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

10 In re	Case No. 01-30923 DM
11 PACIFIC GAS AND ELECTRIC COMPANY, a California corporation,	Chapter 11 Case
12 Debtor.	Date: November 15, 2002
13 Federal I.D. No. 94-0742640	Time: 1:30 p.m.
	Place: 235 Pine Street, 22 nd Floor, San Francisco, California

15 **NOTICE OF MOTION AND SECOND MOTION OF THE OFFICIAL COMMITTEE OF**
16 **UNSECURED CREDITORS FOR AUTHORITY TO INCUR PLAN**
17 **IMPLEMENTATION EXPENSES; MEMORANDUM OF POINTS AND**
18 **AUTHORITIES IN SUPPORT THEREOF**
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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 15, 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, the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 case of Pacific Gas and Electric Company ("PG&E") will and hereby does move the Court for entry of an order approving the Second Motion of the Official Committee of Unsecured Creditors for Authority to Incur Plan Implementation Expenses (the "Motion").

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Paul S. Aronzon, 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 the Order Granting Ex Parte Application of the Official Committee of Unsecured Creditors for Order Shortening Time on Motion of the Official Committee of Unsecured Creditors for Authority to Incur Plan Implementation Expenses entered on November 8, 2002, any written opposition to the Motion and the relief requested herein must be filed with the Bankruptcy Court and served by facsimile or e-mail upon the appropriate parties (including counsel for the Committee, the California Public Utilities Commission and the Office of the United States Trustee) by 2:00 p.m. on November 14, 2002. If there is no timely opposition to the requested relief, the Court may enter an order granting such relief without further hearing.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Bankruptcy Code sections 363(b)(1) and 105(a), the Official
3 Committee of Unsecured Creditors (the "Committee") in the Chapter 11 case of Pacific Gas
4 and Electric Company ("PG&E") requests an order authorizing payment by the PG&E estate of
5 \$175,000, plus reimbursement of certain expenses, for an Indicative Ratings Letter (the
6 "Ratings Letter") from Fitch Ratings ("Fitch") related to the confirmation and implementation
7 of the Second Amended Plan of Reorganization for PG&E filed by the Committee and the
8 California Public Utilities Commission on November 6, 2002 (the "Committee/CPUC Plan").¹
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10 **I. FACTUAL BACKGROUND**

11 PG&E filed a voluntary petition for relief under Chapter 11 of the Bankruptcy
12 Code on April 6, 2001. The Official Committee of Unsecured Creditors was appointed on
13 April 10, 2001. The Committee, in conjunction with the California Public Utilities
14 Commission (the "CPUC"), has proposed the Committee/CPUC Plan. The Committee/CPUC
15 Plan provides for issuance of debt and equity securities in the approximate amount of \$8.8
16 billion to pay the claims of creditors in full, with interest. PG&E has filed a competing plan of
17 reorganization. The confirmation hearing on the Committee/CPUC Plan is scheduled to
18 commence on November 18, 2002.

19 PG&E has previously filed and obtained orders approving more than ten (10)
20 motions seeking authority to incur costs related to implementation of its plan. PG&E has
21 obtained approval for approximately \$60 million pursuant to these motions.

22 This Motion seeks approval for the payment to Fitch of the relatively small sum of
23 \$175,000, plus reimbursement for reasonable travel and lodging expenses and for legal fees
24 incurred in connection with preparation of the Ratings Letter.² The purpose of the

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26 ¹ The Committee is in discussion with other rating agencies and in the future may make
27 similar requests for payment of fees to these agencies to obtain indicative ratings letters. The
28 Committee has already filed a motion for authorization of \$250,000 in plan implementation
expenses to be paid to Standard & Poors for its issuance of an indicative ratings letter.

² See Declaration of Paul S. Aronzon in Support of Motion and Ex Parte Application, filed
(continued . . .)

1 Committee's request for the Ratings Letter is to obtain indicative ratings of the debt and equity
2 securities that will be issued under the Committee/CPUC Plan, if it is confirmed. Obtaining
3 the Ratings Letter is an important step prior to issuance of the securities and will be helpful to
4 the confirmation and implementation of the Committee/CPUC Plan.³ Although the Committee
5 and the CPUC do not believe that Bankruptcy Code section 1129 requires that the securities
6 issued under the Committee/CPUC Plan have an investment grade credit rating for the
7 Committee/CPUC Plan to be feasible, PG&E has indicated that it intends to argue during the
8 confirmation proceedings that the Committee/CPUC Plan would not be feasible if the securities
9 issued do not achieve an investment grade credit rating. Accordingly, the Ratings Letter is
10 necessary. The Committee requests that payment from the PG&E estate to Fitch be authorized
11 and paid upon delivery of Fitch's Ratings Letter or receipt of Fitch's conclusion that the
12 Ratings Letter cannot be issued.

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14 **II. THE PLAN IMPLEMENTATION EXPENSES SHOULD BE APPROVED**
15 **PURSUANT TO SECTIONS 363 (b)(1) AND 105(a) OF THE BANKRUPTCY**
16 **CODE**

17 The Committee seeks approval of payment for the Ratings Letter as a use of estate
18 funds pursuant to Bankruptcy Code section 363(b)(1). Since these expenses are related to the
19 implementation of the Committee/CPUC Plan, the Committee believes that the purposes and
20 scope of the expenditure may be characterized as outside the ordinary course of PG&E's
21 business and therefore requires the Court's approval.

22 The Court has considerable discretion in approving a request pursuant to Section
23 363(b)(1) of the Bankruptcy Code. See In re Montgomery Ward Holding Corp., 242 B.R. 147,
24 153 (D. Del. 1999) (noting that the bankruptcy court has considerable discretion in approving a
25 section 363(b) motion).

26 _____
27 (. . . continued)
28 concurrently herewith ("Aronzon Dec."), ¶ 4, Exhibit A.

³ See Aronzon Dec., ¶ 3.

1 In determining whether to authorize a transaction under section 363(b)(1), courts
2 require a debtor or other estate representative to show that a sound business purpose justifies
3 such actions, applying the business judgment test. See, e.g., Stephens Indus., Inc. v. McClung,
4 789 F.2d 386, 389-90 (6th Cir. 1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re
5 Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); see also Lawrence P. King, 3 Collier on
6 Bankruptcy ¶363.02[1][g] (15th ed. rev. 1998).

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

13 Sound business justifications exist for approval of the implementation costs
14 described above. The Ratings Letter is important to the confirmation and implementation of
15 the Committee/CPUC Plan. Furthermore, PG&E is solvent and has sufficient cash to pay the
16 expenses described herein without causing any detriment to itself. On that basis, the
17 Committee believes that the implementation expenses described herein are necessary and
18 should be approved.

19 Furthermore, section 105(a) of the Bankruptcy Code provides the Court with the
20 power to “issue any order, process, or judgment that is necessary or appropriate to carry out the
21 provisions of [the Bankruptcy Code].” Courts have held that this provision should be
22 considered broadly, giving the Bankruptcy Court considerable power to fashion the appropriate
23 remedies. See United States v. Energy Resources Co., Inc., 495 U.S. 545, 549 (1990); In re
24 Roman, 283 B.R. 1, 13 (9th Cir. BAP) 2002; see also Lawrence P. King, 2 Collier on
25 Bankruptcy, ¶ 105.01 (15th ed. Rev. 2001). Accordingly, the Court should approve the
26 implementation expenses to ensure that the confirmation proceedings and subsequent
27 implementation of the Committee/CPUC Plan proceed without delay.

1 **III. CONCLUSION**

2 For all the foregoing reasons, the Committee respectfully requests that the Court
3 approve the plan implementation expenses described above and grant such other and further
4 relief as may be just and appropriate.

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6 DATED: November 6, 2002

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Respectfully,

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PAUL S. ARONZON

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ROBERT JAY MOORE

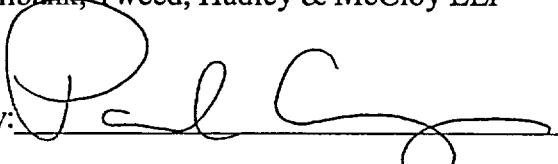
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By: 

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