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7 PACIFIC GAS AND ELECTRIC COMPANY

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

12 In re

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

Case No. 01-30923 DM

Chapter 11 Case

Date: June 30, 2003

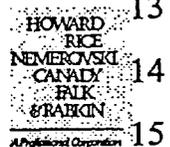
Time: 1:30 p.m.

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

16 Federal I.D. No. 94-0742640  
17

18 DECLARATION OF DAVID RUBIN IN SUPPORT OF PG&E'S MOTION FOR ORDER  
19 APPROVING (1) SALE OF WESTSIDE ZONE FACILITIES AND RELATED  
20 PROPERTY TO TURLOCK IRRIGATION DISTRICT FREE AND CLEAR OF LIENS  
AND INTERESTS (OTHER THAN LIEN OF BNY WESTERN TRUST COMPANY),  
21 AND (2) COMPROMISE OF CONTROVERSY INVOLVING SUCH SALE AND  
RELATED NON-SALE TRANSACTIONS

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HOWARD  
RICE  
NEMEROVSKI  
CANADY  
BLK  
BRABIN  
A Professional Corporation

1 I, David Rubin, declare:

2 1. I am employed by Pacific Gas and Electric Company, the debtor and debtor in  
3 possession in the above-captioned Chapter 11 case (the "Debtor" or "PG&E"), as the  
4 Director of its Service Analysis Department. I make this Declaration in support of PG&E's  
5 Motion For Order Approving (1) Sale of Westside Zone Facilities and Related Property to  
6 Turlock Irrigation District Free and Clear of Liens and Interests (Other Than Lien of BNY  
7 Western Trust Company) and (2) Compromise of Controversy Involving Such Sale and  
8 Related Non-Sale Transactions (the "Motion"). Except as otherwise expressly stated, all  
9 capitalized words and terms used in this declaration have the meanings ascribed to them in  
10 the Motion. I have been actively involved in negotiating the settlement with the TID as  
11 described in the Motion, including the sale, lease and related transactions comprising the  
12 settlement, and in applying to CPUC for approval of such transactions. The facts stated in  
13 this declaration are based on my personal knowledge, except for any matters stated on  
14 information and belief, and as to such matters, I am informed and believe they are true. If  
15 called as a witness, I could and would testify competently to the facts stated herein.

16 2. The only known lien on the Westside Zone Facilities (or any portion thereof)  
17 is the lien of BNY Western Trust Company in its capacity as Trustee under the Indenture.

18 3. The proposed sale of the Westside Zone Facilities and the related proposed  
19 agreements and transactions between PG&E and TID described in the Motion represent the  
20 parties' comprehensive settlement of various disputes between them.

21 **The Dispute Resulting In The Agreements/Transactions Covered By This Motion:**

22 4. TID is an irrigation district organized under California law that owns and  
23 operates an electric distribution and transmission system and provides electric service to  
24 customers in portions of Merced, Stanislaus, and Tuolumne Counties. I am informed and  
25 believe that TID has been in the retail electricity business since 1923 and currently serves  
26 over 67,000 accounts, which range from residential to large industrial users.

27 5. The CPUC previously approved service area agreements for PG&E and TID  
28 in 1941 and 1953. In recent years, disputes arose between PG&E and TID regarding the

1 continuing validity of the 1953 service area agreement. TID contended that the 1953  
2 agreement was no longer enforceable. PG&E contended that TID had violated the 1953  
3 agreement by offering electric distribution service within PG&E's service area in Stanislaus  
4 County, including the cities of Gustine, Los Banos, Patterson and Newman. PG&E also  
5 claimed that the formation of the WPA by TID and the PID violated the 1953 agreement and  
6 that WPA was formed for the purpose of providing electric service to customers in PG&E's  
7 service area.

8 6. In August 1999, PG&E filed Application (A.) 99-08-018, which asked the  
9 Commission to clarify the continued validity of the 1953 service area agreement. In D.00-  
10 06-002, the CPUC denied the application on the grounds that PG&E sought an advisory  
11 opinion and that Assembly Bill (AB) 2638, which was then pending before the Legislature,  
12 might give the parties guidance on this issue.<sup>1</sup> During legislative discussions of AB 2638,  
13 Assemblymembers Cardoza and Calderon, co-authors of the legislation, urged affected  
14 parties, including TID and PG&E, to attempt to resolve their disputes. The agreements and  
15 transactions proposed in this Motion result from a compromise by PG&E and TID to resolve  
16 issues related to their respective service areas and represent a comprehensive settlement of  
17 various disputes between the parties.

18 **The Regulatory Approvals:**

19 7. On January 4, 2002, pursuant to applicable provisions of the California Public  
20 Utilities Code, PG&E filed with the CPUC an application pertaining to the subject sale and  
21 related transactions with TID, entitled "Application For Authorization To Sell Electric  
22 Distribution and Certain Related Transmission Facilities [etc.]" (the "Application"), a true  
23 and correct copy of which is attached as Exhibit A hereto. On April 3, 2003, the CPUC  
24 issued its Decision No. 03-04-032 granting the Application with certain modifications,  
25 entitled "Decision Granting Approval For Conveyance Of Facilities By Pacific Gas and  
26 Electric Company (PG&E) To Turlock Irrigation District (TID), New Service Area

27 \_\_\_\_\_  
28 <sup>1</sup> AB 2638 (2000 Cal. Stat. ch. 1042) became effective on January 1, 2001.

1 Agreement Between PG&E and TID, And Related Transactions” (the “CPUC Decision”), a  
2 true and correct copy of which is attached as Exhibit C hereto.<sup>2</sup> In addition, on or about  
3 November 25, 2002, PG&E applied to FERC for authorization to sell that portion of the  
4 Westside Zone Facilities constituting transmission facilities over which FERC has  
5 jurisdiction. On January 3, 2003, FERC approved the sale of such transmission facilities to  
6 TID pursuant to its “Order Authorizing Disposition of Jurisdictional Facilities” (the “FERC  
7 Order”), a true and correct copy of which is attached hereto as Exhibit D. Accordingly,  
8 PG&E has obtained all necessary regulatory approvals in connection with the sale and  
9 related agreements encompassing the settlement.

10 **The Agreements Comprising The Proposed Settlement:**

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

24  
25 <sup>2</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 4 and 6 below. The 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.

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1           9. As of the date that the Application was filed with the CPUC, the Westside  
2 Zone consisted of approximately 225 square miles wherein PG&E served approximately  
3 5,450 electric customers. Such customers annually used approximately 110 million kWh,  
4 producing approximately \$9.2 million in annual electric revenue. Once the Westside Zone  
5 Facilities are sold to TID, PG&E will no longer provide electric distribution services to  
6 customers in the Westside Zone.

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

11           a. Land Rights and Facilities. (a) Various easements, permits, licenses and  
12 rights-of-way located in the Westside Zone (as described on Schedule 2.1(a)(i) to the Asset  
13 Sale Agreement); (b) distribution circuits and all associated distribution poles, conductors,  
14 hardware, secondaries, services, meters, transformers, capacitors, switches, regulators, street  
15 lights, control and protective devices associated with the distribution circuits, and four 60 kV  
16 transmission poles and associated equipment located in the Westside Zone (as described on  
17 Schedule 2.1(a)(ii) to the Asset Sale Agreement); and (c) the partial assignment of certain  
18 easements for transmission lines (as described on Schedule 2.1(a)(iii) to the Asset Sale  
19 Agreement).

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

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

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

28           e. Assigned Private Line Agreements. Three agreements relating to private

1 lines (consisting of a portion of the Del Puerto Road Private Line, the Crows Landing  
2 Private Line and the Adobe Creek Road Private Line) as listed on Schedule 2.1(e) to the  
3 Asset Sale Agreement and pursuant to the Private Electrical Lines Assignment and  
4 Assumption Agreement attached as Exhibit H to the Application.

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

11 g. Salado and Patterson Leases. (a) A lease for a portion of the real  
12 property constituting PG&E's Salado Substation, in order for TID to maintain the Salado  
13 Assets located at the Salado Substation; and (b) a lease for the real property constituting  
14 PG&E's Patterson Substation, in order for TID to maintain the Patterson Assets located at  
15 the Patterson Substation. The Salado and Patterson Leases are attached as Exhibits D and E,  
16 respectively, to the Application.

17 11. The specific agreements and transactions for which Bankruptcy Court  
18 approval is sought in the Motion, and a summary of each, are as follows:

19 a. Asset Sale Agreement.

20 As already indicated, the principal terms and conditions of the proposed sale  
21 are contained in the Asset Sale Agreement, and the facilities being sold include all electric  
22 distribution circuits and associated distribution facilities, meters, streetlights, and control and  
23 protective devices in the Westside Zone, associated easements and rights of way, the  
24 Patterson substation facilities, a portion of the Salado substation facilities, a portion of  
25 transmission poles with distribution underbuild, and a few associated transmission poles that  
26 would otherwise be stranded. Specific descriptions of the land rights and facilities to be sold  
27 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  
28 the Asset Sale Agreement. The vast majority of the transmission facilities in the Westside

1 Zone are necessary for PG&E's overall system reliability and are therefore being retained by  
2 PG&E. No gas distribution facilities are included in the sale, and PG&E will remain the gas  
3 distribution utility in the Westside Zone.

4 The sale price for the assets described in the Schedules to the Asset Sale  
5 Agreement is \$15,111,825, based on the Replacement Cost New Less Depreciation  
6 ("RCNLD") method. Additional sale proceeds in connection with the Asset Sale Agreement  
7 include \$67,221 under the Installment Sales Agreement described below, plus an estimated  
8 \$6 million for certain unscheduled assets arising and services provided after the execution of  
9 the Asset Sale Agreement.<sup>3</sup> Accordingly, the estimated sales proceeds under or in  
10 connection with the Asset Sale Agreement are approximately \$21.18 million.

11 The Asset Sale Agreement further provides, in Section 4.3, that TID will  
12 pay all NBCs as defined in Section 1.1 for Westside Zone consumers subsequent to the  
13 closing, in the amounts set forth in PG&E's tariffs.<sup>4</sup>

14 The Asset Sale Agreement also covers a variety of other issues, including  
15 delivery of customer information (Sec. 4.1(c) and Schedule 1.1(a)), delivery of facilities  
16 information (Sec. 2.12 and Schedule 1.1(b)), sales of replacement parts if necessary (Sec.  
17 2.11), joint pole arrangements (Sec. 2.10), final customer meter reads (Sec. 4.1(f)),  
18 disconnecting the facilities from the Company's system (Sec.4.2), and numerous other  
19 matters.

20 b. New Service Area Agreement

21 Under the new Service Area Agreement (in the final form attached as  
22

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23 <sup>3</sup> Section 4.1 of the Asset Sale Agreement provides that after December 5, 2000,  
24 PG&E will continue to install new services and facilities in the Westside Zone until the  
25 closing of the transaction, and that the purchase price under the Assets Sale Agreement will  
26 be increased to take into account these additional services and facilities, using the RCNLD  
27 approach. PG&E currently estimates that the RCNLD value of these additional services and  
28 facilities will be approximately \$6 million by the time of closing.

<sup>4</sup> In its Decision, the CPUC required the parties to clarify Section 4.3 by filing an  
amendment to the Asset Sale Agreement within 60 days. CPUC Decision, at pp. 22 n.27 &  
56 (Ordering Paragraph 5). PG&E and TID currently are discussing this amendment and  
expect to finalize and file it soon.

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

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

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

21  
22 <sup>5</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, a true and correct copy of the final form as so amended and approved by  
the CPUC is attached as Exhibit B hereto.

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

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

18           c. Installment Sales Agreement

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

23           At TID's request, PG&E has agreed to transfer this asset by means of an  
24 Installment Sales Agreement. TID requested the use of an Installment Sales Agreement  
25 because it wanted to avoid being required to install new metering and protection equipment  
26 at the intersection of this tap line and the Salado-Patterson 60kV circuit, as will be required  
27 when the purchase is completed. TID anticipates building a new transmission line within the  
28

1 seven-year term of the Installment Sales Agreement, and hence hopes to avoid the new  
2 metering and protection expense entirely.

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

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

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

19 d. Closing Agreement

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

24 e. Tolling and Mutual Release Agreement

25 The Tolling and Mutual Release Agreement between PG&E and TID,  
26 attached as Exhibit F to the Application, suspends any period limiting legal or equitable  
27 actions between PG&E and TID with respect to claims involving the 1953 Service Area  
28

1 Agreement while the Application was pending. At closing, the Tolling and Mutual Release  
2 Agreement will act as a mutual release of disputes related to the 1953 Agreement.

3 f. The Lease Agreements

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

17 g. Private Electrical Lines Assignment and Assumption Agreement

18 Finally, in the Private Electrical Lines Assignment and Assumption  
19 Agreement attached as Exhibit H to the Application, PG&E has agreed to assign to TID  
20 three private electrical line agreements with customers in the Westside Zone. TID is  
21 responsible for carrying out all of PG&E's obligations under the agreement. PG&E is not  
22 relying on Section 365 of the Bankruptcy Code for any right or ability to assign these  
23 agreements (or, for that matter, any other assignments in connection with the transactions  
24 comprising part of the settlement with TID), and in each instance where there is not a  
25 contractual right to assignment, TID is responsible for obtaining any necessary consent to  
26 the assignment from affected persons.

27 Sound Business Reasons For Settlement:

1           12. There are a number of related but distinct sound business reasons why the  
2 proposed settlement and the resulting agreements make eminent sense and are in the best  
3 interests of the bankruptcy estate. The most important are summarized as follows. First, the  
4 purchase price of approximately \$15.2 million for various scheduled assets plus additional  
5 amounts for other assets as described above are based principally on the RCNLD and going  
6 concern value for the assets being sold. This price reflects fair market value and exceeds  
7 both the depreciated book value and historic cost of the facilities.

8           13. Second, the agreements between the parties resolve the serious disputes and  
9 related risks concerning the 1953 Service Agreement in manner consistent with the  
10 enactment of AB 2638. The electric distribution function is one of PG&E core businesses,  
11 and as a general matter PG&E does not divest portions of its distribution system. Moreover,  
12 PG&E has long valued its relationships with the customers and communities in the Westside  
13 Zone. However, in this particular case, the agreement to sell the facilities and settle the  
14 dispute with TID was the best decision for PG&E and its other customers. There is a dispute  
15 concerning the 1953 Service Area Agreement. PG&E believes the 1953 Agreement bars  
16 TID from selling or distributing electricity within PG&E's service territory, and also bars  
17 TID from doing so indirectly through the WPA. TID, however, believes that this Agreement  
18 is no longer enforceable and, even if enforceable, that it does not prevent TID from  
19 participating in the formation, management and operation of the WPA. It is in both PG&E's  
20 and the public interest for this dispute to be settled rather than litigated. Litigation is costly  
21 and there is risk and uncertainty inherent in any lawsuit.

22           14. In addition, PG&E has been greatly concerned by the actions of various  
23 irrigation districts and others in building, or attempting to build, duplicative electric  
24 transmission and distribution facilities and in seeking to serve PG&E's customers,  
25 particularly large commercial customers. Such actions potentially permit others to serve the  
26 lowest cost customers, typically large commercial customers, and leave the higher cost  
27 customers for PG&E to serve. Since PG&E would thereby need to continue operating and  
28 maintaining its facilities in the area, its revenue reductions would not be matched by

1 commensurate reductions in costs, and most of the unrecovered costs would be shifted onto  
2 remaining ratepayers. In short, PG&E's remaining ratepayers would be harmed by such  
3 incursions into PG&E's service territory. Even though TID could not selectively market to  
4 PG&E's customers if PG&E prevailed in its view of the 1953 Service Area Agreement, that  
5 Agreement did not limit PID's ability to selectively pursue attractive customers in the  
6 Patterson area or elsewhere in western Stanislaus County.

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

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

27 17. Further, the agreements are consistent with the Public Utilities Code Sections  
28 added by Assembly Bill 2638. Among its other provisions, AB 2638 added Section 9607

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1 and 9608 to the Public Utilities Code. Section 9607 provides that irrigation districts offering  
2 electric distribution service prior to 1999 (including TID) cannot offer electric service to  
3 customers located in the service area of an electric corporation such as the Company without  
4 obtaining Commission approval and satisfying a number of specific requirements. However,  
5 Section 9608 provides that Section 9607 does not apply "if all of the following occur":

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

9 (b) The commission approves a service area agreement between the  
10 irrigation district and the electrical corporation pursuant to Sections  
11 8101 to 8108, inclusive, which service area agreement provides that  
12 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.

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

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

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

28 19. Also, under the settlement, TID will assume responsibility for the NBCs

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

12 **Provision for Obtaining Release of BNY Western Trust Company Lien on Westside**  
13 **Zone Property After Closing Of Sale:**

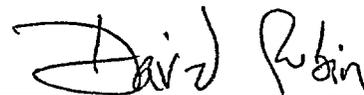
14 20. Pursuant to the Cash Collateral Stipulation, PG&E will comply with the  
15 applicable provisions of the Indenture regarding the release/reconveyance of the lien of BNY  
16 Western Trust Company (in its capacity as Indenture Trustee) on the real property to be sold,  
17 which in this case will result in (i) PG&E delivering a Board resolution, an opinion of in-  
18 house counsel and certain certificates to the Indenture Trustee pursuant to the Trust  
19 Indenture, and (ii) PG&E agreeing that the net proceeds of sale be delivered to the Trustee as  
20 promptly as practicable after the closing of the Asset Sale Agreement. Further, in order to  
21 flesh out the application of the Cash Collateral Stipulation to this sale and move forward  
22 with this sale with the consent of the Trustee, PG&E has agreed with the Trustee (and has  
23 incorporated into the Motion) that the net proceeds of the sale of the Westside Zone  
24

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

13 I declare under penalty of perjury under the Federal laws of the United States of  
14 America that the foregoing is true and correct, and that this declaration is executed on May  
15 30, 2003 at San Francisco, California.



DAVID RUBIN

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18 WD 052903/1-1419914/108/1079156/v3  
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Exhibits are not attached to the service copies of this document. You may obtain copies of the Exhibits in one of the following ways: through the "Pacific Gas & Electric Company Chapter 11 Case" link accessible through the Bankruptcy Court's website ([www.canb.uscourts.gov](http://www.canb.uscourts.gov)), or by written request to Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Attn: Nathaniel H. Hunt, Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4024.