

1 JAMES L. LOPES (No. 63678)
JULIE B. LANDAU (No. 162038)
2 HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
3 A Professional Corporation
Three Embarcadero Center, 7th Floor
4 San Francisco, California 94111-4065
Telephone: 415/434-1600
5 Facsimile: 415/217-5910

6 Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY
7

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
16

Case No. 01-30923 DM

Chapter 11 Case

Date: February 6, 2003

Time: 1:30 p.m.

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

17 NOTICE OF MOTION AND MOTION FOR AUTHORITY TO INCUR
18 LEASE EXTENSION FEES; MEMORANDUM OF POINTS
19 AND AUTHORITIES IN SUPPORT THEREOF

20 [SUPPORTING DECLARATION OF KENNETH RICHEISON FILED
21 SEPARATELY]
22
23
24
25
26
27
28

ADD 1
Add: Rec'd Date
Mailed

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 pursuant to the (i) Motion for Authority to Incur Miscellaneous Implementation Expenses
2 filed on August 15, 2002, (ii) Motion for Authority to Incur Additional Miscellaneous
3 Implementation Expenses filed on September 12, 2002, and (iii) Third Motion for Authority
4 to Incur Miscellaneous Implementation Expenses filed on October 18, 2002. The present
5 Motion seeks authority to incur approximately \$75,000 in additional monthly expenses
6 beginning February 2003 (except that, as noted below, a portion of these monthly expenses
7 would not be paid until March or April 2003) and continuing to such time as the Plan is
8 confirmed.

9
10 **A. Request to Pay Lease Extension Fees for New Facilities to be Leased.**¹

11 As set forth in the Third Motion for Authority to Incur Miscellaneous
12 Implementation Expenses filed on October 18, 2002 (Docket No. 10594) at page 7, PG&E
13 anticipates that up to seven new buildings will need to be leased and prepared for occupancy
14 for use by the New Entities by the Effective Date under the Plan ("Plan Effective Date").²
15 For example, PG&E currently has substation maintenance facilities that include both
16 distribution and electric transmission functions. Since the Reorganized Debtor and the New
17 Entities will be separate legal entities, it is important that there be no confusion about
18 employee supervision and compliance with legal and business requirements. Physical
19 separation of the employees of the Reorganized Debtor and the New Entities will
20 accomplish these important objectives. These new facilities, a subset of the total new
21 facilities that will ultimately be needed by the New Entities, represent only those facilities
22 that are necessary by the Plan Effective Date for the New Entities' commencement of initial
23 field operations.

24
25 ¹ The evidentiary basis and support for the facts set forth in this Motion are contained
in the Declaration of Kenneth Richerson, filed concurrently herewith.

26 ² Pursuant to the Third Miscellaneous Motion, PG&E obtained authority to incur
27 costs for preliminary work related to leasing the new buildings (as well as the modification
of existing PG&E buildings). This preliminary work included hiring construction project
28 managers, obtaining necessary permits, doing preliminary engineering and design work and
obtaining environmental assessments.

1 The present Motion relates to lease "option" payments (referred to herein as
2 "Extension Fees") for the new buildings that PG&E has now identified as key sites to be
3 leased by one or more of the New Entities immediately following Plan confirmation in order
4 to ensure that the new facilities will be operational by the Plan Effective Date.

5 PG&E is in the process of negotiating the Extension Fees as part of a written
6 lease (or lease assignment) with each landlord (or current tenant) for the various properties
7 described below; however, the leases will not be effective unless and until the Plan is
8 confirmed and the Court has authorized PG&E to enter into the leases. PG&E intends to
9 bring a subsequent motion seeking authority to enter into the leases effective upon Plan
10 confirmation.

11 As explained further below, there are five buildings currently available for lease
12 that are well-suited to the needs of the New Entities and for which PG&E has been able to
13 negotiate or expects to obtain favorable lease terms. However, the landlords (or current
14 tenants) of the five buildings are actively attempting to lease (or sublease) the space and are
15 not willing to hold the properties exclusively for PG&E pending the outcome of the Plan
16 confirmation proceedings. PG&E is also considering a sixth building (described in Section
17 B.6 below). Additional buildings may be needed but have not yet been identified and
18 therefore PG&E reserves the right to bring further motions seeking approval for any
19 additional Extension Fees that may be necessary.

20 In order to prevent the buildings from being leased or subleased to others, PG&E
21 is requesting authority to make month to month payments in exchange for the landlord's
22 agreement to lease the property to PG&E upon Plan confirmation (provided that there may
23 be other conditions to be satisfied, including Court approval). PG&E anticipates that it will
24 obtain six successive "extension periods" of one month each for the properties (i.e., the
25 period of time during which the landlords will agree to accept monthly payments in
26
27
28

1 exchange for waiving the right to lease the properties to another tenant).³

2
3 **B. Description of Properties and Lease Extension Fees**

4 The following describes the particular properties that PG&E intends to lease and
5 the anticipated Extension Fees to be paid for each property in order to ensure the continued
6 availability of each property for lease by PG&E upon Plan confirmation.

7 The properties described below (i) are necessary for the New Entities to
8 commence business operations by the Plan Effective Date, (ii) meet the specific
9 requirements of the New Entities (such as sufficient warehouse space that includes an
10 outside storage or parking area), and (iii) are located in key geographic areas designed to
11 meet the New Entities' needs for regional employee headquarters and to provide convenient
12 access for service employees relative to the service territories to be covered.

13
14 **1. GTrans Construction Headquarters in Stockton.**

15 PG&E has identified an industrial building in Stockton that is well-suited for use
16 by GTrans as its Construction Headquarters. Employees to be located here will be
17 responsible for all transmission pipeline construction and major emergency repair activities.
18 This location will be near GTrans' transmission pipeline and underground storage facilities
19 and has outstanding freeway access allowing for efficient dispatch of construction crews and
20 fast emergency response. The building also offers a mix of building to yard area that is not
21 readily available in the Stockton area. The building, consisting of approximately 20,000
22 square feet, includes both a warehouse area and an office area; the site includes a large
23 parking lot and covers approximately 3.6 acres. GTrans intends to use the building for
24 offices, storage of materials and a fabrication shop, and to use the lot for parking of
25 construction trucks.

26
27 ³ The only exception is for the Foster City property described in Section B.5 below,
28 where PG&E expects to obtain four successive extension periods of one month each.

1 PG&E is in the process of negotiating the lease terms and anticipates that the
2 Extension Fees will commence in April 2003 in the amount of approximately \$12,000 per
3 month. This amount is equivalent to the base rent (i.e., rental fees without any other charges
4 such as taxes or insurance) that PG&E expects to negotiate for a lease of the property.
5

6 **2. GTrans Offices and Maintenance Base in Turlock.**

7 PG&E has identified an industrial building in Turlock that is well-suited to
8 GTrans' needs because of its location in relation to GTrans' local transmission facilities.
9 This facility is ideally located for maintenance personnel and emergency response for the
10 area between Ceres and Livingston. The property is desirable due to its large yard area and
11 because it requires only minimal tenant improvements. The building includes both
12 warehouse and office areas, consisting of approximately 6,000 square feet; the site includes
13 a parking lot covering approximately 7,500 square feet. This facility will be used for general
14 offices by maintenance and operating personnel and for the storage and parking of a portion
15 of the GTrans' truck fleet.

16 PG&E is in the process of negotiating the lease terms and anticipates that the
17 Extension Fees will commence in February 2003 (following approval of this Motion) in the
18 amount of approximately \$3,100 per month. This amount is equivalent to the base rent that
19 PG&E expects to negotiate for a lease of the property.
20

21 **3. GTrans Offices and Maintenance Base in Oakland.**

22 PG&E has identified an industrial building in Oakland that is well-suited to
23 GTrans' needs because of its central location with respect GTrans' local transmission system
24 located between Hayward and Rodeo. PG&E has spent several months looking for an
25 alternative site in the Oakland area and has found no other suitable site. This site also offers
26 good freeway access for rapid emergency response. The building includes both warehouse
27 and office areas (consisting of approximately 11,180 square feet), and will be used as a
28 headquarters for East Bay maintenance and operations employees as well as for storage and

1 parking of a portion of the GTrans truck fleet.

2 PG&E is in the process of negotiating the lease terms and anticipates that the
3 Extension Fees will commence on March 1, 2003 in the amount of approximately \$7,500 per
4 month. This amount is equivalent to the base rent that PG&E expects to negotiate for a lease
5 of the property.

6
7 **4. ETrans Warehouse in Woodland.**

8 PG&E has identified an industrial building in Woodland that is well-suited for
9 use as a warehouse by ETrans because of its location along the Interstate 5 and Highway 113
10 transportation corridors and its large outdoor storage area. The building will be utilized as a
11 warehouse with limited office space, consisting of approximately 64,800 square feet; the
12 appurtenant land covers approximately 8.42 acres and includes a fenced and paved lot.

13 PG&E is in the process of negotiating the lease terms and anticipates that the
14 Extension Fees will commence in February 2003 (following approval of this Motion) in the
15 amount of approximately \$22,700 per month for the first 3 months and approximately
16 \$32,100 for the next 3 months. The first three months' Extension Fees are equivalent to
17 approximately 85% of the base rent under the lease that would be assigned to PG&E by the
18 current tenant and the next three months' Extension Fees are based on the current tenant's
19 full lease costs (including rent, real estate taxes and insurance).

20
21 **5. Shared Building for ETrans and GTrans in Foster City.**

22 PG&E has identified an industrial building in Foster City that is well-suited for
23 use by ETrans and GTrans due to its location between San Francisco and San Jose, near
24 local transmission facilities for ETrans and GTrans. ETrans and GTrans intend to use this
25 facility to maintain and operate their respective local transmission facilities located
26 throughout the San Francisco Peninsula region. PG&E has spent several months looking for
27 possible alternatives to this building and has not found a suitable alternative site. The site
28 contains both warehouse and office areas, consisting of approximately 20,000 square feet,

HOWARD
RICE
NEMITROVSKI
CANADY
BALK
& RAIBIN
A Professional Corporation

1 and also includes a 13,500 square foot parking lot. The site would be used for general
2 offices, material storage, truck parking and a fabrication shop.

3 PG&E is in the process of negotiating the lease terms and anticipates that the
4 Extension Fees will commence in February 2003 (following approval of this Motion) in the
5 amount of approximately \$20,600 per month. This amount is equivalent to the base rent
6 under the lease that would be assigned to PG&E by the current tenant.

7 8 **6. Potential ETrans Site In Or Near Rocklin.**

9 PG&E is currently searching for a suitable industrial building for ETrans along
10 either the Highway 50 or Highway 80 corridors, including warehouse and office space, areas
11 suitable for truck parking, material storage and a fabrication shop. PG&E has located only
12 two possible sites that meet ETrans' requirements for outside storage space, both in the
13 Rocklin area and consisting of approximately 10,000 square feet (building) and
14 approximately 30,000 square feet (yard). The market is competitive for this type of facility
15 because few such facilities exist in the area. PG&E requests authority at this time to make
16 monthly payments of Extension Fees, if necessary to retain the property once a decision has
17 been made, in the amount of approximately \$8,500 per month. PG&E believes that this
18 amount is equivalent to the base rent that could be negotiated for a lease of the properties
19 under consideration.

20 21 **II.** **THE LEASE EXTENSION FEES SHOULD BE APPROVED PURSUANT TO** **SECTION 363(b)(1) OF THE BANKRUPTCY CODE**

22
23 PG&E seeks approval for the Extension Fees described above as a use of estate
24 property that is outside of the ordinary course of business under Bankruptcy Code Section
25 363(b)(1). Since the purpose of the Extension Fees is related to the implementation of the
26 Plan, PG&E believes that the purpose and scope of the expenditure may be characterized as
27 outside of the ordinary course of business and therefore requires Court approval.

28 The Court has considerable discretion in approving a request pursuant to Section

1 363(b)(1) of the Bankruptcy Code (“[t]he trustee, after notice and a hearing, may use, sell or
2 lease, other than in the ordinary course of business, property of the estate”). See In re
3 Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming the
4 bankruptcy court’s decision to approve expenditure for employee incentive programs, noting
5 that bankruptcy court has considerable discretion in approving a Section 363(b) motion).

6 In determining whether to authorize a transaction under Section 363(b)(1), courts
7 require a debtor to show that a sound business purpose justifies such actions, applying the
8 business judgment test. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 389-90
9 (6th Cir. 1986); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722
10 F.2d 1063, 1071 (2d Cir. 1983); see also 3 Lawrence P. King, Collier on Bankruptcy
11 ¶363.02[1][g] (15th ed. rev. 1998).

12 Once the debtor has articulated a rational business justification, a presumption
13 attaches that the decision was made “on an informed basis, in good faith and in the honest
14 belief that the action taken was in the best interest of the [debtor].” See, e.g., Official
15 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),
16 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858 (Del.
17 1985)).

18 Sound business justifications exist for approval of the Extension Fees described
19 above. PG&E has identified the need for each property, including the various properties’
20 desirability based on location, unavailability or higher cost of suitable alternative sites, and
21 satisfaction of specific needs and requirements such as ample warehouse or yard space.
22 PG&E believes that the Extension Fee amounts are reasonable and comparable to the base
23 rent that could be negotiated for a long-term lease of each property. At the same time,
24 PG&E is not assuming the long-term obligations associated with a typical lease until such
25 time as Plan confirmation occurs and this Court has authorized PG&E to enter into leases.
26 PG&E also believes that these properties will not be available to PG&E several months from
27 now without payment of the Extension Fees; therefore, PG&E believes that the Extension
28 Fees are essential to implementation of the Plan.

1 Finally, PG&E is solvent and has sufficient cash to pay the expenses described
2 herein without causing any detriment to its creditors.⁴
3

4 CONCLUSION

5 For all of the foregoing reasons, PG&E respectfully requests that the Court
6 approve PG&E's payment of the Extension Fees described above and grant such other and
7 further relief as may be just and appropriate.
8

9 DATED: January 17, 2003

Respectfully,

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

12 By: 
13 JULIE B. LANDAU

14 Attorneys for Debtor and Debtor in Possession
15 PACIFIC GAS AND ELECTRIC COMPANY

16 WD 011703/1-1419905/1049361/v3
17
18
19
20
21
22
23
24
25
26

27 ⁴ As reflected in PG&E's November 2002 Monthly Operating Report, PG&E held
28 more than \$4.1 billion in cash reserves as of November 30, 2002.