

50-275/523

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8
9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 In re
14 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
15 Debtor.

Case No. 01-30923 DM

Chapter 11 Case

Date: October 29, 2002

Time: 1:30 p.m.

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

Judge: Hon. Dennis Montali

17 Federal I.D. No. 94-0742640

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19 NOTICE OF MOTION AND MOTION FOR AUTHORITY TO PAY
20 FILING FEES AND PRINTER'S COSTS IN CONNECTION WITH THE
21 FILING OF REGISTRATION STATEMENTS WITH THE SECURITIES
AND EXCHANGE COMMISSION; MEMORANDUM OF POINTS AND
22 AUTHORITIES IN SUPPORT THEREOF

23 [SUPPORTING DECLARATION OF MICHAEL J. DONNELLY
24 FILED SEPARATELY]

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pacific Gas and Electric Company ("PG&E"), the debtor and debtor in possession
3 in the above-captioned Chapter 11 case, requests authority to pay certain filing fees and
4 printer's costs in connection with the filing of registration statements with the Securities and
5 Exchange Commission ("SEC") for the debt securities to be issued under PG&E's proposed
6 Plan of Reorganization. This request is made pursuant to Bankruptcy Code Section
7 363(b)(1).

8
9 **I. FACTUAL BACKGROUND¹**

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

13 PG&E, together with its parent corporation, PG&E Corporation, has proposed a
14 Plan of Reorganization (as amended from time to time, the "Plan"), which has recently been
15 voted on by creditors, along with the competing plan of reorganization proposed by the
16 California Public Utilities Commission. The confirmation hearing has been scheduled to
17 commence on November 18, 2002.

18 The Plan provides for the creation of three new companies, ETrans LLC, GTrans
19 LLC and Electric Generation LLC (collectively, the "New Entities"), whereby PG&E will
20 separate according to its four historical lines of business and functions. Thus, the
21 Reorganized Debtor (referred to herein as "PG&E") will continue to operate the retail gas
22 and electric distribution business, ETrans LLC ("ETrans") will operate the electric
23 transmission business, GTrans LLC ("GTrans") will operate the gas transmission business,
24 and Electric Generation LLC ("Gen") will operate the electric generation business.

25 A significant component of the Plan involves the issuance of various types of
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27 ¹ The evidentiary basis and support for the facts set forth in this Motion are contained
28 in the Declaration of Michael J. Donnelly filed concurrently herewith.

1 debt securities by the New Entities as part of the distributions to be made to holders of
2 Allowed Claims (as defined in the Plan) and by PG&E and the New Entities as a means of
3 raising the cash to pay Allowed Claims and otherwise implement the Plan.

4 As set forth in PG&E's Motion for Authority to Pay Fees of Designated
5 Underwriter's Counsel, filed on October 1, 2002, PG&E will utilize underwriters and
6 designated underwriter's counsel in connection with the securities offerings. Specifically,
7 PG&E has requested authority to pay underwriter's counsel to assist with, among other
8 items, the preparation of the registration statements and related prospectuses to be filed with
9 the SEC by PG&E and each of the New Entities for the offerings of New Money Notes² to
10 the public and the potential resale of Long-Term Notes³ by holders of Allowed Claims to the
11 public.

12 As conditions precedent to the effectiveness of the Plan, (i) the registration
13 statements for the New Money Notes and the Long-Term Notes must be declared effective
14 by the SEC, and (ii) PG&E must have consummated the sale of its New Money Notes and
15 the New Money Notes of each of the New Entities shall have been priced and their trade
16 dates shall have occurred.⁴ Once the registration statements are filed, there may be a lengthy
17 SEC review process for the securities offerings before the registration statements are
18 declared effective. Therefore, in order to meet the foregoing conditions precedent to the
19 effectiveness of the Plan, PG&E intends to file the registration statements as soon as
20 possible. Currently, the legal work and due diligence process is underway in connection
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22 ² As set forth in the Plan, "New Money Notes" means, collectively, the ETrans New
23 Money Notes, the GTrans New Money Notes, the Gen New Money Notes and the
24 Reorganized Debtor New Money Notes. Generally, the New Money Notes consist of new
debt securities to be issued by PG&E and each of the New Entities and to be sold to
investors.

25 ³ As set forth in the Plan, "Long-Term Notes" means, collectively, the ETrans Long-
26 Term Notes, the GTrans Long-Term Notes and the Gen Long-Term Notes. Generally, the
Long Term Notes consist of long-term debt securities to be issued by each of the New
Entities under the Plan and to be distributed to holders of Allowed Claims.

27 ⁴ See Article VI. T. of the Disclosure Statement for the Plan describing the conditions
28 precedent to the effectiveness of the Plan.

1 with the preparation of the registration statements and PG&E anticipates that the registration
2 statements may be ready for filing by November 1, 2002.

3 At the time the registration statements are filed, PG&E will be required to pay
4 filing fees to the SEC. PG&E estimates that the total filing fees will be approximately
5 \$500,000, based on a total principal amount of \$5.36 billion in debt to be offered (the current
6 SEC filing fee is \$92 for each \$1 million of debt offered). In addition, a professional printer
7 will be needed to prepare and file the registration statements with the SEC in the electronic
8 filing format required by SEC Regulation S-T. The printer's costs for these services are a
9 function of the size of the filings, the number of amendments required by the SEC staff and
10 the number of individual revisions made in preparing the filings and amendments; as a
11 result, these fees are difficult to estimate in advance. However, PG&E anticipates that the
12 printer's costs for these services will not exceed \$800,000 prior to confirmation of the Plan.
13 After confirmation, additional amendments will be required and preliminary and final
14 prospectuses must be printed to conduct the offerings. To the extent necessary, a separate
15 application will be made with respect to these additional costs.

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17 **II.**
18 **PAYMENT OF SEC FILING FEES AND PRINTER'S COSTS**
19 **FOR FILING OF REGISTRATION STATEMENTS IS**
20 **APPROPRIATE PURSUANT TO BANKRUPTCY CODE**
21 **SECTION 363(B)(1)**

22 The Court has considerable discretion in approving a request pursuant to Section
23 363(b)(1) of the Bankruptcy Code (“[t]he trustee, after notice and a hearing, may use, sell or
24 lease, other than in the ordinary course of business, property of the estate”). See Dai-Ichi
25 Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding
26 Corp.), 242 B.R. 147, 153 (D. Del. 1999) (affirming the bankruptcy court's decision to
27 approve expenditure for employee incentive programs, noting that bankruptcy court has
28 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

1 business judgment test. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 389-90
2 (6th Cir. 1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722
3 F.2d 1063, 1071 (2d Cir. 1983); see also 3 Lawrence P. King, Collier on Bankruptcy
4 ¶363.02[1][g] (15th ed. rev. 1998).

5 Once the debtor has articulated a rational business justification, a presumption
6 attaches that the decision was made “on an informed basis, in good faith and in the honest
7 belief that the action taken was in the best interests of the [debtor].” See, e.g., Official
8 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),
9 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858 (Del.
10 1985)).

11 Sound business justifications support PG&E’s request to pay the SEC filing fees
12 and printer’s costs described above. These costs must be incurred in order to file the
13 registration statements with the SEC and to proceed with the process of obtaining SEC
14 clearance for the debt securities offerings that are necessary to implement the Plan. PG&E
15 believes that the registration statements must be filed promptly in order to ensure that PG&E
16 can timely meet the conditions precedent to the effectiveness of the Plan. Finally, PG&E is
17 solvent and has sufficient cash to pay these expenses without causing any detriment to its
18 creditors.⁵

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27 ⁵ As reflected in PG&E’s August 2002 Monthly Operating Report, PG&E held more
28 than \$4.1 billion in cash reserves as of August 31, 2002.

1 **CONCLUSION**

2 For all of the foregoing reasons, PG&E respectfully requests that the Court
3 approve the request set forth above to pay the filing fees and printer's costs in connection
4 with the filing of the registration statements with the SEC, and grant such other and further
5 relief as may be just and appropriate.

6 DATED: October 9, 2002

7 Respectfully,

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

10 By: Janet Nexon
11 JANET A. NEXON

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