

1 JAMES L. LOPES (No. 63678)  
2 JANET A. NEXON (No. 104747)  
3 JULIE B. LANDAU (No. 162038)  
4 HOWARD, RICE, NEMEROVSKI, CANADY,  
5 FALK & RABKIN  
6 A Professional Corporation  
7 Three Embarcadero Center, 7th Floor  
8 San Francisco, California 94111-4065  
9 Telephone: 415/434-1600  
10 Facsimile: 415/217-5910

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

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

16 In re  
17 PACIFIC GAS AND ELECTRIC  
18 COMPANY, a California corporation,  
19 Debtor.  
20 Federal I.D. No. 94-0742640

21 Case No. 01-30923 DM  
22 Chapter 11 Case  
23 Date: May 9, 2002  
24 Time: 1:30 p.m.  
25 Place: 235 Pine Street, 22nd Floor  
26 San Francisco, California

27 NOTICE OF MOTION AND MOTION FOR AUTHORIZATION TO INCUR  
28 AND PAY CERTAIN LAND-RELATED EXPENSES; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Supporting Declaration of Michael Schonherr Filed Concurrently Herewith]

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on May 9, 2002, at 1:30 p.m., or as soon thereafter  
3 as the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at  
4 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric Company,  
5 the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E"), will  
6 and hereby does move the Court for entry of an Order Authorizing PG&E to Incur and Pay  
7 Certain Land-Related Expenses (the "Motion").

8 This Motion is based on this Notice of Motion and Motion, the accompanying  
9 Memorandum of Points and Authorities, the Declaration of Michael Schonherr filed  
10 concurrently herewith, the record of this case and any evidence presented at or prior to the  
11 hearing on this Motion.

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pacific Gas and Electric Company, the debtor and debtor in possession in the  
3 above-captioned Chapter 11 case ("PG&E"), requests an order authorizing PG&E to incur  
4 and pay certain land-related expenses outside of the ordinary course of business pursuant to  
5 Bankruptcy Code Section 363(b)(1).  
6

7 **I. FACTUAL BACKGROUND<sup>1</sup>**

8 PG&E filed a voluntary petition for relief under Chapter 11 of the Bankruptcy  
9 Code on April 6, 2001. A trustee has not been appointed, and PG&E continues to function  
10 as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

11 On March 7, 2002, PG&E, together with its parent corporation, PG&E  
12 Corporation, filed a proposed Second Amended Plan of Reorganization (as amended from  
13 time to time, the "Plan"). The Second Amended Disclosure Statement for the Plan was  
14 tentatively approved by the Court after hearing conducted on April 11, 2002, subject to final  
15 approval at the hearing scheduled for April 24, 2002.

16 **A. Necessity for the Land Work.**

17 The Plan generally provides for the creation of three new companies, ETrans  
18 LLC, GTrans LLC and Electric Generation LLC (collectively, the "New Entities"), whereby  
19 PG&E will separate its operations into four lines of business based on PG&E's historical  
20 functions: retail gas and electric distribution, electric transmission, interstate gas  
21 transmission, and electric generation. By this Motion, PG&E requests authority to pay  
22 certain contractors who will assist with the preparation required for the transfer of PG&E's  
23 existing Land and Land Rights (as defined below) to the New Entities (the "Land Work").  
24 This work is necessary as PG&E holds a large portfolio of real estate assets, including  
25 approximately 250,000 acres of land, more than six million square feet of support service  
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27 <sup>1</sup>The evidentiary basis and support for the facts set forth in this Motion are contained in  
28 the Declaration of Michael Schonherr filed concurrently herewith.

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1 space (service centers, offices and warehouses) and hundreds of real property leases  
2 (collectively, the “Land”), along with thousands of related real property rights, including:  
3 rights-of-way and easements, prescriptive rights, possessory interests, unrecorded rights and  
4 other land-related agreements, and associated maps and drawings (collectively, the “Land  
5 Rights”).

6 The Land Work relates to the ultimate transfer to the New Entities of the Land  
7 and Land Rights necessary for the New Entities to conduct their operations in full  
8 compliance with relevant laws, rules and regulations. Much of the Land Work to be  
9 performed, however, is also for general business purposes, including the maintenance and  
10 reconciliation of PG&E’s real estate rights and records. Land rights analysis and  
11 reconciliation work is constant for a company such as PG&E with substantial real estate  
12 holdings and such work has been ongoing both pre-petition and post-petition. The transfer  
13 of the Land and Land Rights in connection with the Plan now requires an accelerated pace  
14 for this work.

15 **B. Description of Land Work and Contractors Performing Land Work.**

16 PG&E has historically utilized real estate specialists to assist its internal real  
17 estate staff, such as title and survey specialists.<sup>2</sup> Most of the contractors listed below have  
18 worked for PG&E and are familiar with PG&E’s unique Land and Land Rights’ issues;  
19 consequently, PG&E believes that these contractors are well qualified to perform the  
20 services necessary to assist with the Land Work. PG&E believes that these contractors do  
21 not rise to the level of “professionals” under the Bankruptcy Code, due both to the nature of  
22 the services to be provided (as described in more detail below) and to the contractors’  
23 limited role in connection with PG&E’s reorganization proceeding. See In re That’s  
24 Entertainment Mktg. Group, Inc., 168 B.R. 226, 230 (N.D. Cal. 1994); see also In re

25 \_\_\_\_\_  
26 <sup>2</sup>PG&E also utilizes real estate brokers and appraisers, previously approved by the  
27 Court pursuant to Bankruptcy Code Section 327(a), although it is not contemplated that any  
28 of the brokers or appraisers will be utilized for the work described in this Motion. Also,  
PG&E employs various attorneys in connection with real estate matters, who have also been  
previously approved by the Court pursuant to Bankruptcy Code Section 327(e).

1 Saybrook Mfg. Co., Inc., 108 B.R. 366, 368-369 (Bankr. M.D. Ga. 1989) (in determining  
2 whether a person is a professional for purposes of Section 327, courts consider not only the  
3 nature of the services provided but also how central the services are to the reorganization  
4 proceeding).

5 The following is a description of the two categories of Land Work to be  
6 performed and each contractor currently under contract with PG&E to perform the  
7 applicable Land Work (collectively, the "Contractors").<sup>3</sup> All of the Contractors will perform  
8 the work described at the direction of and under the supervision of PG&E.

9 1. Land and Land Rights Analysis and Reconciliation: This category of work  
10 includes contractors performing title work in connection with the review, analysis and  
11 reconciliation of all Land Rights, including field verification of information, assignment of  
12 the Land and Land Rights to the New Entities, and analyzing new and modified rights to be  
13 acquired. Contractors performing this work are as follows:

- 14 • *EDB Data Resources*
- 15 • *Phillip Longo*
- 16 • *Charles McClue*
- 17 • *Paragon Partners, Ltd.*
- 18 • *Kenneth Sorensen*
- 19 • *Willbanks Resources Corporation*

20 Specifically, the work to be performed by each of the foregoing contractors will  
21 include: (1) reviewing Land and Land Rights documents to determine: (a) the grantor and  
22 grantee information; (b) identifying the facility for which the Land or Land Right was  
23 obtained; (c) determining document dates and recording information, if applicable; (d)  
24 determining whether documents contain assignability provisions; and (e) determining  
25 whether documents contain any non-standard provisions; (2) evaluating the chain of title  
26 with respect to Land Rights in order to facilitate a complete and clear understanding of the

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27 <sup>3</sup>PG&E also utilizes certain employees of Corestaff Services, Inc., a staffing agency, to  
28 assist its internal staff with project planning and coordination, data gathering and analysis,  
and database development and management in connection with the Land Work. The  
expenses for these services are also included in the Budget set forth in Section I.C. below.

1 Land Rights; and (3) generating pictorial records (on existing PG&E line drawings) by  
2 highlighting the specific locations of the Land and Land Rights covered by each document  
3 reviewed.

4           2.    Land Surveying. This category of work includes land surveys, preparation  
5 of the deeds and maps related to the possible subdivision, lot line adjustments, and/or  
6 transfer of fee properties to the New Entities, performing the work necessary to ensure  
7 compliance with local rules and regulations, and preparation of easement reservations and  
8 new easement grants. More specifically, this work will include: (1) reviewing PG&E's  
9 records to ascertain the information required to develop recordable legal descriptions for all  
10 deeds and easements to be conveyed to the New Entities or to be reserved by PG&E;  
11 (2) evaluating the chain of title with respect to the Land (fee interests) in order to prepare  
12 clear descriptions, free from defects, for the conveyance of PG&E's interests in the Land;  
13 (3) generating exhibit drawings (maps) that delineate property and easement locations;  
14 (4) performing land surveys to collect the information necessary to subdivide or perform lot  
15 line adjustments for properties that will be divided between PG&E and the New Entities; and  
16 (5) preparing deeds and "Record of Survey Maps" pursuant to the California Subdivision  
17 Map Act, reflecting the proposed subdivision or lot line adjustments with respect to divided  
18 properties. The contractor performing this work is *Towill, Inc.*

19           **C.    Budget for Land Work.**

20           PG&E requests approval to pay the Contractors for the Land Work in the amount  
21 of approximately \$5.5 million (the "Budget"), beginning April 2002 and continuing to the  
22 Effective Date (as defined in the Plan) or such earlier date on which the transfers  
23 contemplated to the New Entities have been completed. Payments would be made by PG&E  
24 to the Contractors on a monthly basis as work is completed, based on monthly billings by the  
25 Contractors.

26           **D.    Current Need for Approval of Budget for Land Work.**

27           The Land Work is essential to the implementation of the Plan. Although the Plan  
28 is not yet confirmed, PG&E estimates that it will take up to 12 months to complete the Land

1 Work necessary to transfer PG&E's extensive Land and Land Rights to the New Entities, as  
2 contemplated by the Plan. Therefore, given the volume of work and level of detail and  
3 accuracy needed to satisfy recording and other requirements, the Land Work must be  
4 accelerated well in advance of confirmation of the Plan in order to assure a timely  
5 consummation.

6 In developing its strategy for handling the Land Work, PG&E has adopted a  
7 moderate approach in terms of balancing risks and costs. Specifically, PG&E contemplates  
8 undertaking a complete review of title and land rights only for those properties and  
9 entitlements that may become assets of the New Entities. PG&E does not intend to obtain  
10 title insurance in connection with any of the transfers to the New Entities. Thus, the goal is  
11 to handle the transactions in a manner that will effectively transfer the Land and Land Rights  
12 to the New Entities, thereby minimizing the potential for disputes and uncertainties arising  
13 post-separation, but without the certainty and costs associated with title insurance.

14 The Land Work will also provide value to PG&E whether or not the Plan is  
15 implemented. PG&E will benefit from the accelerated review and audit of its real property  
16 portfolio as this work will enable it to manage its Land and Land Rights more efficiently  
17 through enhanced understanding and improved organization of its records.

18 Finally, to the extent that subsequent events demonstrate that the transfers to the  
19 New Entities will not be necessary, the associated Land Work can be terminated  
20 immediately. PG&E's standard contractual provisions in place with the various contractors  
21 do not guarantee future work or any minimum amount of revenue. PG&E also maintains the  
22 right to terminate the contracts at any time without cause, in which case PG&E is liable only  
23 for work performed to the date of termination plus costs reasonably incurred by the  
24 contractor in terminating any work in progress.

1 II.

2 THE BUDGET FOR THE LAND WORK SHOULD BE  
3 APPROVED PURSUANT TO SECTION 363(b)(1) OF THE  
4 BANKRUPTCY CODE

5 PG&E seeks approval for the Budget described above as a use of estate property  
6 that is outside of the ordinary course of business under Bankruptcy Code Section 363(b)(1).  
7 Since PG&E seeks to expand the current scope and volume of the Contractors' work in order  
8 to implement the Plan, PG&E believes that the purpose and scope of the expenditure may be  
9 characterized as outside of the ordinary course of business and therefore requires Court  
10 approval. However, as summarized above, the Land Work is also representative of work  
11 that the Contractors have routinely performed for PG&E for years and, in certain respects,  
12 could be characterized as within the ordinary course of PG&E's business. To avoid  
13 confusion and err on the side of caution, PG&E seeks approval of the Budget, which  
14 includes *all* of the Land Work to be performed by the Contractors.

15 The Court has considerable discretion in approving a request pursuant to Section  
16 363(b)(1) of the Bankruptcy Code (“[t]he trustee, after notice and a hearing, may use, sell or  
17 lease, other than in the ordinary course of business, property of the estate”). See In re  
18 Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming the  
19 bankruptcy court's decision to approve expenditure for employee incentive programs, noting  
20 that bankruptcy court has considerable discretion in approving a Section 363(b) motion).

21 In determining whether to authorize a transaction under Section 363(b)(1), courts  
22 require a debtor to show that a sound business purpose justifies such actions, applying the  
23 business judgment test. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 389-90  
24 (6th Cir. 1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722  
25 F.2d 1063, 1071 (2d Cir. 1983); see also 3 Lawrence P. King, Collier on Bankruptcy  
26 ¶363.02[1][g] (15th ed. rev. 1998).

27 Once the debtor has articulated a rational business justification, a presumption  
28 attaches that the decision was made “on an informed basis, in good faith and in the honest  
belief that the action taken was in the best interest of the [debtor].” See, e.g., Official



1 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),  
2 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858, 872 (Del.  
3 1985)).

4 Here, sound business justifications exist for approval of the Budget. The Land  
5 Work is necessary and cannot be delayed without causing a delay in the implementation of  
6 the Plan. The volume of Land and Land Rights that PG&E proposes to transfer to the New  
7 Entities will require resources far in excess of PG&E's own internal resources to review and  
8 reconcile PG&E's interest in the Land and Land Rights, and draft proper, recordable  
9 conveyances and other related documents. The Land Work will also provide value to PG&E  
10 whether or not the Plan is implemented by allowing the continued efficient organization and  
11 management of its extensive real property portfolio.

12 Also, PG&E is solvent and has sufficient cash to pay the Budget (which will be  
13 paid over a period of up to 12 months) without causing any detriment to its creditors.<sup>4</sup> Thus,  
14 while there is the possibility that the Plan will not be confirmed and therefore part of the  
15 Land Work will become unnecessary, this does not justify denial of the expenditure. See  
16 Montgomery Ward, 242 B.R. at 154 (no requirement for debtor to show a successful  
17 prospect of reorganization in order to justify expenditure request under Section 365(b)(1)).  
18 It is sufficient that PG&E currently has sound business reasons for the expenditure. In a  
19 case of this size and complexity, it is simply not possible to wait until Plan confirmation to  
20 begin all of the work necessary to implement the Plan. Therefore, in requesting approval for  
21 the Budget, PG&E has attempted to strike a balance between being prepared to implement  
22 the Plan while at the same time being in a position to terminate or minimize the Land Work  
23 at any time.

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27 <sup>4</sup>As reflected in PG&E's February 2002 Monthly Operating Report, PG&E held more  
28 than \$4.8 billion in cash reserves as of February 28, 2002.

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**III. CONCLUSION**

For all of the foregoing reasons, PG&E respectfully requests that the Court approve the expenditures described herein, in accordance with the Budget, for the purposes set forth herein and grant such other and further relief as may be just and appropriate.

DATED: April 12, 2002

Respectfully,

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

By: Julie Landau  
JULIE B. LANDAU

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

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HOWARD  
RICE  
NEMEROVSKI  
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A Professional Corporation