

1 James E. Spiotto [Admitted *Pro Hac Vice*]
2 Chapman and Cutler
3 111 West Monroe Street
4 Chicago, IL 60603-4080
5 Telephone: (312) 845-3000
6 Facsimile: (312) 701-2361

50-275/323

5 William R. Pascoe, Esq. (State Bar #54284)
6 Pascoe & Rafton
7 1050 Northgate Drive
8 Suite 356
9 San Rafael, CA 94903
10 Telephone: (415) 492-1003
11 Facsimile: (415) 492-3312

12 ATTORNEYS FOR CERTAIN DEBTHOLDERS

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

16 IN RE:)

17 PACIFIC GAS AND ELECTRIC COMPANY,)
18 a California corporation)

Case No. 01-30923 DM

Chapter 11 Case

Date: January 16, 2001

Time: 9:30 a.m.

Place: 235 Pine Street

San Francisco, California

Debtor.)

19 **RESERVATION OF RIGHTS OF CERTAIN DEBTHOLDERS TO THE JOINT MOTION OF DEBTOR**
20 **AND THE BANK OF NEW YORK, AS INDENTURE TRUSTEE, FOR ORDER**
21 **PURSUANT TO SECTIONS 105(A) AND 363 OF THE BANKRUPTCY CODE**
22 **AUTHORIZING (I) DEBTOR TO ENTER INTO TRI-PARTY AGREEMENT, AND**
23 **(II) APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE**

24 NOW COME the Debtholders¹ and hereby respectfully submit their reservation of rights to the
25 Joint Motion of Debtor Pacific Gas and Electric Company (the "Debtor") and The Bank of New York

26 ¹ The Debtholders include the following entities: State Teachers Retirement System of Ohio, the Washington DC
27 Water and Sewer Authority, Chandler Asset Management, Franklin Mutual Advisers, LLC., King Street Capital,
28 M.H. Davidson & Co., L.L.C., OZF Management L.P., Pacific Investment Management Company LLC, Satellite
Asset Management L.P., Security Benefit Life Insurance Co., Stark Investments, Angelo Gordon & Co., and
Appaloosa Management LP.

1001 Add: Rids Dye Mail Center

1 as Indenture Trustee for an Order pursuant to Sections 105(a) and 363 of the Bankruptcy Code,
2 Authorizing, (i) Debtor to enter into Tri-Party Agreement, and (ii) Appointment of Wilmington Trust
3 Company as successor trustee (the "*Motion*")². In support of the reservation of rights, the Debtholders
4 state as follows:
5

6 A. The Debtholders are holders of *inter alia* Floating Rate Notes, Senior Notes, Medium
7 Term Notes, Commercial Paper and other claims against the Debtor as those claims are defined in the
8 First Amended Plan of Reorganization. As holders of in excess of \$2 billion in total claims, the
9 Debtholders represent a significant portion of the unsecured creditors in this bankruptcy proceeding.
10 Over \$1 billion of the claims held by the Debtholders were issued pursuant to the terms of the indenture
11 between The Bank of New York as indenture trustee (the "*Indenture Trustee*"), dated as of September
12 1, 1987, as supplemented by two supplemental indentures (collectively, the "*Indenture*") and the
13 Debtor. With respect to certain series of the securities issued under the Indenture (the "*Securities*"), the
14 Debtholders represent over a majority in principal amount of such series.
15

16 B. In the Motion, the Indenture Trustee indicates that, since it also serves as an indenture
17 trustee under certain secured debt of the Debtor, the filing of the bankruptcy petition in this case
18 triggered an event of default which created a conflict of interest for the Indenture Trustee under
19 Section 310(b) of the Trust Indenture Act of 1939, (the "*TIA*"). The Indenture Trustee states that, while
20 it tendered its resignation as trustee under the Indenture on July 3, 2001, such resignation is not effective
21 until the appointment of a successor trustee.

22 C. In the Motion, the movants seek the Court's permission to enter into a Tri-Party
23 Agreement with Wilmington Trust Company and the appointment of Wilmington Trust Company as
24 successor trustee under the Indenture (the "*Successor Trustee*"), even though Wilmington Trust
25

26
27
28 ² Capitalized terms not otherwise defined shall have the meaning ascribed to them in the Motion and exhibits thereto unless the context shall indicate otherwise.

1 Company lacks a corporate trust office in Manhattan and thus, technically, does not meet the eligibility
2 requirements of the Indenture.

3
4 D. A copy of the proposed Tri-Party Agreement is attached to the Motion as Exhibit A.
5 Section 403 of the Tri-Party Agreement purports to govern the payment of the fees and expenses of both
6 the Resigning Trustee and the Successor Trustee. Under Section 403, all property or funds collected by
7 the Successor Trustee in connection with the Indenture shall be distributed upon receipt: first, to
8 payment of all outstanding fees and expenses due and owing to the Resigning Trustee and the Successor
9 Trustee under the Indenture, and second, to the holders of the Securities.

10 E. While the Debtholders recognize the need for the Indenture Trustee to resign and support
11 the payment by the Debtor of the fees and expenses of the Resigning Trustee and Successor Trustee,
12 they submit the following reservation of rights.

13 RESERVATION OF RIGHTS

14 REMOVAL OF TRUSTEE

15
16 1. Under the terms of Section 610(c) of the Indenture, the trustee under the Indenture (the
17 "*Trustee*") may be removed at any time with respect to the Securities of any series by Act of the
18 Holders, as defined in the Indenture, of a majority in principal amount of the outstanding Securities of
19 such series delivered to the Trustee and to the Company, the Debtor herein. The Debtholders reserve all
20 of their rights under the Indenture including pursuant to this Section 610(c). While the Debtholders
21 know of no reason at this time why Wilmington Trust Company should not be approved as the
22 Successor Trustee, the Debtholders' lack of objection should not be deemed a waiver of any rights of the
23 Debtholders under Section 610(c) should circumstances change in the future.

24 REASONABLE FEES AND EXPENSES

25
26 2. Section 607 of the Indenture provides for compensation and reimbursement of the Trustee
27 under the Indenture for its "reasonable" fees and expenses. Certain portions of Section 403 of the Tri-
28 Party Agreement refer to "all outstanding fees and expenses." Pursuant to the terms of Sections 901 and
902 of the Indenture, although supplemental indentures without the consent of the Holders are

1 appropriate to evidence succession, they are not authorized to change any of the substantive rights of the
2 Holders. The Debtholders assume that the requirement of reasonableness is to be read into Section 403
3 of the Tri-Party Agreement. Moreover, the Debtholders are not implying that the fees would be
4 unreasonable. However, if the purpose of Section 403 is to modify the terms of the Indenture with
5 respect to the standard for reimbursable fees and expenses of the Trustee, then the Debtholders reserve
6 their rights to assert that such amendment is ineffective.
7

8 THE DEBTOR'S OBLIGATION TO PAY TRUSTEE'S FEES

9 3. The Summary Claims Table that appears in the First Amended Disclosure Statement for the
10 First Amended Plan of Reorganization dated as of December 19, 2001, which the Debtor filed in this
11 case, sets forth the estimated percentage of recovery for the Class 5 Claims, including Securities issued
12 under the Indenture, as 100%. It is the position of the Debtholders that the language in Section 403 of
13 the Tri-Party Agreement providing for consideration to be applied first to the payment of fees and
14 expenses under the Indenture is inconsistent with the estimated recovery as set forth in the Amended
15 Disclosure Statement. The Debtholders strongly support the payment of the fees and expenses of the
16 Resigning Trustee and Successor Trustee by the Debtor in this case. Given the facts and circumstances
17 of this case, including the Debtor's solvent status, the Debtholders believe that the fees and expenses of
18 such Trustees must be paid by the Debtor rather than borne by the Holders. The entry of the Order
19 accompanying the Motion should not be deemed an agreement by the Debtholders that the Securities
20 will be paid in full if the consideration received for the Securities can be diminished by exercise of the
21 Trustee's "latch on rights" under the Indenture. The Debtholders do not waive their position that the
22 plan of reorganization in this case must separately deal with the claims of the Trustee in a manner that
23 will satisfy those claims in full by payment from the Debtor and obviate the need to exercise any latch
24 on rights. Under the language of the Indenture, see Section 607, the Debtor covenanted to pay the
25 reasonable fees and expenses of the Trustee. The Debtholders reserve the right to assert that any plan by
26 this solvent Debtor in which the fees and expenses of the Trustee are not paid separately from the claims
27
28

1 of the holders of the Securities is not payment in full of such Securities, with all the attendant
2 ramifications for junior classes.

3 PROPER TREATMENT UNDER PLAN

4 4. Under Section 316(b) of the TIA, the right of any holder of any indenture security to
5 receive payment of the principal of and interest on such security shall not be impaired or affected
6 without the consent of such holder. Under Section 504 of the Indenture, only the Holders of the
7 Securities, and not the Trustee, can vote on a plan of reorganization. Accordingly, only the Holders can
8 approve their treatment under a plan. The Debtholders reserve all their rights with respect to the proper
9 treatment of the Securities under any plan of reorganization in this case.

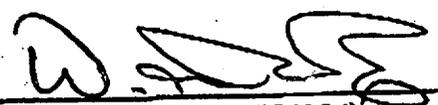
10 SUGGESTED LANGUAGE

11 5. The proposed order should be modified to contain the following language:

12 "Nothing contained herein shall be deemed to (a) diminish the rights of
13 any holders of securities issued under the Indenture, (b) waive the right of
14 any holder of securities issued under the Indenture to be paid in full under
15 applicable law or (c) dictate the provisions of or be an agreement by any
16 creditor as to the terms of a plan of reorganization regarding the securities
17 issued under the Indenture."

18 WHEREFORE, the Debtholders reserve their rights with respect to the Motion as set forth
19 herein.

20 CHAPMAN AND CUTLER
21 PASCOE & RAFTON

22 
23 _____
24 William R. Pascoe (#54284)

25 DATED: January 11, 2002