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JAMES L. LOPES (No. 63678)
JANET A. NEXON (No. 104747)
GARY M. KAPLAN (No. 155530)
HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4065
Telephone: 415/434-1600
Facsimile: 415/217-5910

50-275/323

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Debtor.

Federal I.D. No. 94-0742640

Case No. 01 30923 DM
Chapter 11 Case
Date: December 27, 2001
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

DEBTOR'S NOTICE OF MOTION AND MOTION
FOR AUTHORIZATION TO SETTLE CERTAIN PRE-PETITION CLAIMS;
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

[SUPPORTING DECLARATION OF
KEVIN J. DOWD FILED SEPARATELY]

Acc 1 Add: Kids Ggc Mail Center

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on December 27, 2001, at 1:30 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E" or the "Debtor"), will and hereby does move the Court for entry of an order authorizing PG&E to settle certain pre-petition claims (the "Motion").

This Motion is based on the facts and law set forth herein (including the accompanying Memorandum of Points and Authorities beginning on the next page), the Declaration of Kevin J. Dowd filed concurrently herewith, the record of this case and any evidence presented at or prior to the hearing on this Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9014-1(c)(2) of the Bankruptcy Local Rules for the Northern District of California, any written opposition to the Motion and the relief requested therein must be filed with the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E, the Office of the United States Trustee and the Official Committee of Unsecured Creditors) at least five (5) days prior to the scheduled hearing date. If there is no timely objection to the requested relief, the Court may enter an order granting such relief without further hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION.

Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case (the "Debtor" or "PG&E"), submits this Memorandum of Points and Authorities in Support of Debtor's Motion for Authorization to Settle Certain Pre-Petition Claims (the "Motion"). By this Motion, PG&E seeks the Court's approval to resolve certain pre-petition claims prior to the effective date of the Plan of Reorganization filed herein, subject to the limitations discussed below:

Approximately 12,800 claims have been filed in this case to date.¹ The vast majority of the claims (approximately 80.5%) were filed in an amount less than \$100,000. The remaining claims (approximately 19.5%) are for amounts in excess of \$100,000.

PG&E seeks this Court's authority to settle certain pre-petition claims, without the burden and expense of seeking review by the Official Committee of Unsecured Creditors (the "Committee") and other parties in interest, and without Bankruptcy Court approval of each proposed settlement. Relief from this burden will benefit not only PG&E and its bankruptcy estate, but also the Committee and the Court.

In particular, PG&E seeks authority to settle, without Committee or Court review, the following claims:²

(i) any claim where the proposed allowed amount of such claim is \$100,000 or less; and

(ii) any claim where the proposed allowed amount exceeds \$100,000 but is no more than \$5 million, and is the lesser of (a) 110% of the amount of such claim as scheduled in PG&E's Amended and Restated Schedules filed herein on July 2, 2001 (the "Schedules"),

¹The evidentiary basis and support for the facts set forth in this Motion are contained in the Declaration of Kevin J. Dowd filed concurrently herewith.

²In each instance, the amount of the claim used for these determinations is calculated without interest.

1 and (b) \$500,000 more than the amount of such claim as set forth on the Schedules.³ For
2 purposes of this determination, any claim which is not scheduled, or is scheduled as
3 disputed, contingent or unliquidated, would be treated as a claim scheduled in the amount of
4 \$0.

5 To the extent any proposed settlement does not meet the criteria set forth above,
6 PG&E proposes to provide written notice of such proposed settlement to the Committee
7 (including a description of the claim being settled) via a written notice to the Committee's
8 counsel. If the Committee objects to the proposed settlement by written notice to PG&E's
9 bankruptcy counsel within ten calendar days after the Committee's receipt of PG&E's
10 notice, PG&E will not proceed to enter into such proposed settlement without bringing a
11 motion for approval of the proposed settlement on at least twenty days' written notice to the
12 Committee and the United States Trustee and obtaining a Court order thereon.

13 With respect to any settlement which would result in an allowed claim in excess
14 of \$5 million, PG&E will not enter into and consummate any such settlement without first
15 bringing a motion for approval of such settlement on at least 20 days' notice to the Special
16 Notice List as defined in the Case Management Order Revised June 14, 2001 entered in this
17 case (as the same may be amended or supplemented by the Court from time to time) and
18 obtaining an order on such motion.

19 Written objections or responses to any such motion for approval of a settlement
20 will be required to be filed five (5) calendar days prior the hearing on the motion.

21 PG&E will submit status reports to the Committee on not less than a monthly
22 basis, listing those claims which have been settled and the agreed allowed amount of each
23 such claim. Further, PG&E will file with the Court each written stipulation entered into by
24 PG&E settling any claim, and serve copies thereof on counsel for the Committee and the

25
26 ³For example, where the Scheduled Amount of a claim is \$4 million, and the creditor
27 has filed a proof of claim for \$5 million, if the parties reach a settlement whereby the claim
28 would be allowed at \$4.4 million, no Court or Committee review would be required.
However, if the settlement results in a proposed allowed claim of \$4.5 million, as discussed
below, Committee and/or Court approval would be required, because the variance would be
greater than 10% of the Scheduled Amount of \$4 million.

1 United States Trustee.

2 PG&E has obtained the approval of the Committee for the settlement
3 authorizations sought by the Motion.

4 The effect of a favorable ruling on the present Motion would be to authorize
5 PG&E to settle approximately 80% of the claims filed in this case without further Court or
6 Committee review. This claims settlement authority will benefit the estate by (i) reducing
7 professional fees and other costs for all affected parties in interest, (ii) providing flexibility
8 to expeditiously resolve claims, and (iii) facilitating the efficient administration of the estate.

9
10 **II.**

11 **GENERAL BACKGROUND.**

12 PG&E is an investor-owned utility providing electric and gas services to millions
13 of California residents and businesses. PG&E commenced this case by the filing of a
14 voluntary petition under Chapter 11 of the Bankruptcy Code on April 6, 2001. PG&E
15 continues to manage and operate its business and property as a debtor in possession pursuant
16 to Sections 1107 and 1108 of the United States Bankruptcy Code. 11 U.S.C. §§1107-1108.
17 No trustee has been appointed.

18 This Court has entered an order setting September 5, 2001 as the general claims
19 bar date and October 3, 2001 as the governmental claims bar date. Approximately 12,800
20 claims have been filed in this case. In terms of the number of claims filed, approximately
21 80.5% are general unsecured claims in an amount of \$100,000 or less.

22 PG&E anticipates that the claims resolution process will be time-consuming and
23 require a great deal of effort on the part of its business and legal teams, as well as outside
24 counsel. The procedures proposed in this Motion will facilitate the efficient resolution of the
25 vast majority of the claims in this case.

1 III.

2 **THE REQUESTED AUTHORIZATION IS PERMITTED PURSUANT TO**
3 **BANKRUPTCY RULE 9019(b) AND WILL FACILITATE THE EFFICIENT**
4 **ADMINISTRATION OF THE ESTATE**

5 Absent this Court's authorization of the procedures set forth herein, under Rule
6 9019(a) of the Federal Rules of Bankruptcy Procedure, PG&E would be required to seek this
7 Court's approval of all claim settlements, regardless of the amount of the settlement. Rule
8 9019(a) would also require prior notice and opportunity for hearing to all interested parties
9 before approval of a settlement or compromise.

10 However, PG&E believes this Court can utilize its authority under Rule 9019(b)
11 of the Federal Rules of Bankruptcy Procedure to approve the settlement authority requested
12 by this Motion. Rule 9019(b) provides as follows:

13 "After a hearing on such notice as the court may direct, the court may
14 fix a class or classes of controversies and authorize the trustee to
15 compromise or settle controversies within such class or classes
16 without further court order."

17 Where numerous settlements are anticipated, the court in its discretion may grant
18 the debtor in possession authority to settle under Rule 9019(b) within appropriate parameters
19 without requiring that each and every potential settlement be set for hearing. See Collier on
20 Bankruptcy, ¶9019.03 at 9019-5—9019-6 (15th ed. Revised). For example, in Federated
21 Dep't Stores, Inc. & Allied Stores Corp., No. 1-90-00130, 1990 Bankr. LEXIS 1157, at *3
22 (Bankr. S.D. Ohio June 1, 1990), the bankruptcy court permitted the debtors to settle all pre-
23 petition claims, provided that the settlement amount was either (i) 10% or less above the
24 scheduled amount of the claim or (ii) \$150,000 or less. The court found that, in a case of the
25 size and complexity of Federated, "the cost of seeking Court approval of each settlement
26 may significantly reduce the benefits otherwise incident to so many of the settlements." Id.
27 at *7. See also In re Check Reporting Serv., 137 BR. 653, 656 (Bankr. W.D. Mich. 1992)
28 (trustee authorized to settle, without further notice or hearing, pending preferential transfer
adversary proceedings for no less than twenty-five percent (25%) of the amount of the
judgment requested by the trustee in the adversary proceedings).

1 Similarly, in this large and complex case, the settlement authorization requested
2 by this Motion clearly will facilitate the efficient administration of this estate by
3 streamlining the claims reconciliation process, and will avoid unnecessary consumption of
4 judicial resources. Without the approval sought herein, both the Bankruptcy Court and the
5 Committee potentially would have to review and consider for approval a prohibitively large
6 number of claims settlements—either one by one, or in large groups of dozens or even
7 hundreds at a time. Either undertaking would require an enormous effort. Accordingly,
8 authorizing the suggested parameters for the settlement of pre-petition claims makes eminent
9 sense from a legal, economic and practical perspective.

10 Twenty days' notice of the hearing on this Motion has been sent to the Special
11 Notice List in this Case. PG&E submits that this is adequate notice of the Motion, and that
12 the Court can and should authorize PG&E to settle pre-petition claims prior to the Effective
13 Date of the Plan within the parameters described above.

14 HOWARD
15 RICE
16 NEMEROVSKI
17 CANADY
18 FALK
19 & RABKIN
20 A Professional Corporation

21 IV.

22 CONCLUSION.

23 For all of the foregoing reasons, PG&E respectfully requests that this Court make
24 and enter its order granting the Motion, authorizing PG&E to settle pre-petition claims of the
25 type and within the dollar parameters described above pursuant to the procedures set forth
26 above, without further order of this Court.

27 DATED: December 7, 2001.

28 Respectfully,

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

By: Janet A. Nexon

JANET A. NEXON

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