

50-275/323

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PACIFIC GAS AND ELECTRIC COMPANY

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Attorneys for THE BANK OF NEW YORK, as Indenture Trustee

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

HEARING

Date: January 16, 2002
Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

NOTICE OF MOTION AND JOINT MOTION OF DEBTOR AND BANK OF NEW YORK, AS
INDENTURE TRUSTEE FOR ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF THE
BANKRUPTCY CODE AUTHORIZING (i) DEBTOR TO ENTER INTO TRI-PARTY
AGREEMENT, AND (ii) APPOINTMENT OF WILMINGTON TRUST COMPANY AS
SUCCESSOR TRUSTEE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

JOINT MOTION RE APPOINTMENT OF WILMINGTON TRUST CO. AS SUCCESSOR TRUSTEE

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1 aggregate liquidated amount of \$2,207,250,000.00 on account of outstanding principal consisting of:
2 (i) \$680,000,000.00 aggregate principal amount of 7.375% Senior Notes due 11/1/2005, (ii)
3 \$1,240,000,000.00 aggregate principal amount of floating rate notes due 10/31/01, (iii)
4 \$147,250,000.00 aggregate principal amount of Medium Term Notes, Series B, (iv) \$76,000,000.00
5 aggregate principal amount of Medium Term Notes, Series C and (v) \$64,000,000.00 aggregate
6 principal amount of Medium Term Notes, Series D; and (b) in an aggregate liquidated amount of
7 \$40,361,072.64 on account of outstanding interest as of the Petition Date.
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9 2. BNY Western Trust Company ("BNY Trust"), an affiliate of the Indenture Trustee, is
10 the successor trustee pursuant to that certain First and Refunding Mortgage, dated December 1,
11 1920, among the Debtor, Mt. Shasta Power Corporation, Mercantile Trust Company (San Francisco)
12 and The National City Bank of New York, as supplemented by fourteen supplemental indentures
13 (collectively, the "Secured Indenture"). The Debtor issued certain mortgage bonds pursuant to the
14 Secured Indenture. The mortgage bonds are secured by first-priority security interests and liens on
15 virtually all of the Debtor's assets.
16

17 3. On April 6, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief
18 with this Court under Chapter 11 of Title 11, of the United States Code (the "Bankruptcy Code").
19 The Indenture Trustee submits that the filing of the bankruptcy petition triggered an ongoing event
20 of default under the Indenture. Specifically, Section 501(7) of the Indenture provides that "the
21 commencement by the [Debtor] or any Significant Subsidiary of a voluntary case or proceeding
22 under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law"
23 constitutes an event of default. See Indenture, §501(7).
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25 4. Such an alleged event of default under the Indenture creates a conflict of interest for
26 the Indenture Trustee. Section 310(b)(1) of the Trust Indenture Act of 1939, as amended by the
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1 Trust Indenture Reform Act of 1990 (collectively, the "Trust Indenture Act"), provides that an
2 indenture trustee has a conflict of interest if securities issued pursuant to an underlying indenture are
3 in default and "such trustee is trustee under another indenture under which any other securities . . . of
4 an obligor upon the indenture securities are outstanding." See Trust Indenture Act, §310(b)(1). The
5 Trust Indenture Act requires that a trustee with a conflict of interest either resolve the conflict of
6 interest or resign within 90 days after identifying the conflict of interest, provided the conflict of
7 interest has not been cured, waived or otherwise eliminated. See Trust Indenture Act, §310(b)(i).

9
10 5. The Indenture Trustee determined that it was not possible to resolve the conflict of
11 interest resulting from BNY Trust's position as trustee under the Secured Indenture. Therefore, on
12 July 3, 2001, the Indenture Trustee provided written notice of its resignation as Indenture Trustee to
13 the Debtor. Section 610(b) of the Indenture provides that the Indenture Trustee may resign at any
14 time upon written notice to the Debtor. Specifically, Section 610(b) of the Indenture provides as
15 follows:

16
17 "The Trustee may resign at any time with respect to the Securities of
18 one or more series by giving written notice thereof to the [Debtor]. If
19 the instrument of acceptance by a successor Trustee required by
20 Section 611 shall not have been delivered to the Trustee within 30
21 days after the giving of such notice of resignation, the resigning
Trustee may petition any court of competent jurisdiction for the
appointment of a successor Trustee with respect to the Securities of
such series."

22 6. The Indenture Trustee's resignation does not become effective until the requirements
23 of Section 610(a) of the Indenture are satisfied. Section 610(a) of the Indenture provides that "[n]o
24 resignation or removal of the [Indenture] Trustee and no appointment of a successor Trustee
25 pursuant to this Article shall become effective until the acceptance of appointment by the successor
26 Trustee in accordance with the applicable requirements of Section 611 [of the Indenture]." Section
27 611 of the Indenture requires, among other things, that the successor trustee satisfy the eligibility
28

1 requirements to be trustee under the Indenture. The eligibility requirements require that the
2 successor trustee (i) is a corporation organized and doing business under the laws of the United
3 States, any State, or the District of Columbia, (ii) is authorized under applicable law to exercise
4 corporate trust powers, (iii) have a combined capital and surplus of at least \$50,000,000, (iv) is
5 subject to supervision or examination by federal or state authorities, and (v) have its corporate trust
6 office in the borough of Manhattan, City of New York (collectively, the "Eligibility
7 Requirements").¹ See Indenture, § 609.

9 7. Section 611 of the Indenture further provides that when the proposed successor
10 trustee delivers an instrument accepting appointment as successor trustee to the Debtor and the
11 Indenture Trustee, the resignation of the Indenture Trustee becomes effective and the successor
12 trustee becomes vested with all rights, powers, duties and obligations of the Indenture Trustee.
13 Upon request of the Debtor or the successor trustee, the Indenture Trustee, upon payment of the
14 accrued but unpaid fees, expenses, and indemnities owed to the Indenture Trustee by the Debtor
15 under the Indenture, is obligated to execute an instrument (the "Resignation Instrument") that
16 reflects the transfer of the Indenture Trustee's rights, powers and trusts under the Indenture to the
17 successor trustee, and deliver all property or money held by it under the Indenture to the successor
18 trustee. See Indenture § 611(a). The Debtor and the Indenture Trustee submit that the Tri-Party
19 Agreement (as defined below) will serve as the Resignation Instrument. Certain of the Indenture
20 Trustee's outstanding fees, expenses and indemnities are entitled to be paid prior to the payment of
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25 ¹ Under the Indenture the term corporate trust office is defined as the principal office of the
26 Trustee in the Borough of Manhattan, The City of New York at which at any particular time its
27 corporate trust business shall be administered.
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1 principal and interest in respect of the Securities (as defined in the Indenture). Pursuant to the
2 Debtor's proposed Chapter 11 plan, the Indenture Trustee's accrued but unpaid fees and expenses
3 will be paid upon confirmation of such plan. The Indenture Trustee has agreed to defer payment of
4 such amounts until such time, or such other time as the Indenture Trustee and/or the Successor
5 Trustee is entitled to receive payment of such amounts pursuant to the Indenture as limited by
6 applicable law.

8 Search for a Successor Trustee

9 8. The magnitude of this case made it difficult for the Indenture Trustee to find an
10 eligible successor trustee that did not have a conflict of interest. Institutions which, under normal
11 circumstances, would likely accept appointment as successor trustee declined to do so because of
12 conflicting relationships with the Debtor. After a diligent search, the Indenture Trustee believes that
13 it has found a suitable successor trustee. Wilmington Trust Company, a state chartered commercial
14 bank organized and existing under the laws of the State of Delaware, is the only entity that the
15 Indenture Trustee has found that is willing to serve as successor trustee. Wilmington Trust
16 Company satisfies the Eligibility Requirements, with one exception: it does not have a corporate
17 trust office in Manhattan, although it does have a "drop agency" in Manhattan for the purpose of
18 facilitating payments and transfers.

19 9. The Debtor and the Indenture Trustee believe that Wilmington Trust Company
20 should be appointed successor trustee notwithstanding the lack of a corporate trust office in
21 Manhattan. The Indenture Trustee is obligated to resign because of the conflict of interest discussed
22 above. Wilmington Trust Company is qualified to serve as successor trustee and has served as
23 trustee under numerous other indentures. Moreover, the facts and circumstances of this case make it
24 virtually impossible to find a successor trustee that satisfies all of the Eligibility Requirements. The
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Indenture Trustee and the Debtor believe that Wilmington Trust Company's lack of a corporate trust office in New York will not have a material adverse effect on the noteholders. In addition, since the notes currently outstanding are represented by global notes held by a securities depository, the Debtor and the Indenture Trustee do not believe that the existence of a corporate trust office in Manhattan is a material requirement. Ownership of beneficial interests in the global notes is shown on, and transfers are effected through, the depository's book-entry registration and transfer system and thus a New York registrar and transfer agent is not necessary.

10. Subject to this Court's approval, the Debtor, the Indenture Trustee and Wilmington Trust Company are prepared to enter into that certain Agreement of Resignation, Appointment and Acceptance (the "Tri-Party Agreement"). A copy of the Tri-Party Agreement is attached hereto as Exhibit A. Under the Tri-Party Agreement, and subject to Court approval thereof, Wilmington Trust Company will be appointed successor trustee. The Indenture Trustee will assign all of its rights, powers and trusts as trustee under the Indenture to Wilmington Trust Company.

Relief Requested

11. The Debtor and the Indenture Trustee seek an order pursuant to Sections 105(a) and 363 of the Bankruptcy Code authorizing (i) the Debtor to enter into the Tri-Party Agreement and (ii) the appointment of Wilmington Trust Company as successor trustee under the Indenture.

Basis for Relief

12. The Indenture Trustee provided written notice of its resignation to the Debtor on July 3, 2001. 30 days have passed since such notice. The Indenture Trustee has not received an instrument of acceptance from an eligible successor trustee. Thus, pursuant to Section 610(b) of the Indenture, the Indenture Trustee is eligible to petition this Court, as a court of competent jurisdiction, for the appointment of Wilmington Trust Company as successor trustee.

13. The Indenture Trustee has a conflict of interest under the Trust Indenture Act and has tendered its resignation to the Debtor. Both the Debtor and the Indenture Trustee agree that it is essential that a successor trustee be appointed quickly. As discussed above, the facts and circumstances of this case made it virtually impossible for the Indenture Trustee to locate a suitable successor trustee that satisfies the Eligibility Requirements and does not have a conflict of interest. Both the Debtor and the Indenture Trustee agree that Wilmington Trust Company is qualified to be the successor trustee and should be so appointed notwithstanding the lack of a corporate trust office in Manhattan. The Indenture Trustee submits that the importance of finding a suitable successor trustee greatly outweighs the requirement that the successor trustee have a corporate trust office in Manhattan. Moreover, the resolution proposed herein resolves all issues with respect to the appointment of a successor trustee with minimal cost and inconvenience to the Debtor. The relief sought herein is provided for under Section 363 of the Bankruptcy Code and is well within the Court's broad equitable powers under Section 105(a) of the Bankruptcy Code. See e.g., In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986).

Notice

14. Notice of this Motion has been provided to counsel for the United States Trustee and the Official Committee of Unsecured Creditors, and to each party on the Special Notice List established pursuant to the Court's Case Management Order (revised June 14, 2001). The Debtor and the Indenture Trustee respectfully submit that no other or further notice be provided.

No Prior Request

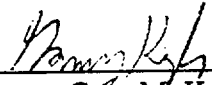
15. No prior request for the relief requested herein has been made to this or any other court.

1 WHEREFORE, the Debtor and the Indenture Trustee respectfully request that the Court
2 enter an order, substantially in the form attached hereto as Exhibit B, (i) authorizing the Debtor to
3 enter into the Tri-Party Agreement with the Indenture Trustee and Wilmington Trust Company, (ii)
4 appointing Wilmington Trust Company as successor trustee under the Indenture, and (iii) granting
5 such other and further relief as is just.
6

7 Dated: December 20, 2001

8
9 HOWARD, RICE, NEMEROVSKI,
CANADY, FALK & RABKIN
10 A Professional Corporation

WHITE & CASE LLP

11
12 By: 
Gary M. Kaplan

By: _____
Evan C. Hollander

13
14 Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

Attorneys for THE BANK OF NEW YORK, as
Indenture Trustee

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17 ACCEPTED AND AGREED

18 PRYOR, CASHMAN, SHERMAN & FLYNN

19
20 By: _____
Edward Fox

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22 Attorneys for WILMINGTON TRUST COMPANY

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WD 121301/1-1419910/956913/v5

1 WHEREFORE, the Debtor and the Indenture Trustee respectfully request that the Court
2 enter an order, substantially in the form attached hereto as Exhibit B, (i) authorizing the Debtor
3 to enter into the Tri-Party Agreement with the Indenture Trustee and Wilmington Trust
4 Company, (ii) appointing Wilmington Trust Company as successor trustee under the Indenture,
5 and (iii) granting such other and further relief as is just.
6


7 Dated: December 13, 2001
8

9 HOWARD, RICE, NEMEROVSKI,
10 CANADY, FALK & RABKIN
A Professional Corporation

11 By: _____
12 Gary M. Kaplan, Esq.

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

WHITE & CASE LLP

By: 
Evan C. Hollander, Esq.

Attorneys for THE BANK OF NEW YORK, as
Indenture Trustee

15
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17 ACCEPTED AND AGREED

18 PRYOR, CASHMAN, SHERMAN & FLYNN
19

20 By: _____
21 Edward Fox, Esq.

22 Attorneys for WILMINGTON TRUST COMPANY
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27 JOINT MOTION RE
28 APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

WHEREFORE, the Debtor and the Indenture Trustee respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit B, (i) authorizing the Debtor to enter into the Tri-Party Agreement with the Indenture Trustee and Wilmington Trust Company, (ii) appointing Wilmington Trust Company as successor trustee under the Indenture, and (iii) granting such other and further relief as is just.

Dated: December 13, 2001

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

WHITE & CASE LLP

By: _____
Gary M. Kaplan, Esq.

By: _____
Evan C. Hollander, Esq.

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

Attorneys for THE BANK OF NEW YORK, as
Indenture Trustee

NO OBJECTION
~~ACCEPTED AND AGREED~~

PRYOR, CASHMAN, SHERMAN & FLYNN

By: 
Edward Fox, Esq.

Attorneys for WILMINGTON TRUST COMPANY

JOINT MOTION RE
APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

EXHIBIT A

Execution Copy

AGREEMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE, dated as of December 19, 2001 by and among Pacific Gas and Electric Company, a corporation duly organized and existing under the laws of the State of California and having its principal office at 77 Beale Street, San Francisco, California 94105 (the "Company"), The Bank of New York, a banking corporation duly organized and existing under the laws of New York and having its principal corporate trust office at 5 Penn Plaza, 13th Floor, New York, New York 10001 (the "Resigning Trustee") and Wilmington Trust Company, a banking corporation duly organized and existing under the laws of Delaware and having its principal corporate trust office at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 (the "Successor Trustee").

RECITALS:

WHEREAS, the Debtor has issued various series of unsecured Notes under an Indenture dated as of September 1, 1987, as supplemented by the First Supplemental Indenture dated as of June 1, 1990 and the Second Supplemental Indenture dated as of November 1, 2000, by and between the Company and the Resigning Trustee and as of the date hereof there are five series of Notes outstanding in the aggregate liquidated amount of \$2,207,250,000 on account of outstanding principal consisting of: (i) \$680,000,000 aggregate principal amount of 7.375% Senior Notes due November 1, 2015, (ii) \$1,240,000,000 aggregate principal amount of Floating Rate Notes due October 31, 2001, (iii) \$147,250,000 aggregate principal amount of Medium-Term Notes, Series B, (iv) \$76,000,000 aggregate principal amount of Medium-Term Notes, Series C; and (v) \$64,000,000 aggregate principal amount of Medium-Term Notes, Series D (said Notes are hereinafter referred to as "Securities" and said Indenture, as supplemented, is hereinafter referred to as the "Indenture"; capitalized terms used but not defined herein shall have the meanings ascribed to them in the Indenture);

WHEREAS, Section 610 of the Indenture provides that the Trustee may at any time resign by giving written notice of such resignation to the Company, effective upon the acceptance by a successor Trustee of its appointment as a successor Trustee;

WHEREAS, Section 610 of the Indenture provides that, if the Trustee shall resign, a court of competent jurisdiction may appoint a successor Trustee;

WHEREAS, Section 611 of the Indenture provides that any successor Trustee appointed in accordance with the Indenture shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment under the Indenture, and thereupon the resignation of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of the predecessor Trustee;

WHEREAS, the Resigning Trustee was appointed Security Registrar and Paying Agent by the Company;

WHEREAS, the Company desires to have a Successor Trustee appointed as Trustee, Security Registrar and Paying Agent to succeed Resigning Trustee under the Indenture; and

WHEREAS, Successor Trustee is willing to accept such appointment as successor Trustee, Security Registrar and Paying Agent under the Indenture;

NOW, THEREFORE, the Company, Resigning Trustee and Successor Trustee, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged subject to approval by the Bankruptcy Court (as defined herein), hereby consent and agree as follows:

ARTICLE ONE

THE RESIGNING TRUSTEE

SECTION 101. Pursuant to Section 610 of the Indenture, Resigning Trustee hereby notifies the Company that Resigning Trustee is hereby resigning as Trustee, Security Registrar and Paying Agent under the Indenture.

SECTION 102. Resigning Trustee hereby represents and warrants to Successor Trustee that:

- (a) No covenant or condition contained in the Indenture has been waived by Resigning Trustee or, to the best of the knowledge of its Responsible Officers, by the Holders of the percentage in aggregate principal amount of the Securities required by the Indenture to effect any such waiver.
- (b) There is no action, suit or proceeding pending or, to the best of the knowledge of its Responsible Officers, threatened against Resigning Trustee before any court or any governmental authority arising out of any action or omission by Resigning Trustee as Trustee under the Indenture.
- (c) As of the effective date of this Agreement, Resigning Trustee holds no property under the Indenture.
- (d) Pursuant to Section 303 of the Indenture, Resigning Trustee has duly authenticated and delivered the Securities, all of which are outstanding without any reduction in principal amount as of the effective date hereof.
- (e) Each person who so authenticated the Securities was duly elected, qualified and acting as an officer of Resigning Trustee and empowered to authenticate the Securities at the times of such authentication and the signature of such person or persons appearing on such Securities is each such person's genuine signature.
- (f) This Agreement has been duly authorized, executed and delivered on behalf of Resigning Trustee and constitutes its legal, valid and binding obligation.

SECTION 103. Resigning Trustee hereby assigns, transfers, delivers and confirms to Successor Trustee all right, title and interest of Resigning Trustee in and to the trust under the Indenture and all the rights, powers and trusts of the Trustee under the Indenture. Resigning Trustee shall execute and deliver such further instruments and shall do such other things as Successor Trustee may reasonably require so as to more fully and certainly vest and confirm in

Successor Trustee all the rights, trusts and powers hereby assigned, transferred, delivered and confirmed to Successor Trustee as Trustee, Security Registrar and Paying Agent.

SECTION 104. Resigning Trustee shall deliver to Successor Trustee, on, or immediately after, the effective date hereof, all of the documents listed on Exhibit A hereto.

ARTICLE TWO

THE COMPANY

SECTION 201. The Company hereby accepts the resignation of Resigning Trustee as Trustee, Security Registrar and Paying Agent under the Indenture.

SECTION 202. The Company hereby accepts the Bankruptcy Court's appointment of Successor Trustee as Trustee, Security Registrar and Paying Agent under the Indenture to succeed to, and hereby vests Successor Trustee with, all the rights, powers, duties and obligations of Resigning Trustee under the Indenture with like effect as if originally named as Trustee in the Indenture.

SECTION 203. The Company hereby represents and warrants to Resigning Trustee and Successor Trustee that:

- (a) The Company is a corporation duly and validly organized and existing pursuant to the laws of the State of California.
- (b) The Indenture was validly and lawfully executed and delivered by the Company and the Securities were validly issued by the Company.
- (c) This Agreement has been duly authorized, executed and delivered on behalf of Company and, subject to approval of the Bankruptcy Court, constitutes its legal, valid and binding obligation.

ARTICLE THREE

THE SUCCESSOR TRUSTEE

SECTION 301. Successor Trustee hereby represents and warrants to Resigning Trustee and to the Company that:

- (a) Successor Trustee is not disqualified under the provisions of Article Six of the Indenture and other than not having its Corporate Trust Office in the Borough of Manhattan, The City of New York, is eligible under the provisions of Section 609 of the Indenture to act as Trustee under the Indenture.
- (b) This Agreement has been duly authorized, executed and delivered on behalf of Successor Trustee and constitutes its legal, valid and binding obligation.

SECTION 302. Successor Trustee hereby accepts its appointment as successor Trustee, Security Registrar and Paying Agent under the Indenture and accepts the rights, powers, duties and obligations of Resigning Trustee as Trustee under the Indenture, upon the terms and conditions set forth therein, with like effect as if originally named as Trustee under the Indenture.

SECTION 303. References in the Indenture to "Corporate Trust Office" or other similar terms shall be deemed to refer to the Corporate Trust Office of Successor Trustee at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 or any other office of Successor Trustee at which, at any particular time, its corporate trust business shall be administered.

SECTION 304. Promptly after the effective date of this Agreement, the Successor Trustee, acting for the Company, shall cause a notice, substantially in the form of Exhibit B annexed hereto, to be sent to each Holder of the Securities in accordance with the provisions of Section 610 of the Indenture.

ARTICLE FOUR

MISCELLANEOUS

SECTION 401. Except as otherwise expressly provided herein or unless the context otherwise requires, all terms used herein which are defined in the Indenture shall have the meaning assigned to them in the Indenture.

SECTION 402. This Agreement and the resignation, appointment and acceptance effected hereby shall be effective as of the date the order of the Bankruptcy Court approving this Agreement becomes a final order (the "Final Order"). The Company and the Resigning Trustee shall promptly submit this Agreement to the Bankruptcy Court for its approval, in which case the Successor Trustee shall consent thereto.

SECTION 403. Pursuant to the Company's proposed Chapter 11 plan, the accrued but unpaid fees and expenses of the Resigning Trustee and the Successor Trustee under the Indenture (including, but not limited to, the reasonable fees and expenses of their respective counsel) will be paid upon confirmation of such plan, or such other time as the Resigning Trustee or the Successor Trustee is entitled to receive payment of such amounts pursuant to the Indenture, as limited by applicable law. The Company, the Successor Trustee and the Resigning Trustee hereby agree that all property and funds held or collected by the Successor Trustee in connection with the Indenture shall be distributed as follows promptly upon receipt:

First: To payment of all outstanding fees and expenses due and owing to the Resigning Trustee and the Successor Trustee under the Indenture (including, but not limited to, the fees and expenses of their respective counsel);

Second: To the holders of the Securities.

SECTION 404. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.


SECTION 405. This Agreement may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 406. This Agreement constitutes the Resignation Instrument as set forth in Section 611 of the Indenture and as defined in the joint motion by the Company and the Resigning Trustee for an order of the Bankruptcy Court authorizing (i) the Company to enter into

this Agreement, and (ii) appointing the Successor Trustee as successor trustee under the Indenture.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement of Resignation, Appointment and Acceptance to be duly executed all as of the day and year first above written.

Pacific Gas and Electric Company

By: 
Name: Kent M. Harvey
Title: Senior Vice President - Treasurer
and Chief Financial Officer

**The Bank of New York, as Resigning
Trustee**

By: _____
Name:
Title:

**Wilmington Trust Company, as Successor
Trustee**

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereby have caused this Agreement of Resignation, Appointment and Acceptance to be duly executed all as of the day and year first above written.

Pacific Gas and Electric Company

By: _____
Name:
Title:

**The Bank of New York, as Resigning
Trustee**

By: Gary S. Bush, V.P.
Name: Gary S. Bush
Title: Vice President

**Wilmington Trust Company, as Successor
Trustee**

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereby have caused this Agreement of Resignation, Appointment and Acceptance to be duly executed all as of the day and year first above written.

Pacific Gas and Electric Company

By: _____
Name:
Title:

**The Bank of New York, as Resigning
Trustee**

By: _____
Name:
Title:

**Wilmington Trust Company, as Successor
Trustee**


By:  _____
Name: Steven D. Malone
Title: Vice President

EXHIBIT A

Documents to be delivered to Successor Trustee (to the best of the ability of the Resigning Trustee)

1. Executed copy of Indenture dated as of September 1, 1987, as supplemented
2. File of Closing Documents
3. Copies of the most recent of each of the SEC reports delivered by the Company pursuant to Section 704 of the Indenture, if any.
4. A copy of the most recent Compliance Certificate delivered pursuant to Section 1009 of the Indenture, if any.
5. Copies of any official notices sent by the Trustee to all the Holders of the Notes pursuant to the terms of the Indenture during the past twelve months and a copy of the most recent Trustee's Annual Report to Holders, if any.

EXHIBIT B

[SUCCESSOR TRUSTEE LETTERHEAD]

NOTICE

To the Holders of
Pacific Gas and Electric Company
7.375% Senior Notes due 2005

NOTICE IS HEREBY GIVEN, pursuant to Section 610 of the Indenture dated as of September 1, 1987 by and between Pacific Gas and Electric Company (the "Company") and The Bank of New York, as Trustee, that The Bank of New York has resigned as Trustee under the Indenture.

Pursuant to Section 611, of the Indenture, Wilmington Trust Company, a banking corporation duly organized and existing under the laws of the State of Delaware, has accepted appointment as Trustee under the Indenture. The address of the Corporate Trust Office of Wilmington Trust Company is Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890.

The Bank of New York's resignation as Trustee and Wilmington Trust Company's appointment as successor Trustee were effective as of the opening of business on December __, 2001.

Dated: New York, New York
December __, 2001

Very truly yours,

By: _____
Name:
Title:

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

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

12 EVAN C. HOLLANDER
13 WHITE & CASE LLP
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18 Attorneys for THE BANK OF NEW YORK, as Indenture Trustee

19 UNITED STATES BANKRUPTCY COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 In re

23 PACIFIC GAS AND ELECTRIC COMPANY,
24 a California corporation,

25 Debtor.

26 Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11 Case

HEARING

Date: January 16, 2002

Time: 9:30 a.m.

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

27 [PROPOSED] ORDER PURSUANT TO SECTION 105(a)
28 OF THE BANKRUPTCY CODE AUTHORIZING
(i) DEBTOR TO ENTER INTO THE TRI-PARTY AGREEMENT, AND (ii)
APPOINTMENT OF WILMINGTON TRUST COMPANY AS SUCCESSOR TRUSTEE

1 The Court having considered the Joint Motion for Order Authorizing (i) Debtor to
2 Enter into the Tri-Party Agreement, and (ii) Appointment of Wilmington Trust Company as
3 Successor Trustee (the "Motion") submitted by Pacific Gas and Electric Company, the debtor and
4 debtor in possession in the above-captioned Chapter 11 case (the "Debtor"), and the Bank of New
5 York, as Indenture Trustee¹; the Declaration of Gary Bush in support thereof, any opposition to the
6 Motion, the record in this case, and any admissible evidence and argument presented to the Court,
7 hereby finds as follows:

8
9 A. Adequate notice of this proceeding was given to parties in interest as appropriate
10 under the circumstances.

11 B. There is good cause for granting the Motion.

12 C. The Court has jurisdiction to consider the Motion and the relief requested therein
13 in accordance with 28 U.S.C. §§ 157 and 1334.
14

15 Based on the foregoing, IT IS HEREBY ORDERED that:

16 1. The Motion is granted in all respects.

17 2. The Debtor is authorized to enter into the Tri-Party Agreement with the Indenture
18 Trustee and Wilmington Trust Company, which is hereby approved in all respects.

19 3. The Tri-Party Agreement shall constitute the Resignation Instrument.

20 4. The resignation of the Indenture Trustee is effective as of the date this Order
21 becomes a final order.
22
23
24

25
26 ¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.
27
28

1 5. Effective as of the date this Order
2 the Tri-Party Agreement, Wilmington Trust

3 Indenture and is vested with all rights, p

4 6. The Debtor shall promptly ,

5 the Indenture Trustee under the Indenture upon col

6 pursuant to the provisions of such plan, or such other time

7 Trustee is entitled to receive payment of such amounts pursua

8 applicable law.

9 Dated: _____

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13 HONORABLE DENNIS MONTALI
14 UNITED STATES BANKRUPTCY JUDGE

15
16 WD 121801/1-1419910/956952/v5