

50-275/323

JAMES L. LOPES (No. 63678)
GARY M. KAPLAN (No. 155530)
HOWARD, RICE, NEMEROVSKI, CANADY
FALK & RABKIN
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4065
Telephone: 415/434-1600
Facsimile: 415/217-5910

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

EVAN C. HOLLANDER
WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10035
Telephone: 212/819-8977
Facsimile: 212/354-8113

Attorneys for THE BANK OF NEW YORK

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation,

Debtor.

Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11 Case

Date: January 16, 2002

Time: 9:30 a.m.

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

DECLARATION OF GARY BUSH IN SUPPORT OF JOINT MOTION FOR ORDER
PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE
AUTHORIZING (i) DEBTOR TO ENTER INTO TRI-PARTY AGREEMENT, AND (ii)
APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

G. BUSH DECL. RE JOINT MOT. RE (i) TRI-PARTY AGREEMENT AND (ii) MOTION RE
APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

Accd Add: RidsOgc Mail Center

1 I, Gary Bush, declare as follows:

2 1. I am a Vice President of The Bank of New York (the "Indenture Trustee"), the
3 indenture trustee under that certain Indenture, dated as of September 1, 1987, as supplemented by
4 two supplemental indentures (collectively, the "Indenture"), among Pacific Gas and Electric
5 Company (the "Debtor") and the Indenture Trustee. This Declaration is based on my personal
6 knowledge of the Indenture, the Indenture Trustee's general operations, practices and policies,
7 and upon my review of the Indenture Trustee's records concerning the matters stated herein. If
8 called as a witness, I could and would testify competently to the facts stated herein.
9

10
11 2. I make this declaration in support of the Joint Motion for Order Pursuant to
12 Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing (i) Debtor to Enter Into Tri-
13 Party Agreement, and (ii) Appointment of Wilmington Trust Company as Successor Trustee,
14 filed by the Debtor and the Indenture Trustee.
15

16 3. Pursuant to the Indenture, the Debtor issued various series of unsecured notes.
17 There are currently five series of notes outstanding under the Indenture and as of the Petition
18 Date (as defined below) the Debtor was and still is, indebted for the following amounts: (a) in
19 the aggregate liquidated amount of \$2,207,250,000.00 on account of outstanding principal
20 consisting of: (i) \$680,000,000.00 aggregate principal amount of 7.375% Senior Notes due
21 11/1/2005, (ii) \$1,240,000,000.00 aggregate principal amount of floating rate notes due 10/31/01,
22 (iii) \$147,250,000.00 aggregate principal amount of Medium Term Notes, Series B, (iv)
23 \$76,000,000.00 aggregate principal amount of Medium Term Notes, Series C and (v)
24 \$64,000,000.00 aggregate principal amount of Medium Term Notes, Series D; and (b) in an
25
26

27 G. BUSH DECL. RE JOINT MOT. RE: (i) TRI-PARTY AGREEMENT AND (ii) MOTION RE
28 APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

1 aggregate liquidated amount of \$40,361,072.64 on account of outstanding interest as of the
2 petition date.

3
4 4. BNY Western Trust Company ("BNY Trust"), an affiliate of the Indenture
5 Trustee, is the successor trustee pursuant to that certain First and Refunding Mortgage, dated
6 December 1, 1920, among the Debtor, Mt. Shasta Power Corporation, Mercantile Trust
7 Company (San Francisco) and The National City Bank of New York, as supplemented by
8 fourteen supplemental indentures (collectively, the "Secured Indenture"). The Debtor issued
9 certain mortgage bonds pursuant to the Secured Indenture. The mortgage bonds are secured by
10 first-priority security interests and liens on virtually all of the Debtor's assets.
11

12 5. Upon information and belief, on April 6, 2001 (the "Petition Date"), the Debtor
13 filed a voluntary petition for relief with this Court under Chapter 11 of title 11, United States
14 Code (the "Bankruptcy Code"). The filing of the bankruptcy petition triggered an ongoing event
15 of default under the Indenture. Specifically, Section 501(7) of the Indenture provides that "the
16 commencement by the [Debtor] or any Significant Subsidiary of a voluntary case or proceeding
17 under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar
18 law" constitutes an event of default. See Indenture, §501(7).
19

20 6. After discussion with counsel, it is my understanding that the event of default
21 under the Indenture creates a conflict of interest for the Indenture Trustee. It is my further
22 understanding that the Trust Indenture Act requires that a trustee with a conflict of interest either
23 resolve the conflict of interest or resign within 90 days after identifying the conflict of interest,
24 provided the conflict of interest has not been cured, waived or otherwise eliminated.
25
26

27 G. BUSH DECL. RE JOINT MOT. RE: (i) TRI-PARTY AGREEMENT AND (ii) MOTION RE
28 APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

1 7. The Indenture Trustee determined that it was not possible to resolve the conflict
2 of interest resulting from BNY Trust's position as trustee under the Secured Indenture.
3
4 Therefore, on July 3, 2001, the Indenture Trustee provided written notice of its resignation as
5 Indenture Trustee to the Debtor. Section 610(b) of the Indenture provides that the Indenture
6 Trustee may resign at any time upon written notice to the Debtor. Specifically, Section 610(b) of
7 the Indenture provides;

8 The Trustee may resign at any time with respect to the Securities
9 of one or more series by giving written notice thereof to the
10 [Debtor]. If the instrument of acceptance by a successor Trustee
11 required by Section 611 shall not have been delivered to the
12 Trustee within 30 days after the giving of such notice of
13 resignation, the resigning Trustee may petition any court of
14 competent jurisdiction for the appointment of a successor Trustee
15 with respect to the Securities of such series.

16 See Indenture, § 610(b)

17 8. The Indenture Trustee's resignation does not become effective until the
18 requirements of Section 610(a) of the Indenture are satisfied. Section 610(a) of the Indenture
19 provides that "No resignation or removal of the [Indenture] Trustee and no appointment of a
20 successor Trustee pursuant to this Article shall become effective until the acceptance of
21 appointment by the successor Trustee in accordance with the applicable requirements of Section
22 611 [of the Indenture]". See Indenture, § 610(a). Section 611 of the Indenture requires, among
23 other things, that the successor trustee satisfy the eligibility requirements to be trustee under the
24 Indenture. The eligibility requirements require that the successor trustee (i) is a corporation
25 organized and doing business under the laws of the United States, any State, or the District of
26 Columbia, (ii) is authorized under applicable law to exercise corporate trust powers, (iii) has a

27 G. BUSH DECL. RE JOINT MOT. RE: (i) TRI-PARTY AGREEMENT AND (ii) MOTION RE
28 APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

1 combined capital and surplus of at least \$50,000,000, (iv) is subject to supervision or
2 examination by federal or state authority, and (v) has its corporate trust office in the borough of
3 Manhattan, City of New York (collectively, the "Eligibility Requirements").¹ See Indenture,
4 § 609.

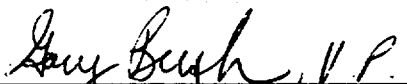
5
6 9. Section 611 of the Indenture further provides that when the proposed successor
7 trustee delivers an instrument accepting appointment as successor trustee to the Debtor and the
8 Indenture Trustee, the resignation of the Indenture Trustee becomes effective and the successor
9 trustee becomes vested with all rights, powers, duties and obligations of the Indenture Trustee.
10 Upon request of the Debtor or the successor trustee, the Indenture Trustee, upon payment of its
11 outstanding fees, expenses, and indemnities by the Debtor, is obligated to execute an instrument
12 that reflects the transfer of its rights, powers and trusts under the Indenture to the successor
13 trustee and deliver all property or money held by it under the Indenture to the successor trustee.
14 See Indenture § 611(a). The Indenture Trustee has agreed to defer payment of all accrued but
15 unpaid fees and expenses owed to it by the Debtor until the confirmation of the Debtor's
16 proposed Chapter 11 time, or such other time as the Indenture Trustee and/or the Successor
17 Trustee is entitled to receive payment of such amounts pursuant to the Indenture as limited by
18 applicable law.
19
20
21
22
23

24 ¹ Under the Indenture the term corporate trust office is defined as the principal office of the
25 Trustee in the Borough of Manhattan, The City of New York at which at any particular time
26 its corporate trust business shall be administered.

1 10. The magnitude of this case made it difficult for the Debtor and the Indenture
2 Trustee to find an eligible successor trustee that did not have a conflict of interest. Institutions
3 which, under normal circumstances, would likely accept appointment as successor trustee
4 declined to do so because of conflicting relationships with the Debtor. After a diligent search,
5 the Debtor and the Indenture Trustee believe they have found a suitable successor trustee.
6
7 Wilmington Trust Company, a state chartered commercial bank organized and existing under the
8 laws of the State of Delaware, is the only entity the Indenture Trustee has found that is willing to
9 serve as successor trustee. Wilmington Trust Company satisfies the Eligibility Requirements,
10 with one exception: it does not have a corporate trust office in Manhattan.
11

12 11. In my opinion, Wilmington Trust Company's failure to have a corporate trust
13 office in New York should not have a material adverse effect on the noteholders. Since the notes
14 currently outstanding are represented by global notes held by a securities depository, I do not
15 believe that the existence of a corporate trust office in Manhattan is a material requirement.
16

17 I declare under penalty of perjury under the laws of the United States of America and the
18 State of California that the foregoing is true and correct. Executed this 14th day of December,
19 2001 at New York, New York.

20
21 
22 Gary Bush, Vice President
23
24
25
26
27
28

G. BUSH DECL. RE JOINT MOT. RE: (i) TRI-PARTY AGREEMENT AND (ii) MOTION RE
APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE