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

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

Case No. 01-30923 DM

Chapter 11

HEARING

Date: February 26, 2002
Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

16 Federal I.D. No. 94-0742640
17

18 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER
19 MODIFYING STIPULATION: (I) AUTHORIZING USE OF CASH
20 COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND BANKRUPTCY
RULE 4001 AND (II) GRANTING ADEQUATE PROTECTION
21 PURSUANT TO 11 U.S.C. §§ 361 AND 363;
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

22 [SUPPORTING DECLARATION OF KENT HARVEY FILED HEREWITH]
23
24
25

26 *A001 Add: Rids Ogc Mail Center*
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION¹**

4 By this Motion, PG&E seeks the Court's approval to modify the Stipulation with BNY
5 Western Trust Company, as successor trustee (the "Indenture Trustee") pursuant to that
6 certain indenture dated December 1, 1920 with respect to mortgage bonds (the "Bonds")
7 issued by PG&E, which indenture has been supplemented by fourteen supplemental
8 indentures (collectively, the "Indenture"). In particular, the proposed modification would
9 provide for the timely payment by PG&E of the principal amount of the Bonds (1992 Series
10 A) scheduled to mature on March 1, 2002, in the approximate amount of \$333 million.²

11 **II.**

12 **FACTUAL BACKGROUND**

13 1. On April 6, 2001, PG&E filed a voluntary petition under Chapter 11 of the
14 Bankruptcy Code. PG&E continues to manage and operate its business and property as a
15 debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

16 2. On May 9, 2001, this Court issued its Order on Debtor's Motion for Order
17 Approving Stipulation: (I) Authorizing and Restricting Use of Cash Collateral Pursuant to 11
18 U.S.C. § 363 and Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant to
19 11 U.S.C. §§ 361 and 363 (the "Order Approving Stipulation"), approving PG&E's entry
20 into and performance under the Stipulation. The Stipulation provides for PG&E's continued
21 use of cash collateral in which the Indenture Trustee has an interest (on behalf of the holders
22 of the Bonds) pursuant to certain conditions and restrictions. Among other things, the
23 Stipulation provides for the timely payment of interest and sinking fund payments as
24 provided under the Indenture. The annual amount of interest and sinking fund payments

25 ¹ The evidentiary basis and support for the facts set forth in this Motion are contained
26 in the Declaration of Kent Harvey filed concurrently herewith.

27 ² The current amount outstanding of the 1992 Series A Bonds is approximately \$340
28 million. Approximately \$7 million of these Bonds that are held in treasury by PG&E will be
satisfied by a sinking fund payment scheduled to be made on February 1, 2002.

1 currently accruing on the Bonds is approximately \$300 million.

2 3. PG&E and the Indenture Trustee have continued to perform their respective
3 obligations under the Stipulation since the entry of the Order Approving Stipulation.

4 4. PG&E's obligations under the Indenture are substantially oversecured. The total
5 unpaid indebtedness under the Bonds is approximately \$3.7 billion. Such indebtedness is
6 secured by a first-priority lien on substantially all of PG&E's assets. PG&E reported total
7 assets of approximately \$25 billion as of November 30 2001 on its most recently filed
8 Operating Report. In addition, PG&E is solvent and expects to pay all allowed claims
9 against the Debtor's estate in full. Thus, there is little doubt that the Bonds will eventually
10 be satisfied in full.³

11 5. The 1992 Series A Bonds, which are scheduled to mature on March 1, 2002,
12 accrue interest at 7-7/8% (7.875%) per annum.⁴ If PG&E is authorized to make the March
13 2002 principal payment on the Bonds, it expects to do so using cash currently held by the
14 estate. As reported on PG&E's most recent Operating Report, PG&E had a cash balance of
15 approximately \$4.9 billion as of November 30, 2001. PG&E submits that such payment will
16 benefit the estate financially because the Bonds accrue interest at a rate significantly in
17 excess of the rates currently being earned by PG&E on its cash balances. By contrast, if
18 PG&E fails to timely make the March 2002 principal payment, it risks being in default under
19 the Indenture, and the negative consequences that may flow from such a default (e.g., the
20 potential acceleration of all series of the Bonds).

21 III.

22 THE PROPOSED MODIFICATIONS TO THE STIPULATION

23 The Stipulation currently provides (in paragraph 21) as follows:

24 "As additional adequate protection hereunder, the Indenture Trustee and the
25

26 ³ PG&E's proposed Chapter 11 plan currently before the Court provides for payment
27 of the Bonds in full in cash (except for a small portion of the Bonds which secure the
28 Debtor's pollution control bonds, which are to be replaced by new bonds).

⁴ The next series of Bonds scheduled to mature is in August 2003.

1 Bondholders shall be entitled to the payment of accrued and unpaid interest and
2 sinking fund payments due and payable under the Indenture (the "Pre-Petition
3 Indebtedness") on or prior to the Petition Date at the prevailing rate (with respect
4 to interest payments) in effect under the Indenture. Additionally, interest on the
5 Pre-Petition Indebtedness shall continue to accrue subsequent to the Petition Date
6 at the prevailing rate under the Indenture and shall be payable on the terms set
7 forth therein. Furthermore, any and all sinking fund payments that become due
8 subsequent to the Petition Date shall be payable on the terms set forth in the
9 Indenture."

10 The Indenture Trustee has requested, and PG&E has agreed (subject to this Court's
11 approval) to modify paragraph 21 of the Stipulation to add the following sentence at the end
12 of such paragraph:⁴

13 "In addition, the principal amount of the Bonds scheduled to mature on March 1,
14 2002 in the approximate amount of \$333 million shall be payable on the terms set
15 forth in the Indenture."

16 PG&E submits that the proposed modification to the Stipulation is consistent with the
17 Court's Guidelines for Cash Collateral and Financing Stipulations.

18 IV.

19 THE COURT SHOULD AUTHORIZE THE PROPOSED 20 MODIFICATION OF THE STIPULATION

21 The Stipulation expressly contemplates subsequent modifications to the Stipulation,
22 including modifications to provide different or additional adequate protection. Paragraph 12
23 of the Stipulation provides, in relevant part, as follows:

24 "[T]he grant of adequate protection to the Indenture Trustee and the Bondholders
25 pursuant hereto is without prejudice to the right of the Debtor (subject to the
26 provisions of paragraph 14(c)), the Indenture Trustee and the Bondholders to seek
27 modification of the grant of adequate protection provided hereby so as to provide
28 different or additional adequate protection . . ."

In addition to the Court's power to authorize the use of cash collateral under Section
363(c)(2) of the Bankruptcy Code, the Court is empowered to authorize the proposed

⁴ A "blacklined" copy of the proposed revised Stipulation is attached as Exhibit 1 to the Declaration of Kent Harvey filed herewith. Exhibit 1 is not attached to the service copies of that Declaration. You may obtain copies of such documents through the "Pacific Gas & Electric Company Chapter 11 Case" link accessible through the Bankruptcy Court's website (www.canb.uscourts.gov), or by written request by mail to Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Attn: Jerome Ferrer, Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4065, or by e-mail request to jferrer@hrice.com.

1 additional adequate protection pursuant to Section 361 of the Bankruptcy Code. As
2 discussed above, the Debtor submits that the proposed modification to the Stipulation is in
3 the best interests of the Debtor's estate, as the Bonds accrue interest at a rate significantly in
4 excess of the rates currently being earned by PG&E on its cash balances that would be used
5 to fund such payment. In addition, since PG&E's obligations under the Indenture are
6 substantially oversecured, and PG&E is solvent and expects to pay all allowed claims
7 against the Debtor's estate in full, there is little doubt that the Bonds will eventually be
8 satisfied in full. By contrast, if PG&E fails to timely make the March 2002 principal
9 payment, it risks being in default under the Indenture, and the negative consequences that
10 may flow from such a default (e.g., the potential acceleration of all series of the Bonds).

11 V.

12 CONCLUSION

13 For all of the foregoing reasons, PG&E respectfully requests that this Court make and
14 enter its order:

- 15 1. Granting the Motion.
16 2. Authorizing the Stipulation to be modified to provide for timely payment of the
17 principal amount of the bonds maturing on March 1, 2002.
18 3. Providing for such other and further relief as the Court deems just and appropriate.

19 DATED: February 1, 2002

20 Respectfully,

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

24 By: _____


GARY M. KAPLAN

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

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