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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 Case No. 01-30923 DM

21 Chapter 11

22 HEARING

23 Date: July 21, 2003

24 Time: 1:30 p.m.

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

27 Federal I.D. No. 94-0742640

28 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER  
MODIFYING STIPULATION: (I) AUTHORIZING 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, TO ENABLE AUGUST 2003  
PRINCIPAL PAYMENT ON CERTAIN MORTGAGE BONDS;  
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

[SUPPORTING DECLARATION OF KENT M. HARVEY FILED  
HEREWITH]



1 Harvey (submitted herewith), the record of this case and any admissible evidence presented  
2 to the Court at or prior to the hearing on this Motion.

3 **PLEASE TAKE FURTHER NOTICE** that pursuant to Rule 9014-1(c)(2) of the  
4 Bankruptcy Local Rules of the United States District Court for the Northern District of  
5 California, any opposition to the Motion and the relief requested herein must be filed with  
6 the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E) at  
7 least five (5) days prior to the scheduled hearing date. If there is no timely objection to the  
8 requested relief, the Court may enter an order granting such relief without further hearing.

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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **INTRODUCTION<sup>2</sup>**

14 By this Motion, PG&E seeks the Court's approval to modify the Stipulation with BNY  
15 Western Trust Company, as successor trustee (the "Indenture Trustee") pursuant to that  
16 certain indenture dated December 1, 1920 with respect to mortgage bonds issued by PG&E,  
17 which indenture has been supplemented by 14 supplemental indentures (collectively, the  
18 "Indenture"). In particular, the proposed modification would provide for the timely payment  
19 by PG&E of the principal amount of the 1993 Series C Bonds scheduled to mature on  
20 August 1, 2003 (the "Bonds"), in the approximate amount of \$281 million.<sup>3</sup>

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23 <sup>2</sup> The evidentiary basis and support for the facts set forth in this Motion are contained  
in the Declaration of Kent M. Harvey filed concurrently herewith.

24 <sup>3</sup> The current principal amount outstanding of the 1993 Series C Bonds is  
25 approximately \$290.5 million. However, approximately \$9.5 million of these Bonds are held  
26 in treasury by PG&E. Rather than seeking authority to pay the approximately \$9.5 million  
27 in principal amount of the Bonds held in treasury by PG&E (which would entail the prompt  
28 "roundtripping" of such \$9.5 million by first paying it to the Trustee, who would then pay it  
to PG&E in satisfaction of the Bonds held in treasury), the Debtor by this Motion proposes  
to cancel such \$9.5 million held in treasury on or before the August 1, 2003 maturity date,  
and therefore by this Motion seeks authority to pay on maturity the approximately \$281  
million principal amount of the 1993 Series C Bonds held by the public.

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**II.**

**FACTUAL BACKGROUND**

1. On April 6, 2001, PG&E filed a voluntary petition under Chapter 11 of the Bankruptcy Code. PG&E continues to manage and operate its business and property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. On May 9, 2001, this Court issued its Order on Debtor's Motion for Order Approving 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 (the "Original Stipulation"), approving PG&E's entry into and performance under the Stipulation. The Original Stipulation provides for PG&E's continued use of cash collateral in which the Indenture Trustee has an interest (on behalf of the holders of the Bonds) pursuant to certain conditions and restrictions. Among other things, the Original Stipulation provides for the timely payment of interest and sinking fund payments as provided under the Indenture. The annual amount of interest and sinking fund payments currently accruing on the Bonds is approximately \$260 million.

3. On February 1, 2002, the Debtor filed the Prior Motion (as defined in footnote 1 above) for an order modifying the Original Stipulation to permit the Debtor's timely payment of \$333 million in principal amount of mortgage bonds that matured on March 1, 2002. On February 26, 2002, the Court issued its order so modifying the Original Stipulation by adding the following language to paragraph 21 of the Original Stipulation: "In addition the principal amount of the Bonds scheduled to mature on March 1, 2002 in the approximate amount of \$333 million shall be payable on the terms set forth in the Indenture." (The Original Stipulation as so modified is hereinafter referred to as the "Stipulation.")

4. PG&E and the Indenture Trustee have continued to perform their respective obligations under the Stipulation.

5. PG&E's obligations under the Indenture are substantially oversecured. The total unpaid indebtedness under the Bonds is approximately \$3.3 billion. Such indebtedness is

1 secured by a first-priority lien on substantially all of PG&E's assets. PG&E reported total  
2 assets of approximately \$26.6 billion as of April 30, 2003 on its most recently filed  
3 Operating Report. In addition, PG&E is solvent and expects to pay all allowed claims  
4 against the Debtor's estate in full. Thus, there is little doubt that the Bonds will eventually  
5 be satisfied in full.<sup>4</sup>

6 6. The 1993 Series C Bonds, which are scheduled to mature on August 1, 2003,  
7 accrue interest at 6 1/4 percent (6.25%) per annum. If PG&E is authorized to make the  
8 August 2003 principal payment on the Bonds, it expects to do so using cash currently held  
9 by the estate. As reported on PG&E's most recent Operating Report, PG&E had a cash  
10 balance of approximately \$3.6 billion as of April 30, 2003. PG&E submits that such  
11 payment will benefit the estate financially because the Bonds accrue interest at a rate  
12 significantly in excess of the rates currently being earned by PG&E on its cash balances. By  
13 contrast, if PG&E fails to timely make the August 2003 principal payment, it risks being in  
14 default under the Indenture, and the negative consequences that may flow from such a  
15 default (e.g., the potential acceleration of all series of the Bonds).

### 16 III.

#### 17 THE PROPOSED MODIFICATIONS TO THE STIPULATION

18 The Stipulation currently provides (in paragraph 21) as follows:

19 "As additional adequate protection hereunder, the Indenture Trustee and the  
20 Bondholders shall be entitled to the payment of accrued and unpaid interest and  
21 sinking fund payments due and payable under the Indenture (the "Pre-Petition  
22 Indebtedness") on or prior to the Petition Date at the prevailing rate (with respect  
23 to interest payments) in effect under the Indenture. Additionally, interest on the  
24 Pre-Petition Indebtedness shall continue to accrue subsequent to the Petition Date  
25 at the prevailing rate under the Indenture and shall be payable on the terms set  
26 forth therein. Furthermore, any and all sinking fund payments that become due  
27 subsequent to the Petition Date shall be payable on the terms set forth in the  
28 Indenture. In addition the principal amount of the Bonds scheduled to mature on  
March 1, 2002 in the approximate amount of \$333 million shall be payable on the  
terms set forth in the Indenture."

26 <sup>4</sup> PG&E's proposed Chapter 11 plan provides for payment of the Bonds in full in cash  
27 (except for approximately \$345 million of the Bonds that secure the Debtor's pollution  
28 control bonds, which, if the notes to be issued under the plan are unsecured, are to be  
replaced by new bonds).

1 The Indenture Trustee has requested, and PG&E has agreed (subject to this Court's  
2 approval) to modify paragraph 21 of the Stipulation to add the following sentence at the end  
3 of such paragraph:<sup>5</sup>

4 "In addition the principal amount of the Bonds scheduled to mature on August 1,  
5 2003 in the approximate amount of \$281million shall be payable on the terms set  
6 forth in the Indenture."

7 PG&E submits that the proposed modification to the Stipulation is consistent with the  
8 Court's Guidelines for Cash Collateral and Financing Stipulations.

#### 9 IV.

### 10 THE COURT SHOULD AUTHORIZE THE PROPOSED 11 MODIFICATION OF THE STIPULATION

12 The Stipulation expressly contemplates subsequent modifications to the Stipulation,  
13 including modifications to provide different or additional adequate protection. Paragraph 12  
14 of the Stipulation provides, in relevant part, as follows:

15 "[T]he grant of adequate protection to the Indenture Trustee and the Bondholders  
16 pursuant hereto is without prejudice to the right of the Debtor (subject to the  
17 provisions of paragraph 14(c)), the Indenture Trustee and the Bondholders to seek  
18 modification of the grant of adequate protection provided hereby so as to provide  
19 different or additional adequate protection . . . ."

20 In addition to the Court's power to authorize the use of cash collateral under Section  
21 363(c)(2) of the Bankruptcy Code, the Court is empowered to authorize the proposed  
22 additional adequate protection pursuant to Section 361 of the Bankruptcy Code. As  
23 discussed above, the Debtor submits that the proposed modification to the Stipulation is in  
24 the best interests of the Debtor's estate, as the Bonds accrue interest at a rate significantly in  
25 excess of the rates currently being earned by PG&E on its cash balances that would be used  
26 to fund such payment. In addition, since PG&E's obligations under the Indenture are

27 <sup>5</sup> A "blacklined" copy of the proposed revised Stipulation is attached as Exhibit 1 to  
28 the Declaration of Kent M. Harvey filed herewith. Exhibit 1 is not attached to the service  
copies of that Declaration. You may obtain copies of such documents 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 by mail to Howard, Rice,  
Nemerovski, Canady, Falk & Rabkin, Attn: Jerome Ferrer, Three Embarcadero Center, 7th  
Floor, San Francisco, California 94111-4065, or by e-mail request to [jferrer@hrice.com](mailto:jferrer@hrice.com).

1 substantially oversecured, and PG&E is solvent and expects to pay all allowed claims  
2 against the Debtor's estate in full, there is little doubt that the Bonds will eventually be  
3 satisfied in full. By contrast, if PG&E fails to timely make the August 2003 principal  
4 payment, it risks being in default under the Indenture, and the negative consequences that  
5 may flow from such a default (e.g., the potential acceleration of all series of the Bonds).

6 V.

7 **CONCLUSION**

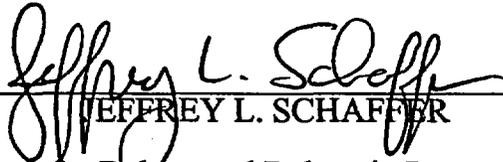
8 For all of the foregoing reasons, PG&E respectfully requests that this Court make and  
9 enter its order:

- 10 1. Granting the Motion;
- 11 2. Authorizing the Stipulation to be modified to provide for timely payment of the  
12 principal amount of the Bonds maturing on August 1, 2003; and
- 13 3. Providing for such other and further relief as the Court deems just and appropriate.

14 DATED: June 29, 2003

15 Respectfully,

16 HOWARD, RICE, NEMEROVSKI, CANADY,  
17 FALK & RABKIN  
18 A Professional Corporation

19 By: 

20 JEFFREY L. SCHAFFER

21 Attorneys for Debtor and Debtor in Possession  
22 PACIFIC GAS AND ELECTRIC COMPANY

23 WD 062003/1-1419911/108/1080654/v2