 Liens, Reduction in Indebtedness, etc.

5 5. To the extent that, inter alia, the use of the Cash Collateral results in a decrease
6 in the value of the Agent's and the Suppliers' interest in the Cash Collateral, and as adequate
7 protection for the use by the Debtor of the Cash Collateral, the Agent on its own behalf and on behalf
8 of the Suppliers shall have and is hereby granted (effective upon the date of this Stipulation and
9 without the necessity of the execution by the Debtor, or filing, of security agreements, pledge
10 agreements, mortgages, financing statements or otherwise) a lien and security interest of the same
11 extent, priority and validity as the Pre-Petition Suppliers' Liens on all property of the same type and
12 kind as the Pre-Petition Suppliers' Collateral acquired by the Debtor after the Petition Date, except
13 for any claims for relief arising under the Bankruptcy Code (including, without limitation, claims
14 arising under 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code). In addition, in
15 accordance with Section 3(i) of the Gas Supplies Security Agreement, if, at any time, the value of the
16 Suppliers' Pre-Petition Collateral and the collateral granted to the Suppliers in the immediately
17 preceding sentence is less than the aggregate amount of (x) the Pre-Petition Indebtedness and (y) any
18 other claim existing subsequent to the Petition Date under the Master Gas Purchase Arguments and
19 the Gas Supplier Security Agreement (the "Post-Petition Indebtedness"), then as further adequate
20 protection for the use by the Debtor of the Cash Collateral, the Agent on its own behalf and on behalf
21 of the Suppliers shall have and is hereby granted (effective upon the date of this Stipulation and
22 without the necessity of the execution by the Debtor, or filing, of security agreements, pledge
23 agreements, mortgages, financing statements or otherwise) a lien and security interest of the same
24 extent, priority and validity as the Pre-Petition Suppliers' Liens on the inventory of Natural Gas (as
25 defined in the Gas Supplier Security Agreement) owned by the Debtor and designated for Core
26 Customers (as defined in the Gas Supplier Security Agreement). In accordance with Section 3(j) of
27 the Gas Supplier Security Agreement, if, at any time, the value of the Suppliers' Pre-Petition
28 Collateral and the collateral granted to the Suppliers in this paragraph 5 is less than the aggregate

1 amount of (x) the Pre-Petition Indebtedness and (y) the Post-Petition Indebtedness, then the Debtor
2 shall pay the Post-Petition Indebtedness, reducing the Post-Petition Indebtedness to each Supplier on
3 a pro rata basis, until the aggregate amount of the Pre-Petition Indebtedness and the Post-Petition
4 Indebtedness is at least equal to the value of the Suppliers' Pre-Petition Collateral and the collateral
5 granted to the Suppliers in this paragraph 5.

6 6. The liens and security interests provided to the Agent and the Suppliers herein
7 are collectively referred to as the "Pre-Petition Suppliers' Replacement Liens" and the property
8 securing the Pre-Petition Suppliers' Replacement Liens is hereinafter referred to as the "Post-Petition
9 Suppliers' Collateral". The Pre-Petition Suppliers' Replacement Liens shall be deemed perfected as
10 of the commencement of the Chapter 11 Case, shall not be subject to or pari passu with any lien or
11 security interest existing as of the Petition Date or granted or arising thereafter, other than the Senior
12 Liens, if any, and except as otherwise specifically provided in this Stipulation, shall be valid and
13 enforceable against any trustee appointed in the Chapter 11 Case or in a subsequent proceeding upon
14 the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code. No lien or
15 security interest in any property of the Debtor granted or arising on or after the Petition Date
16 (including, without limitation, liens and security interests, if any, granted in favor of any federal,
17 state, municipal or other governmental unit, commission, or board for any liability of the Debtor)
18 shall be created or permitted to be pari passu with, or senior to, the liens and security interests of the
19 Agent and the Suppliers in the Pre-Petition Suppliers' Collateral, or the Pre-Petition Suppliers'
20 Replacements Liens, except as granted to any holder of a Senior Lien, or as expressly agreed in
21 writing by the Agent and the Suppliers, which agreement shall not be implied.

22 7. Without the necessity of the filing of financing statements, mortgages or other
23 documents, this Stipulation shall be sufficient evidence of the Agent's and the Supplier's perfected
24 liens on and security interests in all Post-Petition Suppliers' Collateral as described herein to secure
25 the Pre-Petition Indebtedness and the Post-Petition Indebtedness. Notwithstanding the foregoing, the
26 Debtor, and its officers or agents on its behalf, is authorized and directed, if so requested by the
27 Agent or any of the Suppliers, to execute such documents including, without limitation, pledges,
28 mortgages, deeds of trust and Uniform Commercial Code financing statements and to pay all costs

1 Gas Purchase Agreements and the Gas Supplier Security Agreement, and (ii) a monthly certificate of
2 an authorized officer of the Debtor, in the form and substance reasonably satisfactory to the Agent
3 and the Suppliers, certifying that the Debtor is in full compliance with the provisions of this
4 Stipulation.

5 12. Based upon the terms of this Stipulation and the Agent's and the Suppliers'
6 consent thereto, the payments, liens, superpriority claims and other claims and other protections
7 provided in this Stipulation are fair and reasonable to protect the interests of the Agent and the
8 Suppliers as of the date of this Stipulation. Notwithstanding any other provision hereof, the grant of
9 adequate protection to the Agent and the Suppliers pursuant hereto is without prejudice to the right of
10 the Debtor (subject to the provisions of paragraph 13(c)), and the Agent and the Suppliers to seek
11 modification of the grant of adequate protection provided hereby so as to provide different or
12 additional adequate protection (including, without limitation, to require the Debtor to comply with
13 reasonable budgeting and reporting requirements), or to seek to terminate the Debtor's authority to
14 use the Cash Collateral based upon the Debtor's inability to continue to provide adequate protection.

15 No Implied Authorization

16 13. Except for transactions in the ordinary course of its business or except as
17 otherwise permitted in the Master Gas Purchase Agreements or the Gas Supplier Security Agreement
18 or authorized by an order of this Court (after notice to the Suppliers), the Debtor shall not sell,
19 transfer, lease encumber or otherwise dispose of any Pre-Petition Suppliers' Collateral or Post-
20 Petition Suppliers' Collateral without the prior written consent of the Agent and the Suppliers, and no
21 such consent shall ever be implied from any other action, inaction or acquiescence by the Agent and
22 the Suppliers. The Agent and the Suppliers expressly authorize the Debtor to sell assets pursuant to
23 Section 363(f) of the Bankruptcy Code free and clear of any liens, claims or encumbrances of the
24 Agent and the Suppliers to the extent such sales are permitted by the Master Gas Purchase
25 Agreements and the Gas Supplier Security Agreement and so long as the liens, claims or
26 encumbrances of the Agent and the Suppliers shall attach to the proceeds of such sales with the same
27 validity and priority as the liens, claims and encumbrances of the Agent and the Suppliers in the
28

1 assets subject to such sales, until the disposition of such proceeds in accordance with the Master Gas
2 Purchase Agreements, the Gas Supplier Security Agreement and applicable bankruptcy law.

3 Termination Events

4 14. As long as any portion of the Pre-Petition Indebtedness, the Post-Petition
5 Indebtedness or other amounts that became due as provided in the Master Gas Purchase Agreements,
6 the Gas Supplier Security Agreement and this Stipulation after the Petition Date remain unpaid, the
7 Debtor shall not seek, and it shall constitute a "Termination Event" if, except with the express written
8 consent of the Agent and each of the Suppliers, which consent shall not be implied:

9 (a) the Chapter 11 Case shall be dismissed or converted to a case under Chapter 7
10 of the Bankruptcy Code; or a Chapter 11 trustee shall be appointed in the Chapter 11 Case
pursuant to an order for which the time to appeal has expired; or

11 (b) the Court or any other court of competent jurisdiction shall enter an order or
12 orders for which the time to appeal has expired granting relief from the automatic stay
13 applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security
14 interests (other than the security interests of the Agent and the Suppliers to the extent granted
15 in this Stipulation) in any assets of the Debtor allowing such holder or holders to foreclose or
otherwise realize upon any such security interests which assets have (individually or together
with any previous orders granting such relief) an aggregate value in excess of \$[100] million;
or

16 (c) an order of the Court or any other court of competent jurisdiction shall be
17 entered for which the time to appeal has expired amending, supplementing, staying, vacating,
18 reversing, revoking, rescinding or otherwise modifying this Stipulation; provided that no
19 Termination Event shall occur under this clause (c) to the extent that any such amendment,
supplement or other modification is not adverse, in the reasonable judgment of the Agent and
the Suppliers, to the rights and interests of the Agent and the Suppliers under this Stipulation;
or

20 (d) unless the Agent and the Suppliers otherwise expressly agree in writing, an
21 order of the Court or any other court of competent jurisdiction shall be entered granting any
22 lien or security interest in any property of the Debtor in favor of any party other than the
holder of a Senior Lien, the Agent and the Suppliers pursuant to this Stipulation, or granting a
claim to any party other than the holder of a Senior Lien, the Suppliers that is pari passu with
or senior to the claims granted to the Agent and the Suppliers pursuant to this Stipulation; or

23 (e) the Debtor shall file any pleading seeking, or otherwise consenting to, or shall
24 support or acquiesce in writing in any other person's motion as to, any of the matters set forth
25 in paragraphs (a) through (d) above, or the Court shall enter an order for which the time to
appeal has expired granting any such motion filed by any other person; or

26 (f) this Stipulation shall cease to be in full force and effect or the Debtor's
authority to use Cash Collateral hereunder shall have otherwise terminated; or

27 (g) the Debtor shall make any payment (including "adequate protection"
28 payments) on or in respect of any pre-Petition Date indebtedness or obligations other than
(i) the Pre-Petition Indebtedness, the Post-Petition Indebtedness or other amounts that become

1 due pursuant to the Master Gas Purchase Agreements, the Gas Supplier Security Agreement
2 or this Stipulation after the Petition Date, (ii) as permitted under this Stipulation or authorized
3 by the Court, (iii) sales taxes, employee withholding taxes and similar "trust account" items
4 which have been collected by the Debtor but not yet paid, (iv) as required under Section
5 365(b) (in connection with the assumption of unexpired leases or executory contracts) or other
6 provisions of the Bankruptcy Code, and (v) Senior Liens; or

7 (h) the Debtor shall fail to comply with the terms of this Stipulation in any
8 material respect; or

9 (i) this Court shall abstain from hearing the Chapter 11 Case, or the Debtor shall
10 so move or support any motion brought by any third party seeking such relief; or

11 (j) the Debtor shall seek to, or shall support in writing (in any such case by way
12 of, inter alia, any motion or other pleading filed with this Court or any other writing to another
13 party-in-interest executed by or on behalf of the Debtor) any other person's motion to,
14 disallow or subordinate in whole or in part the Agent's or any Supplier's claim in respect of
15 the Pre-Petition Indebtedness, the Post-Petition Indebtedness or any other amounts that
16 become due pursuant to the Master Gas Purchase Agreements, the Gas Supplier Security
17 Agreement or this Stipulation after the Petition Date or to challenge the validity,
18 enforceability, perfection or priority of the liens in favor of the Agent and the Suppliers
19 (including, without limitation, the Liens securing the Pre-Petition Indebtedness, the Post-
20 Petition Indebtedness or any other amounts that become due as provided in the Master Gas
21 Purchase Agreements, the Gas Supplier Security Agreement or this Stipulation after the
22 Petition Date owed to the Agent or such Supplier); or

23 (k) the filing of any motion to obtain credit from any party unless the liens and/or
24 super-priority claims to be granted in connection therewith shall be junior to the liens and
25 super-priority claims granted in this Stipulation.

26 Remedies

27 15. The Debtor's right to use the Cash Collateral shall automatically terminate on
28 the fifth (5th) Court Day after receipt of written notice from the [Agent] by the Debtor and its
counsel, counsel to the Committee, and the Office of the United States Trustee for Region 17 of the
occurrence of any Termination Events, unless prior to the expiration of such period the Court has
entered an order authorizing the Debtor's continued use of Cash Collateral.

29 Survival

30 16. The provisions of this Stipulation and any actions taken pursuant hereto shall
31 survive entry of any order (a) converting the Chapter 11 Case to a Chapter 7 case or (b) dismissing
32 the Chapter 11 Case or pursuant to which this Court abstains from hearing the Chapter 11 Case, and
33 the terms and provisions of this Stipulation and the Agent's and the Suppliers' claims, liens and
34 security interests granted pursuant to this Stipulation and the Gas Supplier Security Agreement shall

1 continue in full force and effect notwithstanding the entry of any such order and the Agent's and the
2 Suppliers' liens, security interests and claims shall maintain their priority as provided by this
3 Stipulation and the Gas Supplier Security Agreement until all of the Pre-Petition Indebtedness, the
4 Post-Petition Indebtedness (and any other amounts that may become due and under the Master Gas
5 Purchase Agreements, the Gas Supplier Security Agreement or this Stipulation after the Petition
6 Date) is indefeasibly paid in full in cash or satisfied pursuant to Chapter 11 plan confirmed by the
7 Court pursuant to Section 1129 of the Bankruptcy Code.

8 Limitation on Actions

9 17. Any party in interest (other than the Debtor, who expressly waived its rights to
10 do so as provided herein), including any Committee, must commence any adversary proceeding or
11 contested matter challenging the validity, enforceability or priority of the Pre-Petition Indebtedness
12 (including any claim by such party that the Pre-Petition Indebtedness should be subordinated) or, to
13 the extent they secure the Pre-Petition Indebtedness, the Agent's and the Suppliers' liens on or
14 security interests in the Pre-Petition Suppliers' Collateral no later than the date that is one hundred
15 and twenty (120) days after the entry of an order of this Court approving this Stipulation, or, in the
16 case of any trustee or other fiduciary hereafter appointed in the Chapter 11 case or in any superseding
17 Chapter 7 case as a legal representative of the Debtor or the debtor's estate, or any committee
18 hereafter appointed in the Chapter 11 Case pursuant to Bankruptcy Code Section 1102, the later of
19 (a) ninety (90) days after the appointment of the applicable entity, or (b) the date that is one hundred
20 and twenty (120) days after the entry of an order of this Court approving this Stipulation.

21 Preservation of Rights

22 18. Except as otherwise specifically provided herein, entry of this Stipulation shall
23 be without prejudice to any and all rights, remedies, claims and causes of action which the Agent and
24 the Suppliers or the Debtor may have against the other party to this Stipulation or any third parties,
25 and without prejudice to the right of the Agent and the Suppliers or the Debtor to seek relief from the
26 automatic stay in effect pursuant to Section 362 of the Bankruptcy Code, or any other relief under the
27 Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, the right of the
28 Agent and the Suppliers to (i) request additional adequate protection of their interests in the

1 Suppliers' Pre-Petition Collateral (including, without limitation, the Cash Collateral) or relief from or
2 modification of the automatic stay under Section 362 of the Bankruptcy Code, (ii) request conversion
3 of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code and (iii) propose, subject to
4 the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan.

5 19. Upon approval of this Stipulation by the Court, the provisions hereof shall be
6 immediately binding upon and inure to the benefit of the Agent and the Suppliers, the Debtor and
7 their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in
8 the Chapter 11 Case or in any superseding Chapter 7 case as a legal representative of the Debtor or
9 the Debtor's estate.

10 No Surcharge

11 20. For so long as the Debtor is authorized to use the Cash Collateral pursuant to
12 this Stipulation, the Debtor shall not be entitled to assert a claim under Section 506(c) of the
13 Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection,
14 disposition or enhancement of the Suppliers' Pre-Petition Collateral or the Suppliers' Post-Petition
15 Collateral.

16 21. As additional adequate protection hereunder, the Agent and the Suppliers shall,
17 subject to the following procedures, be entitled to reimbursement by the Debtor, without the necessity
18 of the filing of fee applications or obtaining the prior approval of the Court with respect thereto, of all
19 fees provided under the Master Gas Purchase Agreements and Gas Supplier Security Agreement and
20 all reasonable costs and expenses incurred both before and after the Petition Date, in connection with
21 (i) the Agent's and the Suppliers' claims and liens and (ii) actions to preserve, protect and/or enforce
22 the rights and remedies under, and to administer, the Master Gas Purchase Agreements and the Gas
23 Supplier Security Agreement, including reasonable counsel fees and disbursements, filing fees, audit
24 expenses, field examination expenses and reasonable fees and disbursements of accountants and/or
25 financial advisors. The Agent and the Suppliers shall serve copies of their invoices and the invoices
26 of any professionals retained by the Agent and the Suppliers upon the Debtor, its counsel, counsel to
27 the Committee and the United States Trustee's Office. If any such party believes that all or a portion
28 of the fees reflected in any invoice are unreasonable (an "Objecting Party"), such Objecting Party

1 shall provide written notice thereof to the Agent or the Suppliers (as the case may be) or the
2 applicable professional retained by the Agent or the Suppliers within 20 days of receipt of the invoice
3 in question (with a copy to the Debtor and its counsel). Promptly after the expiration of such 20 day
4 period, the Debtor shall pay any undisputed portion of such invoices, and retain the balance thereof
5 pending resolution of any dispute with an Objecting Party, or if any such dispute cannot be
6 consensually resolved, upon approval of any disputed portion by the Court. The payment of any
7 amounts to the Agent or the Suppliers or any professionals retained by the Agent or the Suppliers
8 pursuant to this paragraph are expressly subject to disallowance by the Court, and the Agent or the
9 Suppliers or such professional (as the case may be) shall promptly disgorge to the Debtor, upon entry
10 of a final order, any amounts so disallowed.

11 Right to Inspect

12 22. The Agent and each of the Suppliers shall have the right, upon reasonable
13 telephonic notice to the Debtor to conduct any inspections of the Debtor's property permitted in the
14 Master Gas Purchase Agreements and the Gas Supplier Security Agreement. The Debtor shall timely
15 file and serve upon the Agent and each of the Suppliers and their respective counsel all pleadings and
16 other documents filed by the Debtor in the Chapter 11 Case, including the financial reports required
17 by the United States Trustee's office, and shall continue to supply such reports as are required under
18 the Master Gas Purchase Agreements and the Gas Supplier Security Agreement or as the Agent
19 and/or the Suppliers are entitled to request under the Master Gas Purchase Agreements and the Gas
20 Supplier Security Agreement.

21 23. Subject to appropriate confidentiality protections, the Debtor shall promptly
22 provide the Agent and each of the Suppliers with copies of all consultants' reports, appraisals,
23 business plans, and similar documents provided to the Committee.

24 No Release of Non-Debtors

25 24. Nothing contained in this Stipulation shall be deemed to terminate, modify or
26 release any obligations of any non-debtor guarantor to the Agent or any of the Suppliers with respect
27 to the Pre-Petition Indebtedness, the Post-Petition Indebtedness or any other amount that may
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1 become due under the Master Gas Purchase Agreements, the Gas Supplier Security Agreement or this
2 Stipulation after the Petition Date.

3 No Third-Party Beneficiaries

4 25. No rights are intended to be created hereunder for the benefit of any third party
5 or creditor or any direct or indirect incidental beneficiary except as specifically provided herein.

6 Effectiveness

7 26. This Stipulation shall take effect and be fully enforceable immediately upon
8 approval thereof by the Court. Except as otherwise provided herein, the terms of this Stipulation
9 shall be valid and binding upon the Debtor all creditors of the Debtor, any statutory committee
10 appointed in the Chapter 11 Case and all other parties in interest from and after the approval of this
11 Stipulation by this Court.

12 Waiver, Modification and Amendment

13 27. No waiver, modification, or amendment of any of the provisions hereof shall
14 be effective unless it is set forth in writing and signed by the parties hereto.

15 Notice

16 28. The Debtor shall, within five (5) Court Days after entry on the docket of this
17 Court of this Stipulation, provide notice of the approval notice thereof to all parties entitled to notice
18 pursuant to the Local Bankruptcy Rules for the Northern District of California.

19 29. All notices, requests, demands or other communications provided for or
20 required by the Stipulation shall be in writing and shall be deemed to have been given when sent by
21 facsimile or mail as follows:

22 Notice to the Debtor will be sent to:

23 Pacific Gas and Electric Company
24 77 Beale Street
25 San Francisco, CA 94120
26 Fax: (415) 973-4343
27 Attn: Mr. Kent Harvey, CFO

28 - and -

1 Howard, Rice, Nemerovski, Canady, Falk & Rabkin
2 Three embarcadero Center, 7th Floor
3 San Francisco, CA 9411
4 Fax: (415) 217-5910
5 Attn: Gary M. Kaplan, Esq.

6 Notices to the Agent and the Suppliers will be sent to:

7 [TO COME]

8 - and -

9 [TO COME]

10 Notices to the Committee will be sent to:

11 Milbank, Tweed, Hadley & McCloy LLP
12 601 South Figueroa Street
13 Los Angeles, CA 90017
14 Fax: (213) 629-5063
15 Attn: Robert Moore, Esq.

16 Notices to the United States Trustee shall be sent to:

17 Office of the United States Trustee

18 250 Montgomery Street
19 Suite 1000
20 San Francisco, CA 94104
21 Fax: (415) 705-3379
22 Attn: Steven Johnson, Esq.

23 Dated: _____, 2001

24 The terms of this Stipulation are hereby
25 agreed and consented to by the
26 following:

27 The Debtor:

28 PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

By: _____
Name:
Title:

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The Agent:

U.S. TRUST COMPANY, NATIONAL ASSOCIATION, as Agent

By: _____
Name:
Title:

The Suppliers:

B.P. CANADA MARKETING CORPORATION

By: _____
Name:
Title:

B.P. ENERGY COMPANY

By: _____
Name:
Title:

DYNEGY CANADA MARKETING & TRADE,
a DIVISION OF DCI

By: _____
Name:
Title:

DYNEGY MARKETING & TRADE

By: _____
Name:
Title:

EL PASO MERCHANT ENERGY, L.P.

By: _____
Name:
Title:

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TEXACO CANADA

By: _____
Name:
Title:

TEXACO NATURAL GAS

By: _____
Name:
Title:

ADAM A. LEWIS (Bar No. 88736)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Telephone: (415) 268-7000
Fax: (415) 268-7522

4
LARREN M. NASHESKY (*Pro Hac Vice*)
MARK B. JOACHIM (*Pro Hac Vice*)
STEPHEN M. TANNENBAUM (*Pro Hac Vice*)
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

Attorneys for El Paso Merchant Energy, L.P.

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

In re:) Case No. 01-30923 (DM)
PACIFIC GAS & AND ELECTRIC COMPANY,) Chapter 11 Case
a California corporation,) HEARING
14 Debtor.) Date: May 9, 2001 Time 2001
15) Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California
Federal I.D. No. 94-0742640)

17 STIPULATION: ~~(I) AUTHORIZING~~ (I) AUTHORIZING AND RESTRICTING
USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C.
18 § 363 AND BANKRUPTCY RULE 4001 AND ~~(II) GRANTING~~ (II) GRANTING
ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. ~~§§ 361~~ §§ 361 AND 363
19

20 This Stipulation (the "Stipulation") is made by and among Pacific Gas and Electric
Company, a California corporation, and a debtor and debtor-in-possession (the "Debtor"), and ~~BNY~~
~~Western Trust Company, as successor trustee (the "Indenture Trustee")~~ the Agent (as defined
below), and certain gas suppliers (the "Suppliers") that hold a security interest in certain of the
Debtor's assets (the "Suppliers' Pre-Petition Collateral") pursuant to that certain indenture dated
December 1, 1920, which indenture has been supplemented by fourteen supplemental indentures
(collectively, the "Indenture"), Gas Supplier Security Agreement, dated as of February _____, 2001,
among the Debtor, the Suppliers, and U.S. Trust Company, National Association, as collateral

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1 agent for each of the Suppliers (in such capacity, the "Agent") (the "Gas Supplier Security
2 Agreement").

3 ~~WHEREAS: WHEREAS:~~

4 A. On April 6, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for
5 relief with this Court under Chapter 11 of the Bankruptcy Code (Case No. 01-30923 (DM) (the
6 ~~Chapter 11~~ "Chapter 11 Case"). The Debtor is authorized to continue to operate its business and
7 manage its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy
8 Code.

9 B. Also on the Petition Date, the Debtor filed an emergency motion for authority
10 to use the ~~Bondholders' (as defined below)~~ Suppliers' cash collateral (the "Cash Collateral Motion").
11 A preliminary hearing on the Cash Collateral Motion was held before the Court on April 9, 2001 (the
12 "Preliminary Hearing").

13 C. Counsel for the ~~Indenture Trustee~~ certain of the Suppliers appeared
14 telephonically at the Preliminary Hearing and consented to the Debtor's request for authority to use
15 the ~~Bondholders'~~ Suppliers' cash collateral, on an interim basis, pending a final ~~hearing~~ hearing,
16 which hearing was scheduled for 9:30 a.m. (prevailing pacific coast time) on May 9, 2001 (the "Final
17 Hearing").

18 D. No trustee or examiner has been appointed in the ~~Chapter 11~~ Chapter 11 Case
19 nor has a request for the appointment of a trustee or examiner been made. On April 11, 2001, the
20 Office of the United States Trustee appointed an official committee of unsecured creditors of the
21 Debtor (the "Committee") and the Committee retained counsel.

22 E. The Debtor admits (without prejudice to the rights of any third party acting on
23 its own behalf or derivatively through the Debtor in accordance with paragraph 17) that, ~~(i) as~~ (i) as of
24 the Petition Date it ~~had approximately \$3.8 billion of bonds issued and outstanding pursuant to the~~
25 ~~Indenture (the "Bonds") and (ii) the Bonds are secured by first priority security interests and liens on~~
26 ~~virtually all of the Debtor's existing and after-acquired real and personal property, including, but not~~
27 ~~limited to, money, accounts, contract rights, goods, general intangibles, chattel paper, documents,~~
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1 instruments and all proceeds thereof, and all oil, gas, minerals, timber or fixtures which the Debtor
2 owns located in or upon any real estate in any county in the State of California or other State of the
3 United States of America in which the Debtor is now or hereafter the record owner of any interest,
4 and also all and singular the properties, both real and personal, of every kind and character, which the
5 Debtor shall hereafter acquire, and all proceeds thereof.

6 owed an aggregate amount of approximately \$[] million to the Suppliers
7 on account of the Debtor's Master Gas Purchase and Sale Agreements with the Suppliers
8 (collectively, the "Master Gas Purchase Agreements") for natural gas deliveries made on behalf
9 of the Debtor's Core Customers (as defined in the Gas Supplier Security Agreement), (ii) such
10 payment obligations are secured by at least a second-priority security interest and lien upon the
11 Suppliers' Pre-Petition Collateral (as more fully described in the Gas Supplier Security
12 Agreement), and (iii) as of the Petition Date, the value of the Suppliers' Pre-Petition Collateral
13 was approximately \$[] million.

14 F. As of the Petition Date, the Debtor was indebted to the ~~Indenture Trustee and~~
15 ~~the holders of the Bonds (the "Bondholders")~~ Agent and the Suppliers in the aggregate sum of not
16 less than \$3,693,524,000 \$[] million plus additional interest, costs, fees and
17 expenses thereon as provided in the ~~Indenture~~ Master Gas Purchase Agreements and the Gas
18 Supplier Security Agreement (the "Pre-Petition Indebtedness"). Without prejudice to the rights of
19 any third party acting on its own behalf or derivatively through the Debtor in accordance with
20 paragraph 17, the Debtor ~~(a) admits~~ (a) admits, after due inquiry, the legality, validity and
21 enforceability of the Pre-Petition Indebtedness owing to the ~~Indenture Trustee~~ Agent and the
22 ~~Bondholders~~ Suppliers and (b) admits, after due inquiry, that the security interests and liens held by
23 the ~~Indenture Trustee~~ Agent and the Suppliers in and upon the ~~Pre-Petition~~ Suppliers' Collateral
24 (the "Pre-Petition Bondholder Suppliers' Liens") are duly perfected, legal, valid, binding and
25 enforceable ~~first~~, at least, second-priority liens and security interests on the Suppliers' Pre-Petition
26 Collateral, not subject to claim, avoidance, defense, objection, action, counterclaim, setoff,
27 recoupment or subordination under the Bankruptcy Code or applicable non-bankruptcy law, except
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1 that such liens and security interests are junior and subordinated to any pre-existing validly perfected
2 and unavoidable liens and security interests that were senior to the Pre-Petition ~~Bondholder~~
3 Suppliers' Liens as of the Petition Date (the "Senior Liens").

4 **G.** Without prejudice to the rights of any third party acting on its own behalf or
5 derivatively through the Debtor in accordance with paragraph 17, the Debtor further admits, after due
6 inquiry, ~~(i) that~~ **(i) that the Suppliers' Pre-Petition Collateral includes, without limitation, all cash,**
7 ~~negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents~~
8 **certain accounts receivable of the Debtor and related documents, instruments and chattel**
9 **paper evidencing such accounts receivable,** whenever acquired, ~~in which the Debtor has an~~
10 ~~interest,~~ as well as (subject to the Senior Liens) all proceeds of the Suppliers' Pre-Petition Collateral,
11 whether existing before or after the commencement of the Chapter 11 ~~Cases~~ **Case**, which items
12 constitute the ~~Indenture Trustee's Agent's~~ and the ~~Bondholders'~~ **Suppliers'** cash collateral within the
13 meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral") and ~~(ii) that~~ **(ii) that the**
14 ~~Indenture Trustee Agent~~ and the ~~Bondholders~~ **Suppliers** are entitled, pursuant to Sections 361 and
15 363 of the Bankruptcy Code, to adequate protection of their interests in the Cash Collateral, including
16 adequate protection for any diminution in the value of the Cash Collateral.

17 **H.** If not authorized to use the Cash Collateral, the Debtor will be unable to
18 purchase electricity and gas, meet its payroll or the other obligations necessary to operate its business.
19 The Debtor's need to access the Cash Collateral is immediate. In the absence of the proposed use of
20 the Cash Collateral, serious and irreparable harm will occur.

21 ~~THE INDENTURE TRUSTEE I.~~ **The Agent and the Suppliers** will not consent
22 to the use of the Cash Collateral absent the approval of the terms and conditions set forth herein.

23 ~~As reflected in the Debtor's publicly filed financial reports, the Debtor's property, plant and~~
24 ~~equipment, which is part~~ **J. The value of the Suppliers' Pre-Petition Collateral is greatly in**

25 **excess of the amount** of the Pre-Petition Collateral, ~~had a net book value of in excess of \$12 billion~~
26 ~~as of September 30, 2000. The value of the Pre-Petition Collateral is greatly in excess of the amount~~
27 ~~of the Pre-Petition Indebtedness.~~ As such, the Debtor asserts that the ~~Indenture Trustee and the~~
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1 ~~Bondholders are entitled to post-petition interest and other charges on the Bonds, and the Indenture~~
2 ~~Trustee is entitled to its Agent and the Suppliers are entitled to their post-petition costs, fees and~~
3 expenses, including reasonable attorneys fees and costs, pursuant to the ~~Indenture Master Gas~~
4 ~~Purchase Agreements and the Gas Supplier Security Agreement, as provided by Section 506(b)~~
5 of the Bankruptcy Code.]

6 K. The proposed use of the Cash Collateral has been negotiated in good faith and
7 at arms' length ~~between~~ among the Debtor, the Agent and the ~~Indenture Trustee~~ Suppliers, with
8 ~~both~~ all parties represented by counsel.

9 L. The proposed use of the Cash Collateral is fair and reasonable, reflects the
10 Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and is supported
11 by reasonably equivalent value and fair consideration.

12 M. Pursuant to the Bankruptcy Code, the Debtor is required to provide adequate
13 protection to the ~~Indenture Trustee~~ Agent and the ~~Bondholder's~~ Suppliers in respect and to the
14 extent of, inter alia, any diminution of the value of the Cash Collateral. Subject to paragraphs 12 and
15 18 of this Stipulation, the protections provided pursuant to the terms and conditions of this
16 Stipulation shall be deemed to constitute adequate protection of the interests of the ~~Indenture Trustee~~
17 Agent and the ~~Bondholders~~ Suppliers in the Cash Collateral for so long as the Debtor shall be
18 entitled to use the Cash Collateral pursuant to this Stipulation.

19 IT IS HEREBY STIPULATED, CONSENTED AND AGREED that:

20 Authorization

21 1. This Stipulation has no force or effect and the Debtor is not authorized to use
22 any of the Cash Collateral, unless and until this Stipulation is approved by the Court.

23 2. The Debtor shall use the Cash Collateral only on the terms and subject to the
24 conditions set forth in this Stipulation ~~and the Indenture, the Master Gas Purchase Agreements and~~
25 ~~the Gas Supplier Security Agreement~~. Notwithstanding the termination of the Debtor's authority
26 to use the Cash Collateral hereunder, all liens, priorities, rights and remedies provided to the
27 ~~Indenture Trustee~~ Agent and the ~~Bondholder's~~ Suppliers in this Stipulation shall survive such
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1 termination and remain in full force and effect with respect to the Pre-Petition Indebtedness, and any
2 other claims and obligations arising under the ~~Indenture~~ Gas Supplier Security Agreement, the
3 Master Gas Purchase Agreements or this Stipulation (including, without limitation, the Post-
4 Petition Indebtedness (as defined in paragraph 5 hereof)), outstanding on such termination date.

5 3. Notwithstanding anything herein to the contrary, no Cash Collateral may be
6 used to investigate, object to or contest in any manner, or otherwise challenge, this Stipulation, the
7 validity, perfection, priority or enforceability of the Pre-Petition Indebtedness or any liens or security
8 interests securing the Pre-Petition Indebtedness; provided, however, that the Committee may utilize
9 the Cash Collateral to investigate any such matters up to and including the point of formal discovery,
10 including, without limitation, any examination or request for production of documents pursuant to
11 Federal Rule of Bankruptcy Procedure 2004.

12 Acknowledgment Acknowledgement of Claims, Liens and Security Interests

13 4. The Debtor has acknowledged and agreed (without prejudice and subject to the
14 rights of any third party acting on its own behalf or derivatively through the Debtor or its estate in
15 accordance with paragraph 17) for all purposes that as of the Petition Date: ~~(a) the~~ (a) the Pre-
16 Petition Indebtedness constituted legal, valid, binding and enforceable obligations of the Debtor, ~~(b)~~
17 ~~the~~ (b) the amount of the Pre-Petition Indebtedness due and payable to the ~~Indenture Trustee~~ Agent
18 and the ~~Bondholders~~ Suppliers as of the Petition Date is not less than \$3,693,524,000 \$[]
19 million, being the amount due to the ~~Indenture Trustee~~ Agent and the ~~Bondholder's~~ Suppliers
20 according to the books and records of the ~~Indenture Trustee~~ [Agent/Debtor] as of the Petition
21 Date ~~(subject to verification thereof by the Indenture Trustee)~~, ~~(c) the~~, (c) the liens and security
22 interests of the ~~Indenture Trustee~~ Agent and the ~~Bondholders~~ Suppliers upon the Pre-Petition
23 Suppliers' Collateral are legal, valid, binding, perfected and enforceable, not subject to claim,
24 avoidance, defense, objection, action, counterclaim, setoff, recoupment or subordination, except that
25 such liens and security interests are junior and subordinate to the Senior Liens, if any, ~~(d) the~~
26 ~~Indenture Trustee's~~ (d) the Agent's and the ~~Bondholder's~~ Suppliers' pre-petition claims against the
27 Debtor and the estate of the Debtor with respect to the Pre-Petition Indebtedness are allowed and are
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1 valid and enforceable, not subject to claim, avoidance, defense, objection, action, counterclaim,
2 setoff, recoupment or subordination, in the amount of the Pre-Petition Indebtedness, and ~~(e)~~
3 ~~the (e) the~~ Debtor does not possess, may not assert and has waived any claim, objection, action,
4 counterclaim, setoff, recoupment or defense of any kind or nature which could in any way affect the
5 validity, priority, enforceability and nonavoidability of the Pre-Petition Indebtedness or the liens and
6 security interests of the ~~Indenture Trustee and/or the Bondholders~~ Agent and the Suppliers upon the
7 Pre-Petition Suppliers' Collateral or which would reduce or affect the obligation of the Debtor to pay
8 the Pre-Petition Indebtedness.

9 Liens, Reduction in Indebtedness, etc.

10 5. To the extent that, inter alia, the use of the Cash Collateral results in a decrease
11 in the value of the ~~Indenture Trustee's and the Bondholder's interests~~ Agent's and the Suppliers'
12 interest in the Cash Collateral, and as adequate protection for the use by the Debtor of the Cash
13 Collateral, the ~~Indenture Trustee~~ Agent on its own behalf and on behalf of the ~~Bondholders~~
14 Suppliers shall have and ~~are~~ is hereby granted (effective upon the date of this Stipulation and without
15 the necessity of the execution by the Debtor, or filing, of security agreements, pledge agreements,
16 mortgages, financing statements or otherwise) a lien and security interest of the same extent, priority
17 and validity as the Pre-Petition ~~Bondholder~~ Suppliers' Liens on all property of the same type and
18 kind as the Pre-Petition Suppliers' Collateral acquired by the Debtor after the Petition Date, except
19 for any claims for relief arising under the Bankruptcy Code (including, without limitation, claims
20 arising under 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code). In addition, in
21 accordance with Section 3(i) of the Gas Supplies Security Agreement, if, at any time, the value
22 of the Suppliers' Pre-Petition Collateral and the collateral granted to the Suppliers in the
23 immediately preceding sentence is less than the aggregate amount of (x) the Pre-Petition
24 Indebtedness and (y) any other claim existing subsequent to the Petition Date under the Master
25 Gas Purchase Arguments and the Gas Supplier Security Agreement (the "Post-Petition
26 Indebtedness"), then as further adequate protection for the use by the Debtor of the Cash
27 Collateral, the Agent on its own behalf and on behalf of the Suppliers shall have and is hereby
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1 granted (effective upon the date of this Stipulation and without the necessity of the execution by
2 the Debtor, or filing, of security agreements, pledge agreements, mortgages, financing
3 statements or otherwise) a lien and security interest of the same extent, priority and validity as
4 the Pre-Petition Suppliers' Liens on the inventory of Natural Gas (as defined in the Gas
5 Supplier Security Agreement) owned by the Debtor and designated for Core Customers (as
6 defined in the Gas Supplier Security Agreement). In accordance with Section 3(j) of the Gas
7 Supplier Security Agreement, if, at any time, the value of the Suppliers' Pre-Petition Collateral
8 and the collateral granted to the Suppliers in this paragraph 5 is less than the aggregate
9 amount of (x) the Pre-Petition Indebtedness and (y) the Post-Petition Indebtedness, then the
10 Debtor shall pay the Post-Petition Indebtedness, reducing the Post-Petition Indebtedness to
11 each Supplier on a pro rata basis, until the aggregate amount of the Pre-Petition Indebtedness
12 and the Post-Petition Indebtedness is at least equal to the value of the Suppliers' Pre-Petition
13 Collateral and the collateral granted to the Suppliers in this paragraph 5.

14 6. The liens and security interests provided to the ~~Indenture Trustee Agent~~ and
15 the ~~Bondholders~~ Suppliers herein are ~~hereafter~~ collectively referred to as the "Pre-Petition
16 Bondholder Suppliers' Replacement Liens" and the property securing the Pre-Petition ~~Bondholder~~
17 Suppliers' Replacement Liens is hereinafter referred to as the "Post-Petition Suppliers' Collateral".
18 The Pre-Petition ~~Bondholder~~ Suppliers' Replacement Liens shall be deemed perfected as of the
19 commencement of the Chapter 11 ~~Cases~~ Case, shall not be subject to or pari passu with any lien or
20 security interest existing as of the Petition Date or granted or arising thereafter, other than the Senior
21 Liens, if any, and, except as otherwise specifically provided in this Stipulation, shall be valid and
22 enforceable against any trustee appointed in the Chapter 11 Case or in a subsequent proceeding upon
23 the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code. No lien or
24 security interest in any property of the Debtor granted or arising on or after the Petition Date
25 (including, without limitation, liens and security interests, if any, granted in favor of any federal,
26 state, municipal or other governmental unit, commission, or board for any liability of the Debtor)
27 shall be created or permitted to be pari passu with, or senior to, the liens and security interests of the
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1 ~~Trustee's and the Bondholders' interest~~ Agent's and the Suppliers' interests in the Cash Collateral
2 after the Petition Date such that the ~~claim~~ claims of the ~~Indenture Trustee Agent~~ and the ~~Bondholders~~
3 Suppliers fails to be fully secured notwithstanding the other adequate protection provided herein, the
4 ~~Indenture Trustee Agent~~ and the ~~Bondholders~~ Suppliers shall have allowed administrative expense
5 claims pursuant to Section 507(b) of the Bankruptcy Code, with priority in payment over all
6 administrative expense claims and unsecured claims against the Debtor now existing or hereafter
7 arising of any kind or nature, other than the administrative expenses of any superseding Chapter 7
8 Case (the "Pre-Petition ~~Bondholder~~ Suppliers' Superpriority Claims").

9
10 Cash Management

11 10. The Debtor is directed to continue the existing accounts collection arrangement
12 adhered to pre-petition Petition Date.

13 Reporting Requirements

14 11. During the term of this Stipulation, the Debtor shall provide the ~~Indenture~~
15 ~~Trustee Agent and the Suppliers~~ with (i) ~~any~~ (i) any and all financial information in the Debtor's
16 possession or within its control, as the ~~Indenture Trustee Agent or any of the Suppliers~~ shall
17 reasonably request and is entitled to request under the ~~Indenture~~, and (ii) a Master Gas Purchase
18 Agreements and the Gas Supplier Security Agreement, and (ii) a monthly certificate of an
19 authorized officer of the Debtor, in the form and substance reasonably satisfactory to the ~~Indenture~~
20 ~~Trustee Agent and the Suppliers~~, certifying that the Debtor is in full compliance with the provisions
21 of this Stipulation.

22 12. Based upon the terms of this Stipulation and the ~~Indenture Trustee's Agent's~~
23 and the Suppliers' consent thereto, the payments, liens, superpriority claims and other claims and
24 other protections provided in this Stipulation are fair and reasonable to protect the interests of the
25 ~~Indenture Trustee Agent~~ and the ~~Bondholders~~ Suppliers as of the date of this Stipulation.

26 Notwithstanding any other provision hereof, the grant of adequate protection to the ~~Indenture Trustee~~
27 ~~Agent and the Bondholders Suppliers~~ pursuant hereto is without prejudice to the right of the Debtor
28 (subject to the provisions of paragraph 13(c)), and the ~~Indenture Trustee Agent~~ and the ~~Bondholders~~

1 Suppliers to seek modification of the grant of adequate protection provided hereby so as to provide
2 different or additional adequate protection (including, without limitation, to require the Debtor to
3 comply with reasonable budgeting and reporting requirements), or to seek to terminate the Debtor's
4 authority to use the Cash Collateral based upon the Debtor's inability to continue to provide adequate
5 protection.

6
7 No Implied Authorization

8 13. Except for transactions in the ordinary course of its business or except as
9 otherwise permitted in the Indenture Master Gas Purchase Agreements or the Gas Supplier
10 Security Agreement or authorized by an order of this Court (after notice to the Indenture Trustee)
11 Suppliers), the Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any Pre-
12 petition Suppliers' Collateral or Post-Petition Suppliers' Collateral without the prior written consent
13 of the Indenture Trustee Agent and the Suppliers, and no such consent shall ever be implied from
14 any other action, inaction or acquiescence by the Indenture Trustee or any Bondholder. The Indenture
15 Trustee expressly authorizes Agent and the Suppliers. The Agent and the Suppliers expressly
16 authorize the Debtor to sell assets pursuant to Section 363(f) of the Bankruptcy Code free and clear
17 of any liens, claims or encumbrances of the Indenture Trustee Agent and the Suppliers to the extent
18 such sales are permitted by the Indenture Master Gas Purchase Agreements and the Gas Supplier
19 Security Agreement and so long as the liens, claims or encumbrances of the Indenture Trustee
20 Agent and the Suppliers shall attach to the proceeds of such sales with the same validity and priority
21 as the liens, claims and encumbrances of the Indenture Trustee Agent and the Suppliers in the assets
22 subject to such sales, until the disposition of such proceeds in accordance with the Indenture Master
23 Gas Purchase Agreements, the Gas Supplier Security Agreement and applicable bankruptcy law.

24 Termination Events

25 14. As long as any portion of the Pre-Petition Indebtedness, the Post-Petition
26 Indebtedness or other amounts that became due as provided in the Indenture Master Gas Purchase
27 Agreements, the Gas Supplier Security Agreement and this Stipulation after the Petition Date
28 remain unpaid, the Debtor shall not seek, and it shall constitute a "Termination Event" if, except with

1 the express written consent of the ~~Indenture Trustee~~ Agent and each of the Suppliers, which
2 consent shall not be implied:

3 (a) ~~(a)~~ the Chapter 11 Case shall be dismissed or converted to a case
4 under Chapter 7 of the Bankruptcy Code; or a Chapter 11 trustee shall be appointed in the
5 Chapter 11 Case pursuant to an order for which the time to appeal has expired; or

6 (b) ~~(b)~~ the Court or any other court of competent jurisdiction shall enter
7 an order or orders for which the time to appeal has expired granting relief from the automatic
8 stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any
9 security interests (other than the security interests of the ~~Indenture Trustee or the Bondholders~~
Agent and the Suppliers to the extent granted in this Stipulation) in any assets of the Debtor
allowing such holder or holders to foreclose or otherwise realize upon any such security
interests which assets have (individually or together with any previous orders granting such
relief) an aggregate value in excess of ~~\$100~~ \$[100] million; or

10 (c) ~~(c)~~ an order of the Court or any other court of competent
11 jurisdiction shall be entered for which the time to appeal has expired amending,
12 supplementing, staying, vacating, reversing, revoking, rescinding or otherwise modifying this
13 Stipulation; provided that no Termination Event shall occur under this clause (c) to the extent
that any such amendment, supplement or other modification is not adverse, in the reasonable
judgment of the ~~Indenture Trustee~~ Agent and the Suppliers, to the rights and interests of the
~~Bondholders~~ Agent and the Suppliers under this Stipulation; or

14 (d) ~~(d)~~ unless the ~~Indenture Trustee~~ Agent and the Suppliers
15 otherwise expressly ~~agrees~~ agree in writing, an order of the Court or any other court of
16 competent jurisdiction shall be entered granting any lien or security interest in any property of
17 the Debtor in favor of any party other than the holder of a Senior Lien, the ~~Indenture Trustee~~
Agent and the Bondholders Suppliers pursuant to this Stipulation, or granting a claim to any
18 party other than the holder of a Senior Lien ~~the Indenture Trustee and the Bondholders, the~~
Suppliers that is pari passu with or senior to the claims granted to the ~~Indenture Trustee~~
Agent and the Bondholders Suppliers pursuant to this Stipulation; or

19 (e) ~~(e)~~ the Debtor shall file any pleading seeking, or otherwise
20 consenting to, or shall support or acquiesce in writing in any other person's motion as to, any
21 of the matters set forth in paragraphs (a) through (d) above, or the Court shall enter an order
22 for which the time to appeal has expired granting any such motion filed by any other person;
or

23 (f) ~~(f)~~ this Stipulation shall cease to be in full force and effect or the
24 Debtor's authority to use Cash Collateral hereunder shall have otherwise terminated; or

25 (g) ~~(g)~~ the Debtor shall make any payment (including "adequate
26 protection" payments) on or in respect of any pre-Petition Date indebtedness or obligations
27 other than ~~(i) the Pre-~~ (i) the Pre-Petition Indebtedness, the Post-Petition Indebtedness or
28 other amounts that become due pursuant to the ~~Indenture Master Gas Purchase Agreements,~~
the Gas Supplier Security Agreement or this Stipulation after the Petition Date, ~~(ii) as~~ (ii) as
permitted under this Stipulation or authorized by the Court, ~~(iii) sales~~ (iii) sales taxes,
employee withholding taxes and similar "trust account" items which have been collected by
the Debtor but not yet paid, ~~(iv) as~~ (iv) as required under Section 365(b) (in connection with
the assumption of unexpired leases or executory contracts) or other provisions of the
Bankruptcy Code, and (v) Senior Liens; or

1 (h) ~~(h)~~ the Debtor shall fail to comply with the terms of this Stipulation
in any material respect; or

2 (i) ~~(i)~~ this Court shall abstain from hearing the Chapter 11 Case, or the
3 Debtor shall so move or support any motion brought by any third party seeking such relief; or

4 (j) ~~(j)~~ the Debtor shall seek to, or shall support in writing (in any such
5 case by way of, inter alia, any motion or other pleading filed with this Court or any other
6 writing to another party-in-interest executed by or on behalf of the Debtor) any other person's
7 motion to, disallow or subordinate in whole or in part ~~any Bondholder's~~ the Agent's or any
8 Supplier's claim in respect of the Pre-Petition Indebtedness, the Post-Petition Indebtedness
9 or any other amounts that become due pursuant to the Indenture Master Gas Purchase
10 Agreements, the Gas Supplier Security Agreement or this Stipulation after the Petition
Date or to challenge the validity, enforceability, perfection or priority of the liens in favor of
the ~~Indenture Trustee or any Bondholder~~ Agent and the Suppliers (including, without
limitation, the Liens securing the Pre-Petition Indebtedness, the Post-Petition Indebtedness
or any other amounts that become due as provided in the Indenture Master Gas Purchase
Agreements, the Gas Supplier Security Agreement or this Stipulation after the Petition
Date owed to the ~~Indenture Trustee~~ Agent or such ~~Bondholder~~ Supplier); or

11 (k) ~~(k)~~ the filing of any motion to obtain credit from any party unless
12 the liens and/or super-priority claims to be granted in connection therewith shall be junior to
the liens and super-priority claims granted in this Stipulation.

13 Remedies

14 15. The Debtor's right to use the Cash Collateral shall automatically terminate on
15 the fifth (5th) Court Day after receipt of written notice from the ~~Indenture Trustee~~ [Agent] by the
Debtor and its counsel, counsel to the Committee, and the Office of the United States Trustee for
Region 17 of the occurrence of any Termination Events, unless prior to the expiration of such period
the Court has entered an order authorizing the Debtor's continued use of Cash Collateral.

16 Survival

17 16. The provisions of this Stipulation and any actions taken pursuant hereto shall
18 survive entry of any order (a) converting the Chapter 11 Case to a Chapter 7 case or ~~(b)~~
19 ~~dismissing~~ (b) dismissing the Chapter 11 Case or pursuant to which this Court abstains from hearing
the Chapter 11 Case, and the terms and provisions of this Stipulation and the ~~Indenture Trustee's~~
20 ~~Agent's~~ and the ~~Bondholders'~~ Suppliers' claims, liens and security interests granted pursuant to this
21 Stipulation and the ~~Indenture~~ Gas Supplier Security Agreement shall continue in full force and
effect notwithstanding the entry of any such order and the ~~Indenture Trustee's~~ Agent's and the
22 ~~Bondholders'~~ Suppliers' liens, security interests and claims shall maintain their priority as provided

1 by this Stipulation and the ~~Indenture~~ Gas Supplier Security Agreement until all of the Pre-Petition
2 Indebtedness, the Post-Petition Indebtedness (and any other amounts that may become due and
3 under the ~~Indenture~~ Master Gas Purchase Agreements, the Gas Supplier Security Agreement or
4 this Stipulation after the Petition Date) is indefeasibly paid in full in cash or satisfied pursuant to
5 Chapter 11 plan confirmed by the Court pursuant to Section 1129 of the Bankruptcy Code.

6 Limitation on Actions

7 17. Any party in interest (other than the Debtor, who expressly waived its rights to
8 do so as provided herein), including any Committee, must commence any adversary proceeding or
9 contested matter challenging the validity, enforceability or priority of the Pre-Petition Indebtedness
10 (including any claim by such party that the Pre-Petition Indebtedness should be subordinated) or, to
11 the extent they secure the Pre-Petition Indebtedness, the ~~Indenture Trustee's Agent's~~ and the
12 ~~Bondholders'~~ Suppliers' liens on or security interests in the Pre-Petition Suppliers' Collateral no
13 later than the date that is one hundred and twenty (120) days after the entry of an order of this Court
14 approving this Stipulation, or, in the case of any trustee or other fiduciary hereafter appointed in the
15 Chapter 11 ~~Case~~ case or in any superseding Chapter 7 case as a legal representative of the Debtor or
16 the ~~Debtor's~~ debtor's estate, or any committee hereafter appointed in the Chapter 11 Case pursuant
17 to Bankruptcy Code Section 1102, the later of ~~(a) ninety~~ (a) ninety (90) days after the appointment of
18 the applicable entity, or ~~(b) the~~ (b) the date that is one hundred and twenty (120) days after the entry
19 of an order of this Court approving this Stipulation.

20 Preservation of Rights

21 18. Except as otherwise specifically provided herein, entry of this Stipulation shall
22 be without prejudice to any and all rights, remedies, claims and causes of action which the ~~Indenture~~
23 ~~Trustee, any Bondholder~~ Agent and the Suppliers or the Debtor may have against the other party to
24 this Stipulation or any third parties, and without prejudice to the right of the ~~Indenture Trustee, any~~
25 ~~Bondholder~~ Agent and the Suppliers or the Debtor to seek relief from the automatic stay in effect
26 pursuant to Section 362 of the Bankruptcy Code, or any other relief under the Bankruptcy Code or
27 applicable non-bankruptcy law, including, without limitation, the right of the ~~Indenture Trustee or~~
28

1 **21.** As additional adequate protection hereunder, the ~~Indenture Trustee~~ Agent and
2 the Suppliers shall, subject to the following procedures, be entitled to reimbursement by the Debtor,
3 without the necessity of the filing of fee applications or obtaining the prior approval of the Court with
4 respect thereto, of all fees provided ~~from the Indenture~~ under the Master Gas Purchase
5 Agreements and Gas Supplier Security Agreement and all reasonable costs and expenses incurred
6 both before and after the Petition Date, in connection with ~~(i) the Indenture Trustee's~~ (i) the Agent's
7 and the ~~Bondholders'~~ Suppliers' claims and liens and ~~(ii) actions~~ (ii) actions to preserve, protect
8 and/or enforce the rights and remedies under, and to administer, the ~~Indenture~~ Master Gas Purchase
9 Agreements and the Gas Supplier Security Agreement, including reasonable counsel fees and
10 disbursements, filing fees, audit expenses, field examination expenses and reasonable fees and
11 disbursements of accountants and/or financial advisors. The ~~Indenture Trustee~~ Agent and the
12 Suppliers shall serve copies of ~~its~~ their invoices and the invoices of any professionals retained by the
13 ~~Indenture Trustee~~ Agent and the Suppliers upon the Debtor, its counsel, counsel to the Committee
14 and the United States Trustee's Office. If any such party believes that all or a portion of the fees
15 reflected in any invoice are unreasonable (an "Objecting Party"), such Objecting Party shall provide
16 written notice thereof to the ~~Indenture Trustee~~ Agent or the Suppliers (as the case may be) or the
17 applicable professional retained by the ~~Indenture Trustee~~ Agent or the Suppliers within 20 days of
18 receipt of the invoice in question (with a copy to the Debtor and its counsel). Promptly after the
19 expiration of such 20 day period, the Debtor shall pay any undisputed portion of such invoices, and
20 retain the balance thereof pending resolution of any dispute with an Objecting Party, or, if any such
21 dispute cannot be consensually resolved, upon approval of any disputed portion by the Court. The
22 payment of any amounts to the ~~Indenture Trustee~~ Agent or the Suppliers or any professionals
23 retained by the ~~Indenture Trustee~~ Agent or the Suppliers pursuant to this paragraph are expressly
24 subject to disallowance by the Court, and the ~~Indenture Trustee~~ Agent or the Suppliers or such
25 professional (as the case may be) shall promptly disgorge to the Debtor, upon entry of a final order,
26 any amounts so disallowed.

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Right to Inspect

~~The Indenture Trustee~~ **22. The Agent and each of the Suppliers** shall have the right, upon reasonable telephonic notice to the Debtor to conduct any inspections of the Debtor's property permitted in the ~~Indenture~~ **Master Gas Purchase Agreements and the Gas Supplier Security Agreement**. The Debtor shall timely file and serve upon the ~~Indenture Trustee and its Agent and each of the Suppliers and their respective~~ counsel all pleadings and other documents filed by the Debtor in the Chapter 11 Case, including the financial reports required by the United States Trustee's office, and shall continue to supply such reports as are required under the ~~Indenture or as the Indenture Trustee is~~ **Master Gas Purchase Agreements and the Gas Supplier Security Agreement or as the Agent and/or the Suppliers** are entitled to request under the ~~Indenture Master Gas Purchase Agreements and the Gas Supplier Security Agreement~~.

23.

Subject to appropriate confidentiality protections, the Debtor shall promptly provide the ~~Indenture Trustee~~ **Agent and each of the Suppliers** with copies of all consultants' reports, appraisals, business plans, and similar documents provided to the Committee.

No Release of Non-Debtors

24. Nothing contained in this Stipulation shall be deemed to terminate, modify or release any obligations of any non-debtor guarantor to the ~~Indenture Trustee or any Bondholder~~ **Agent or any of the Suppliers** with respect to the Pre-Petition Indebtedness ~~or any~~, the **Post-Petition Indebtedness or any other** amount that may become due under the ~~Indenture~~ **Master Gas Purchase Agreements, the Gas Supplier Security Agreement** or this Stipulation after the Petition Date.

No Third-Party Beneficiaries

25. No rights are intended to be created hereunder for the benefit of any third party or creditor or any direct or indirect incidental beneficiary except as specifically provided herein.

1
2 Effectiveness

3 26. This Stipulation shall take effect and be fully enforceable immediately upon
4 approval thereof by the Court. Except as otherwise provided herein, the terms of this Stipulation
5 shall be valid and binding upon the Debtor all creditors of the Debtor, any statutory committee
6 appointed in the Chapter 11 Case and all other parties in interest from and after the approval of this
7 Stipulation by this Court.

8 Waiver, Modification and Amendment

9 27. No waiver, modification, or amendment of any of the provisions hereof shall
10 be effective unless it is set forth in writing and signed by the parties hereto.

11 Notice

12 28. The Debtor shall, within five (5) Court Days after entry on the docket of this
13 Court of this Stipulation, provide notice of the approval notice thereof to all parties entitled to notice
14 pursuant to the Local Bankruptcy Rules for the Northern District of California.

15 29. All notices, requests, demands, or other communications provided for or
16 required by the Stipulation shall be in writing and shall be deemed to have been given when sent by
17 facsimile or mail as follows:

18 Notice to the Debtor will be sent to:

19 Pacific Gas and Electric Company
20 77 Beale Street
21 San Francisco, CA 94120
22 Fax: (415) 973-4343
23 Attn: Mr. Kent Harvey, CFO

24 - and -

25 Howard, Rice, Nemerovski, Canady, Falk & Rabkin
26 Three ~~Embarcadero~~ embarcadero Center, 7th Floor
27 San Francisco, CA ~~94111~~ 94111
28 Fax: (415) 217-5910
29 Attn: Gary M. Kaplan, Esq.

30 Notices to the ~~Indenture Trustee~~ will be sent to: Agent and the Suppliers will be sent
31 to:

32 ~~BNY Western Trust~~ [TO COME]

33 ~~700 South Flower~~ and -

1 ~~5th Floor~~
2 ~~Los Angeles, CA 90017~~
3 ~~Fax: (213) 630-6285~~
4 ~~Attn: Mr. Todd Duncan~~

5
6 ~~-and-~~

7
8 ~~White & Case LLP~~
9 ~~1155 Avenue of the Americas~~
10 ~~New York, NY 10036~~
11 ~~Fax: (212) 354-8113~~
12 ~~Attn: Evan C. Hollander, Esq. [TO COME]~~

13 Notices to the Committee will be sent to:
14 Milbank, Tweed, Hadley & McCloy LLP
15 601 South Figueroa Street
16 Los Angeles, CA 90017
17 Fax: (213) 629-5063
18 Attn: Robert Moore, Esq.

19 Notices to the United States Trustee shall be sent to:
20 Office of the United States Trustee
21 250 Montgomery Street
22 , Suite 1000
23 San Francisco, CA 94104
24 Fax: (415) 705-3379
25 Attn: Steven Johnson, Esq.

26 Dated: _____, 2001

27
28 The terms of this Stipulation are hereby
29 agreed and consented to by the
30 following:

31

32

The Debtor:

²PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

³

⁴

By: _____

⁵ _____

Name:

Title:

⁷

⁸

~~The Indenture Trustee:~~

⁹

~~BNY WESTERN TRUST COMPANY, as Indenture Trustee~~

¹⁰

¹¹

~~By: _____ Name:~~

~~Title:~~

¹³

The Agent:

¹⁴

U.S. TRUST COMPANY, NATIONAL ASSOCIATION, as Agent

¹⁶

By: _____

¹⁷ Name:

¹⁸ Title:

¹⁹

The Suppliers:

²⁰

B.P. CANADA MARKETING CORPORATION

²¹

²²

By: _____

²³ Name:

²⁴ Title:

B.P. ENERGY COMPANY

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By: _____

²⁷ Name:

²⁸ Title:

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DYNEGY CANADA MARKETING & TRADE,
a DIVISION OF DCI

2

3
By: _____

4 Name:
5 Title:

DYNEGY MARKETING & TRADE

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7
By: _____

8 Name:
9 Title:

EL PASO MERCHANT ENERGY, L.P.

10

11
By: _____

12 Name:
13 Title:

TEXACO CANADA

14

15
By: _____

16 Name:
17 Title:

TEXACO NATURAL GAS

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19
By: _____

20 Name:
21 Title:

22 ----- COMPARISON OF HEADERS -----

23 -HEADER 1-

24

-HEADER 2-

25 2345678910111213141516171819202122232425262728

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-HEADER 3-

28 2345678910111213141516171819202122232425262728