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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 30, 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
28 INCUR HUMAN RESOURCES MANAGEMENT SYSTEM EXPENSES;
MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF

[SUPPORTING DECLARATION OF BRUCE R. BOWEN FILED
SEPARATELY]

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MOTION FOR AUTHORIZATION TO INCUR HRMS EXPENSES

A001

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 expenses related to the Human Resources Management System described below, outside of
5 the ordinary course of business pursuant to Bankruptcy Code Section 363(b)(1).
6

7 **I. FACTUAL BACKGROUND¹**

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 PG&E is an investor-owned utility providing gas and electric services to more
12 than 4.5 million customers in central and northern California serving a total population of
13 about 13 million. PG&E employs over 19,000 people and has in excess of 30,000 trade
14 creditors.

15 On April 19, 2002, PG&E, together with its parent corporation, PG&E
16 Corporation, filed its amended Plan of Reorganization (as amended from time to time, the
17 "Plan"). The Court approved the Disclosure Statement for the Plan after hearing conducted
18 on April 24, 2002.

19 The Plan generally provides for the creation of three new companies, ETrans
20 LLC, GTrans LLC and Electric Generation LLC (collectively, the "New Entities"), whereby
21 PG&E will separate its operations into four lines of business based on PG&E's historical
22 functions. Accordingly, the Reorganized Debtor will continue the retail gas and electric
23 distribution business, ETrans will operate the electric transmission business, GTrans will
24 operate the interstate gas transmission business, and Electric Generation will operate the
25 electric generation business.
26

27 ¹ The evidentiary basis and support for the facts set forth in this Motion are contained
28 in the Declaration of Bruce R. Bowen filed concurrently herewith.

1
2 **A. PG&E's Current Human Resources and Payroll Systems**
3 **and Necessity for Development of New Systems.**

4 PG&E's human resources and payroll systems ("HR/Payroll System") process all
5 employee-related transactions, including payroll, employee benefits, employee
6 classifications, and compliance with laws, rules and regulations. Current and historical data
7 on employees and former employees with vested interests are processed at all stages of the
8 employment lifecycle. Tasks such as generating paychecks, hiring, promotions and
9 restructurings of business units, are enabled or performed by these systems. With thousands
10 of employees, the HR/Payroll System is essential to business operations and to PG&E's
11 ability to effectively use its workforce.

12 PG&E's HR/Payroll System currently supports 33,000 current and former
13 employees and accommodates the requirements of four collective bargaining agreements in
14 place between PG&E and its three unions. The HR/Payroll System consists of over 50
15 different information technology systems and applications. The average age of the core
16 computer processes, employee file maintenance and pay calculation, is in excess of 30 years.
17 Over the past several years, PG&E has studied the costs of replacing its aging HR/Payroll
18 System. In lieu of replacement, PG&E has continued to maintain these applications and to
19 replace those elements that are most at risk; however, the applications are based on outdated
20 technology and computer code and system and transaction failures have occurred with
21 increasing frequency. Another consequence of the outdated HR/Payroll System is the
22 decreasing number of knowledgeable employees and other potential resources available to
23 maintain the systems.

24 The New Entities will require human resources and payroll systems to support the
25 payroll and related functions needed for a company employing thousands of employees with
26 benefits comparable to PG&E's existing benefits, and the restrictions of a collective
27 bargaining agreement, among other complexities. Since the HR/Payroll System is in need of
28 replacement, PG&E believes that it would be impractical and perhaps impossible to use
versions of the existing system for the New Entities. For example, the technical

1 infrastructure for the HR/Payroll System is nearing obsolescence, it is increasingly difficult
2 to find computer programmers with knowledge about the existing systems, and the risk and
3 frequency of system failures continues to increase. Also, the HR/Payroll System is not
4 capable of processing transactions for employees of multiple companies.

5 For the New Entities, PG&E has selected an integrated, vendor-supplied human
6 resources system developed by PeopleSoft, Inc. ("PeopleSoft"), known as the Human
7 Resources Management System ("HRMS"). The HRMS offers the functionality and
8 flexibility of modern software and also avoids PG&E's current problems with system
9 failures and obsolete program code. The HRMS consists of four PeopleSoft modules:
10 Human Resources, Benefits Administration, Payroll, and Time and Labor. For example, the
11 functions of these modules will include: workforce administration and personnel records;
12 employee payroll; employee time reporting; payroll tax reporting; employee vacation and
13 leave accruals and balances; employee benefits enrollment, eligibility and premium
14 determination; Equal Employment Opportunity compliance and other workforce statistics;
15 and interfaces with external medical, insurance, financial and other providers.

16
17 **B. Description of Work to be Completed by PeopleSoft.**

18 In order to implement the HRMS for use by the New Entities, PG&E has selected
19 PeopleSoft to provide technical and functional assistance (the "Services").² PG&E does not
20 have sufficient internal resources to implement the HRMS, nor does PG&E have the
21 expertise and experience that PeopleSoft will provide. PeopleSoft will work under the
22 direction and supervision of PG&E's project manager for the HRMS implementation.
23 PeopleSoft will provide project management support, functional leads for each module,
24 technical resources, a database administrator and a test team.

25
26 ² PG&E may require additional resources in connection with the completion of the
27 HRMS project, such as end-user training and documentation, and technical and
28 administrative assistance. If and when PG&E decides that such assistance is required,
PG&E will file a subsequent motion seeking approval for these additional expenses.

1 Specifically, the Services to be provided by PeopleSoft will include: (i)
2 implementation of the HRMS through the four modules, including configuration and set-up
3 of the software to match the New Entities' specific business processes and requirements, in
4 addition to system testing and system deployment; (ii) designing, building and testing of
5 interfaces between the HRMS and internal (such as accounting) and external (such as payroll
6 direct deposit) systems; (iii) programming changes or customizations required by the New
7 Entities' business requirements that cannot be supported by the standard design of the
8 HRMS; (iv) development of controls, procedures and authorizations to be configured into
9 the software to control access to confidential or other private information within the system;
10 (v) designing and building the tools needed to extract and deliver system data to end users;
11 and (vi) configurations needed to control the flow of authorizations and signoffs involved in,
12 for example, hiring a new employee or authorizing a payroll change.

13 PG&E requests approval to incur approximately \$2.2 million in consulting fees to
14 be paid to PeopleSoft for the period beginning April 2002³ and continuing to the Effective
15 Date (as defined in the Plan). PG&E will pay PeopleSoft on a monthly basis, based on
16 monthly billings by PeopleSoft.

17 PG&E believes that PeopleSoft is not a "professional person" under the
18 Bankruptcy Code due both to the nature of the Services to be provided and PeopleSoft's
19 limited role in connection with PG&E's reorganization proceeding. See In re That's
20 Entertainment Mktg. Group, Inc., 168 B.R. 226, 230 (N.D. Cal. 1994); see also In re
21 Saybrook Mfg. Co., Inc., 108 B.R. 366, 368-369 (Bankr. M.D. Ga. 1989) (in determining
22 whether a person is a professional for purposes of Section 327, courts consider not only the
23 nature of the services provided but also how central the services are to the reorganization
24 proceeding). Although the Services are related to implementation of the Plan, PG&E
25 believes that these Services should not be considered "central" to the Chapter 11 case.

26
27 ³ PeopleSoft began limited work in April 2002 in order to determine the scope and
28 timing of the HRMS project.

1 PG&E believes that the purpose and scope of the expenditure may be characterized as
2 outside of the ordinary course of business and therefore requires Court approval.

3 The Court has considerable discretion in approving a request pursuant to Section
4 363(b)(1) of the Bankruptcy Code (“[t]he trustee, after notice and a hearing, may use, sell or
5 lease, other than in the ordinary course of business, property of the estate”). See In re
6 Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming the
7 bankruptcy court’s decision to approve expenditure for employee incentive programs, noting
8 that bankruptcy court has considerable discretion in approving a Section 363(b) motion).

9 In determining whether to authorize a transaction under Section 363(b)(1), courts
10 require a debtor to show that a sound business purpose justifies such actions, applying the
11 business judgment test. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 389-90
12 (6th Cir. 1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722
13 F.2d 1063, 1071 (2d Cir. 1983); see also 3 Lawrence P. King, Collier on Bankruptcy
14 ¶363.02[1][g] (15th ed. rev. 1998).

15 Once the debtor has articulated a rational business justification, a presumption
16 attaches that the decision was made “on an informed basis, in good faith and in the honest
17 belief that the action taken was in the best interest of the [debtor].” See, e.g., Official
18 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),
19 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858, 872 (Del.
20 1985)).

21 Here, sound business justifications exist for approval of the HRMS Expenses.
22 PG&E’s outdated and problematic HR/Payroll System cannot be utilized for the New
23 Entities. The development of the HRMS for the New Entities will be one of the critical first
24 steps in the Plan implementation process since it will be integral to the commencement of
25 business operations. As described above, the work necessary for the HRMS to reach basic
26 functionality could take up to 12 months and therefore cannot be delayed until after Plan
27 confirmation without jeopardizing PG&E’s ability to timely implement the Plan.

28 Also, PG&E is solvent and has sufficient cash to pay the HRMS Expenses

1 without causing any detriment to its creditors.⁴ Thus, while there is the possibility that the
2 Plan will not be confirmed and therefore the HRMS will become unnecessary, this does not
3 justify denial of the expenditure. See Montgomery Ward, 242 B.R. at 154 (no requirement
4 for debtor to show a successful prospect of reorganization in order to justify expenditure
5 request under Section 365(b)(1)). It is sufficient that PG&E currently has sound business
6 reasons for the expenditure. In a case of this size and complexity, it is simply not possible to
7 wait until Plan confirmation to begin all of the work necessary to implement the Plan.
8 Therefore, in requesting approval for the HRMS Expenses, PG&E has attempted to strike a
9 balance between being prepared to implement the Plan on a timely basis and being prepared
10 to terminate PeopleSoft's contract on 14 days' notice should the work prove unnecessary.

11
12 **CONCLUSION**

13 For all of the foregoing reasons, PG&E respectfully requests that the Court
14 approve the HRMS Expenses and grant such other and further relief as may be just and
15 appropriate.

16
17 DATED: May 10, 2002

18 Respectfully,

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

21 By: 
22 JULIE B. LANDAU

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

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27 ⁴As reflected in PG&E's March 2002 Monthly Operating Report, PG&E held more
28 than \$4.5 billion in cash reserves as of March 31, 2002.