

50-295/323

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8
9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

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

No. 01-30923 DM
Chapter 11 Case
Date: April 17, 2002
Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

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19 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER
20 APPROVING EXPENDITURE OF FUNDS TO CONSTRUCT THE
NORTHEAST SAN JOSE TRANSMISSION REINFORCEMENT PROJECT;
21 SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

22 [SUPPORTING DECLARATIONS OF KEVIN DASSO AND VALERIE O. FONG
23 FILED SEPARATELY]
24
25
26

27 *A001*
28 *Add 235 Pine St. 22nd Floor*

TABLE OF CONTENTS

	Page
1	
2	
3	NOTICE OF MOTION AND MOTION 1
4	MEMORANDUM OF POINTS AND AUTHORITIES 2
5	I. INTRODUCTION 2
6	II. FACTUAL BACKGROUND 4
7	A. The NESJ Project 4
8	B. NESJ Project Cost 5
9	C. The CPUC's Issuance of a CPCN for the NESJ Project 6
10	D. PG&E's Management Approved Construction of the NESJ Project 9
11	III. THE NESJ PROJECT SHOULD BE AUTHORIZED PURSUANT TO SECTIONS 363 AND 105 OF THE BANKRUPTCY CODE 12
12	
13	CONCLUSION 14

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17
18
19
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21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355 (1986)	10
Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 478 U.S. 354 (1988)	11

Statutes

11 U.S.C.	1, 2
§105	13, 14
§105(a)	1, 2, 3
§363	13
§363(c)	
Cal. Pub. Util. Code	3
§§1001 et seq.	11
§1005.5	10, 11
§1005.5(a)	11
§1005.5(b)	
CPUC Rules of Practice and Procedure 2-8, 15, 16, 17.1, 17.3, 18 (Cal. Code of Regs., tit. 20)	3
CPUC General Order 131-D	3

Other Authorities

2 Lawrence P. King, <u>Collier on Bankruptcy</u> ¶105.01 (15th ed. rev. 2000)	13
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 By this Motion, Pacific Gas and Electric Company, the debtor and debtor in
4 possession in this Chapter 11 case ("PG&E" or the "Debtor"), seeks an order pursuant to
5 Sections 363 and 105 of the Bankruptcy Code (11 U.S.C. §363, 105)¹ authorizing PG&E to
6 spend up to \$183 million for the construction of the NESJ Project. The purpose of the NESJ
7 Project is to build electric transmission facilities to serve electric customers in the cities of
8 San Jose, Santa Clara and Milpitas and the Silicon Valley (collectively the "San Jose area").
9 The California Public Utilities Commission ("CPUC") has ordered PG&E to construct the
10 NESJ Project.

11 PG&E brings this Motion because the requested \$183 million exceeds the project
12 limit authorized in PG&E's Motion for Authority to Make Capital Expenditures in the
13 Ordinary Course of Business filed in this case on June 6, 2001, which was approved
14 pursuant to the Court's Order thereon dated June 29, 2001 (such prior Motion and Order
15 hereinafter are collectively referred to as the "Omnibus Cap Ex Motion and Order"). In
16 broad outline, pursuant to the Omnibus Cap Ex Motion and Order, PG&E is authorized to
17 proceed (a) without notice to or approval of the Court or the Official Committee of
18 Unsecured Creditors (the "Committee"), with any project costing less than \$10 million,
19 (b) with notice to and no objection by the Committee, with any project costing more than
20 \$10 million and less than \$50 million, and (c) only upon a motion noticed to the Committee
21 and the United States Trustee on at least 10 business days' notice and approval of the Court,
22 with any project anticipated to cost more than \$50 million.

23 PG&E submitted a notice and description of the NESJ Project to the Committee
24 on January 10, 2002. The Committee on January 24, 2002 indicated in writing that it had no
25 objection to the Debtor proceeding with NESJ Project. PG&E respectfully requests that this
26 Motion be granted and that PG&E be authorized to expend up to \$183 million for

27 ¹Unless otherwise indicated, all statutory references in this Motion are to the United
28 States Bankruptcy Code (Title 11 of the United States Code).

1 construction of the NESJ Project.

2 Before PG&E's Chapter 11 filing in July 1998, PG&E applied to the CPUC
3 pursuant to applicable provisions of the California Public Utilities Code² for a certificate of
4 public convenience and necessity (a "CPCN") to construct the NESJ Project. In a final
5 decision dated December 11, 2001 (the "CPUC Order"), the CPUC approved the Project
6 and, subject to PG&E's acceptance of the conditions in the CPUC Order, issued PG&E a
7 CPCN.³ As discussed further below, the CPUC Order purports to set a "cost cap" on the
8 NESJ Project in the amount of \$147,542,555 (approximately \$35.5 million less than PG&E
9 estimates the Project will cost to build). In response to PG&E's expressed concerns about
10 constructing the NESJ Project in light of the CPUC's effort to interfere with PG&E's
11 recovery of the anticipated costs of doing so, the CPUC ordered PG&E to construct the
12 NESJ Project.

13 Notwithstanding the CPUC's "cost cap," PG&E respectfully requests that this
14 Motion be granted and that PG&E be permitted pursuant to Section 363 to expend up to
15 \$183 million to construct the NESJ Project. PG&E further requests that it receive such
16 approval forthwith because the NESJ Project already is behind schedule. As was the case
17 with PG&E's recent motions for authority to incur capital expenditures in connection with
18 its Path 15 Project and Tri-Valley Project (which were granted by separate orders issued by
19 the Court on February 2, 2002), PG&E by the present Motion is not asking the Court to
20 address or rule on any state law regulatory issues; rather, PG&E by this Motion only seeks
21 authorization to incur the subject capital expenditures pursuant to Section 363 of the
22 Bankruptcy Code.

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25
26 ²See Cal. Pub. Util. Code §§1001 et seq.; CPUC Rules of Practice and Procedure 2-8,
15, 16, 17.1, 17.3, 18 (Cal. Code of Regs., tit. 20); CPUC General Order 131-D.

27 ³A true and correct copy of the CPUC Order is attached as Exhibit 2 to the Declaration
28 of Kevin Dasso ("Dasso Declaration") filed concurrently herewith.

1 II. FACTUAL BACKGROUND⁴

2 A. The NESJ Project

3 The San Jose area has key businesses and industries affecting the overall
4 California economy. With only a small number of electric generation facilities in the area,
5 PG&E relies heavily on its electric transmission facilities to import power to serve customer
6 demand.

7 Before the recent energy crisis and current economic downturn, this area had
8 been experiencing high economic expansion and electric demand growth. Between the years
9 1995 and 2000, peak electric demand grew from 1,320 megawatts ("MW") to 1,900 MW, or
10 an average of 100 MW per year. Electric demand, while lower in 2001, is expected to grow
11 at or near the previous pace in the longer term with the recovery of the California economy.
12 The loadings on several local 115 kilovolt ("kV") power lines and transformer equipment at
13 PG&E's Newark and Metcalf substations are expected to exceed their capability by 2002 or
14 2003, depending upon the pace of economic recovery. Other 115 kV lines in south San Jose
15 are also loaded at or close to their capability. As noted in the CPUC Order, the California
16 Independent System Operator ("ISO") has concluded that the transmission system in the
17 northeast San Jose area was in violation of the ISO grid planning criteria for reliability in the
18 summers of 2000 and 2001. To support the load growth and correct violations of the ISO
19 reliability criteria, the ISO has found, and the CPUC has agreed, that substantial additions to
20 PG&E's transmission system will be required to be in place by 2003 to meet demand and
21 ensure system reliability.⁵

22 _____
23 ⁴The evidentiary basis and support for the facts set forth in this Motion are contained in
24 the Dasso Declaration (cited as the "Dasso Decl.") and in the Declaration of Valerie O. Fong
25 (hereinafter referred to as the "Fong Declaration" and cited as the "Fong Decl.") filed
26 concurrently herewith. Where there is no citation supporting a particular fact, the
evidentiary basis for such fact is contained in the Dasso Declaration. Where, on the other
hand, the evidentiary basis for a particular fact is contained in the Fong Declaration, we will
specifically cite to the Fong Declaration.

27 ⁵Pursuant to the ISO's comprehensive transmission planning and approval process, the
28 ISO Governing Board in January 2000 approved the NESJ Project as the preferred
transmission alternative to address the identified reliability concerns on the ISO Grid.

1 The NESJ Project has been designed to solve transmission deficiencies in the
2 San Jose area. To complete the NESJ Project as approved by the CPUC, PG&E will:

- 3 ■ Acquire 20 acres of land and construct a new transmission substation, Los
4 Esteros, with three 420 MVA transmission transformers, capacitors and
5 other electric equipment;
- 6 ■ Construct approximately 7.3 miles of 230 kV double circuit transmission
7 line (2.8 miles of underground and 4.5 miles of overhead);
- 8 ■ Construct approximately 1.5 miles of 115 kV power line and reconfigure
9 existing 115 kV power lines to make four additional 115 kV connections to
10 Los Esteros substation; and
- 11 ■ Install equipment and make required upgrades at substations impacted by
12 the NESJ Project.

13 PG&E originally scheduled construction on the NESJ Project to begin in 2001
14 so that the Project would become operational in June 2002. Because of delays in the CPUC
15 proceedings, the NESJ Project currently is behind schedule. To meet the relevant
16 operational deadlines for 2003, construction must begin no later than May 2002.

17 B. NESJ Project Cost

18 In February 1997, PG&E's Board of Directors approved an appropriation of \$71
19 million to fund PG&E's proposed NESJ Project. The CPUC substantially redesigned the
20 NESJ Project, ordering changes in the proposed route, requiring PG&E to underground 2.8
21 miles of transmission lines, purchase more costly land, and interconnect with PG&E's
22 transmission grid at a different location. The CPUC-ordered changes and delay, and to a
23 lesser extent more detailed design, increased the original project estimate of \$71 million to
24 PG&E's current cost estimate of approximately \$183 million.⁶

25 _____
26 ⁶As PG&E witnesses testified before the CPUC in PG&E's supplemental cost
27 testimony submitted in August 2001 and during the September 2001 hearings, the relative
28 per-mile cost of constructing underground transmission line in the NESJ Project is
substantially more than the cost of constructing overhead transmission line. The \$112
million increase in the NESJ Project cost estimate reflects not only the increase in costs
(continued . . .)

1 On February 20, 2002, PG&E's Board of Directors approved updated capital
2 expenditures in the aggregate amount of \$183 million, subject to Bankruptcy Court approval.
3 On January 10, 2002, PG&E submitted a notice and description of the NESJ Project to the
4 Committee, and on January 24, 2002, the Committee notified PG&E that it did not oppose
5 the NESJ Project but asked PG&E "to notify the Committee immediately should there be
6 material changes to the scope of work/services (i.e., CPUC/FERC reviews, delays, etc.)."
7 Fong Decl. ¶¶2, 3 & Ex. B.

8 In addition to being the only CPUC-certified approach for providing the electric
9 transmission capacity required to serve the projected loads in the San Jose area, the NESJ
10 Project is the lowest cost alternative to serve new electric customer demand in the San Jose
11 area. The overall NESJ Project is expected to increase the Company's revenue requirement
12 by a net present value of \$243 million. Generally speaking, the cost of transmission
13 facilities is expected to be included in PG&E's base utility revenue requirements and is
14 expected to earn the rate of return authorized by the Federal Energy Regulatory Commission
15 ("FERC").

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16 C. The CPUC's Issuance of a CPCN for the NESJ Project

17 In July 1998, PG&E submitted an application to the CPUC for a CPCN
18 authorizing the construction of the NESJ Project. After consultation with the Don Edwards
19 San Francisco Bay National Wildlife Refuge, PG&E re-filed its CPCN application with a
20 different proposed route in September 1999. The CPUC eventually conducted evidentiary
21 hearings in August and September 2000. The CPUC issued a decision on May 14, 2001 (the
22 "May CPUC Opinion"), approving the NESJ Project, but selecting a different route for the
23 230 kV transmission line based on environmental considerations. The CPUC's

24 _____
25 (... continued)
26 related to the additional miles of underground transmission line, but also higher real estate
27 values due to the three-year delay and the change in selected route, environmental mitigation
28 measures and electrical configuration changes due to the change in the selected route, more
detailed design of certain components, higher indirect costs such as contingency costs
(which are calculated as a percentage of the subtotal of labor, material, contract, and other
direct costs), and general cost escalation due to the three-year Project delay.

1 “environmentally superior route”⁷ specifies 2.8 miles of underground construction, crosses
2 more expensive land than PG&E’s proposed route and requires a different interconnection to
3 PG&E’s transmission grid. Because PG&E had never estimated the costs of constructing the
4 NESJ Project along the CPUC-selected route, the May CPUC Decision also ordered PG&E
5 to provide detailed cost estimates for the new route within 30 days so that the CPUC could
6 use these estimates to set a cost cap for the Project.

7 In June 2001, PG&E submitted a detailed cost estimate of \$182.4 million to
8 construct the NESJ Project along the CPUC-selected route. Faced with the higher cost, the
9 CPUC ordered a stay on the NESJ Project, ordered additional hearings and ordered PG&E to
10 submit additional written and oral testimony regarding, among other things, the need for the
11 NESJ Project to ensure system reliability under state and federal standards, the basis for the
12 June 2001 cost estimate for the CPUC-selected route, and the estimated costs of constructing
13 the NESJ Project along alternative route segments various alternative Project routes. All
14 other parties to the proceeding also had an opportunity to present evidence on the need for
15 the NESJ Project and the accuracy of PG&E’s cost estimates. The additional costs incurred
16 to prepare the requested additional cost estimates, written testimony and participate in
17 administrative hearings drove PG&E’s cost estimate to \$182.9 million.

18 After a week of hearings in September 2001, the CPUC issued a proposed draft
19 decision on October 10, 2001 (the “Draft Decision”). In the Draft Decision, the CPUC
20 reaffirmed the need for the NESJ Project to ensure reliable electric service, reconfirmed the
21 Project’s selected route and placement of transmission lines, and issued a CPCN for the
22 NESJ Project. The Draft Decision, however, adopted a “cost cap” of approximately \$143.5
23 on project expenditures. In October 2001, PG&E filed comments on the Draft Decision

24 _____
25 ⁷The CPUC-approved environmentally superior route begins with overhead
26 construction, tapping off of an existing 230 kV line east of Newark Substation and running
27 south along the west side of Highway I-880. In south Fremont, the route will transition to
28 underground construction for 2.8 miles through the Bayside Business Park (as advocated by
the owner of the Bayside Business Park). At the southern end of the business park, the line
will transition back to overhead construction for the remaining three miles to the proposed
Los Esteros substation site.

1 objecting to the proposed “cost cap” and the purported bases for each of the “reductions” of
2 various Project components in PG&E’s cost estimate.⁸

3 On December 11, 2001, the CPUC issued the CPUC Order granting a CPCN for
4 the NESJ Project.⁹ Over PG&E’s objections, however, the CPUC Order still asserted the
5 right to impose a “cost cap” on PG&E’s recovery of costs for the NESJ Project and stated
6 that the “maximum cost determined to be reasonable and prudent” for the NESJ Project is
7 \$147,542,555. Dasso Decl. Ex. 2 (CPUC Order at 31 (Ordering Paragraph 2)).¹⁰ This
8 amount is approximately \$35.5 million less than the amount of PG&E’s estimated cost for
9 the CPUC-approved NESJ Project. Following PG&E’s stated concerns about proceeding
10 with the NESJ Project in light of the CPUC’s attempts to interfere with PG&E’s recovery of
11 the actual costs of the Project, the CPUC also ordered PG&E to construct the NESJ Project.

12 In January 2002, PG&E filed an application for rehearing of the CPUC Order
13 (“Rehearing Application”), in which PG&E stated its position, among other things, that:
14 (a) the CPUC has no authority, under either the FERC-approved ISO Tariff or state law, to
15 reconsider ISO’s determination that the NESJ Project is needed to ensure the reliability of
16 the electrical transmission system; (b) the CPUC has no authority under state or federal law
17 to impose a “cost cap” on the Project; (c) the CPUC has no authority under state or federal
18 law to order PG&E to construct the Project; and (d) the CPUC has no authority under
19 federal law to conduct a duplicative “reasonableness review” of PG&E’s NESJ Project
20 expenditures because FERC sets rates to recover transmission costs. Dasso Decl. Ex. 3
21 (Rehearing Application at 2-6, 8-20). In addition, PG&E argued that the CPUC Order’s

22
23 ⁸PG&E also objected to other components of the Draft Decision, including the CPUC’s
24 lack of authority under state or federal law to impose a cost cap on the NESJ Project, its
25 reconsideration of the ISO’s determination that all components of the NESJ Project are
needed to ensure system reliability, and its order directing PG&E to submit an application
seeking a CPUC “reasonableness review” of NESJ Project costs.

26 ⁹The CPUC Order incorporates the May CPUC Decision and lifts the CPUC’s stay of
that decision. Dasso Decl. Ex. 2 (CPUC Order at 31 (Ordering Paragraph 1)).

27 ¹⁰The CPUC order also stated that the CPUC retains jurisdiction to review the
28 reasonableness of PG&E’s final NESJ Project expenditures. Dasso Decl. Ex. 2 (CPUC
Order at 30 (Conclusions of Law 3)).

1 arbitrary reductions of PG&E's costs estimates are not supported by the evidence and should
2 be reversed. Id. at 6, 21-40.

3 As of the filing of this Motion, the CPUC has not ruled on the Rehearing
4 Application.

5
6 D. PG&E's Management Approved Construction of the NESJ Project

7 In deciding whether to approve construction of the NESJ Project and seek
8 Bankruptcy Court approval to expend the necessary funds, PG&E management weighed the
9 risks posed by the CPUC's identification of the "maximum reasonable and prudent cost"
10 (assuming, as PG&E must, that PG&E's Rehearing Application is denied). Due to the
11 aggregate amount of the "reductions" to PG&E's cost estimate (\$35.5 million), the
12 identification of the "maximum reasonable and prudent cost" as \$147,542,555 poses
13 potential substantial risks to cost recovery on the NESJ Project. Because of the need for the
14 NESJ Project to maintain reliable electrical service and PG&E's belief that the CPUC "cost
15 cap" likely will not interfere with cost recovery for the reasons set forth below, PG&E
16 management is willing to proceed with the NESJ Project despite the CPUC having purported
17 to identify the "maximum reasonable and prudent cost" approximately \$35.5 million below
18 PG&E's estimated costs for the Project.¹¹

19 In making the Motion and seeking this Court's authorization under Sections 363
20 and/or 105 of the Bankruptcy Code for PG&E to expend up to the requisite \$183 million to
21 proceed with and complete the NESJ Project, PG&E is not asking this Court to address or
22 rule on whether or how PG&E may seek or obtain any cost recovery for the \$35.5 million
23 that exceeds the CPUC's so-called "cost cap" or otherwise to make any ruling with respect
24 to the merits of PG&E's position respecting the CPUC's "cost cap." Nonetheless, a
25

26 ¹¹PG&E's decision to proceed with the NESJ Project despite the CPUC's arbitrary
27 "cost cap" does not mean that PG&E will recommend proceeding with any other
28 transmission project where the CPUC sets a "cost cap" below PG&E's estimated costs. The
risk associated with each project will be considered individually.

1 summary of PG&E's position regarding the "cost cap" may be helpful to the Court.

2 The CPUC asserts authority to set a "cost cap" based on California Public
3 Utilities Code Section 1005.5(a), which provides:

4 Whenever the commission issues to an electrical or gas corporation a
5 certificate authorizing the new construction of any addition to or extension of
6 the corporation's plant estimated to cost greater than fifty million dollars
7 (\$50,000,000), the commission shall specify in the certificate a maximum cost
8 determined to be reasonable and prudent for the facility. The commission shall
9 determine the maximum cost using an estimate of the anticipated construction
10 cost, taking into consideration the design of the project, the expected duration
11 of construction, an estimate of the effects of economic inflation, and any
12 known engineering difficulties associated with the project.

9 PG&E contends that: (a) the CPUC has been deprived of state law authority to
10 set "cost caps" on transmission projects by the California Legislature's transfer of
11 responsibility for the electrical transmission grid to the ISO; and (b) any CPUC authority to
12 "cap" transmission projects' costs is preempted by the FERC tariff with the ISO. Through
13 the enactment of AB 1890,¹² the California Legislature created the ISO, transferred control
14 of the electrical transmission grid from the CPUC to the ISO, and ordered the ISO to submit
15 control of the transmission grid to FERC jurisdiction. The ISO now operates the
16 transmission grid pursuant to a FERC-approved tariff, which has the force of federal law.
17 See, e.g., Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 368-69 (1986). PG&E's
18 analysis of these issues is set forth more fully in its Rehearing Application, attached as
19 Exhibit 3 to Dasso Declaration. Because the recovery of transmission costs is under FERC
20 jurisdiction, the CPUC cannot legally constrain transmission cost recovery by setting a
21 "maximum reasonable and prudent cost."

22 Even the CPUC seems to concede this point; the CPUC has previously ruled that
23 the Project is a FERC-jurisdictional transmission project and FERC will address cost
24 recovery for this Project. See 2000 Cal. PUC LEXIS 239, Decision 00-02-046 (February 17,
25 2000) at 322, Part 3 of 4 ("The Northeast San Jose Transmission Relief [sic]
26

27 ¹²AB 1890 is codified at Sections 330 through 398.5 of the California Public Utilities
28 Code.

1 [Reinforcement] Project is a transmission project, and the costs of this project will be
2 recovered through FERC-approved transmission rates)” (emphasis added). The CPUC,
3 moreover, may not prevent PG&E from recovering those costs that FERC has found
4 recoverable and, for the same reasons may not conduct “a reasonableness review” of
5 PG&E’s Project costs because FERC will do so. Mississippi Power & Light Co. v.
6 Mississippi ex rel. Moore, 478 U.S. 354, 369-70 (1988) (no state prudence review where
7 FERC approves the rates).

8 Moreover, even if the CPUC has authority to set a “cost cap” for the NESJ
9 Project pursuant to Section 1005.5(a), PG&E may apply to the CPUC for an increase in such
10 “cost cap” specified in the CPCN:

11 After the certificate has been issued, the corporation may apply to the
12 commission for an increase in the maximum cost specified in the
13 certificate. The commission may authorize an increase in the specified
14 maximum cost if it finds and determines that the cost has in fact
15 increased and that the present or future public convenience and
16 necessity require construction of the Project at the increased cost;
17 otherwise, it shall deny the application. (Cal. Pub. Util. Code
18 §1005.5(b))¹³

19 The CPUC Order recognizes such right. Dasso Decl. Ex. 2 (CPUC Order at 7,
20 30). In the event that the actual project costs exceed the CPUC’s “cost cap” or further
21 evidence supports estimated costs that exceed the CPUC’s “cost cap,” PG&E may seek an
22 increase pursuant to Section 1005.5(b) if PG&E at such time believes it will be fruitful to do
23 so.

24 Finally, the CPUC Order requires PG&E to “file a written notice with the
25 Commission . . . executed by an officer of PG&E duly authorized . . . to acknowledge
26 PG&E’s acceptance of the conditions set forth in Ordering Paragraphs 1 through 11 and 13,
27 inclusive, of this decision.” Dasso Decl. Ex. 1 (May CPUC Decision at 91 (Ordering
28 Paragraph 12)). The CPUC’s “cost cap” is not contained in those ordering paragraphs;

¹³Pending California AB 47 (Diaz, as amended June 25, 2001), if enacted, would amend Section 1005.5 to provide that “the application for an increase may occur before, during, or after construction.”

1 however, Ordering Paragraph 4 of the May CPUC Decision states: "This order shall become
2 effective once the Commission reviews the cost data and comments thereon and incorporates
3 a cost cap and any other necessary changes into this decision." *Id.* at 89. For the reasons set
4 forth above, PG&E does not believe that the CPUC may require PG&E to agree that it will
5 not seek to recoup all of the actual Project costs in transmission rates. In all events, PG&E's
6 written notice filed on February 22, 2002 affirmatively asserts PG&E's right to seek
7 recovery of all Project costs from FERC, even if actual costs exceed the CPUC's "cost cap."

8
9 III. THE NESJ PROJECT SHOULD BE AUTHORIZED
10 PURSUANT TO SECTIONS 363 AND 105 OF THE
11 BANKRUPTCY CODE

12 As set forth at some length in the Omnibus Cap Ex Motion, PG&E on an annual
13 basis makes approximately \$1.5 billion in capital expenditures in the ordinary course of its
14 business of providing gas and electric service to its customers. These capital expenditures
15 cut across the utility functions of the company (including electric distribution, gas
16 distribution, electric transmission, gas transmission and electric generation) and generally
17 fall into one or more of three broad categories: (1) emergency/safety projects; (2) projects
18 that are mandated by regulatory or legal orders (including projects undertaken to remain in
19 compliance with regulatory and legal requirements); and (3) other projects, such as projects
20 designed to improve the reliability of PG&E's distribution or transmission system which
21 may not be mandated by specific performance requirements. See Omnibus Cap Ex Motion
22 at 3:19-4:4.

23 The NESJ Project has elements of all three expenditure categories, in that the
24 completion of the Project will help avoid emergency shortages in Northern California,
25 PG&E has been ordered to construct the Project, and the Project is designed to improve the
26 reliability of the electric transmission system.

27 As previously noted in the Cap Ex Omnibus Motion, PG&E believes that the
28 expenditures on virtually all of its capital projects as described above are within the ordinary
course of its business. As such, PG&E appreciates that such expenditures should be

1 permitted without notice or hearing or any Bankruptcy Court approval pursuant to 11 U.S.C.
2 Section 363(c) as a use, sale or lease of estate property in the ordinary course of business.
3 However, recognizing that few are the cases in which a debtor in possession must make well
4 over \$1 billion in capital expenditures per year due to the unique nature of its business and
5 the complex regulatory environment in which it operates, PG&E already has agreed that the
6 Committee and the Court should be apprised of and/or asked to approve PG&E's capital
7 expenditures at certain substantial materiality thresholds as established in the Omnibus Cap
8 Ex Motion and Order. See generally Omnibus Cap Ex Motion at 15:23-17:20. Thus,
9 although the NESJ Project was conceived and will be undertaken in the ordinary course of
10 PG&E's business, PG&E seeks this Court's authority to proceed with the NESJ Project
11 because the anticipated cost of the Project exceeds \$50 million, and a motion and Court
12 approval therefore are required pursuant to the Omnibus Cap Ex Motion and Order.

13 PG&E has demonstrated in Part II above that the NESJ Project is important to the
14 reliability of the electric transmission system and service in the San Jose area, and that the
15 proposed maximum \$183 million expenditure for such Project pursuant to the Motion most
16 cost-efficiently attains the implementation and completion of the Project. Accordingly, this
17 Court plainly can and should utilize its authority under Section 363 of the Bankruptcy Code
18 to approve the capital expenditure authorization for the NESJ Project requested by the
19 Motion.

20 Additionally, Section 105(a) of the Bankruptcy Code authorizes this Court to
21 "issue any order, process, or judgment that is necessary or appropriate to carry out the
22 provisions of this title." The purpose of Section 105 is "to assure the bankruptcy courts'
23 power to take whatever action is appropriate or necessary in aid of the exercise of their
24 jurisdiction." 2 Lawrence P. King, Collier on Bankruptcy ¶105.01, at 105-6 (15th ed. rev.
25 2000). For the reasons set forth above, the capital expenditures authorization for the NESJ
26 Project requested by this Motion plainly will best serve the interests of the Debtor, its
27 creditors and its customers alike, and will not violate any principle or precept of the
28 Bankruptcy Code. Accordingly, pursuant to the Court's authority and discretion under

1 Section 105(a) of the Bankruptcy Code, the Court can and should grant the Motion.

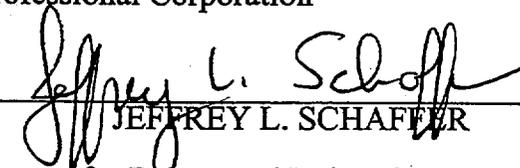
2
3 CONCLUSION

4 For all of the foregoing reasons, PG&E respectfully requests that this Court make
5 and enter an order granting the Motion, authorizing PG&E to enter into contractual
6 commitments and incur the expenditure of funds up to a maximum of \$183 million to
7 construct the NESJ Project.

8
9 DATED: April 1, 2002

10 Respectfully submitted,

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