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7 PACIFIC GAS AND ELECTRIC COMPANY

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

11 In re
12 PACIFIC GAS AND ELECTRIC
13 COMPANY, a California corporation,
14 Debtor.
15 Federal I.D. No. 94-0742640

Case No. 01-30923 DM
Chapter 11 Case
Date: December 23, 2002
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

17 DECLARATION OF DAVID H. RUSH IN SUPPORT OF PACIFIC GAS AND
18 ELECTRIC'S MOTION FOR ORDER APPROVING SETTLEMENT OF DEBTOR'S
19 CLAIMS AGAINST TRAVELERS PROPERTY AND CASUALTY, ET AL.

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DECLARATION OF DAVID H. RUSH ISO MOT. FOR ORDER

001 Add: Kids Ogo Mail Center

1 I, David H. Rush, declare:

2 1. I am an attorney at law licensed to practice in the State of California and an
3 attorney for Pacific Gas & Electric Company ("PG&E"), the debtor and debtor in possession
4 in the above-captioned Chapter 11 case. I am the attorney with primary responsibility for
5 PG&E's litigation against the "Insurers" referenced in the Motion for an Order Approving
6 Settlement which accompanies this declaration. I make this declaration of my own personal
7 knowledge and can testify competently to the truth of the matters stated herein.

8 2. On August 7, 1994, a fire started near Rough and Ready, California, when a
9 tree limb contacted a PG&E distribution line, causing sparks which ignited dry grass below
10 the lines.

11 3. Claims and lawsuits were initiated by property owners for both property
12 damage and emotional distress. PG&E tendered defense of the cases to Insurers, but such
13 tender was rejected. Accordingly, on November 7, 1994, PG&E filed an action against
14 Insurers to establish PG&E's indemnity rights, being Nevada County Superior Court Case
15 No. 52984. In the meantime, PG&E negotiated and settled claims as they arose.

16 4. The parties then agreed on May 18, 1995, to binding arbitration, which was
17 tried to a three judge panel in Sacramento. The arbitrators entered their award on April 2,
18 1996, ruling that PG&E was entitled to full indemnity from Insurers. The arbitrators made
19 no determination as to the amount owed to PG&E by Insurers.

20 5. Prior to the April 2, 1996 arbitration award PG&E paid \$1,711,209.96 in
21 third party claims, \$26,454.25 to independent investigators and appraisers, \$63,672.50 in
22 adjusting expenses, \$83,504.00 to repair damaged PG&E facilities, \$117,070.31 for fire
23 clean-up an tree removal and incurred \$113,532.62 in attorney fees and costs, for a grand
24 total of \$2,115,443.64.

25 6. Subsequent to the arbitration award, Insurers paid out several millions to
26 settle the remaining unresolved third party claims.

27 7. In approximately August 1995, a misdemeanor action was filed against
28 PG&E in Nevada County Municipal Court (Case No. M95-1422). The case culminated in a

1 conviction for, inter alia, violation of Public Resources Code Section 4421 (allowing fire to
2 escape to the land of another). In addition to several fines imposed for violation of Section
3 4421, as well as other sections of the Public Resources Code, the court entered its
4 Sentencing Order on July 30, 1997, stating therein, "PG&E shall pay full direct restitution to
5 all persons who suffered economic losses as a result of the Rough and Ready fire."

6 8. Thereupon, on November 6, 1997, the Insurers filed a claim for restitution
7 in the criminal case for \$4,654,318.45 it had allegedly paid out to third parties as a result of
8 the subject fire. On February 3, 1998, the Insurers filed an amended restitution claim for
9 \$6,254,318.45 , plus interest at 10%.

10 9. On May 17, 2000, PG&E re-filed its petition to confirm the civil case
11 arbitration award (which petition was initially filed on May 20, 1996). On May 26, 2000,
12 the Superior Court confirmed the award and scheduled an evidentiary hearing to determine
13 the amount of damages to which PG&E was entitled.

14 10. On August 30, 2000, the Insurers filed a separate declaratory relief action
15 against PG&E as Nevada Superior Court Case No. 64714 contending that its damages were
16 precluded by California Insurance Code Section 533.5, which provides that insurance
17 policies may not cover payment of any restitution ordered in a criminal proceeding.

18 11. The evidentiary hearing re the arbitration award was continued pending
19 settlement negotiations between the parties. On September 21, 2000, Insurers offered
20 \$761,703.74 to settle, but it was rejected by PG&E.

21 12. The parties then agreed to mediate, and mediation sessions were held before
22 Joseph Ramsey, Mediator, on March 29, 2001 and on August 30, 2001.

23 13. At the mediation, the matter was settled, subject to Bankruptcy Court
24 approval. PG&E's claim for \$2,115,443.64, plus interest of \$1,057,721.82, was
25 compromised for \$1,500,000.00, to be paid to PG&E by Insurers. In addition, Insurers
26 agreed to abandon their \$6,254,318.45 (plus interest at 10%) restitution claim against PG&E.

27 14. On August 30, 2001, the parties signed a preliminary mediation settlement
28 agreement. This was then formalized in a Settlement Agreement and Mutual Release, which

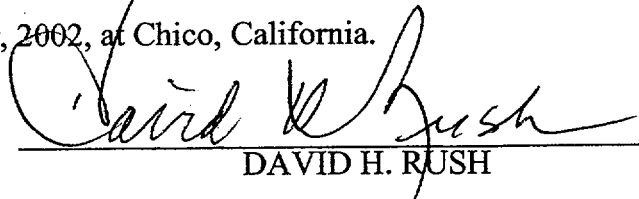
1 was finally signed by the last of the parties on April 22, 2002. A copy of said agreement is
2 attached hereto as Exhibit "A."

3 15. PG&E believes the settlement is fair and reasonable and is in the best
4 interests of Debtor and its creditors. Though PG&E believes that reimbursement for the \$1.7
5 million it paid to third parties is a legitimate damage under its contractual indemnity rights
6 against Insurers, there is the counter argument that, by reimbursing PG&E for those
7 amounts, the Insurers are reducing the amount that PG&E otherwise had to pay those same
8 third parties as a result of the restitution order. In effect, therefore, the Insurers argue that
9 they would be paying for criminal restitution contrary to the provisions of Insurance Code
10 Section 533.5.

11 16. The Insurers also raised an issue with the other large component of PG&E's
12 claimed damages, the \$1 million in interest. Since the arbitration award did not include a
13 determination of damages and, since the Insurers would be contesting the reasonableness of
14 the damages at the upcoming evidentiary hearing, the Insurers argued that no Civil Code
15 Section 3287 interest would be available as the damages had not yet been made certain, nor
16 were they capable of being made certain until an evidentiary hearing was actually held.

17 17. Finally, although PG&E believed that People v. Birkett, 21 Cal. 4th 226
18 (1999), provided a complete defense against Insurers' approximately \$6.3 million criminal
19 restitution claim, PG&E also believed it preferable to totally eliminate that exposure through
20 the settlement process.

21 I declare under penalty of perjury under the laws of the United States of America
22 and the State of California that the foregoing is true and correct, and that this declaration was
23 executed on this 30 day of September, 2002, at Chico, California.

24 
25 _____
26 DAVID H. RUSH

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28
WD 100402/1-1419905/mw/1023039/v1

DECLARATION OF DAVID H. RUSH ISO MOT. FOR ORDER

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1. This Settlement Agreement and Mutual Release ("AGREEMENT") is entered into by and between TRAVELERS INSURANCE COMPANY, fna Aetna Life & Casualty Company, AMERICANMOTORISTS INSURANCE COMPANY, a subsidiary of Kemper Insurance company, TIG INSURANCE COMPANY, fna Transamerica Insurance Company, and UTILITY TREE SERVICE, INC. (collectively "INSURERS"), on the one hand, and PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), on the other. This AGREEMENT becomes effective once it has been signed by a designated representative of PG&E, the INSURERS and their respective counsel and approved by the Bankruptcy Court in In re Pacific Gas and Electric Company, No. 01-30923 DM (Northern District of California).

2. Subject to the approval of the Bankruptcy Court, the INSURERS will pay to PG&E the total amount of \$1,500,000.00, payable within 30 days of approval by the Bankruptcy Court. The payment is to be made by checks payable to PG&E and David Rush, its attorney.

3. It is understood by the parties to this AGREEMENT that PG&E completely releases and discharges the INSURERS, and any and all of their current or former officers, directors, agents, employees, representatives, corporate parents or subsidiaries, related corporations, and/or successors and assigns from any and all claims of any and every kind, nature or character, known or unknown, that PG&E may now have, or has ever had, arising from, or in any way connected with, the Trauner fire of August 7, 1994.

4. It is understood by the parties to this AGREEMENT that the INSURERS completely release and discharge PG&E, and any and all of its current or former officers, directors, agents, employees, representatives, corporate parents or subsidiaries, related corporations, and/or successors and assigns from any and all claims of any and every kind, nature or character, known or unknown, that the INSURERS may now have, or have ever had, arising from, or in any way connected with the Trauner fire of August 7, 1994.

5. It is further understood that this AGREEMENT is a full and final mutual release by PG&E and the INSURERS of all unknown, undisclosed and unanticipated losses, wrongs, injuries, claims, and damages that arise from, or are in any way connected with, the Trauner fire of August 7, 1994. With respect to the mutual release in the preceding sentence PG&E and the INSURERS waive any

and all rights or benefits under the terms of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6. Any liability for each and all of the parties' respective claims is expressly denied. This AGREEMENT represents a compromise settlement of disputed claims, and neither this AGREEMENT itself, nor the furnishing of consideration for this AGREEMENT, should ever be deemed, construed, or interpreted for any purpose as an admission of anyone's liability or responsibility for any claimed wrongdoing of any kind.

7. PG&E shall dismiss with prejudice within ten days of receipt of the check described in paragraph 2 above its complaint in Pacific Gas and Electric Company v. American Motorists Insurance Company, et al., No. 52984 (County of Nevada). The INSURERS shall dismiss with prejudice within ten days of receipt of a copy of the dismissal referenced in the preceding sentence their complaint in Travelers Property and Casualty, et al. v. Pacific Gas and Electric Company, No. 64714 (County of Nevada). INSURERS also agree to abandon and withdraw any claim for restitution in People v. Pacific Gas and Electric Company, No. M95-1422 (County of Nevada).

8. Each party is to bear its own attorney's fees and costs. PG&E is responsible for any and all liens.

9. The parties intend that this is a binding settlement agreement, enforceable by California Code of Civil Procedure § 664.6, to the fullest extent allowed by law. The settling parties stipulate and agree that this AGREEMENT is admissible in any proceeding or hearing relating to the mediation and settlement described herein pursuant to California Evidence Code § 1123.

10. This AGREEMENT shall be construed and governed by the laws of the State of California.

11. If, for any reason, any paragraph, or portion of a paragraph, or any other provision of this AGREEMENT is not enforceable, then any such unenforceable portion shall be deemed severable, and the remainder of this AGREEMENT shall nonetheless remain binding and effective.

12. This AGREEMENT constitutes the entire agreement between PG&E and the INSURERS regarding actual or potential claims between the parties and the settlement of those

claims. This AGREEMENT supersedes all prior agreements, written or oral, between or among the parties regarding those claims or potential claims and the settlement of those claims. No other agreement, statement, or promise made by one party to another as to any matter addressed in this AGREEMENT shall be binding or valid. This AGREEMENT cannot be orally modified. Any amendment or modification to this AGREEMENT must be in writing, signed by PG&E and by the INSURERS.

13. The parties agree that any legal rule to the effect that ambiguities shall be resolved against the drafting party shall not apply in any interpretation of this AGREEMENT.

14. The parties may execute this AGREEMENT in counterparts which shall in the aggregate, be signed by all the parties; and each counterpart shall be deemed an original.

INSURERS:

Dated: DECEMBER 12, 2001

TRAVELERS INSURANCE COMPANY,
fna Aetna Life & Casualty Company

By Melinda Black

Dated: _____, 2001

AMERICAN MOTORISTS INSURANCE COMPANY, a subsidiary of Kemper Insurance company,

By _____

Dated: _____, 2001

TIG INSURANCE COMPANY,
fna Transamerica Insurance Company

By _____

Dated: _____, 2001

UTILITY TREE SERVICE, INC.

By _____

(Signatures continue . . .)

claims. This AGREEMENT supersedes all prior agreements, written or oral, between or among the parties regarding those claims or potential claims and the settlement of those claims. No other agreement, statement, or promise made by one party to another as to any matter addressed in this AGREEMENT shall be binding or valid. This AGREEMENT cannot be orally modified. Any amendment or modification to this AGREEMENT must be in writing, signed by PG&E and by the INSURERS.

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INSURERS:

Dated: _____, 2001

TRAVELERS INSURANCE COMPANY,
fna Aetna Life & Casualty Company

By _____

Dated: Nov. 14, 2001

**AMERICAN MOTORISTS INSURANCE
COMPANY,** a subsidiary of Kemper
Insurance company,

By William A. Oland

Dated: _____, 2001

TIG INSURANCE COMPANY,
fna Transamerica Insurance Company

By _____

Dated: _____, 2001

UTILITY TREE SERVICE, INC.

By _____

(Signatures continue . . .)

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INSURERS:

Dated: _____, 2001

TRAVELERS INSURANCE COMPANY,
fna Aetna Life & Casualty Company

By _____

Dated: _____, 2001

AMERICAN MOTORISTS INSURANCE COMPANY, a subsidiary of Kemper Insurance company,

By _____

Dated: Nov. 27, 2001

TIG INSURANCE COMPANY,
fna Transamerica Insurance Company

By Michael D. Roggen
Dr. Claims Specialist - Excess.

Dated: _____, 2001

UTILITY TREE SERVICE, INC.

By _____

(Signatures continue . . .)

(Signatures continued . . .)

PG&E:

**PACIFIC GAS AND ELECTRIC
COMPANY**

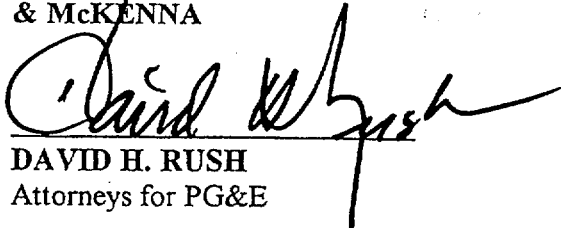
Dated: _____, 2001

By _____

Approved as to form:

Dated: 10-31, 2001


**PETERS, RUSH, HABIB
& McKENNA**



DAVID H. RUSH
Attorneys for PG&E

Dated: 12/14, 2001

**ANWYL, SCOFFIELD, STEPP
& UNIVERSAL, LLP**



LINDY H. SCOFFIELD
Attorneys for Insurers

(Signatures continued . . .)

PG&E:

PACIFIC GAS AND ELECTRIC
COMPANY

By Raymond. [Signature]

Dated: January 18, 2007

Approved as to form:

Dated: 10-31, 2001

PETERS, RUSH, HABIB
& MCKENNA

David H. Rush
DAVID H. RUSH
Attorneys for PG&E

Dated: _____, 2001

ANWYL, SCOFFIELD, STEPP
& UNIVERSAL, LLP

LINDY H. SCOFFIELD
Attorneys for Insurers

DATED: April 22, 2002

FABTECO, fna Utility Tree Service, Inc.

By Frederick M. Tobin
Frederick M. Tobin, Secretary

PG&E:

DATED: _____, 2002

PACIFIC GAS AND ELECTRIC COMPANY

By _____

Approved as to form:

DATED: _____, 2002

PETERS, RUSH, HABIB & McKENNA

DAVID H. RUSH, Attorneys for PG&E

DATED: _____, 2002

ANWYL, SCOFFIELD, STEPP & UNIVERSAL, LLP

LINDY H. SCOFFIELD, Attorney for
INSURERS