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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, Debtor. Federal I.D. No. 94-0742640	Case No. 01-30923 DM Chapter 11 Case Date: July 2, 2002 Time: 1:30 p.m. Place: 235 Pine Street, 22nd Floor San Francisco, California

NOTICE OF MOTION AND MOTION FOR AUTHORITY TO ACQUIRE INFORMATION TECHNOLOGY EQUIPMENT

[SUPPORTING DECLARATION OF MARTIN HUNT FILED SEPARATELY]

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 2, 2002, at 1:30 p.m. or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E"), will and hereby does move the Court for entry of an Order Authorizing Acquisition of Information Technology Equipment (the "Motion").

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Martin Hunt filed concurrently herewith, the record of this case and any evidence presented at or prior to the hearing on this Motion.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E"), requests an order authorizing PG&E to acquire certain information technology equipment, outside of the ordinary course of business pursuant to Bankruptcy Code Section 363(b)(1).

I. FACTUAL BACKGROUND[1]

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

On April 19, 2002, PG&E, together with its parent corporation, PG&E Corporation, filed its amended Plan of Reorganization (as amended from time to time, the "Plan"). The Court-approved Disclosure Statement for the Plan (the "Disclosure Statement"), along with the Plan, will be mailed to creditors for voting on or after June 17, 2002. A Plan confirmation hearing has been set for August 1, 2002.

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

A. Necessity for Information Technology Equipment Acquisition

The New Entities will require various information technology computer and network hardware, software and miscellaneous components (collectively, the "IT

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[1] The evidentiary basis and support for the facts set forth in this Motion are contained in the Declaration of Martin Hunt filed concurrently herewith.

Equipment") in order to support their business operations. The lines of business currently use over 400 applications that must be separated from PG&E in order for the New Entities to operate independently. Examples of these applications include: (i) the SAP system, which performs many functions, including accounting, materials management, FERC reporting, work management and project tracking; (ii) the capital accounting system, which performs numerous functions, including: tracking depreciation of capital assets, tax accruals, property appraisals, asset accounting and tracking of tangible property for property tax and franchise fee calculations; and (iii) Microsoft BackOffice Systems, which includes electronic mail and calendar, file and print services, user authentication and a desktop management system.

PG&E does not have sufficient hardware to implement a separate network to support the New Entities, although PG&E will be transferring approximately 63 servers to the New Entities. In addition to the equipment to be transferred by PG&E, additional IT Equipment will be needed by the New Entities, as described below. The IT Equipment listed below is the absolute minimum required to split shared applications and to implement an independent network for the New Entities.

The IT Equipment includes servers, switches and routers to implement a physically separated network for the New Entities. This will establish: (i) an independent network for both the New Entities and the Reorganized Debtor; (ii) a data center for the New Entities to host application servers, data storage, backup services and network components (the "Data Center"); and (iii) a supporting structure to allow network authentication (log-in and security functions), file and print capability, electronic mail and miscellaneous other "back office" functions.

B. <u>IT Equipment to be Leased or Purchased for the New Entities.</u>

PG&E has decided that the IT Equipment should be acquired by lease or purchase (as explained further below) on a consolidated basis. PG&E anticipates that the benefits of consolidated acquisition will include: (i) reduced overall cost through acquisition in larger lots; (ii) reduced maintenance costs by procuring hardware based on a common standard; and (iii) minimizing time and complexity by dealing with a limited number of lessors and vendors. Also, PG&E believes that obtaining approval for the IT Equipment acquisition in one motion will facilitate consolidated purchasing by permitting PG&E to proceed with the bidding process without any delay in obtaining piece by piece approvals.

PG&E will acquire the IT Equipment through a competitive bid process. The bid proposal will include clauses to allow PG&E the flexibility needed if the separation of the lines of business under the Plan does not occur. For example, PG&E will be able to retain the IT Equipment for its use, or alternatively, PG&E will be able to transfer the IT Equipment to the New Entities once the separation becomes effective. The anticipated costs set forth below represent the maximum amounts that PG&E anticipates spending on the IT Equipment; PG&E will attempt to obtain the lowest possible price through the bidding process.

1. **Items to be Leased.** The IT Equipment to be leased includes:

(a) 97 Servers. Approximately 97 servers will be leased. The servers will be used to run the various applications that will be needed for the New Entities' business operations, including accounting, human resources and payroll, document management, e-mail, security and network access as well as applications that are specific to a business line, such as SCADA (gas control software), DNA (gas and power monitoring system) and the hydro thermal optimizations system.

(b) 75 Switches and Routers. Approximately 75 switches and routers will be leased. The switches and routers are hardware devices that will connect every personal computer, application and related computer resources of each employee of the New Entities. The switches and routers will enable functioning of both an internal network and the Internet.

(c) Two Storage Area Networks and One Tape Library. Two storage area networks and one tape library will be leased for the Data Center. A storage area network is similar in use to a hard drive and is connected to the network and available for use by all users and systems. The tape library is a system that holds back-up tapes and will be the primary back-up and recovery system for the New Entities.

The total estimated cost for leasing the above equipment for the period ending December 31, 2002 is $4.4 million.[2]

2. Items to be Purchased. Certain components of the IT Equipment cannot be leased, such as software and miscellaneous equipment. Therefore, the following includes all IT Equipment that must be purchased instead of leased.

(a) Data Center Components: This includes components for the site preparation at the facilities for the New Entities and to support the segregation of components within PG&E's existing data center for the co-located Data Center. These components include: (i) security cages for component isolation in the Data Center; (ii) component racks and wiring for new equipment; and (iii) environmental support equipment to maintain proper environmental conditions (such as temperature, surge protection and fire control) for all computer hardware.

(b) Software Licenses: This includes software licenses for software tools that are required by the New Entities, including: (i) anti-virus software for servers; (ii) anti-virus software for workstations; (iii) desktop management tools; (iv) user account migration tools; (v) help desk management and support tools; (vi) server operating systems; and (vii) back-up software.

(c) Miscellaneous Components: This includes additional items needed to support the information technology requirements of the New Entities. These items include: (i) back-up tapes; (ii) voice communication circuits; (iii) Internet access fees and software components to facilitate Internet functioning (such as firewalls and security systems); and (iv) data communication circuits.

The total estimated cost for purchasing the above software and equipment for the

[2] PG&E will seek further approval for any costs to be incurred after December 2002 in excess of this amount if the Effective Date (as defined in the Plan) has not occurred by that time.

period ending December 31, 2002 is $2 million.[3]

C. Necessity for Current Approval of IT Equipment Acquisition

By this Motion, PG&E is requesting approval for all of the IT Equipment that must be acquired. This will allow PG&E to enter into leases or contracts for the IT Equipment once bids have been accepted, without obtaining separate Court orders for each acquisition. Therefore, PG&E has brought this Motion in advance of the bidding process.

It could take several months to complete the bidding process, accept bids, negotiate contracts and obtain the IT Equipment. It could then take several more months to complete the physical installation of hardware, installation of software, configuration of specific functions and settings, and system testing for functionality and reliability.[4] Therefore, PG&E believes that the IT Equipment must be acquired promptly in order for the New Entities to be prepared for a timely implementation of the Plan once it has been confirmed.

In the event that separation of PG&E's business lines does not occur as contemplated by the Plan, the IT Equipment could be used by PG&E to update its existing hardware and software, both to replace aging hardware and software and to accommodate the normal replacement process whereby approximately 20 to 30% of PG&E's equipment is replaced each year as equipment reaches the end of its lifecycle. PG&E also believes that any IT Equipment that is not needed could be sold to recover a major portion of the costs incurred. PG&E will have the right to purchase any leased equipment (at a reduced price based on the number of lease payments already received) and estimates that most of the IT Equipment could be sold for 60 to 70% of its original value. Nonetheless, PG&E believes that most, if not all, of the IT Equipment could be used by PG&E as set forth above.

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[3] PG&E will seek further approval for any costs to be incurred after December 2002 in excess of this amount if the Effective Date (as defined in the Plan) has not occurred by that time.

[4] By separate motion, PG&E will be seeking Court approval for consulting services related to the installation, configuration and testing processes for the IT Equipment.

II.
THE IT EQUIPMENT ACQUISITION SHOULD BE APPROVED PURSUANT TO SECTION 363(b)(1) OF THE BANKRUPTCY CODE

PG&E seeks approval for the acquisition costs set forth above for the IT Equipment as a use of estate property that is outside of the ordinary course of business under Bankruptcy Code Section 363(b)(1). Since the IT Equipment is required in connection with implementation of the Plan, PG&E believes that the purpose and scope of the expenditure may be characterized (at least in part) as outside of the ordinary course of business and therefore requires Court approval.

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

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

Once the debtor has articulated a rational business justification, a presumption 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 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

Here, sound business justifications exist for approval of the IT Equipment acquisitions. PG&E does not have sufficient capacity with its existing hardware to support

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the New Entities' hardware requirements, although approximately 63 servers will be transferred by PG&E to the New Entities, thereby reducing the number of new servers that need to be acquired. PG&E believes that the acquisitions described in this Motion represent the minimum necessary to allow the New Entities to commence business operations. Also, PG&E is solvent and has sufficient cash to acquire the IT Equipment without causing any detriment to its creditors.[5]

It will take several months to acquire the IT Equipment and complete the work required to install, configure and test the IT Equipment for basic functionality. PG&E therefore believes that the acquisition cannot be delayed until after Plan confirmation without jeopardizing PG&E's ability to timely implement the Plan.

Finally, PG&E would be able to utilize the IT Equipment to replace its own outdated equipment in the event that the business lines are not separated into the New Entities as contemplated by the Plan. PG&E could also recover a significant portion of its costs by selling any IT Equipment that is not needed.

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[5] As reflected in PG&E's April 2002 Monthly Operating Report, PG&E held more than $4.5 billion in cash reserves as of April 30, 2002.

CONCLUSION

For all of the foregoing reasons, PG&E respectfully requests that the Court approve the IT Equipment acquisition and grant such other and further relief as may be just and appropriate.

DATED: June 12, 2002

Respectfully,

HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN
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By: Julie Landau
JULIE B. LANDAU

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

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PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, Debtor. Federal I.D. No. 94-0742640	Case No. 01-30923 DM Chapter 11 Case Date: July 2, 2002 Time: 1:30 p.m. Place: 235 Pine Street, 22nd Floor San Francisco, California

DECLARATION OF MARTIN HUNT IN SUPPORT OF MOTION FOR AUTHORITY TO ACQUIRE INFORMATION TECHNOLOGY EQUIPMENT

I, Martin Hunt, declare:

1. I am employed by Pacific Gas and Electric Company ("PG&E"), the debtor and debtor-in-possession in this Chapter 11 case. I am the project manager for the acquisition of information technology equipment in connection with the implementation of PG&E's proposed Plan of Reorganization (as amended from time to time, the "Plan"). This declaration is submitted in support of PG&E's Motion for Authorization to Acquire Information Technology Equipment (the "Motion"). Defined terms used herein shall have the meanings set forth in the Motion. I make this declaration from personal knowledge and if called as a witness, could and would testify competently to the matters set forth herein.

2. The New Entities will require various information technology computer and network hardware, software and miscellaneous components (collectively, the "IT Equipment") in order to support their business operations. The lines of business currently use over 400 applications that must be separated from PG&E in order for the New Entities to operate independently. Examples of these applications include: (i) the SAP system, which performs many functions, including accounting, materials management, FERC reporting, work management and project tracking; (ii) the capital accounting system, which performs numerous functions, including: tracking depreciation of capital assets, tax accruals, property appraisals, asset accounting and tracking of tangible property for property tax and franchise fee calculations; and (iii) Microsoft BackOffice Systems, which includes electronic mail and calendar, file and print services, user authentication and a desktop management system.

3. PG&E does not have sufficient hardware to implement a separate network to support the New Entities, although PG&E will be transferring approximately 63 servers to the New Entities. In addition to the equipment to be transferred by PG&E, additional IT Equipment will be needed by the New Entities. The IT Equipment listed below is the absolute minimum required to split shared applications and to implement an independent network for the New Entities.

4. The IT Equipment includes servers, switches and routers to implement a physically separated network for the New Entities. This will establish: (i) an independent

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network for both the New Entities and the Reorganized Debtor; (ii) a data center for the New Entities to host application servers, data storage, backup services and network components (the "Data Center"); and (iii) a supporting structure to allow network authentication (log-in and security functions), file and print capability, electronic mail and miscellaneous other "back office" functions.

5. PG&E has decided that the IT Equipment should be acquired by lease or purchase (as explained further below) on a consolidated basis. PG&E anticipates that the benefits of consolidated acquisition will include: (i) reduced overall cost through acquisition in larger lots; (ii) reduced maintenance costs by procuring hardware based on a common standard; and (iii) minimizing time and complexity by dealing with a limited number of lessors and vendors. Also, PG&E believes that obtaining approval for the IT Equipment acquisition in one motion will facilitate consolidated purchasing by permitting PG&E to proceed with the bidding process without any delay in obtaining piece by piece approvals.

6. PG&E will acquire the IT Equipment through a competitive bid process. The bid proposal will include clauses to allow PG&E the flexibility needed if the separation of the lines of business under the Plan does not occur. For example, PG&E will be able to retain the IT Equipment for its use, or alternatively, PG&E will be able to transfer the IT Equipment to the New Entities once the separation becomes effective. The anticipated costs set forth below represent the maximum amounts that PG&E anticipates spending on the IT Equipment; PG&E will attempt to obtain the lowest possible price through the bidding process.

7. The IT Equipment to be leased includes:

a. Servers. Approximately 97 servers will be leased. The servers will be used to run the various applications that will be needed for the New Entities' business operations, including accounting, human resources and payroll, document management, e-mail, security and network access as well as applications that are specific to a business line, such as SCADA (gas control software), DNA (gas and power monitoring system) and the hydro thermal optimizations system.

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c. Storage and Tape Library. Two storage area networks and a tape library will be leased for the Data Center. A storage area network is similar in use to a hard drive and is connected to the network and available for use by all users and systems. The tape library is a system that holds back-up tapes and will be the primary back-up and recovery system for the New Entities.

8. The total estimated cost for leasing the above equipment for the period ending December 31, 2002 is $4.4 million.

9. Certain components of the IT Equipment cannot be leased, such as software and miscellaneous equipment. Therefore, the following includes all IT Equipment that must be purchased instead of leased.

(a) Data Center Components: This includes components for the site preparation at the facilities for the New Entities and to support the segregation of components within PG&E's existing data center for the co-located Data Center. These components include: (i) security cages for component isolation in the Data Center; (ii) component racks and wiring for new equipment; and (iii) environmental support equipment to maintain proper environmental conditions (such as temperature, surge protection and fire control) for all computer hardware.

(b) Software Licenses: This includes software licenses for software tools that are required by the New Entities, including: (i) anti-virus software for servers; (ii) anti-virus software for workstations; (iii) desktop management tools; (iv) user account migration tools; (v) help desk management and support tools; (vi) server operating systems; and (vii) back-up software.

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10. The total estimated cost for purchasing the above software and equipment for the period ending December 31, 2002 is $2 million.

11. It could take several months to complete the bidding process, accept bids, negotiate contracts and obtain the IT Equipment. It could then take several more months to complete the physical installation of hardware, installation of software, configuration of specific functions and settings, and system testing for functionality and reliability. Therefore, PG&E believes that the IT Equipment must be acquired promptly in order for the New Entities to be prepared for a timely implementation of the Plan once it has been confirmed.

12. In the event that separation of PG&E's business lines does not occur as contemplated by the Plan, the IT Equipment could be used by PG&E to update its existing hardware and software, both to replace aging hardware and software and to accommodate the normal replacement process whereby approximately 20 to 30% of PG&E's equipment is replaced each year as equipment reaches the end of its lifecycle. PG&E also believes that any IT Equipment that is not needed could be sold to recover a major portion of the costs incurred. PG&E will have the right to purchase any leased equipment (at a reduced price based on the length of time that the lease has been in place) and PG&E estimates that most of the IT Equipment could be sold for 60 to 70% of its original value. Nonetheless, PG&E believes that most, if not all, of the IT Equipment could be used by PG&E as set forth above.

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I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed at San Francisco, California on June 12, 2002.

Martin E. Hunt

MARTIN HUNT

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