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7 PACIFIC GAS AND ELECTRIC COMPANY

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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.

16 Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11

Date: February 26, 2004

Time: 1:30 p.m.

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

18 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER  
19 MODIFYING STIPULATION: (I) AUTHORIZING USE OF CASH  
COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND BANKRUPTCY  
20 RULE 4001 AND (II) GRANTING ADEQUATE PROTECTION  
PURSUANT TO 11 U.S.C. §§ 361 AND 363, TO ENABLE MARCH 2004  
21 PRINCIPAL PAYMENT ON CERTAIN MORTGAGE BONDS;  
SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

22 [SUPPORTING DECLARATION OF KENT M. HARVEY FILED  
23 HEREWITH]

24  
25  
26  
27  
28 BKRA01

MOT. TO MOD. STIP. RE USE OF MORTGAGE BONDHOLDERS' CASH COLLATERAL TO PERMIT MARCH  
2004 PRINCIPAL PAYMENT ON MORTGAGE BONDS



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

7  
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I.**

10 **INTRODUCTION<sup>2</sup>**

11 By this Motion, PG&E seeks the Court's approval to modify the Stipulation with BNY  
12 Western Trust Company, as successor trustee (the "Indenture Trustee") pursuant to that  
13 certain indenture dated December 1, 1920 with respect to mortgage bonds issued by PG&E,  
14 which indenture has been supplemented by 14 supplemental indentures (collectively, the  
15 "Indenture"). In particular, the proposed modification would provide for the timely payment  
16 by PG&E of the principal amount of the 1993 Series G Bonds scheduled to mature on  
17 March 1, 2004 (the "Bonds"), in the approximate amount of \$310 million.

18 **II.**

19 **FACTUAL BACKGROUND**

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

23 2. On May 9, 2001, this Court issued its Order on Debtor's Motion for Order  
24 Approving Stipulation: (I) Authorizing and Restricting Use of Cash Collateral Pursuant to 11  
25 U.S.C. § 363 and Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant to  
26 11 U.S.C. §§ 361 and 363 , approving PG&E's entry into and performance under the

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

1 Stipulation. The Stipulation provides for PG&E's continued use of cash collateral in which  
2 the Indenture Trustee has an interest (on behalf of the holders of the Bonds) pursuant to  
3 certain conditions and restrictions. Among other things, the Stipulation provides for the  
4 timely payment of interest and sinking fund payments as provided under the Indenture. The  
5 annual amount of interest and sinking fund payments currently accruing on the Bonds is  
6 approximately \$230 million.

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

15 4. On June 20, 2003, the Debtor filed the second of the two Prior Motions (as  
16 defined in footnote above) for an order further modifying the Stipulation to permit the  
17 Debtor's timely payment of \$281 million in principal amount of mortgage bonds that  
18 matured on August 1, 2003. On July 21, 2003, the Court issued its order so modifying the  
19 Stipulation by adding the following additional language to paragraph 21 of the Stipulation:  
20 "In addition the principal amount of the Bonds scheduled to mature on August 1, 2003 in the  
21 approximate amount of \$281 million shall be payable on the terms set forth in the  
22 Indenture."

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

25 6. PG&E's obligations under the Indenture are substantially oversecured. The total  
26 unpaid indebtedness under the Bonds is approximately \$3.0 billion. Such indebtedness is  
27 secured by a first-priority lien on substantially all of PG&E's assets. PG&E reported total  
28 assets of approximately \$27.8 billion as of November 30, 2003 on its most recently filed

1 Operating Report. In addition, PG&E is solvent and is expected to pay all allowed claims  
2 against the Debtor's estate in full. By Order dated December 22, 2003, this Court  
3 confirmed PG&E's compromise Plan of Reorganization, which so provides.<sup>3</sup> Thus, there is  
4 little doubt that the Bonds will be satisfied in full.

5 7. The 1993 Series G Bonds, which are scheduled to mature on March 1, 2004,  
6 accrue interest at 6 1/4 percent (6.25%) per annum. If PG&E is authorized to make the  
7 March 2004 principal payment on the Bonds, it expects to do so using cash currently held by  
8 the estate. As reported on PG&E's most recent Operating Report, PG&E had a cash balance  
9 of approximately \$4.1 billion as of November 30, 2003. PG&E submits that such payment  
10 will benefit the estate financially because the Bonds accrue interest at a rate significantly in  
11 excess of the rates currently being earned by PG&E on its cash balances. By contrast, if  
12 PG&E fails to timely make the March 2004 principal payment, it risks being in default under  
13 the Indenture, and the negative consequences that may flow from such a default (e.g., the  
14 potential acceleration of all series of the Bonds).

### 15 III.

#### 16 THE PROPOSED MODIFICATIONS TO THE STIPULATION

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

18 "As additional adequate protection hereunder, the Indenture Trustee and the  
19 Bondholders shall be entitled to the payment of accrued and unpaid interest and  
20 sinking fund payments due and payable under the Indenture (the "Pre-Petition  
21 Indebtedness") on or prior to the Petition Date at the prevailing rate (with respect  
22 to interest payments) in effect under the Indenture. Additionally, interest on the  
23 Pre-Petition Indebtedness shall continue to accrue subsequent to the Petition Date  
24 at the prevailing rate under the Indenture and shall be payable on the terms set  
25 forth therein. Furthermore, any and all sinking fund payments that become due  
subsequent to the Petition Date shall be payable on the terms set forth in the  
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. In addition the principal amount of the Bonds  
scheduled to mature on August 1, 2003 in the approximate amount of \$281  
million shall be payable on the terms set forth in the Indenture."

26 <sup>3</sup> With respect to the Bonds, PG&E's confirmed Chapter 11 plan provides for payment  
27 of the Bonds in full in cash (except for approximately \$345 million of the Bonds that secure  
28 the Debtor's pollution 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 further to add the following sentence at  
3 the end of such paragraph:<sup>4</sup>

4 "In addition the principal amount of the Bonds scheduled to mature on March 1,  
5 2004 in the approximate amount of \$310 million 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

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27 <sup>4</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 March 2004 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 March 1, 2004; and  
13 3. Providing for such other and further relief as the Court deems just and appropriate.

14 DATED: January 26, 2004

15 Respectfully,

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

19 By:   
JEFFREY L. SCHAFER

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

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