

1 JAMES L. LOPES (No. 63678)  
2 JEFFREY L. SCHAFER (No. 91404)  
3 JULIE B. LANDAU (No. 162038)  
4 HOWARD, RICE, NEMEROVSKI, CANADY,  
5 FALK & RABKIN  
6 A Professional Corporation  
7 Three Embarcadero Center, 7th Floor  
8 San Francisco, California 94111-4065  
9 Telephone: 415/434-1600  
10 Facsimile: 415/217-5910

11 Attorneys for Debtor and Debtor in Possession  
12 PACIFIC GAS AND ELECTRIC COMPANY

13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 In re

17 PACIFIC GAS AND ELECTRIC  
18 COMPANY, a California corporation,

19 Debtor.

20 Federal I.D. No. 94-0742640

21 Case No. 01-30923 DM

22 Chapter 11 Case

23 Date: June 30, 2003

24 Time: 1:30 p.m.

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

27 NOTICE OF MOTION AND MOTION FOR ORDER APPROVING (1) SALE OF  
28 WESTSIDE ZONE FACILITIES AND RELATED PROPERTY  
29 TO TURLOCK IRRIGATION DISTRICT FREE AND CLEAR OF LIENS AND  
30 INTERESTS (OTHER THAN LIEN OF BNY WESTERN TRUST COMPANY), AND  
31 (2) COMPROMISE OF CONTROVERSY INVOLVING SUCH SALE AND RELATED  
32 NON-SALE TRANSACTIONS;  
33 SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

34 [SUPPORTING DECLARATION OF DAVID RUBIN FILED SEPARATELY]

35 Note: BNY Western Trust Company should take special notice that the  
36 relief requested in this Motion includes the sale of real property that  
37 constitutes part of the Westside Zone Facilities described in this Motion,  
38 that such real property is subject to the lien of BNY Western Trust  
39 Company, and that the Debtor has agreed as part of the sale of the real  
40 property to seek and demand, after the closing of such sale, the release of  
41 the lien of BNY Western Trust Company on such real property pursuant to  
42 the Debtor's rights under applicable nonbankruptcy law.

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HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

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1 in its capacity as Trustee under the Indenture described in the accompanying Memorandum  
2 of Points and Authorities) at least fourteen (14) days prior to the scheduled hearing date. If  
3 there is no timely objection to the requested relief, the Court may enter an order granting  
4 such relief without further hearing.

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& RABKIN  
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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **INTRODUCTION**

3                   By this Motion, Pacific Gas and Electric Company, the debtor and debtor in  
4 possession in this Chapter 11 case ("PG&E"), seeks an order (1) pursuant to 11 U.S.C.  
5 Sections 363(b) and 363(f),<sup>1</sup> authorizing the sale free and clear of liens (other than the lien of  
6 BNY Western Trust Company) of certain electric distribution facilities, related transmission  
7 facilities and related property rights (including easements and rights of way) as well as the  
8 lease of certain PG&E-owned land related thereto, all located in a service area known as the  
9 "Westside Zone" (located in a portion of western Stanislaus County, including the City of  
10 Patterson, the Community of Crows Landing and adjacent rural areas) and collectively  
11 referred to herein as the "Westside Zone Facilities," to Turlock Irrigation District ("TID"),  
12 and (2) pursuant to 11 U.S.C. Section 363(b) and Bankruptcy Rule 9109(a), approving  
13 PG&E's compromise of controversy with TID encompassing the aforementioned sale and  
14 certain related transactions between PG&E and TID as more particularly described below.  
15 The sales price for the sale of the Westside Zone Facilities is \$15,111,825 for various  
16 scheduled assets, plus other compensation for unscheduled assets as described more  
17 particularly below.

18                   The only known lien on the Westside Zone Facilities (or any portion thereof) is  
19 the lien of BNY Western Trust Company in its capacity as Trustee under the Indenture as  
20 described more fully in Part III below.

21                   The proposed sale of the Westside Zone Facilities and the related proposed  
22 agreements and transactions between PG&E and TID described herein represent the parties'  
23 comprehensive settlement of various disputes between them. Those aspects of the  
24 settlement that involve the transfer of Federal Energy Regulatory Commission ("FERC")  
25 jurisdictional assets already have been approved by FERC, and those aspects of the proposed  
26

27                   <sup>1</sup>Unless otherwise indicated, all statutory references in this Motion are to the United  
28 States Bankruptcy Code (Title 11 of the United States Code).



1 settlement requiring the California Public Utilities Commission ("CPUC") approval already  
2 have been approved by the CPUC. Accordingly, this Court's approval of this Motion is the  
3 only remaining approval needed to consummate the settlement and proceed with the subject  
4 sale and related transactions.

5 I.

6 THE FACTS<sup>2</sup>

7 A. The Dispute Resulting In The Agreements/Transactions Covered By This Motion

8 TID is an irrigation district organized under California law that owns and  
9 operates an electric distribution and transmission system and provides electric service to  
10 customers in portions of Merced, Stanislaus, and Tuolumne Counties. TID has been in the  
11 retail electricity business since 1923 and currently serves over 67,000 accounts, which range  
12 from residential to large industrial users.

13 The CPUC previously approved service area agreements for PG&E and TID in  
14 1941 and 1953. In recent years, disputes arose between PG&E and TID regarding the  
15 continuing validity of the 1953 service area agreement. TID contended that the 1953  
16 agreement was no longer enforceable. PG&E contended that TID had violated the 1953  
17 agreement by offering electric distribution service within PG&E's service area in Stanislaus  
18 County, including the cities of Gustine, Los Banos, Patterson and Newman. PG&E also  
19 claimed that the formation of the Westside Power Authority ("WPA") by TID and the  
20 Patterson Irrigation District ("PID") violated the 1953 agreement and that WPA was formed  
21 for the purpose of providing electric service to customers in PG&E's service area.

22 In August 1999, PG&E filed Application (A.) 99-08-018, which asked the  
23 Commission to clarify the continued validity of the 1953 service area agreement. In D.00-  
24 06-002, the CPUC denied the application on the grounds that PG&E sought an advisory  
25 opinion and that Assembly Bill (AB) 2638, which was then pending before the Legislature,  
26

27 <sup>2</sup>The evidentiary basis and support for the facts set forth in this Motion are contained in  
28 the Declaration of David Rubin (hereinafter referred to as the "Rubin Declaration" and cited  
as the "Rubin Decl.") filed concurrently herewith.

1 might give the parties guidance on this issue.<sup>3</sup> During legislative discussions of AB 2638,  
2 Assemblymembers Cardoza and Calderon, co-authors of the legislation, urged affected  
3 parties, including TID and PG&E, to attempt to resolve their disputes. The agreements and  
4 transactions proposed in this Motion result from a compromise by PG&E and TID to resolve  
5 issues related to their respective service areas and represent a comprehensive settlement of  
6 various disputes between the parties.

7 B. The Regulatory Approvals

8 On January 4, 2002, pursuant to applicable provisions of the California Public  
9 Utilities Code, PG&E filed with the CPUC an application pertaining to the subject sale and  
10 related transactions with TID, entitled "Application For Authorization To Sell Electric  
11 Distribution and Certain Related Transmission Facilities [etc.]" (the "Application"), a true  
12 and correct copy of which is attached as Exhibit A to the Rubin Declaration. On April 3,  
13 2003, the CPUC issued its Decision No. 03-04-032 granting the Application with certain  
14 modifications, entitled "Decision Granting Approval For Conveyance Of Facilities By  
15 Pacific Gas and Electric Company (PG&E) To Turlock Irrigation District (TID), New  
16 Service Area Agreement Between PG&E and TID, And Related Transactions" (the "CPUC  
17 Decision"), a true and correct copy of which is attached as Exhibit C to the Rubin  
18 Declaration.<sup>4</sup> In addition, on or about November 25, 2002, PG&E applied to FERC for  
19 authorization to sell that portion of the Westside Zone Facilities constituting transmission  
20 facilities over which FERC has jurisdiction. On January 3, 2003, FERC approved the sale of  
21 such transmission facilities to TID pursuant to its "Order Authorizing Disposition of  
22 Jurisdictional Facilities" (the "FERC Order"), a true and correct copy of which is attached as  
23 Exhibit D to the Rubin Declaration. Accordingly, PG&E has obtained all necessary

24 <sup>3</sup>AB 2638 (2000 Cal. Stat. ch. 1042) became effective on January 1, 2001.

25 <sup>4</sup>While the CPUC Decision approved the Application in all significant respects, the  
26 CPUC Decision, in Ordering Paragraphs 2 and 5, required a few modifications to certain  
27 aspects of the agreements described in the Application, some of which are more particularly  
28 summarized in footnotes 7 and 9 below. This Motion seeks approval of the agreements and  
transactions described in the Application, as modified pursuant to Ordering Paragraphs 2 and  
5 of the CPUC Decision.

1 regulatory approvals in connection with the sale and related agreements encompassing the  
2 settlement.

3 C. The Agreements Comprising The Proposed Settlement

4 There are several related agreements comprising the proposed compromise of  
5 controversy between PG&E and TID. Most central, pursuant to an Asset Sale Agreement by  
6 and between PG&E and TID dated as of December 18, 2001, as amended (the "Asset Sale  
7 Agreement"), a true and correct copy of which is attached as Exhibit A to the Application,  
8 PG&E has agreed to sell to TID (subject to any necessary regulatory and Court approval and  
9 certain other conditions) PG&E's electric distribution facilities, certain related transmission  
10 facilities, and related land rights (including easements and rights of way) located in a portion  
11 of western Stanislaus County, including the City of Patterson, the Community of Crows  
12 Landing and adjacent rural areas (referred to herein as the "Westside Zone"). In addition,  
13 pursuant to various separate agreements with TID summarized more fully below, PG&E has  
14 agreed, among other things, to lease to TID certain PG&E-owned real property, to sell to  
15 TID a 60 kV transmission tap line serving a large food processing customer, and to assign to  
16 TID three private electrical line agreements.

17 As of the date that the Application was filed with the CPUC, the Westside Zone  
18 consisted of approximately 225 square miles wherein PG&E served approximately 5,450  
19 electric customers. Such customers annually used approximately 110 million kWh,  
20 producing approximately \$9.2 million in annual electric revenue. Once the Westside Zone  
21 Facilities are sold to TID, PG&E will no longer provide electric distribution services to  
22 customers in the Westside Zone.

23 The Westside Zone Facilities being sold or leased to TID by PG&E are described  
24 in Article 2 and Schedules 2.1(a) through (e) of the Asset Sale Agreement (Exhibit A to the  
25 Application), and in the various ancillary agreements attached as Exhibits B through H to the  
26 Application, and include the following:

27 Land Rights and Facilities. (a) Various easements, permits, licenses and rights-  
28 of-way located in the Westside Zone (as described on Schedule 2.1(a)(i) to the Asset Sale

1 Agreement); (b) distribution circuits and all associated distribution poles, conductors,  
2 hardware, secondaries, services, meters, transformers, capacitors, switches, regulators, street  
3 lights, control and protective devices associated with the distribution circuits, and four 60 kV  
4 transmission poles and associated equipment located in the Westside Zone (as described on  
5 Schedule 2.1(a)(ii) to the Asset Sale Agreement); and (c) the partial assignment of certain  
6 easements for transmission lines (as described on Schedule 2.1(a)(iii) to the Asset Sale  
7 Agreement).

8 Salado Assets. The distribution substation equipment located at PG&E's Salado  
9 Substation (the "Salado Assets"), as listed on Schedule 2.1(b) to the Asset Sale Agreement,  
10 including, for example, transformers, switches and insulators.

11 Patterson Assets. The distribution substation equipment located at PG&E's  
12 Patterson Substation (the "Patterson Assets"), as listed on Schedule 2.1(c) to the Asset Sale  
13 Agreement, including, for example, transformers, switches and insulators.

14 Other Distribution Equipment. A partial interest in certain transmission poles as  
15 listed on Schedule 2.1(d) to the Asset Sale Agreement.

16 Assigned Private Line Agreements. Three agreements relating to private lines  
17 (consisting of a portion of the Del Puerto Road Private Line, the Crows Landing Private Line  
18 and the Adobe Creek Road Private Line) as listed on Schedule 2.1(e) to the Asset Sale  
19 Agreement and pursuant to the Private Electrical Lines Assignment and Assumption  
20 Agreement attached as Exhibit H to the Application.

21 Assigned Contracts. (a) Agreements between PG&E and its customers in the  
22 Westside Zone covering the customer's special facilities, to the extent a customer has  
23 consented to the transfer to TID if such consent is required; and (b) a 60kV tap line to  
24 Patterson Frozen Foods, whereby PG&E will sell to TID certain electric facilities and  
25 easements constituting the 60 kV tap line pursuant to the Installment Sales Agreement  
26 attached as Exhibit G to the Application.

27 Leases. (a) A lease for a portion of the real property constituting PG&E's Salado  
28 Substation, in order for TID to maintain the Salado Assets located at the Salado Substation

1 (the "Salado Lease"); and (b) a lease for the real property constituting PG&E's Patterson  
2 Substation, in order for TID to maintain the Patterson Assets located at the Patterson  
3 Substation (the "Patterson Lease"). The Salado and Patterson Leases are attached as  
4 Exhibits D and E, respectively, to the Application.

5 The specific agreements and transactions for which Court approval is sought in  
6 this Motion, and a summary of each, are as follows:

7  
8 1. Asset Sale Agreement

9 As already indicated, the principal terms and conditions of the proposed sale are  
10 contained in the Asset Sale Agreement, and the facilities being sold include all electric  
11 distribution circuits and associated distribution facilities, meters, streetlights, and control and  
12 protective devices in the Westside Zone, associated easements and rights of way, the  
13 Patterson substation facilities, a portion of the Salado substation facilities, a portion of  
14 transmission poles with distribution underbuild, and a few associated transmission poles that  
15 would otherwise be stranded. Specific descriptions of the land rights and facilities to be sold  
16 are contained in Section 2.1 and Schedules 2.1(a)(i), 2.1(a)(ii), 2.1(b), 2.1(c), and 2.1(d) of  
17 the Asset Sale Agreement. The vast majority of the transmission facilities in the Westside  
18 Zone are necessary for PG&E's overall system reliability and are therefore being retained by  
19 PG&E. No gas distribution facilities are included in the sale, and PG&E will remain the gas  
20 distribution utility in the Westside Zone.

21 The sale price for the assets described in the Schedules to the Asset Sale  
22 Agreement is \$15,111,825, based on the Replacement Cost New Less Depreciation  
23 ("RCNLD") method.<sup>5</sup> Additional sale proceeds in connection with the Asset Sale

24  
25 <sup>5</sup>The RCNLD approach is a commonly accepted method for valuing utility distribution  
26 assets and streetlight assets. "Replacement cost new" is defined as the current cost, new, of  
27 a similar new property having the nearest equivalent use as the property being appraised. It  
28 represents total installed costs, which consist of material costs, including allowances for  
stores expense, freight, taxes, labor costs, and general and administrative overhead. In  
developing the replacement cost new for distribution facilities, PG&E generally uses  
multiple computer programs and resources reflecting current construction practices and  
(continued . . . )

1 Agreement include \$67,221 under the Installment Sales Agreement described below, plus an  
2 estimated \$6 million for certain unscheduled assets arising and services provided after the  
3 execution of the Asset Sale Agreement.<sup>6</sup> Accordingly, the estimated sales proceeds under or  
4 in connection with the Asset Sale Agreement are approximately \$21.18 million.

5 The Asset Sale Agreement further provides, in Section 4.3, that TID will pay all  
6 authorized nonbypassable charges as defined in Section 1.1 ("NBCs") for Westside Zone  
7 consumers subsequent to the closing, in the amounts set forth in PG&E's tariffs.<sup>7</sup>

8 The Asset Sale Agreement also covers a variety of other issues, including  
9 delivery of customer information (Sec. 4.1(c) and Schedule 1.1(a)), delivery of facilities  
10 information (Sec. 2.12 and Schedule 1.1(b)), sales of replacement parts if necessary (Sec.  
11 2.11), joint pole arrangements (Sec. 2.10), final customer meter reads (Sec. 4.1(f)),  
12 disconnecting the facilities from the Company's system (Sec.4.2), and numerous other  
13 matters.

14 ( . . . continued )  
15 costs.

16 The concept of depreciation in the valuation context can simply be defined as the  
17 measure of loss in value. A definition suitable to facilities sold by PG&E is found in Iowa  
18 Bulletin 156:

19 Depreciation of a unit of physical property at any age is the difference  
20 between the present worth of its present probable future operation  
21 returns or services and the present worth of its probable future  
22 operation returns or services if it were new. (Condition-Percent  
23 Tables for Depreciation of Unit and Group Properties; Iowa  
24 Engineering Experiment Station Bulletin 156, 1942, page 6)

25 Not only is the RCNLD approach common in the industry, it is the approach that  
26 PG&E has historically used and the approach expected by municipalities and other buyers of  
27 small segment distribution facilities and streetlight facilities. Furthermore, the RCNLD  
28 approach is accepted by the CPUC.

29 <sup>6</sup>Section 4.1 of the Asset Sale Agreement provides that after December 5, 2000, PG&E  
30 will continue to install new services and facilities in the Westside Zone until the closing of  
31 the transaction, and that the purchase price under the Assets Sale Agreement will be  
32 increased to take into account these additional services and facilities; using the RCNLD  
33 approach. PG&E currently estimates that the RCNLD value of these additional services and  
34 facilities will be approximately \$6 million by the time of closing.

35 <sup>7</sup>In its Decision, the CPUC required the parties to clarify Section 4.3 by filing an  
36 amendment to the Asset Sale Agreement within 60 days. CPUC Decision, at pp. 22 n.27 &  
37 56 (Ordering Paragraph 5). PG&E and TID currently are discussing this amendment and  
38 expect to finalize and file it soon.

1                   2.   New Service Area Agreement

2                   Under the new Service Area Agreement (in the final form attached as Exhibit B  
3 to the Rubin Declaration),<sup>8</sup> PG&E and TID have agreed to terminate the existing 1953  
4 Service Area Agreement and enter into a new 25-year Service Area Agreement. The WPA,  
5 which also will serve customers in this area, is a party to the new Service Area Agreement,  
6 as is PID as a member of WPA.

7                   Sections 2, 3 and 4 of the new Service Area Agreement define exclusive  
8 geographic zones within which TID and WPA on the one side and PG&E on the other side  
9 would sell or distribute electric power or energy, directly or indirectly. There are several  
10 changes to the existing service territory boundaries.

11                  Under Sections 3, 4 and 5a of the new Service Area Agreement, the parties agree,  
12 with certain limited exceptions, not to own or control distribution or transmission facilities  
13 for the purpose of serving each other's retail customers for 25 years. In light of changes in  
14 the electric industry in recent years and the "unbundling" of various services, the new  
15 Service Area Agreement explicitly sets forth various unbundled services that are permitted  
16 or not permitted. Unlike the 1953 Service Area Agreement, the new Agreement does not  
17 prohibit a party from engaging in direct access transactions in the other party's service  
18 territory, to the extent that such services are authorized by the CPUC, and subject to  
19 satisfying certain conditions precedent (see Sec. 6a, 7a, 7b and 7c).<sup>9</sup> The new Service Area  
20 Agreement also permits power sales to wholesale customers (Sec. 6e and 7g), and permits  
21

22                  <sup>8</sup>While the Application was pending with the CPUC, the parties amended the new  
23 Service Area Agreement to clarify certain issues raised by the Merced Irrigation District and  
24 the Modesto Irrigation District. These amendments were filed with the CPUC before the  
25 CPUC acted on the Application. Accordingly, the form of the new Service Area Agreement  
attached as Exhibit B to the Application is not the final form as so amended and approved by  
the CPUC. Rather, the final form as so amended and approved by the CPUC is attached as  
Exhibit B to the Rubin Declaration.

26                  <sup>9</sup>In its Decision, the CPUC required the parties to amend certain portions of the Asset  
27 Sale Agreement and the Service Area Agreement within 60 days, to clarify the provisions  
28 regarding direct access. CPUC Decision, pp. 32-34, 38-39 & 55-56 (Ordering Paragraphs 2  
and 5). PG&E and TID currently are discussing these amendments and expect to finalize  
and file them soon.

1 each party to extend facilities to interconnect generators in the other party's service territory  
2 (Sec. 6c and 7e).

3 The new Service Area Agreement also explicitly prohibits conducting activities  
4 through a joint powers agency or other joint venture or affiliate that the party cannot do  
5 itself. Sec. 5a; see also Sec. 29. These provisions resolve the dispute between PG&E and  
6 TID over whether a joint powers arrangement such as WPA is barred by the 1953 Service  
7 Area Agreement.

8 Another important feature of the new Service Area Agreement involves Merced  
9 Irrigation District ("MEID"). TID is presently providing various services to MEID under  
10 agreements entered into over the past few years. Section 10 of the Service Area Agreement  
11 allows TID to continue to provide those services, notwithstanding other provisions of the  
12 Agreement. Because an existing Power Sales Agreement between MEID and TID grants  
13 TID the right, under certain circumstances, to acquire MEID's facilities and/or lease those  
14 facilities, which actions would otherwise violate the strict service area boundaries, Section  
15 10 of the new Service Area Agreement permits TID to exercise its rights under this Power  
16 Sales Agreement. However, Section 10 contains detailed restrictions on TID's ability to  
17 build duplicate electric facilities or otherwise engage in activity which would be barred by  
18 the new Service Area Agreement, and further provides that if TID acquires any facilities  
19 owned by MEID in PG&E's territory, PG&E has an option to acquire these facilities from  
20 TID at essentially the same price.

21  
22 3. Installment Sales Agreement

23 The Installment Sales Agreement between PG&E and TID, attached as Exhibit G  
24 to the Application, conveys to TID a 60 kV industrial customer tap line off of the Salado-  
25 Patterson 60 kV circuit serving Patterson Frozen Foods ("PFF") and the associated  
26 easements.

27 At TID's request, PG&E has agreed to transfer this asset by means of an  
28 Installment Sales Agreement. TID requested the use of an Installment Sales Agreement



1 because it wanted to avoid being required to install new metering and protection equipment  
2 at the intersection of this tap line and the Salado-Patterson 60kV circuit, as will be required  
3 when the purchase is completed. TID anticipates building a new transmission line within the  
4 seven-year term of the Installment Sales Agreement, and hence hopes to avoid the new  
5 metering and protection expense entirely.

6 The sale price under the Installment Sale Agreement is \$67,221. The Installment  
7 Sales Agreement provides for TID to pay all but one dollar of the sale price of the tap line as  
8 a down payment at closing, and to assume all risk of loss. The final payment of one dollar is  
9 due by no later than seven years after the closing date. TID may take possession of the  
10 property on the closing date, but PG&E will retain legal title under the final payment is  
11 made.

12 Upon receipt of the final payment, PG&E will assign the easement to TID and  
13 give TID a bill of sale for the property, free and clear of all liens and encumbrances, other  
14 than the mortgage lien on the property. PG&E will take all reasonable steps to remove the  
15 mortgage lien from the property within 30 days after delivery of the assignment and bill of  
16 sale.

17 TID has agreed to pay taxes, assessments and other expenses related to the  
18 property during the term of the Installment Sale Agreement, and to indemnify, defend and  
19 hold harmless PG&E from any claims arising from or connection to TID's use of the  
20 property. TID is also required to maintain certain insurance coverage during the term of the  
21 Installment Sale Agreement.

#### 22 23 4. Closing Agreement

24 The Closing Agreement, attached as Exhibit C to the Application, contains the  
25 terms of closing the various transactions between the parties, and essentially acts as escrow  
26 instructions. It provides, with limited exceptions, that the transactions are dependent upon  
27 the requisite approvals of this Court, the CPUC and FERC.

1                   5.    Tolling and Mutual Release Agreement

2                   The Tolling and Mutual Release Agreement between PG&E and TID, attached as  
3 Exhibit F to the Application, suspends any period limiting legal or equitable actions between  
4 PG&E and TID with respect to claims involving the 1953 Service Area Agreement while the  
5 Application was pending. At closing, the Tolling and Mutual Release Agreement will act as  
6 a mutual release of disputes related to the 1953 Agreement.

7  
8                   6.    The Lease Agreements

9                   There are two separate seven-year leases by PG&E, as lessor, to TID, as lessee  
10 that constitute part of the overall settlement. One is a lease of a portion of the land at the  
11 Salado substation (entitled "Lease Agreement For A Portion Of the Salado Substation")  
12 attached as Exhibit D to the Application, and the other is a lease of the land at the Patterson  
13 substation (entitled "Lease Agreement For The Patterson Substation") attached as Exhibit E  
14 to the Application (collectively, the "Leases"). The Leases are necessary because TID is  
15 purchasing the Patterson substation equipment and portion of the equipment at the Salado  
16 substation, but PG&E is retaining ownership of the land in both cases. TID needs a  
17 reasonable period of time to operate and maintain the equipment in place at its current  
18 location. At the end of the lease terms, TID plans to serve the Westside Zone customers out  
19 of another substation. Under each Lease, TID will pay PG&E rent in the amount of \$3,000  
20 per year. These two Leases will be signed at a later date in accordance with the Closing  
21 Agreement.

22  
23                   7.    Private Electrical Lines Assignment and Assumption Agreement

24                   Finally, in the Private Electrical Lines Assignment and Assumption Agreement  
25 attached as Exhibit H to the Application, PG&E has agreed to assign to TID three private  
26 electrical line agreements with customers in the Westside Zone. TID is responsible for  
27 carrying out all of PG&E's obligations under the agreement. PG&E is not relying on  
28 Section 365 of the Bankruptcy Code for any right or ability to assign these agreements (or,

1 for that matter, any other assignments in connection with the transactions comprising part of  
2 the settlement with TID), and in each instance where there is not a contractual right to  
3 assignment, TID is responsible for obtaining any necessary consent to the assignment from  
4 affected persons.

6 II.

7 THE SETTLEMENT AND RESULTING AGREEMENTS  
8 PROVIDE FAIR VALUE AND SATISFY THE SOUND  
9 BUSINESS PURPOSE TEST, AND SHOULD BE AUTHORIZED  
10 PURSUANT TO SECTION 363(b) OF THE BANKRUPTCY  
11 CODE

12 Pursuant to Section 363(b) of the Bankruptcy Code, PG&E may, after notice and  
13 hearing, use, sell or lease property of the estate other than in the ordinary course of business.  
14 With respect to the sale/lease aspects of the settlement, courts generally authorize pre-  
15 confirmation sales of assets and other use or lease of property outside the ordinary course of  
16 business upon the articulation of a valid business justification. See, e.g., Fulton State Bank  
17 v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (requiring an “articulated  
18 business justification”); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel  
19 Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (“good business reason”); 240 North Brand  
20 Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 North Brand Partners, Ltd.), 200 B.R.  
21 653, 659 (B.A.P. 9th Cir. 1996) (“valid business justification”); In re Lady H Coal Co., 193  
22 B.R. 233, 243 (Bankr. S.D. W. Va. 1996) (“sound business purpose”); WBQ P’ship v.  
23 Virginia Dep’t of Med. Assistance Servs. (In re WBQ P’ship), 189 B.R. 97, 102 (Bankr.  
24 E.D. Va. 1995) (adopting the “‘sound business purpose’ test”); In re Weatherly Frozen Food  
25 Group, Inc., 149 B.R. 480, 482-83 (Bankr. N.D. Ohio 1992) (“sound business purpose”); see  
26 also Abel v. Shugrue (In re Ionosphere Clubs, Inc.), 184 B.R. 648, 653 (S.D.N.Y. 1995)  
27 (Section 363(b) “sales are not limited to emergencies”); In re America West Airlines, Inc.,  
28 166 B.R. 908, 912 (Bankr. D. Ariz. 1994) (considering whether transaction is “in the best  
interests of the estate”); In re Wilde Horse Enters., Inc., 136 B.R. 830, 841 (C.D. Cal. 1991)  
(requiring articulated business reason and finding that “sale is in best interest of the estate”).

1 Further, the sale, lease and related agreements here are part of an integrated  
2 settlement. Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve any  
3 settlement or compromise during the pendency of a reorganization or liquidation.<sup>10</sup> Myers v.  
4 Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996); Vaughn v. Drexel Burnham Lambert  
5 Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 134 B.R. 499, 505 (Bankr.  
6 S.D.N.Y. 1991). Indeed, compromises and settlements are a common and favored  
7 occurrence in bankruptcy cases because they allow a debtor and its creditors to avoid the  
8 financial and other burdens associated with litigation over contentious issues and expedite  
9 the administration of the bankruptcy estate. Protective Comm. for Indep. Stockholders of  
10 TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); Martin v. Kane (In re A &  
11 C Props.), 784 F.2d 1377, 1380-81 (9th Cir. 1986).

12 In reviewing a proposed settlement, the bankruptcy court's inquiry focuses only  
13 upon whether the compromise is fair and equitable and in the best interest of the estate.  
14 TMT Trailer, 390 U.S. at 424; A & C Props., 784 F.2d at 1380-81; Nellis v. Shugrue, 165  
15 B.R. 115, 121 (S.D.N.Y. 1994). In making this determination, however, the bankruptcy  
16 court is not required to conduct a mini-trial on the merits of the underlying dispute or an  
17 independent investigation into the reasonableness of the settlement. Port O'Call Inv. Co. v.  
18 Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976); see also In re Purofied Down Prods.  
19 Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993); Drexel Burnham, 134 B.R. at 505.

20 Rather, the standards for such approval have been described as lenient and  
21 intended to encourage approval of settlements in bankruptcy cases. See Purofied Down, 150  
22 B.R. at 522-23. The bankruptcy court need only canvass the legal and factual issues  
23 underpinning the compromise to ensure that the proposed settlement does not fall "below  
24 the lowest point in the range of reasonableness." Nellis, 165 B.R. at 121-22 (quoting  
25 Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983)); Purofied

26  
27 <sup>10</sup>Bankruptcy Rule 9019(a) simply states, in part, that "[o]n motion by the trustee and  
28 after notice and a hearing, the court may approve a compromise or settlement." Fed. R.  
Bankr. P. 9019(a).

1 Down, 150 B.R. at 522; Official Unsecured Creditors' Comm. of Pennsylvania Truck Lines,  
2 Inc. v. Pennsylvania Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.), 150 B.R. 595,  
3 598 (E.D. Pa. 1992), aff'd mem., 8 F.3d 812 (3d Cir. 1993); Drexel Burnham, 134 B.R. at  
4 505. In making this determination, significant deference may be given to the informed  
5 judgment of the debtor in possession that a proposed compromise is fair and equitable.  
6 Martin, 91 F.3d at 395; Nellis, 165 B.R. at 122; Purofied Down, 150 B.R. at 522-23; Drexel  
7 Burnham, 134 B.R. at 505. Further, here, there is substantial comfort about the bona fides  
8 and reasonableness of the settlement by virtue of the fact that the agreements comprising the  
9 settlement have been submitted to and approved by the CPUC pursuant to its regulatory  
10 oversight of the Debtor.

11 In applying the sound business purpose test applicable to sale, lease and other  
12 transactions outside the ordinary course of business, courts generally consider four elements:  
13 (1) a sound business reason justifying the proposed transaction; (2) good faith; (3) adequate  
14 and reasonable notice to interested parties; and (4) fair and reasonable consideration. In re  
15 WBQ P'ship, 189 B.R. at 102; see also In re Lady H Coal Co., 193 B.R. at 243; Titusville  
16 Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D.  
17 Pa. 1991). Each of these elements is met in the present case.

18  
19 A. PG&E Has A Sound Business Reason for the Sale, Lease And Other Transactions  
20 Comprising The Settlement With TID

21 There are a number of related but distinct sound business reasons why the  
22 proposed settlement and the resulting agreements make eminent sense. The most important  
23 are summarized as follows:

24  
25 1. The Company Will Obtain a Fair Price Based on RCNLD

26 The purchase price of approximately \$15.2 million for various scheduled assets  
27 plus additional amounts for other assets as described above are based principally on the  
28 RCNLD and going concern value for the assets being sold. This price reflects fair market

1 value and exceeds both the depreciated book value and historic cost of the facilities.

2  
3 2. The Agreements Between the Parties Resolve The Serious Disputes and  
4 Related Risks Concerning The 1953 Service Agreement In a Manner  
5 Consistent With the Enactment of AB 2638

6 The electric distribution function is one of PG&E core businesses, and as a  
7 general matter PG&E does not divest portions of its distribution system. Moreover, PG&E  
8 has long valued its relationships with the customers and communities in the Westside Zone.  
9 However, in this particular case, the agreement to sell the facilities and settle the dispute  
10 with TID was the best decision for PG&E and its other customers.

11 First, as noted above, there is a dispute concerning the 1953 Service Area  
12 Agreement. PG&E believes the 1953 Agreement bars TID from selling or distributing  
13 electricity within PG&E's service territory, and also bars TID from doing so indirectly  
14 through the WPA. TID, however, believes that this Agreement is no longer enforceable and,  
15 even if enforceable, that it does not prevent TID from participating in the formation,  
16 management and operation of the WPA. It is in both PG&E's and the public interest for this  
17 dispute to be settled rather than litigated. Litigation is costly and there is risk and  
18 uncertainty inherent in any lawsuit.

19 Second, PG&E has been greatly concerned by the actions of various irrigation  
20 districts and others in building, or attempting to build, duplicative electric transmission and  
21 distribution facilities and in seeking to serve PG&E's customers, particularly large  
22 commercial customers. Such actions potentially permit others to serve the lowest cost  
23 customers, typically large commercial customers, and leave the higher cost customers for  
24 PG&E to serve. Since PG&E would thereby need to continue operating and maintaining its  
25 facilities in the area, its revenue reductions would not be matched by commensurate  
26 reductions in costs, and most of the uncovered costs would be shifted onto remaining  
27 ratepayers. In short, PG&E's remaining ratepayers would be harmed by such incursions into  
28 PG&E's service territory. Even though TID could not selectively market to PG&E's  
customers if PG&E prevailed in its view of the 1953 Service Area Agreement, that

1 Agreement did not limit PID's ability to selectively pursue attractive customers in the  
2 Patterson area or elsewhere in western Stanislaus County.

3 In light of this situation and other recent experience, PG&E supported the  
4 legislative goals embodied in AB 2638, i.e., discouraging the building of duplicative  
5 infrastructure (Pub. Util. Code §9610(b)(2)) and avoiding cost-shifting to customers of an  
6 electrical corporation resulting from the transfer of distribution service from an electrical  
7 corporation to an irrigation district (Pub. Util. Code §9607(a)). TID, however, initially  
8 opposed the proposed legislation. As noted above, at the urging of Assemblymembers  
9 Cardoza and Calderon, PG&E and TID began negotiations and ultimately PG&E agreed to  
10 sell the Westside Zone Facilities to TID. In short, the Memorandum of Understanding  
11 (MOU) between PG&E and TID eliminated one source of opposition to AB 2638. PG&E  
12 believes that AB 2638, by expanding the jurisdiction of the CPUC and clarifying the  
13 circumstances under which Irrigation Districts can provide electric service within the service  
14 territories of electric utilities regulated by the CPUC, greatly benefits all Californians and  
15 prevents uneconomic distribution bypass and the selective marketing to only the most  
16 desirable retail customers.

17 Because PID was recently formed, the restrictions of AB 2638 do not apply to it,  
18 and if TID's interpretation of the 1953 Service Area Agreement is correct, WPA would be  
19 free to build duplicate facilities in the Company's service territory and selectively market to  
20 the most desirable customers. Approval of this Application will prevent such activities and  
21 thus protect the PG&E and its remaining customers from the harmful economic effects of  
22 such uneconomic bypass and selective marketing.

23  
24 3. The Agreements Are Consistent With The Public Utilities Code Sections  
25 Added By Assembly Bill 2638

26 Among its other provisions, AB 2638 added Section 9607 and 9608 to the Public  
27 Utilities Code. Section 9607 provides that irrigation districts offering electric distribution  
28 (including TID) cannot offer electric service to customers located in the service area of an

1 electric corporation such as the Company without obtaining Commission approval and  
2 satisfying a number of specific requirements. However, Section 9608 provides that Section  
3 9607 does not apply "if all of the following occur":

4 (a) The irrigation district acquires substantially all the electric  
5 distribution facilities and related subtransmission facilities of any  
6 electrical corporation that has an obligation to provide electric  
distribution service within the area to be served by the irrigation  
district.

7 (b) The commission approves a service area agreement between the  
8 irrigation district and the electrical corporation pursuant to Sections  
9 8101 to 8108, inclusive, which service area agreement provides that  
10 the electrical corporation may not provide electric distribution service  
in the area to be served by the irrigation district and that the irrigation  
district may not provide electric distribution service in the remainder  
of the electrical corporation's service territory.

11 (c) The commission relieves the electrical corporation of its  
12 obligation to serve within the area to be served by the irrigation  
district.

13 As the Application shows, the Asset Sale Agreement and the Service Area  
14 Agreement comply with these conditions of Section 9608.

15  
16 4. The Boundaries of the Westside Zone Were Negotiated to Avoid Leaving  
17 PG&E With Isolated, Sparsely Populated Areas That Are Costly to Serve

18 PG&E and TID negotiated at length to define Service Area boundaries that make  
19 both electric distribution and economic sense. The agreed-upon Westside Zone not only  
20 includes the City of Patterson and the community of Crows Landing, but also the entire area  
21 west to the Santa Clara/Stanslaus County line. In establishing this western boundary, TID  
22 agreed to purchase PG&E's facilities in that very sparsely populated, hilly area, including  
23 facilities north and west of the proposed Diablo Grande development, that serve a state park  
24 and a few residences, and would have been expensive for PG&E to continue to serve. Thus,  
25 the service territory being transferred as part of the sale is not simply the denser area that  
26 TID and WPA would have chosen (or initially chose) to serve, but also includes a  
27 geographic area and associated cost characteristics that are somewhat more representative of  
28 PG&E's rural areas.



1                   5.    TID Will Assume Responsibility for the Non-Bypassable Charges Owed by  
2                            Consumers in the Westside Zone

3                   Under Section 4.3 of the Asset Sale Agreement, TID will pay PG&E the NBCs  
4 owed by consumers within the Westside Zone for the period of time that they are authorized.  
5 These charges include Competition Transition Charges (CTCs), trust transfer amounts, and  
6 nuclear decommissioning amounts.<sup>11</sup> These amounts will appropriately reduce the amounts  
7 otherwise owed by other ratepayers. CTC amounts will be credited to the transition cost  
8 balancing account (TCBA, Preliminary Statement AV), while the nuclear decommissioning  
9 amounts will be credited to the Transition Revenue Account (TRA, Preliminary Statement  
10 Section N.5.f.). Section 4.3 also provides that TID will pay any other NBCs owed by  
11 Westside Zone consumers adopted by the CPUC or by the Legislature prior to the closing  
12 date, such as any charges for Department of Water Resources costs or prior uncollected  
13 excess power purchase costs.<sup>12</sup>

14  
15                   B.    The Sale, Lease and Related Transactions Comprising The Settlement Have Been  
16                            Proposed In Good Faith

17                   “Good faith encompasses fair value, and further speaks to the integrity of the  
18 transaction. Typical bad faith or misconduct, would include collusion between the seller and  
19 buyer, or any attempt to take unfair advantage of other potential purchasers.” 240 North  
20 Brand Partners, 200 B.R. at 659 (quoting In re Wilde Horses, 136 B.R. at 842).

21                   The compelling reasons for this settlement described in Part IIA immediately  
22 above plainly meet this standard. There is no basis for concluding that the proposed  
23 settlement has not been proposed in good faith, or that the agreements comprising the  
24

25                   <sup>11</sup>Consistent with Ordering Paragraph 12(h) of the CPUC’s Cost Separation Decision,  
26 D.97-08-056, customers served by TID or WPA will not be responsible for PG&E’s Public  
Purpose Program charges.

27                   <sup>12</sup>As noted in footnote 7 above, the CPUC Decision ordered the parties to amend the  
28 Asset Sale Agreement to clarify the provisions regarding payment of nonbypassable charges,  
and that amendment is expected to be finalized and filed shortly.

1 settlement do not provide fair value to PG&E and its estate. Indeed, the components of the  
2 settlement have been submitted to and approved by the CPUC, subject to certain conditions  
3 as described and incorporated by reference in this Motion.  
4

5 C. Interested Parties will Receive Adequate and Reasonable Notice

6 In the context of a Section 363(b) sale, "notice is sufficient if it includes the terms  
7 and conditions of the sale, if it states the time for filing objections, and if the estate is selling  
8 real estate, it generally describes the property." In re WBQ P'ship, 189 B.R. at 103 (quoting  
9 In re Karpe, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988)). The use or lease of estate assets in  
10 connection with a proposed settlement is subject to no more stringent a standard, so long as  
11 the settlement is adequately described and the counterparty to the settlement is added to the  
12 notice.

13 PG&E is noticing this Motion to, and serving it and the accompanying  
14 Memorandum of Points and Authorities on, the full Special Notice List established pursuant  
15 to the Case Management Order entered in this case, as well as TID. This satisfies the  
16 reasonable and adequate notice requirement because such served documents describe the  
17 proposed settlement, including the terms and conditions of the proposed sale, lease and  
18 related transactions comprising the proposed settlement, and state the time for filing any  
19 objections or opposition thereto.  
20

21 D. The Settlement And The Consideration Which PG&E Will Receive Are Fair and  
22 Reasonable

23 For the reasons already described in Part IIA above, both the settlement itself —  
24 and the consideration to be received by PG&E from TID in connection with the sale, lease  
25 and related transactions comprising the settlement — are fair and reasonable.  
26  
27  
28

III.

**THE COURT SHOULD AUTHORIZE THE SALE OF THE  
WESTSIDE ZONE FACILITIES FREE AND CLEAR OF ALL  
LIENS AND INTERESTS, EXCEPT THE LIEN OF BNY  
WESTERN TRUST COMPANY**

PG&E requests that this Court approve the sale of the Westside Zone Facilities to TID under the Asset Sale Agreement free of all liens and interests pursuant to Bankruptcy Code Section 363(f), other than the lien of BNY Western Trust Company on the real property comprising part of the Westside Zone Facilities.

Section 363(f) allows for sales of property of the estate "free and clear of any interest" if any one of the following five conditions are met:

1. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
2. such entity consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
4. such interest is in bona fide dispute; or
5. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

These conditions are stated in the disjunctive and satisfaction of any one of the five conditions will justify a sale free and clear of liens and interests pursuant to this section.

See, e.g., Citicorp Homeowners Servs., Inc. v. Elliott (In re Elliott), 94 B.R. 343, 345 (E.D. Pa. 1988); Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994).

PG&E is only aware of one lien on the Westside Zone Facilities. That is the lien on substantially all assets of PG&E in favor of BNY Western Trust Company in its capacity as the successor trustee (the "Trustee") under that certain Indenture dated December 1, 1920 as amended to date, which is the subject of that certain "Stipulation (I) Authorizing and Restricting Use of Cash Collateral Pursuant to 11 U.S.C. §363 and Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§361 and 363" entered into

1 between PG&E and the Trustee on May 9, 2001 (the "Cash Collateral Stipulation") and  
2 approved by the Bankruptcy Court by its Order thereon dated the same date, as modified to  
3 date. As part of the Cash Collateral Stipulation, the Trustee and PG&E agreed as follows:

4 Except for transactions in the ordinary course of its business or except  
5 as otherwise permitted in the Indenture or authorized by an order of  
6 this Court (after notice to the Indenture Trustee), the Debtor shall not  
7 sell, transfer, lease, encumber or otherwise dispose of any Pre-Petition  
8 Collateral or Post-Petition Collateral without the prior written consent  
9 of the Indenture Trustee, and no such consent shall ever be implied  
10 from any other action, inaction or acquiescence by the Indenture  
11 Trustee or any Bondholder. The Indenture Trustee expressly  
12 authorizes the Debtor to sell assets pursuant to Section 363(f) of the  
Bankruptcy Code free and clear of any liens, claims or encumbrances  
of the Indenture Trustee to the extent such sales are permitted by the  
Indenture and so long as the liens, claims or encumbrances of the  
Indenture Trustee shall attach to the proceeds of such sales with the  
same validity and priority as the liens, claims and encumbrances of the  
Indenture Trustee in the assets subject to such sales, until the  
disposition of such proceeds in accordance with the Indenture and  
applicable bankruptcy law. (Cash Collateral Stipulation ¶13)

13 Thus, while the Debtor has the authority pursuant to the Cash Collateral  
14 Stipulation to sell the real property that is part of the Westside Zone Assets free and clear of  
15 the Trustee's lien upon meeting specified conditions, the Debtor is not by this Motion  
16 requesting that this Court order the Trustee's lien to be reconveyed as a condition of closing  
17 the sale. Rather, the Debtor and TID have agreed in the Asset Sale Agreement and  
18 Installment Purchase Agreement that PG&E will, within 30 days after closing of the sale of  
19 the real property assets, seek to obtain the prompt reconveyance of the lien of the Trustee on  
20 such assets, pursuant to the Debtor's rights under the Indenture and the Cash Collateral  
21 Stipulation.

22 Accordingly, pursuant to the Cash Collateral Stipulation, PG&E will comply with  
23 the applicable provisions of the Indenture regarding the release/reconveyance of the  
24 Trustee's lien on the real property to be sold, which in this case will result in (i) PG&E  
25 delivering a Board resolution, an opinion of in-house counsel and certain certificates to the  
26 Indenture Trustee pursuant to the Trust Indenture, and (ii) PG&E agreeing that the net  
27 proceeds of sale be delivered to the Trustee as promptly as practicable after the closing of  
28 the Asset Sale Agreement. Further, in order to flesh out the application of the Cash

1 Collateral Stipulation to this sale and move forward with this sale with the consent of the  
2 Trustee, PG&E has agreed with the Trustee (and hereby incorporates into the Motion) that  
3 the net proceeds of the sale of the Westside Zone Facilities to be paid over to the Trustee  
4 will be held by the Trustee in a segregated account as cash collateral for PG&E's obligations  
5 under the Indenture, and such proceeds shall not be released to PG&E unless and until either  
6 (i) the Trustee has consented in writing to the release of such proceeds to PG&E, or (ii) this  
7 Court orders the Trustee to release such proceeds following a noticed motion and hearing  
8 thereon, any such motion to be served upon the Trustee no less than 28 days prior to the  
9 scheduled hearing date. In connection with any such motion, PG&E reserves the right to  
10 argue that the Trustee is required pursuant to the applicable provisions of the Indenture to  
11 release some or all of the net proceeds of this sale that are held by the Trustee as cash  
12 collateral, and/or that the Trustee's interest in PG&E's property is adequately protected  
13 without regard to such cash collateral; and the Trustee reserves the right to oppose any or all  
14 such arguments and to make any and all adequate protection arguments that it deems  
15 appropriate.

16 Although PG&E is not aware of any other liens on the Westside Zone Facilities  
17 or any portion thereof, PG&E notes that a number of courts have held that failure to object to  
18 the sale after notice and a hearing constitutes implied consent sufficient to satisfy the  
19 requirement of Section 363(f)(2). See, e.g., Veltman v. Whetzal, 93 F.3d 517, 521 (8th Cir.  
20 1996) (noting that some courts have found implied consent upon a failure to object); Elliott,  
21 94 B.R. at 345 (holder of first mortgage on debtor's property "consented to the sale by  
22 failing to make any timely objection after receiving notice of the sale. . . . [I]mplied consent  
23 is sufficient to authorize a sale under §362(f)(2)"); In re Tabone, Inc., 175 B.R. at 858 ("As  
24 the Township did not offer any objection, it may be deemed to have consented to the sale for  
25 purposes of section 363(f)(2)"); In re Shary, 152 B.R. 724, 725 (Bankr. N.D. Ohio 1993)  
26 ("[T]he State's failure to object to the sale, or the confirmation of the sale, implicitly  
27 conveyed its consent to the sale as found under §362(f)(2)"); but see In re Roberts, 249 B.R.  
28 152, 157 (Bankr. W.D. Mich. 2000) (rejecting implied consent theory despite the fact that

1 "every published opinion and the leading bankruptcy treatises support the . . . contention that  
2 the consent required by Section 363(f)(2) may be implied by the lienholder's failure to  
3 object").

4 Therefore, to the extent there are any other holders of liens or other interests in  
5 the Westside Zone Facilities or any portion thereof who are on notice of this Motion and  
6 who fail to object to this Motion, their consent may be implied and the sale authorized free  
7 and clear of those liens and interests pursuant to Section 363(f)(2).

### 8 9 CONCLUSION

10 For all of the foregoing reasons, PG&E respectfully requests that this Court  
11 exercise its power pursuant to Sections 363(b) and (f) of the Bankruptcy Code and  
12 Bankruptcy Rule 9019(a) to approve the agreements and transactions described above as part  
13 of PG&E's settlement and compromise of controversy with TID, and to authorize the sale of  
14 the Westside Zone Facilities to TID under the Asset Sale Agreement free and clear of liens  
15 and interests (other than the lien of BNY Western Trust Company) on the terms and  
16 conditions specified herein.

17  
18 DATED: May 30, 2003

19 Respectfully,

20 HOWARD, RICE, NEMEROVSKI, CANADY,  
21 FALK & RABKIN  
A Professional Corporation

22  
23 By: 

JEFFREY L. SCHAFER

24 Attorneys for Debtor and Debtor in Possession  
25 PACIFIC GAS AND ELECTRIC COMPANY  
26  
27  
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