

50-275/323

1 JAMES L. LOPES (No. 63678)
2 WILLIAM J. LAFFERTY (No. 120814)
3 CEIDE ZAPPARONI (No. 200708)
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

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: November 5, 2002
24 Time: 9:30 a.m.
25 Place: 235 Pine Street, 22nd Floor
26 San Francisco, California

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

27 NOTICE OF MOTION AND MOTION FOR ORDER
28 APPROVING ENTRY INTO RECISSION AGREEMENT

[Memorandum of Points and Authorities and
Declaration of Lori I. Austin in Support Filed Concurrently Herewith]

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1 PLEASE TAKE NOTICE that on November 5, 2002 at 9:30 a.m., or as soon
2 thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali,
3 located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric
4 Company (the "Debtor" or "PG&E"), the debtor and debtor in possession in the above-
5 captioned Chapter 11 case, will and hereby does move the Court for entry of an Order
6 Approving Entry Into Rescission Agreement And Mutual Release Between Debtor and RCN
7 Telecom Services ("RCN") (the "Motion").

8 By this Motion, PG&E seeks the Court's approval of a rescission agreement and
9 mutual release between the Debtor and RCN (collectively, the "Parties"), which provides for
10 the rescission of a lease agreement with RCN and resolves potential disputes between the
11 Parties upon terms favorable to PG&E's estate.

12 PG&E and RCN are parties to a "Master Conduit and Facilities License and
13 Lease Agreement" dated November 20, 2000 for the lease of certain gas pipelines in San
14 Francisco (the "Master Agreement"). Subsequently, RCN failed to make required payments
15 under the Master Agreement, and the City and County of San Francisco claimed that the
16 Master Agreement was in breach of certain agreements and municipal code provisions. In
17 view of the foregoing, PG&E determined that it was no longer in the business interests of
18 PG&E's estate to maintain the Master Agreement and negotiated the "Rescission Agreement
19 and Mutual Release" (the "Rescission Agreement") with RCN. The Rescission Agreement
20 provides for the rescission of the Master Agreement upon PG&E's refund the RCN of
21 \$873,170.72 (the majority of the amount paid by RCN under the Master Agreement). The
22 Rescission Agreement also provides for the mutual releases of the Parties' potential liability
23 without any requirement that PG&E pay interest or rejection damages.

24 Accordingly, the Rescission Agreement meets the requirements for authorization
25 under Bankruptcy Rule 9019 in that it resolves the disputes between the Parties without
26 further time and expense and use of Court and party resources upon terms beneficial to
27 PG&E's estate. Moreover, PG&E's refund of \$873,170.72 is justified by sound business
28 reasons and should be approved pursuant to Section 363(b)(1) of the Bankruptcy Code.

1 **PLEASE TAKE FURTHER NOTICE** that pursuant to Rule 9014(c)(2) of the
2 Bankruptcy Local Rules of the United States District Court for the Northern District of
3 California, any opposition to the Motion and the relief requested herein must be filed with
4 the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E) at
5 least five (5) days prior to the scheduled hearing date. If there is no timely objection to the
6 requested relief as described in this paragraph, the Court may enter an order granting such
7 relief without further hearing.

8
9 DATED: October 7, 2002.

10 Respectfully,

11 HOWARD, RICE, NEMEROVSKI, CANADY,
12 FALK & RABKIN
13 A Professional Corporation

14 By: _____

15 CEIDE ZAPPARONI

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

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