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8 Attorneys for Deutsche Bank Trust Company Americas,  
9 As Indenture Trustee

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

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

17 Case No. 01-30923 DM  
18 Chapter 11 Case  
19 Date: December 2, 2002  
20 Time: 9:30 a.m.  
21 Place: 235 Pine Street, 22<sup>nd</sup> Floor  
22 San Francisco, CA

23 Federal I.D. No. 94-0724640

24 **CONDITIONAL OBJECTION AND REQUEST FOR CLARIFICATION**  
25 **OF DEUTSCHE BANK TRUST COMPANY AMERICAS, AS INDENTURE**  
26 **TRUSTEE, WITH RESPECT TO THE CALIFORNIA PUBLIC UTILITIES**  
27 **COMMISSION'S AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS'**  
28 **SECOND AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF**  
**THE BANKRUPTCY CODE FOR PACIFIC GAS AND ELECTRIC COMPANY**

Deutsche Bank Trust Company Americas, as Indenture Trustee ("DB"), by its attorneys, Moses & Singer LLP, hereby conditionally objects to, and requests clarification of, The California Public Utilities Commission's And Official Committee of Unsecured Creditors' Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code For Pacific Gas And Electric Company (the "CPU Second Amended Plan"), as follows:

Att. Add: Kids Age Mail Center

1 **BACKGROUND**

2 1. The basis for the conditional objection and the explanation for why it is  
3 being filed at this time is set forth below. On April 6, 2001 (the "Petition Date"), Pacific Gas  
4 and Electric Company, the debtor and debtor in possession in the above-referenced  
5 bankruptcy case ("PG&E" or the "Debtor"), filed a voluntary petition for relief under Chapter  
6 11 of the Bankruptcy Code in the above-captioned Court. PG&E is a debtor in possession  
7 and is operating its business pursuant to Bankruptcy Code §§ 1107 and 1108.  
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10 2. Pursuant to the terms of that certain Indenture of Trust, dated as of April  
11 1, 1992 (the "Indenture"), by and between California Pollution Control Financing Authority  
12 (the "Issuer") and Deutsche Bank Trust Company Americas f/k/a Bankers Trust Company,  
13 the Issuer issued those certain California Pollution Control Financing Authority, Pollution  
14 Control Refunding Revenue Bonds (Pacific Gas and Electric Company) 1992 Series A in the  
15 aggregate principal amount of \$35,000,000 (the "1992 PC Bonds"). PG&E obligated itself  
16 through a bond loan agreement with the Issuer to pay the 1992 PC Bonds. DB is the  
17 indenture trustee with respect to the 1992 PC Bonds.  
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20 3. In connection with the issuance of the 1992 PC Bonds, in order to secure  
21 its obligation under the bond loan agreement to repay the bond loan made by the Issuer to the  
22 Debtor of the proceeds from the sale of the 1992 PC Bonds, the Debtor delivered to DB its  
23 first and refunding mortgage bonds (the "Collateral Bonds") in an aggregate principal amount  
24 equal to the related series of 1992 PC Bonds. The Collateral Bonds delivered to DB to secure  
25 the 1992 PC Bonds provide for payments on such Collateral Bonds at the times and in the  
26 amounts necessary to allow DB to distribute full and timely payment of the principal of,  
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1 premium, if any, and interest on the 1992 PC Bonds.

2           4.     The Collateral Bonds securing the 1992 PC Bonds were issued under  
3 and secured by the Debtor's First and Refunding Mortgage dated December 1, 1920, as  
4 supplemented and amended (defined in the CPU Second Amended Plan as the "Mortgage"),  
5 which constitutes a first mortgage lien upon all real property and a security interest in  
6 substantially all personal property of the Debtor. The Mortgage secures, *pari passu*, (i) a total  
7 of approximately \$345 million of bonds (the "Mortgage Bonds") issued as collateral to  
8 various indenture trustees, such as DB, for various pollution control bonds (the "PC Bonds"),  
9 and (ii) other bonds (the "First and Refunding Mortgage Bonds") in the current face amount  
10 of \$2.699 billion.

11           5.     As indenture trustee for the 1992 PC Bonds, DB has standing both as a  
12 holder of Collateral Bonds and as indenture trustee with respect to the 1992 PC Bonds.

13           6.     On or about May 17, 2002, the California Public Utilities Commission  
14 (the "CPU") filed its Plan of Reorganization Under Chapter 11 of the Bankruptcy Code For  
15 Pacific Gas And Electric Company (the "CPU Plan"). The CPU Plan classified the First and  
16 Refunding Mortgage Bonds in Class 3 and the 1992 PC Bonds in Class 4a. Pursuant to the  
17 terms of the CPU Plan, both the First and Refunding Mortgage Bonds and the 1992 PC Bonds  
18 were to remain outstanding and be reinstated and rendered unimpaired in accordance with  
19 Section 1124(2) of the Bankruptcy Code.

20           7.     On or about November 6, 2002, the CPU and the Official Committee of  
21 Unsecured Creditors filed the CPU Second Amended Plan. The CPU Second Amended Plan  
22 continues to provide for the 1992 PC Bonds in Class 4a to be reinstated and unimpaired. The  
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1 Disclosure Statement confirmed this and no disclosure was made of any attempt to impair the  
2 1992 PC Bonds. No provision was made for a vote by Class 4a, and DB, in reliance thereon,  
3 did not object to the CPU Second Amended Plan.  
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5 8. However, the CPU Second Amended Plan provides for \$2.699 billion of  
6 the First and Refunding Mortgage Bonds in Class 3 to be paid in full and for all liens securing  
7 them to be extinguished as of the Effective Date. The CPU Second Amended Plan provides  
8 no specific treatment for the \$345 million of Mortgage Bonds, including the Collateral  
9 Bonds, that secure the 1992 PC Bonds and the other PC Bonds that were also issued under  
10 and secured by the Mortgage. The CPU Second Amended Plan defines these as "Mortgage  
11 Bonds," a term separate and distinct from the term "First and Refunding Mortgage Bonds,"  
12 although both are secured, *pari passu*, by the Mortgage.  
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#### 15 **CONDITIONAL OBJECTION**

16 9. DB, and apparently the other trustees for the mortgage backed PC  
17 Bonds, interpreted the CPU Second Amended Plan to provide that the Mortgage Bonds,  
18 including the Collateral Bonds, and the lien of the Mortgage securing them, would not be  
19 extinguished. DB concluded that only the First and Refunding Mortgage Bonds issued to the  
20 public in the amount of \$2.699 billion would be repaid and that lien extinguished. Any other  
21 interpretation would presume that the Second Amended Plan intended to deprive Class 4a of  
22 the benefits of its Mortgage Bond collateral with no compensation. This would impair Class  
23 4a and entitle it to vote. There is no legal justification for depriving Class 4a of its collateral  
24 without compensation.  
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27 10. On November 26, 2002, however, the Debtor advised DB that it  
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1 interpreted the CPU Second Amended Plan differently. The Debtor believes that the  
2 Mortgage Bonds, including the Collateral Bonds, fall within the definition of the First and  
3 Refunding Mortgage Bonds, are within Class 3 and that the lien created by the Mortgage will  
4 be extinguished as of the Effective Date, depriving the PC Bonds of their Mortgage Bond  
5 security. However, the \$2.699 billion provided to be paid is insufficient to cover both the  
6 First and Refunding Mortgage Bonds and the \$345 million of the Mortgage Bonds, if those  
7 bonds are included in Class 3. If the Debtor is correct, then confirmation of the CPU Second  
8 Amended Plan will deprive the 1992 PC Bonds of their collateral and Class 4a will be  
9 impaired under the CPU Second Amended Plan with no opportunity to vote or object and  
10 with inadequate and misleading disclosure.  
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13           11. When a secured creditor is deprived of its collateral in a plan of  
14 reorganization, the secured creditor's claim is impaired. 11 U.S.C. § 1124; *In re Barakat*, 99  
15 F.3d 1520, 1527 (9<sup>th</sup> Cir. 1996). Moreover, if the secured creditor is deprived of its collateral  
16 without being given the collateral's "indubitable equivalent" in exchange, the plan cannot be  
17 confirmed over the secured creditor's objection. 11 U.S.C. § 1129(b)(2); *In re Ambanc La*  
18 *Mesa Limited Partnership*, 115 F.3d 650, 653 (9<sup>th</sup> Cir. 1996). Obviously, extinguishment of  
19 the Mortgage Bonds as part of Class 3, while providing no recovery to their holders, is  
20 discriminatory in violation of Section 1129(b).  
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23           12. The Debtor's position regarding the CPU Second Amended Plan  
24 compels DB to conditionally object to confirmation and to seek clarification of the CPU  
25 Second Amended Plan. In the event that the proponents of the CPU Second Amended Plan  
26 confirm that the Collateral Bonds securing the 1992 PC Bonds are to be extinguished with no  
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1 payment, then the CPU Second Amended Plan cannot and should not be confirmed.

2 **CONCLUSION**

3 For the foregoing reasons, DB conditionally objects to confirmation of the CPU  
4 Second Amended Plan and requests clarification. The CPU Second Amended Plan provides  
5 that the 1992 PC Bonds are unimpaired, and the collateral securing such bonds remains in full  
6 force and effect. In the event that the 1992 PC Bonds are impaired, and the PC Bonds,  
7 including the Collateral Bonds, are extinguished, then the CPU Second Amended Plan should  
8 not be confirmed.  
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12 DATED: November 27, 2002

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13  
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