

50-275/323

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

16 HOWARD
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19 CANADY
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23 In re
24 PACIFIC GAS AND ELECTRIC
25 COMPANY, a California corporation,
26 Debtor.
27 Federal I.D. No. 94-0742640

28 No. 01 30923 DM
Chapter 11 Case
Date: October 9, 2001
Time: 9:30 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

29 PG&E'S NOTICE OF MOTION AND MOTION FOR AUTHORITY (1) TO SELL (FREE
30 AND CLEAR OF A SPECIFIED LIEN), DONATE, LEASE, LICENSE OR OTHERWISE
31 ENCUMBER ITS REAL AND PERSONAL PROPERTY, AND (2) TO ENTER INTO
32 LEASE, LICENSE AND PERMIT AGREEMENTS FOR THE USE OF THIRD-PARTY
33 PROPERTY, IN EACH CASE WITHIN SPECIFIED PARAMETERS; SUPPORTING
34 MEMORANDUM OF POINTS AND AUTHORITIES

35 [SUPPORTING DECLARATION OF LINDA E. CHINN FILED SEPARATELY]

36 **Note: BNY Western Trust Company should take special notice that the**
37 **relief requested in this Motion includes, under conditions specified in**
38 **the Motion, the sale, pursuant to 11 U.S.C. §363(f), free and clear of the**
39 **lien asserted by it in assets of Pacific Gas and Electric Company.**

40 *Accr Add: Rids Oge Mail Center*

NOTICE OF MOTION AND MOTION

1 **PLEASE TAKE NOTICE** that on October 9, 2001, at 9:30 a.m., or as soon
2 thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali,
3 located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric
4 Company, the debtor and debtor in possession in the above-captioned Chapter 11 case
5 ("PG&E" or the "Debtor"), will and hereby does move the Court for entry of an order
6 authorizing PG&E to sell (free and clear of the lien of BNY Western Trust Company in its
7 capacity as the successor Trustee under that certain Indenture December 1, 1920, as amended),
8 donate, lease, license or otherwise encumber its real property and personal property in the
9 ordinary course of business within specified parameters as set forth in the accompanying
10 Memorandum of Points of Authorities incorporated by reference herein (the "MPA"), and
11 authorizing PG&E to enter into lease, license and permit agreements for the use of third-party
12 property in the ordinary course of business within specified parameters as set forth in the MPA

13 This Motion is made pursuant to Sections 363 (b) and (f) and 105(a) of the United
14 States Bankruptcy Code (11 U.S.C. §§363, 105(a)) and is based on the facts and law set forth
15 herein (including the accompanying MPA beginning on the next page hereof), the Declaration
16 of Linda E. Chinn filed concurrently herewith, the record of this case and any evidence
17 presented at or prior to the hearing on this Motion.

18 BNY Western Trust Company should take special notice that the relief requested in
19 this Motion includes, under specified conditions, the sale, pursuant to 11 U.S.C. §363(f), free
20 and clear of the lien asserted by it in assets of Pacific Gas and Electric Company.

21 **PLEASE TAKE FURTHER NOTICE** that pursuant to Rule 9014-1(c)(1) of the
22 Bankruptcy Local Rules for the Northern District of California, any written opposition to the
23 Motion and the relief requested therein must be filed with the Bankruptcy Court and served
24 upon appropriate parties (including counsel for PG&E, the Office of the United States Trustee,
25 the Official Committee of Unsecured Creditors, and BNY Western Trust Company in its
26 capacity as Trustee under the Indenture described in the Motion) at least fourteen (14) days
27 prior to the scheduled hearing date. If there is no timely objection to the requested relief, the
28 Court may enter an order granting such relief without further hearing.

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Other Authorities

2 Collier on Bankruptcy 105.01 (15th ed. rev. 2000)

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Pacific Gas and Electric Company, the debtor and debtor in possession in the
4 above-captioned Chapter 11 case (the "Debtor" or "PG&E"), submits this Memorandum Of
5 Points And Authorities In Support Of PG&E's Motion For Authority (1) To Sell (Free and
6 Clear of A Specified Lien), Donate, Lease, License, or Otherwise Encumber Its Real
7 Property and Personal Property, and (2) To Enter Into Lease, License and Permit
8 Agreements for the Use of Third-Party Property, In Each Case Within Specified Parameters
9 (the "Motion").

10 The types of transactions involving real property or personal property that PG&E
11 routinely undertakes in the ordinary course of business can be categorized into five groups:
12 (1) sales of property owned by PG&E; (2) non-telecommunications leases, licenses and
13 permits for use of property owned by PG&E, with PG&E as the lessor, licensor or permittor,
14 as the case may be, (3) telecommunications leases, licenses, permits and joint pole
15 agreements for use of property owned by PG&E, again with PG&E as the lessor; (4)
16 PG&E's use of third-party property pursuant to leases, licenses and permits, with PG&E as
17 the lessee, licensee or permittee; and (5) the donation of property with no or little residual
18 value to charitable organizations, consistent with PG&E's past practices. The first three
19 categories are ancillary to PG&E's utility business and provide additional sources of revenue
20 for PG&E. The fourth category encompasses transactions where PG&E expends money to
21 procure rights pertaining to land and/or commercial or other improved properties necessary
22 for utility operations. The fifth category is ancillary to PG&E's operations inasmuch as in a
23 business as equipment-intensive as PG&E's business, there is always a steady stream of
24 equipment and other hard assets that have become obsolete or otherwise reached the end of
25 their useful lives, and PG&E's property donation practices provide an efficient way of
26 disposing of such assets while at the same time benefiting organizations in need.

27 To provide a general overview of the dollar level of annual activity in the
28 foregoing types of transactions based on PG&E's experience over the last several years,

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1 PG&E estimates that on an annual basis it receives approximately \$8.4 million in gross
2 revenue from the sale of surplus property, \$6.2 million in gross revenue from timber sales,
3 less than \$1 million in gross revenue from the sale of single and multiple customer operating
4 facilities, \$1.5 million in gross revenue from streetlight sales, \$670,000 in gross revenue
5 from eminent domain settlements, less than \$100,000 in gross revenue from sales or grants
6 of easements, \$4 million in gross revenue from non-telecommunications leases, licenses and
7 permits to others for the use of PG&E property, and \$6.7 million in gross revenue from
8 telecommunications-related leases, licenses and permits to others for the use of PG&E
9 property. PG&E further estimates that on an annual basis it spends approximately \$15
10 million on leases, and less than \$1 million on licenses and permits necessary for operation of
11 its utility business. The property donations program obviously does not produce any revenue
12 for PG&E. All of the foregoing types of transactions, as well as the property donations
13 program , are described in further detail below.

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14 Pursuant to this Motion, PG&E seeks an order of the Bankruptcy Court
15 authorizing PG&E to (1) enter into and consummate transactions for the sale, donation,
16 lease, licensing, permitting or other encumbrancing of real property or personal property
17 owned by PG&E within certain parameters based on types of property, value and price
18 criteria as set forth more specifically below; (2) enter into and consummate transactions for
19 the lease, licensing or permitting of third-party property by PG&E, subject to certain
20 parameters regarding consideration to be paid by PG&E; and (3) implement procedures for
21 review by the Official Committee of Unsecured Creditors (the "Committee") and the
22 Bankruptcy Court of such sales of PG&E real and personal property where the sales price
23 exceeds specified price criteria or fails to meet specified value criteria, and of such lease,
24 license and permit agreements for the use of third-party property by PG&E where PG&E is
25 obligated to make payments in excess of specified dollar amounts. By this Motion, PG&E
26 further requests that any currently pending sales, leases, licenses and permit agreements be
27 subject to the same criteria and review procedures as new transactions, so that PG&E will
28 seek such review/approval of any such transaction as would have been applicable under this

1 Motion if such transaction were entered into after an order on this Motion is granted.
2 Finally, by this Motion, PG&E also seeks the authority to continue with its property
3 donations program as described more fully below.

4 The authority sought by this Motion will benefit the estate by allowing PG&E to
5 continue its ordinary business practices with respect to selling, donating, leasing, licensing,
6 permitting and otherwise encumbering PG&E-owned real and personal property.
7 Additionally, the authority sought by this Motion will facilitate PG&E's ability to access
8 third-party property necessary for the safe and reliable delivery of services to PG&E
9 customers. If the Court grants PG&E the requested authority, PG&E will be able to enter
10 into routine real and personal property transactions without unnecessarily burdening this
11 Court or the Committee with individual requests for approval of each of PG&E's sales,
12 leases, licenses, and permit agreements and each property donation, most of which have little
13 or no effect on PG&E's ongoing utility operations or the overall assets of the estate.

14 As more fully discussed in Part IX below, PG&E does not by this Motion seek to
15 obviate or otherwise affect any California Public Utilities Code approval requirements for
16 any sale, lease, license or permit transactions within the ambit of this Motion. Rather, during
17 the pendency of its Chapter 11 case prior to the effective date of a confirmed plan of
18 reorganization, PG&E intends to comply with the requirements of the California Public
19 Utilities Code respecting real and personal property transactions unless and until PG&E
20 specifically moves this Court for relief from such requirements or for a determination that
21 some or all of such requirements are not applicable. Accordingly, this Motion, if granted,
22 will in no way affect the applicability of any state law provisions requiring approval by the
23 California Public Utilities Commission ("CPUC") of any transaction subject to this Motion.

24 In addition, as discussed more fully in Part X below, except for the existing cash
25 collateral stipulation with BNY Western Trust Company as incorporated into this Motion
26 and any Order thereon, PG&E does not by this Motion seek to circumscribe or affect any
27 specific protections afforded any lienholder, co-interest owner or the like under various
28

1 provisions of Section 363 of the United States Bankruptcy Code (11 U.S.C. §363)¹ which
2 may be applicable with respect to any specific property of the debtor proposed to be sold,
3 leased or used.

4 5 II. GENERAL BACKGROUND²

6 PG&E is an investor-owned utility providing electric and gas services to millions
7 of California residents and businesses. Beginning approximately last summer, as a result of
8 the partial deregulation of the power industry, PG&E was forced to pay dramatically
9 increased wholesale prices for electricity, but has been prevented from passing these costs on
10 to retail customers, resulting in a staggering financial shortfall. In the face of the
11 deterioration in PG&E's financial condition and with little progress having been made
12 toward a resolution of the crisis, PG&E by early April 2001 determined that a Chapter 11
13 reorganization offered the best prospects for protecting the interests of its customers,
14 creditors, employees and shareholders alike. Accordingly, PG&E filed a voluntary petition
15 under Chapter 11 of the Bankruptcy Code on April 6, 2001. PG&E continues to manage and
16 operate its business and property as a debtor in possession pursuant to Sections 1107 and
17 1108 of the United States Bankruptcy Code (11 U.S.C. §§1107-1108). No trustee has been
18 appointed.

19 20 III. SALES OF PG&E OWNED PROPERTY

21 The types of sales of PG&E-owned property covered by this Motion are described
22 in this Part III.³ They break down into five groups, as follows.

23
24 ¹Unless otherwise expressly stated, all Section references in this Motion are to the
United States Bankruptcy Code (title 11 of the United States Code).

25 ²The evidentiary basis for the facts set forth in this Memorandum of Points and
26 Authorities is contained in the Declaration of Linda E. Chinn filed concurrently herewith
(hereinafter referred to as the "Chinn Declaration" and cited as the "Chinn Decl.").

27 ³PG&E has intentionally excluded sales of tangible personal property from this
28 "omnibus" Motion. A company as large and complex as PG&E necessarily routinely
disposes of large amounts of used equipment and similar assets which are no longer useful to
PG&E because of such factors as obsolescence, unacceptably high maintenance costs,

1 A. Sales of Surplus Real Property

2 Each year PG&E sells utility owned property which has been identified as surplus
3 property. For purposes of this Motion, "surplus property" means property as to which PG&E
4 has determined it no longer needs to maintain a fee interest for utility purposes.⁴ The sale of
5 surplus property allows PG&E to avoid carrying costs associated with land and buildings
6 that PG&E no longer needs to own in fee. Some of the avoided costs include the elimination
7 of property taxes, maintenance costs, insurance payments, and other liabilities related to the
8 respective properties. For these business reasons, PG&E regularly identifies and sells
9 surplus property.

10 Some of the surplus property is sold outright and some of the property is sold
11 subject to PG&E retaining some form of land rights encumbrance, typically in the form of an
12 easement. For example, PG&E may determine that it is no longer necessary to retain a fee
13 interest in a particular parcel of land, but the parcel may contain underground gas lines which
14 PG&E must retain for utility purposes. In such instances, PG&E will sell the fee interest in
15 the property and retain an easement for the underground gas line. Since PG&E retains the
16 necessary land rights, utility operations are not affected by the sale of surplus property.

17 Over the last five years, PG&E has sold approximately 63 surplus properties and
18 generated over \$43 million in gross revenue from such sales. The size of the properties sold

19
20 changes in business practices obviating the need for such equipment, and the like. But
21 because such disposition of used equipment happens across virtually all of PG&E's many
22 organizational divisions and departments and there is no completely centralized authority for
23 such dispositions, it would be extremely difficult to propose objective "threshold" criteria for
24 Committee review or Court approval that would be practicable in all situations. PG&E has a
25 high degree of comfort that the vast majority of its used equipment sale activities is squarely
26 in the ordinary course of business, and therefore is willing to continue most such activity
27 without the "comfort" that including it in this omnibus motion would provide. To the extent
28 PG&E has any doubt about whether a particular future transaction for the sale of used
equipment or related tangible personal property assets is in the ordinary course of business,
the burden will be on PG&E to seek this Court's approval of such transaction under Section
363 of the Bankruptcy Code.

⁴Although this Motion primarily concerns transactions involving certain tangible
property, various intangible property rights are also within its scope. For example, included
in the category of surplus property that may be disposed of pursuant to this Motion are
transferable development rights ("TDRs"), which are intangible rights associated with
PG&E's real property holdings.

1 ranged from less than one acre to over 3,000 acres. The purchase prices of the properties
2 ranged from \$18,000 to \$3.9 million.⁵ The average annual revenue from surplus property
3 sales over this five-year period is \$8.4 million.

4 B. Sale of Timber Harvested on PG&E's Hydroelectric Property

5 PG&E has a Timber Management Program which sells harvested timber grown
6 on PG&E property to private parties. The timber is harvested in accordance with timber
7 harvesting plans approved by the California Department of Forestry and Fire Protection. The
8 timber grows on PG&E's hydroelectric watershed lands and is managed in a sustained yield
9 manner in an effort to maintain the health and vigor of the forest, and remove hazards near
10 PG&E facilities. PG&E has no use for the timber and therefore sells it to private parties to
11 generate revenue. Over the last five years, PG&E has sold over \$30 million in timber to
12 private parties. The average annual revenue from timber sales is \$6.2 million.

13 C. Operating Property

14 1. Distribution Facility Sales

15 From time to time, PG&E is approached by municipal utility systems, irrigation
16 districts or other electric distribution providers with requests to purchase a limited amount of
17 system facilities. A sale of distribution facilities typically includes poles, overhead and
18 underground conductors, meters and transformers. Sales of larger distribution facilities may
19 also involve substations, service yards and offices. In the normal course, these sale
20 opportunities arise where the prospective buyer operates a distribution system that adjoins
21 PG&E's system and, because the area in question is to be annexed or because of desired
22 operating efficiencies, the public entity wishes to acquire PG&E operating property and is
23 considering using the power of eminent domain to do so. Customers also from time to time
24 approach PG&E seeking to purchase a dedicated substation or transformer. While

25 _____
26 ⁵From time to time, PG&E donates real property to third parties where, for example,
27 the property is difficult to sell due to liabilities associated with the property or otherwise the
28 costs or burdens associated with disposing of the property exceed the value of the property.
In any instance where PG&E contemplated such a donation, PG&E would provide to the
Committee notice and an opportunity to object. This is distinct from the personal property
donations program described in Part VII below.

1 acquisition requests relating to large system segments raise complex financial and legal
2 issues and are not encompassed by this Motion, PG&E occasionally is willing to make small
3 distribution segment sales (i.e., facilities sold for less than \$2 million) at a price generally
4 based on replacement cost new, less depreciation. The average annual revenue from
5 distribution facility sales to individual customers and to other distribution providers serving
6 multiple customers is less than \$1 million.

7 2. Streetlight Sales

8 PG&E is not typically in the business of selling streetlights, since street lighting is
9 a revenue-generating service provided to its customers. However, since the late 1980s cities
10 have condemned streetlight facilities, arguing that the cities can maintain the facilities at less
11 cost. To avoid the costly condemnation process, PG&E from time to time in the last several
12 years has entered into consensual sales agreements with cities for streetlight facilities. By
13 using the sale process, PG&E receives adequate compensation for the streetlight facilities
14 and transaction costs are reduced. The sales price for the facilities is determined by
15 appraisals conducted by PG&E's Capital Accounting Department, using generally accepted
16 accounting principles and accounting criteria approved by the CPUC and FERC. The
17 average annual revenue from streetlight sales is \$1.5 million.

18
19 D. Stipulations and/or Settlements Where PG&E is Named as Defendant in
20 Eminent Domain Cases

21 On occasion PG&E is named as a defendant in eminent domain actions
22 commenced by governmental entities. These condemnation actions are the result of
23 government projects on parcels of land that are either owned in fee by PG&E or contain
24 easements owned by PG&E. For parcels of land that are not owned in fee by PG&E, PG&E
25 typically ensures that no PG&E facilities or easements will be affected as a result of the
26 contemplated condemnation. For condemnation of a parcel of land owned by PG&E in fee,
27 PG&E typically files a stipulated judgment agreeing to accept just compensation (generally,
28 the fair market value based on appraisal) for the parcel that is being condemned. On
average, approximately three to five properties owned by PG&E in fee are condemned

1 annually, generating an average of \$670,000 per year.

2 E. Sale/Grant of Easements

3 The sale/grant of easements are conceptually akin to the sale of surplus
4 properties, but they do not fall into that category because, as described in Part III.A above,
5 the sale of "surplus properties" means a sale in which PG&E transfers its fee interest in real
6 property. PG&E sells easements to third parties for a variety of purposes, including roads,
7 sewer lines, underground pipelines, generation-related uses, and general ingress and egress.
8 Sometimes the sales are made because the purchasing party's use of the easement will
9 facilitate or otherwise benefit some aspect of PG&E's business operations, sometimes they
10 are made because there are legal issues surrounding the purchaser's right to an easement
11 under real property law doctrines, and sometimes they are made simply because they are a
12 revenue-raising source and the easement to be granted is not incompatible with PG&E's use
13 of its fee interest in the property. PG&E estimates that for the three-year period from 1998
14 through 2000, it received gross revenue of approximately \$94,000 per year from the
15 grant/sale of easements. PG&E by this Motion seeks authority to continue with its
16 easement granting activity.

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18 IV. NON-TELECOMMUNICATIONS LEASES, LICENSES AND PERMITS FOR USE
19 OF PG&E PROPERTY

20 PG&E enters into lease agreements and license agreements, and issues permits,
21 for use by third parties of PG&E-owned land and other property when the intended use is a
22 compatible secondary use of the property which does not interfere with utility operations.
23 This activity generates revenue and also helps to reduce the maintenance costs associated
24 with such properties.

25 PG&E is the lessor, licensor or permittor under approximately 2,712 individual
26 agreements, which can be generally categorized as pertaining to one of the following seven
27 functions or uses: agriculture and grazing; commercial; park and recreation; PG&E
28 employee residences; parking and storage; training; or other. The seven functions are

1 summarized as follows:

2 a. Agriculture and Grazing Agreements. The agriculture and grazing
3 agreements allow others to use vacant land for growing various agricultural products or as
4 pastureland for animal grazing.

5 b. Commercial Agreements. The commercial agreements are for the use of
6 land and buildings for various commercial purposes including but not limited to resorts,
7 posting of signs, fish hatcheries, nurseries, siting of electrical equipment, and retail spaces in
8 PG&E office buildings.

9 c. Park and Recreation Agreements. The park and recreation agreements
10 allow the use of land for parks or other recreational purposes such as marinas, recreational
11 homesites or boat docks near PG&E-owned reservoirs or other bodies of water. This
12 category also includes public recreation program agreements, mandated by individual,
13 project specific FERC licenses, which offer camping and boating access to the public.

14 d. Employee Residences and Cottages. PG&E employee residences are the
15 cottages and homes specifically for use by PG&E employees who are headquartered at
16 remote hydroelectric facilities.

17 e. Parking and Storage Agreements. Parking and storage agreements are
18 entered into when others wish to use PG&E's excess property for parking and/or storage of
19 materials and equipment.

20 f. Training. Day Use Agreements allow others the use of PG&E's training,
21 demonstration and conference facilities.

22 g. Other. Agreements characterized as "other" do not easily fit into the
23 other categories and include environmental site access agreements, road access agreements,
24 and the like.

25 In calendar year 2000, PG&E received approximately \$2.5 million in revenues
26 from its leasing, licensing and permitting activities. On average, PG&E enters into about
27 600 new leases, licenses and permits annually, and 100 renewals. In calendar year 2000,
28 PG&E also received approximately \$2.8 million in fees from 967 day-use programs held at

1 the training and demonstration facilities at PG&E's Learning Center in San Ramon and the
2 Pacific Energy Center in San Francisco.

3 A summary of the quantity of active leases, licenses, permits and day-use
4 agreements is contained in the table below:

5

Category	Leases	Licenses	Permits	Total
Agriculture and Grazing	23	84	7	114
Commercial	42	27	5	74
Park and Recreation	64	1276	32	1372
PG&E Employee Residences	68	0	0	68
Parking and Storage	24	43	5	72
Training Facilities (number of day-use agreements—year 2000 only)		967		967
Other	0	10	11	21
TOTAL	221	2407	60	2688

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13 V. TELECOMMUNICATIONS LEASES, LICENSES, PERMITS AND JOINT POLE
14 AGREEMENTS FOR USE OF PG&E PROPERTY

15 The telecommunications leases, licenses and permits for the use of PG&E
16 property allow telecommunications-related uses of PG&E property by third parties so long as
17 such uses are compatible with PG&E's utility service. The telecommunications leases,
18 licenses and permits can be categorized into one of the following types of agreements: pole
19 attachment and underground conduit, wireless personal communication systems (PCS),
20 wireline (fiber optic), and other. These four types of agreements are described as follows:

21 a. Pole Attachment and Underground Conduit Agreements. Pole
22 attachment and/or underground conduit agreements allow telecommunications companies,
23 cable companies and school districts to attach communications facilities to PG&E or jointly-
24 owned distribution poles and/ or PG&E-owned underground conduit.

25 b. Wireless Agreements. Wireless personal communication system (PCS)
26 agreements allow cellular carriers to mount PCS antennas on PG&E towers, poles, or
27 buildings located on land owned in fee or on land in which PG&E has an easement interest.

28 c. Wireline Agreements. Wireline agreements allow telecommunications

1 companies to utilize available space on PG&E's electric transmission and distribution
2 infrastructure for the installation of fiber optic facilities.

3 d. Other Agreements. Other types of agreements include those allowing
4 others to use PG&E land and improvements for vault space, antennas, and passive reflectors
5 as well as technical software licenses.

6 Overall, PG&E received over \$12 million in revenues in 2000 from agreements
7 for the use of its electric transmission, distribution and telecommunications infrastructure.
8 This revenue source has been growing over the last five years and the growth in this area is
9 expected to continue as PG&E continues to identify opportunities to generate revenue from
10 the existing infrastructure.

11 12 VI. LEASES, LICENSES AND PERMITS FOR PG&E USE OF THIRD-PARTY 13 PROPERTY

14 The operation of PG&E's utility business requires that PG&E enter into
15 agreements for the use of property owned by third parties. In the ordinary course of its
16 business, PG&E regularly enters into agreements for the use of land and buildings owned by
17 third parties to support the utility business and provide adequate gas and electric service to
18 PG&E customers.

19 PG&E is currently the lessee under approximately 260 leases. The leases
20 generally fit within one of the following four categories: office, utility, telecommunications
21 or parking and storage. These four categories are more fully described as follows:

22 a. Office Leases. The office leases include high-rise office space,
23 warehouses with large yards and offices, small customer service offices, and yards with a
24 small office building.

25 b. Utility Leases. The utility leases are used to support the provision of
26 gas and electric service to PG&E's customers and include leases of land for electric
27 substations, mobile generator sites and gas regulator/meter stations.

28 c. Telecommunications Leases. The telecommunications leases are used

1 to support PG&E's independent telecommunications infrastructure and include leasing of
2 vault and antenna/passive reflector space on mountaintops and other key locations
3 throughout PG&E's service territory.

4 d. Parking and Storage Leases. The parking and storage leases are used
5 to provide ancillary parking or storage of material and equipment adjacent to a PG&E
6 facility or PG&E project.

7 Overall, PG&E's total annual leases payments under leases where PG&E is the
8 lessee average \$15.6 million. In addition, PG&E has acquired permits and licenses from
9 various state, federal and local agencies or private parties such as railroads, usually for the
10 purpose of PG&E facilities crossing through lands or easements owned by others. These
11 include permits from the San Francisco Bay Conservation and Development Commission
12 (BCDC), California Coastal Commission, California Department of Fish and Game, Army
13 Corps of Engineers, California State Lands Commission, United States Forest Service, water
14 districts and municipal utility districts. PG&E also acquires licenses and permits from
15 private parties for permission to enter property for temporary purposes such as surveying and
16 environmental testing. The annual expense to PG&E for these licenses and permits in 2000
17 was less than \$1 million. PG&E generally enters into 50 new leases, licenses and permits
18 per year and 640 renewals per year. This, of course, can vary dramatically in any given year,
19 based on such factors as the number of leases expiring that year, unanticipated changes in
20 needs, and the like.

21 VII. PROPERTY DONATIONS

22 PG&E regularly donates tangible personal property to charitable organizations
23 and government entities. There are two principal types of in-kind donations that PG&E
24 seeks authority to continue making pursuant to this Motion.
25

26 The first type is the donation of tangible personal property that has no or de
27 minimis residual value. For example, because of the rapid obsolescence of such equipment
28 as computers and cell phones, these types of assets have virtually no value at the end of their

1 useful life to PG&E. The largest type of donation within this category is the donation of
2 computers for schools and community-based organizations. PG&E at one time had a
3 contract with The Detwiler Foundation, pursuant to which Detwiler would refurbish old
4 computers and distribute them to needy organizations. But since The Detwiler Foundation
5 no longer performs this function, PG&E has made such donations directly on a piecemeal
6 basis during the past year. PG&E is presently exploring a relationship with a community-
7 based organization in Fresno, California, that would perform a similar refurbishing and
8 distribution function previously performed by The Detwiler Foundation. As another
9 example, the United Way of the Bay Area has requested that PG&E donate any used cellular
10 telephones, which PG&E is evaluating and may proceed to do.

11 The second type of in-kind donation covered by this Motion is where the tangible
12 personal property to be donated is no longer useful to PG&E but has some small residual
13 value. For example, PG&E over the past two years has donated used motor vehicles that
14 could be sold through fleet services, as well as older equipment such as trailers, containers,
15 poles and photographic supplies that likely could be sold for some small residual value. A
16 specific example of a donation in this category, made in calendar year 2000, is a truck to the
17 Mendocino Volunteer Fire Department. Donations in this category are made only to non-
18 profit organizations or local governmental entities. By this Motion, PG&E seeks authority to
19 make annual donations of tangible personal property in this category with an aggregate
20 residual value not to exceed \$500,000 without further Committee or Court review or
21 approval. PG&E will seek authority from the Court before proceeding with any donation
22 that would cause the aggregate amount of donations to exceed \$500,000 in residual value
23 during any calendar year.

24
25 **VIII. PROPOSED CRITERIA FOR REVIEW AND APPROVAL OF SALE, LEASE,
26 LICENSE AND PERMIT AGREEMENTS BETWEEN PG&E AND THIRD PARTIES**

27 Even though PG&E's transactions described above with respect to the sale,
28 donation, lease, licensing, permitting or other encumbrance of real and personal property

1 involves transactions, receipts and expenditures that PG&E believes are in the vast majority
2 of instances in the ordinary course of its business, PG&E recognizes that its creditors have an
3 interest in evaluating unusually large transactions which involve substantial dollars. PG&E
4 proposes to address this concern by adopting a procedure for determining when real property
5 and personal property sales, donations, leases, licenses, permits and similar transactions must
6 be reviewed by the Committee and when such transactions must be approved by the
7 Bankruptcy Court. Attached to the Chinn Declaration filed concurrently herewith as
8 Exhibit A is a chart setting forth PG&E's proposed criteria for Committee review or Court
9 approval of real property and personal property transactions within the scope of this Motion.

10 As illustrated by the chart attached as Exhibit A to the Chinn Declaration, PG&E
11 proposes to submit to the Committee for review the following real property and personal
12 property transactions:

- 13 •Any sale of surplus real property where the sale price is between \$5 million and
14 \$50 million, or the sale price is less than 80% of fair market value ("FMV"), as
15 determined by appraisal or competitive bidding;
- 16 •Any sale of operating property consisting of distributions facilities or streetlights
17 where the sale price is between \$2 million and \$50 million, or the sale price is
18 less than 80% of FMV, as determined by appraisal or competitive bidding;
- 19 •Any eminent domain action/settlement where the sale price is between \$5
20 million and \$50 million, or the sale price is less than 80% of FMV, as determined
21 by appraisal;
- 22 •Any sale of an easement where the sale price is between \$100,000 and \$500,000;
23 or any sale of an easement that, after giving effect to such current proposed sale
24 transaction, would result in easement sale transactions exceeding \$500,000 in the
25 aggregate during any calendar year;
- 26 •Any lease, license or permit of PG&E-owned property to a third party for
27 grazing/agricultural, recreational or residential use, where the revenue under such
28 lease, license or permit is between \$500,000 and \$1 million annually, or between
\$3 million and \$7 million over the life of such lease, license or permit (excluding

1 any unexercised extension option);⁶

2 •Any lease, license or permit of PGE-owned property to a third party for
3 commercial/industrial or peaker/generation use, where the revenue under such
4 lease, license or permit is between \$1 million and \$10 million annually, or
5 between \$10 million and \$25 million over the life of such lease, license or permit
6 (excluding any unexercised extension option);

7 •Any telecommunications lease, license or permit of PG&E-owned property,
8 where the revenue under such lease, license or permit is between \$1 million and
9 \$10 million annually, or between \$10 million and \$25 million over the life of
10 such lease license or permit (excluding any unexercised extension option);

11 •Any lease, license or permit for use of third-party property by PG&E where
12 PG&E's payment obligations under such lease, license or permit are between \$1
13 million and \$10 million annually, or between \$10 million and \$25 million over
14 the life of such lease, license or permit (excluding unexercised extension
15 options);

16 •Any of the foregoing transactions that is pending at the time an order on this
17 Motion is granted will be subject to this Motion and will be subject to the same
18 review and approval procedure described herein as if such transaction were
19 proposed to be entered into after an order on this Motion is granted.

20 Under the proposed procedure, the Committee would have five (5) business days to
21 review transactions submitted by PG&E. If the Committee does not object to the transaction
22 within such period, no court order would be required for PG&E to enter into or consummate
23 the transaction. If, on the other hand, the Committee objects to the transaction within such
24 five-day period, PG&E, if it desires to pursue the transaction notwithstanding the lack of
25 Committee approval, would seek this Court's order authorizing PG&E to enter into the
26 particular agreement, upon no less than ten (10) days' written notice to the Committee and

27 ⁶PG&E notes that lease, license, permit and joint pole agreements, which allow third
28 parties to use PG&E-owned property, are of a different nature than the other types of
transactions and arguably should not need further review or approval at any dollar levels.
This is because virtually all activities permitted on PG&E property under lease, license,
permit and joint pole agreements are compatible secondary uses of utility property which do
not interfere with utility operations or the value of property to PG&E. Nonetheless, PG&E
has accommodated the Committee's request that some review-triggering threshold also be
established for these types of transactions, covered in the text in the fifth through seventh
bullet points.

1 the United States Trustee.

2 As further illustrated by the chart attached as Exhibit A to the Chinn Declaration,
3 review and non-objection by the Committee would not be sufficient, and Bankruptcy Court
4 approval would be required, for the following transactions:

- 5 •Any sale of surplus real property where the sale price is \$50 million or more;
- 6 •Any sale of operating property consisting of the sale of distribution facilities or
7 streetlights where the sale price is \$50 million or more;
- 8 •Any eminent domain settlement of \$50 million or more;
- 9 •Any sale of an easement where the sale price is at least \$500,000 or where the
10 current proposed transaction would cause the aggregate dollar amount of sales of
11 easements to exceed \$1 million in any calendar year;
- 12 •Any lease, license or permit of PG&E-owned property to a third party for
13 grazing/agricultural, recreational or residential use, where the revenue under such
14 lease, license or permit is at least \$1 million annually or at least \$7 million over
15 the life of such lease, license or permit (excluding any unexercised extension
16 option);
- 17 •Any lease, license or permit of PGE-owned property to a third party for
18 commercial/industrial or peaker/generation use, where the revenue under such
19 lease, license or permit is at least \$10 million annually or at least \$25 million over
20 the life of such lease license or permit (excluding any unexercised extension
21 option);
- 22 •Any telecommunications lease, license or permit of PG&E-owned property,
23 where the revenue under such lease, license or permit is at least \$10 million
24 annually or at least \$25 million over the life of such lease license or permit
25 (excluding any unexercised extension option);
- 26 •Any lease, license or permit for use of third-party property by PG&E where
27 PG&E's payment obligations under such lease, license or permit are at least \$10
28 million annually or at least \$25 million over the life of such lease, license or
29 permit (excluding unexercised extension options); and
- Any donation to a charitable, non-profit or government entity of tangible
personal property that would cause the aggregate residual value of all donations
in a calendar year to exceed \$500,000.

Bankruptcy Court approval would be sought by a motion noticed and served upon the

1 Committee and the United States Trustee no less than ten (10) days prior to the scheduled
2 hearing on the motion.

3 Finally, based on the foregoing thresholds triggering Committee review or Court
4 approval, and as further illustrated by the chart attached as Exhibit A to the Chinn
5 Declaration, PG&E would be permitted to engage in the following transactions without
6 review or approval by the Committee or the Bankruptcy Court:

- 7 •Any sale of surplus real property where the sale price does not exceed \$5
8 million, provided that the sale price is not less than 80% of fair market value
9 (“FMV”), as determined by appraisal or competitive bidding;
- 10 •Any sale of operating property consisting of distributions facilities or streetlights
11 where the sale price does not exceed \$2 million, provided that the sale price is not
12 less than 80% of FMV, as determined by appraisal or competitive bidding;
- 13 •Any eminent domain action/settlement where the sale price does not exceed \$5
14 million, provided that the sale price is not less than 80% of FMV, as determined
by appraisal;
- 15 •Any sale of an easement where the sale price does not exceed \$100,000,
16 provided that after giving effect to such current proposed sale transaction, the
17 aggregate sales proceeds from easement sale transactions do not exceed \$500,000
in a calendar year;
- 18 •Any lease, license or permit of PG&E-owned property to a third party for
19 grazing/agricultural, recreational or residential use, where the revenue under such
20 lease, license or permit does not exceed \$500,000 annually and does not exceed
21 \$3 million over the life of such lease, license or permit (excluding any
unexercised extension option);
- 22 •Any lease, license or permit of PGE-owned property to a third party for
23 commercial/industrial or peaker/generation use, where the revenue under such
24 lease, license or permit does not exceed \$1 million annually and does not exceed
25 \$10 million over the life of such lease, license or permit (excluding any
unexercised extension option);
- 26 •Any telecommunications lease, license or permit of PG&E-owned property,
27 where the revenue under such lease, license or permit does not exceed \$1 million
28 annually and does not exceed \$10 million over the life of such lease license or

1 permit (excluding any unexercised extension option);

2 •Any lease, license or permit for use of third-party property by PG&E where
3 PG&E's payment obligations under such lease, license or permit does not exceed
4 \$1 million annually and does not exceed \$10 million over the life of such lease,
5 license or permit (excluding unexercised extension options);

6 •Any donation to a charitable, non-profit or government entity of tangible
7 personal property, provided that after giving effect to such donation, the
8 aggregate residual value of all donations in such calendar year does not exceed
9 \$500,000; and

10 •Any of the foregoing transactions that is pending at the time an order on this
11 Motion is granted and that per the foregoing criteria do not require Committee
12 review or Court approval.

13 IX. INTERPLAY BETWEEN CALIFORNIA PUBLIC UTILITIES CODE SECTION 851
14 AND BANKRUPTCY COURT APPROVAL OF REAL AND PERSONAL PROPERTY
15 TRANSACTIONS

16 Under relevant state law, PG&E is required to obtain the approval of the CPUC
17 for dispositions of certain types of properties. In particular, California Public Utilities Code
18 ("PUC") Section 851 requires that utility assets which are "necessary or useful" for public
19 utility purposes may not be sold, leased or otherwise encumbered without prior approval
20 from the Commission. The requirements of PUC Section 851 apply to sales, leases,
21 assignments, mortgages and other dispositions or encumbrances of utility property which is
22 necessary or useful to utility operations.⁷ Specifically, PUC Section 851 provides in
23 pertinent part:

24
25 No public utility . . . shall sell, lease, assign, mortgage, or otherwise dispose of
26 or encumber . . . property necessary or useful in the performance of its duties to

27
28 ⁷To avoid confusion, PG&E notes that property that might be identified as "surplus
property" for sale or other disposition as described in Part III.A above is not necessarily the
flip side of "necessary or useful" for purposes of PUC Section 851. That is to say, a property
for technical reasons may fall within PUC interpretations of "necessary or useful" even
though it is identified by PG&E as "surplus property" that PG&E desires to sell or otherwise
dispose of. Neither the Court nor interested parties need be concerned about this seeming
anomaly, since as clearly stated herein, PG&E will continue to comply with the requirements
of Section 851 absent further order of this Court.

1 the public, or any franchise or permit or any right thereunder, . . . without first
2 having secured from the commission an order authorizing it so to do. Every
3 such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or
4 consolidation made other than in accordance with the order of the commission
authorizing it is void. (Emphasis added.)

5 By this Motion, PG&E is not seeking to circumvent or otherwise affect the PUC
6 Section 851 approval process. PG&E has continued to file and pursue PUC Section 851
7 Applications with the CPUC since the commencement of its Chapter 11 case with respect to
8 transactions which would be subject to PUC Section 851 if no bankruptcy case had been
9 commenced, and PG&E's continued compliance with PUC Section 851 will not be affected
10 by this Motion. This Motion simply requests this Court's authorization, to the extent required
11 under the Bankruptcy Code, to allow PG&E to enter into a wide variety of real and personal
12 property transactions prior to the effective date of a confirmed plan of reorganization in this
13 Chapter 11 case. To the extent that PG&E determines that, absent bankruptcy, it would be
14 required to apply to the CPUC for approval of a transaction under PUC Section 851, PG&E
15 prior to the effective date of a confirmed plan of reorganization in this case will continue to
16 seek such approval from the CPUC, except as stated in the next sentence. If, under particular
17 circumstances, PG&E believes that this Court should authorize a transaction without CPUC
18 approval where such approval would otherwise be required under state law, PG&E will
19 specifically request Bankruptcy Court authorization to so proceed, and PG&E will not
20 proceed with the transaction absent such a Bankruptcy Court order specifically authorizing
21 PG&E to proceed with the transaction.

22
23 X. EFFECT OF THE AUTHORIZATIONS SOUGHT BY THIS MOTION ON LIEN OR
CO-OWNERSHIP INTERESTS

24 As indicated in Part I above, with one exception discussed immediately below,
25 PG&E by this Motion does not seek to circumscribe or affect any specific protections
26 afforded any lienholder, co-interest owner or the like under Section 363 that may be
27 applicable with respect to any specific property PG&E might seek to sell. Thus, for
28

1 example, notwithstanding that a particular proposed sale transaction is under the dollar
2 threshold triggering Committee review or Bankruptcy Court approval under this Motion, if
3 there were a lien on such property and PG&E sought to sell the property free and clear of the
4 lien, Section 363(f) (and any Federal or local Bankruptcy Rule pertaining thereto) would
5 remain fully applicable, and PG&E would still be obligated to comply with Section 363(f)
6 and any applicable Bankruptcy Rule. Similarly, as another example, if there were a co-
7 owner of a property PG&E otherwise was authorized to sell without Committee review or
8 Court approval pursuant to this Motion, and PG&E sought to sell the entire property, Section
9 363(h) (and any Federal or local Bankruptcy Rule pertaining thereto) would remain fully
10 applicable, and PG&E would still be required to comply with Section 363(h) and any
11 applicable Bankruptcy Rule.

12 The one exception to the foregoing concerns the lien on substantially all assets of
13 the estate in favor of BNY Western Trust Company in its capacity as the successor trustee
14 (the "Trustee") under that certain Indenture dated December 1, 1920 and related
15 documentation, as amended to date (collectively, the "Indenture"), which is the subject of
16 that certain "Stipulation (I) Authorizing and Restricting Use of Cash Collateral Pursuant to
17 11 U.S.C. §363 and Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant
18 to 11 U.S.C. §§361 and 363" entered into between PG&E and the Trustee on May 9, 2001
19 (the "Cash Collateral Stipulation") and approved by the Bankruptcy Court by its Order
20 thereon dated the same date. As part of the Cash Collateral Stipulation, the Trustee and
21 PG&E agreed as follows:

22 Except for transactions in the ordinary course of its business or except
23 as otherwise permitted in the Indenture or authorized by an order of
24 this Court (after notice to the Indenture Trustee), the Debtor shall not
25 sell, transfer, lease, encumber or otherwise dispose of any Pre-Petition
26 Collateral or Post-Petition Collateral without the prior written consent
27 of the Indenture Trustee, and no such consent shall ever be implied
28 from any other action, inaction or acquiescence by the Indenture
Trustee or any Bondholder. The Indenture Trustee expressly
authorizes the Debtor to sell assets pursuant to Section 363(f) of the
Bankruptcy Code free and clear of any liens, claims or encumbrances
of the Indenture Trustee to the extent such sales are permitted by the
Indenture and so long as the liens, claims or encumbrances of the
Indenture Trustee shall attach to the proceeds of such sales with the

1 same validity and priority as the liens, claims and encumbrances of the
2 Indenture Trustee in the assets subject to such sales, until the
3 disposition of such proceeds in accordance with the Indenture and
4 applicable bankruptcy law. (Cash Collateral Stipulation ¶13)

5 Against the backdrop of the Cash Collateral Stipulation, and in order to further
6 the principal purpose of this Motion (viz., to enable PG&E to proceed with routine
7 transactions within the dollar parameters specified herein without the need for a separate
8 motion and a separate Bankruptcy Court order for each such transaction), PG&E has agreed
9 with the Trustee as follows with respect to sales of PG&E property subject to the lien under
10 the Indenture and incorporates such agreement into this Motion:

11 (a) For each and any such sale transaction that, under the criteria set forth in
12 the Motion, does not need to be the subject of a separate motion filed with the Bankruptcy
13 Court or approved by the Bankruptcy Court (i.e., any sale transaction for a sales price of \$5
14 million or less, or for a sales price of between \$5 million and \$50 million if the Committee
15 has not objected to the sale within the time specified in the Motion for objecting), PG&E will
16 comply with all applicable provisions of the Indenture that are a condition to obtaining the
17 release of the lien of the Trustee on the applicable property, all net proceeds of any and each
18 such sale (i.e., the gross proceeds of sale minus the direct costs of sale) will be paid over to
19 the Trustee to be held by the Trustee in a segregated account as cash collateral for PG&E's
20 obligations under the Indenture, and such proceeds shall not be released to PG&E unless and
21 until either (i) the Trustee has consented in writing to the release of such proceeds to PG&E,
22 or (ii) the Bankruptcy Court orders the Trustee to release such proceeds following a noticed
23 motion and hearing thereon, any such motion to be served upon the Trustee no less than 28
24 days prior to the scheduled hearing date. In connection with any such motion, PG&E
25 reserves the right to argue that the Trustee is required pursuant to the applicable provisions
26 of the Indenture to release some or all of the net proceeds then held by the Trustee as cash
27 collateral, and/or that the Trustee's interest in PG&E's property is adequately protected
28 without regard to such cash collateral; and the Trustee reserves the right to oppose any or all
such arguments and to make any and all adequate protection arguments that it deems

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1 appropriate. Accordingly, with this arrangement incorporated into this Motion, PG&E by
2 this Motion proposes that PG&E will not be required to bring a separate motion under
3 Section 363(f) or any applicable local or Federal Bankruptcy Rule in order to consummate,
4 free and clear of the Trustee's lien under the Indenture, a sale of any PG&E property that
5 does not require a separate motion or Bankruptcy Court approval under the criteria set forth
6 in the Motion.

7 (b) For each and any sale transaction that, under the criteria set forth in the
8 Motion, must be the subject of a separate motion filed with the Bankruptcy Court and
9 approved by the Bankruptcy Court (i.e., any sale transaction for a sales price of \$50 million
10 or more, or for a sales price of between \$5 million and \$50 million if the Committee has
11 objected to the sale within the time specified in the Motion for objecting), PG&E will bring a
12 motion for a sale free and clear of the lien of the Indenture pursuant to Section 363(f) of the
13 Bankruptcy Code and any applicable local or Federal Bankruptcy Rules, and the issue of the
14 disposition of the net proceeds of any such sale shall be addressed by the parties and the
15 Court in connection with the resolution of such motion, with both PG&E and the Trustee
16 reserving all rights to make any arguments and take any positions under applicable law.

17 In sum, to the extent the Motion authorizes PG&E to enter into and
18 consummate a specific transaction pursuant to Section 363(b) or (c) without any additional
19 motion or Bankruptcy Court approval, PG&E will not be required to bring a motion under
20 Section 363(f) or any applicable local or Federal Bankruptcy Rule in order to enter into or
21 consummate such sale free and clear of the lien of the Trustee, provided that PG&E complies
22 with the applicable Indenture provisions for obtaining release of the lien and the net proceeds
23 of each such sale are tendered to the Trustee to hold as cash collateral pending either (i) the
24 Trustee's written consent to release such proceeds, or (ii) a Bankruptcy Court order requiring
25 the Trustee to release such proceeds after a noticed motion served upon the Trustee.
26 Conversely, to the extent that under the criteria set forth in the Motion a proposed sale
27 requires a further motion by PG&E and a Bankruptcy Court order approving such sale, the
28 present Motion does not provide for a sale free and clear of the lien of the Indenture and

1 therefore does not address the disposition of the net proceeds of such a sale. Rather, if
2 PG&E wishes such a sale to be free and clear of the lien of the Indenture, PG&E as part of
3 such further motion will move pursuant to Section 363(f) to sell the property free and clear
4 of the lien of the Indenture, and the disposition of the net proceeds of such a sale will
5 necessarily be dealt with in the Bankruptcy Court's ruling on such a motion.

6
7 **XI. THE COURT SHOULD APPROVE THE REQUESTED REAL AND PERSONAL**
8 **PROPERTY TRANSACTIONS AND AUTHORIZATIONS PURSUANT TO SECTIONS**
9 **363 AND 105(a) OF THE BANKRUPTCY CODE**

10 As demonstrated above and in the supporting Chinn Declaration, the types of
11 transactions that PG&E seeks authority to proceed with pursuant to this Motion without
12 further Court order typically arise, are entered into and are consummated in the ordinary
13 course of PG&E's business. Accordingly, PG&E believes that the sales, donations, leases,
14 licenses, permits and other encumbrances that are the subject of this Motion are permitted
15 without notice or hearing or any Bankruptcy Court approval pursuant to Section 363(c) as a
16 use, sale or lease of estate property by the debtor in possession in the ordinary course of its
17 business.

18 However, there are several related reasons why it is appropriate for PG&E in this
19 case to seek (and this Court to authorize) pre-established ground rules for the sale, donation,
20 lease, license, permit and similar transactions covered by this Motion. In light of the
21 uncommon size and nature of PG&E's business, the large number of sale, donation, lease,
22 license, permit and similar transactions it routinely enters into as part of such business, and
23 the substantial aggregate dollar amount of such transactions, it seems both reasonable and
24 appropriate to involve the Committee and the Court in establishing acceptable parameters for
25 this aspect of PG&E's operations. In an area with some shades of gray and where subjective
26 judgments are required on a case-by-case basis to determine what is or may be in the
27 "ordinary course of business," PG&E should not have to guess as to what the Committee or
28 the Court might later question or find objectionable. Thus, without the reasonable

1 parameters and authorization sought by this Motion, substantially more judicial and
2 Committee resources likely will have to be devoted to a large volume of routine transactions.
3 For this reason, PG&E has sought and obtained the Committee's concurrence with and
4 support of the authority sought in this Motion.

5 Related, it is widely known that many non-debtor counterparties to certain sale,
6 lease and license transactions will insist on a Bankruptcy Court order approving a proposed
7 transaction with a debtor in possession as a condition to such transaction becoming effective,
8 even if such transaction is in the ordinary course of the debtor's business and does not
9 require any approval or notice and hearing pursuant to Section 363(c). Simply stated,
10 counterparties in certain purchase, sale and lease transactions, and, perhaps even more
11 importantly, title companies in purchase and sale transactions, do not want to guess about
12 what is in the ordinary course of a debtor's business, and often insist on "comfort" orders as
13 a condition of closing a transaction with a debtor in possession.

14 While PG&E cannot ensure that all counterparties and title companies will be
15 willing to rely on an order entered on this Motion and will not demand any further order as a
16 condition of consummating its particular transaction, PG&E hopes and expects that an order
17 on this Motion will satisfy most counterparties and title companies, thus greatly minimizing
18 the need for PG&E to seek individual "comfort" orders from the Court. For those
19 transactions covered by this Motion that are under the dollar threshold triggering Committee
20 review, the counterparty (and, if one is involved, the title company) will be able to confirm
21 objectively that the transaction is covered by the order on this Motion. For those transactions
22 covered by this Motion that are over the dollar threshold triggering Committee review but
23 under the dollar threshold requiring Bankruptcy Court approval, PG&E hopes and expects
24 that the counterparty (and, if one is involved, the title company) will accept a certificate from
25 PG&E and/or the Committee stating that the transaction has been reviewed by the
26 Committee under the procedure specified in the Motion and order thereon and that the
27 Committee has not objected to the transaction, thereby meaning the transaction is approved
28 pursuant to the order on this Motion.

1 PG&E believes this Court can utilize its authority under Section 363 of the
2 Bankruptcy Code to grant the authorizations requested by this Motion. Additionally, Section
3 105(a) of the Bankruptcy Code authorizes this Court to "issue any order, process, or
4 judgment that is necessary or appropriate to carry out the provisions of this title." The
5 purpose of Section 105 is "to assure the bankruptcy courts power to take whatever action is
6 appropriate or necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy
7 §105.01, at 105-6 (15th ed. rev. 2000). For the reasons set forth above, the authorizations
8 sought by this Motion plainly will facilitate the efficient administration of this estate and at
9 the same time best serve the interests of PG&E, its creditors and its customers alike, and will
10 not violate any principle or precept of the Bankruptcy Code. Accordingly, pursuant to the
11 Court's authority and discretion under Section 105(a), the Court can and should authorize
12 PG&E to enter into and consummate the sale, donation, lease, license, permit and similar
13 transactions described in this Motion, subject to the parameters and Committee and Court
14 review procedures specified in the Motion.

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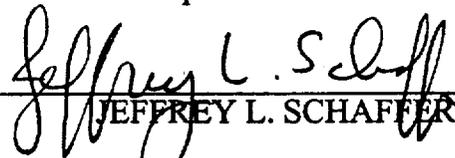
16 CONCLUSION

17 For all of the foregoing reasons, PG&E respectfully requests that this Court make
18 and enter an order granting the Motion.

19 DATED: September 5, 2001

20 Respectfully,

21 HOWARD, RICE, NEMEROVSKI, CANADY,
22 FALK & RABKIN
A Professional Corporation

23
24 By: 

JEFFREY L. SCHAFER

25 Attorneys for Debtor and Debtor in Possession
26 PACIFIC GAS AND ELECTRIC COMPANY
27
28