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7 PACIFIC GAS AND ELECTRIC COMPANY

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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
COMPANY, a California corporation,
14 Debtor.
15 Federal I.D. No. 94-0742640

Case No. 01 30923 DM

Chapter 11 Case

Date: November 5, 2002

Time: 9:30 a.m.

Place: 235 Pine Street, 22nd Floor
San Francisco, California

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

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19 DECLARATION OF LORI I. AUSTIN IN SUPPORT OF DEBTOR'S MOTION FOR
20 ORDER APPROVING ENTRY INTO RESCISSION AGREEMENT AND MUTUAL
RELEASE BETWEEN DEBTOR AND RCN TELECOM SERVICES

21 [Notice of Motion And Memorandum Of Points And Authorities In Support Filed
22 Concurrently Herewith]

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27 A001 Add: Rids Ogc Mail Center
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1 I, Lori I. Austin, declare as follows:

2 1. I have been employed by Pacific Gas and Electric Company ("PG&E") since
3 1981. For the past three (3) years I have held the position of Manager in PG&E's Business
4 Development Department. I make this Declaration in support of PG&E's Motion for Order
5 Approving Entry Into Rescission Agreement and Mutual Release Between Debtor and RCN
6 Telecom Services ("RCN"). I make this Declaration based on my personal knowledge of the
7 agreements entered into by PG&E and RCN, my personal knowledge of PG&E's general
8 operations, and my review of PG&E's records concerning the matters stated herein. If called
9 as a witness, I could and would testify competently to the facts stated herein.

10 2. As Manager of Business Development, my responsibilities include
11 negotiating agreements with telecommunications carriers that wish to contract with PG&E
12 for the use of PG&E transmission facilities to install telecommunications equipment such as
13 fiber optic cables and wireless antennae. RCN Telecom Services, Inc. is one such
14 telecommunications carrier.

15 3. PG&E has underground gas pipelines in San Francisco streets. PG&E's right
16 to have gas lines in San Francisco streets is, in part, pursuant to a gas franchise agreement
17 with the City and County of San Francisco ("CCSF"), which is codified in CCSF municipal
18 code (hereinafter "CCSF Gas Franchise").

19 4. On November 20, 2000, PG&E entered into the "Master Conduit and
20 Facilities License and Lease Agreement" with RCN (the "Master Agreement"). Attached as
21 Exhibit A hereto is a true and correct copy of the Master Agreement.

22 5. The Master Agreement was designed to provide RCN with the right to install
23 and maintain telecommunications equipment in certain deactivated PG&E gas lines under
24 the streets of San Francisco. Master Agreement ¶1.1. Under the Master Agreement, RCN
25 was to reserve a minimum amount of gas line each year and make an up-front payment for
26 each section of gas line reserved. In addition, RCN was required to make annual payments
27 for each section of deactivated gas line reserved. The amounts payable by RCN were
28 calculated using a formula set forth in the Master Agreement, which was based (in part) on

1 how much of pipeline RCN reserved. Master Agreement ¶8.1. The first amount due under
2 the Master Agreement represented a 20-year payment for 30 miles of pipeline. For each of
3 the next 9 years of the Master Agreement, RCN would pay an amount representing a 20-year
4 payment for 8 miles of pipeline, until RCN reached the maximum of 100 miles of pipeline
5 for which RCN had contracted. After the first 20 years of the Master Agreement had
6 elapsed, RCN was required to pay an amount every 10 years representing 10 years of use of
7 100 miles of pipeline. Thus, it was anticipated that RCN's use of pipeline would increase
8 over the term of the Master Agreement. If the Master Agreement were terminated by either
9 party before the end of the term, the parties agreed that PG&E would refund RCN the
10 prorata portion of the payments received that were allocable to future use. Master
11 Agreement ¶ 8.1(d).

12 6. On January 1, 2001, RCN made its first payment of \$876,553.92. The next
13 payment required under the Master Agreement was \$248,384.50 (for a further 8 miles of
14 pipeline for 20 years), which was due on January 1, 2002.

15 7. On November 27, 2001, I met with Tim Melgaard, RCN's Operations
16 Manager. During our meeting, he informed me that due to RCN's financial position, it
17 would not be making the January payment, and RCN would not be able to make any
18 subsequent payments due under the Master Agreement. Furthermore, he informed me that
19 RCN's needs for pipeline capacity had substantially decreased, and the Master Agreement
20 provided pipeline capacity far in excess of RCN's anticipated future needs. Between
21 November 30, 2001 and January 1, 2002, I exchanged emails with Mr. Melgaard attempting
22 to resolve the situation with RCN.

23 8. RCN did not make the payment due under the Master Agreement on January
24 1, 2002. After I made attempts to contact RCN by telephone and email, in March 2002, I
25 notified RCN that its failure to make the January payment constituted a breach of the Master
26 Agreement and advised RCN of PG&E's intent to terminate the Master Agreement if the
27 breach was not cured within 30 days. Attached as Exhibit B hereto is a true and correct copy
28 of my letter dated March 21, 2002 to Mr. Fred Fabricus of RCN.

1 9. In about March 2002, I became aware that CCSF filed a claim in PG&E's
2 Bankruptcy Case (Claim No. 12640), which included a claim for an "unknown" amount
3 relating to PG&E's proposed lease of its deactivated gas lines to RCN for RCN's use in
4 building out its cable/telecommunications system. CCSF claimed that the CCSF Gas
5 Franchise did not include telecom-related uses, and the Master Agreement violated the
6 CCSF Gas Franchise.

7 10. In view of RCN's failure to make the January payment, statements regarding
8 its financial position and lack of need for the pipeline capacity for which it had contracted,
9 the Master Agreement provision requiring PG&E to return to RCN on termination
10 approximately 19/20 (or 95%) of the \$876,533.92, and CCSF's allegations that PG&E was
11 not authorized to enter into the Master Agreement, I concluded that maintaining the Master
12 Agreement was not in PG&E's business interests. Accordingly, I negotiated a proposed
13 agreement with RCN to rescind the Master Agreement to resolve any potential dispute with
14 RCN and also avoid any potential dispute with CCSF. Attached as Exhibit C hereto is a true
15 and correct copy of the Rescission Agreement and Mutual Release Between PG&E and
16 RCN (the "Rescission Agreement"). The Rescission Agreement provides for PG&E to
17 refund \$873,170.72 (the amount RCN paid PG&E pursuant to ¶8.1 of the Master
18 Agreement, less certain costs incurred by PG&E under the Master Agreement), without any
19 requirement that PG&E pay interest to RCN. Furthermore, the Rescission Agreement
20 provides for mutual releases of liability and also provides that the entry into the Rescission
21 Agreement does not constitute a rejection of the Master Agreement for bankruptcy purposes.
22 Thus, the Rescission Agreement allows PG&E to resolve potential disputes with RCN while
23 avoiding any need to pay interest or rejection damages. On that basis, the Rescission
24 Agreement provides a reasonable resolution of the issues and potential disputes that arose
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1 out of the Master Agreement in a manner that is beneficial to PG&E.

2 I declare under penalty of perjury under the laws of the United States of America
3 that the foregoing is true and correct, and that this Declaration is executed this 7th day of
4 October, 2002 at San Francisco, California.

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6 *Lori I. Austin*

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LORI I. AUSTIN

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Exhibits are not attached to the service copies of this document. You may obtain copies of the Exhibits in one of the following ways: 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 to Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Attn: Nathaniel H. Hunt, Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4024.