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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,
Debtor.

Case No. 01-30923 DM

Chapter 11 Case

Date: May 5, 2003

Time: 1:30 p.m.

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

Judge: Hon. Dennis Montali

Federal I.D. No. 94-0742640

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21 DEBTOR'S NOTICE OF MOTION AND MOTION FOR AN ORDER AUTHORIZING
22 COMPROMISE OF CLAIMS OF CALIFORNIA REGIONAL WATER QUALITY
23 CONTROL BOARD REGARDING THE DIABLO CANYON POWER PLANT AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

BKRP01

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HOWARD
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A Professional Corporation

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1 Motion and the relief requested therein must be filed with the Bankruptcy Court and served
2 upon appropriate parties (including counsel for PG&E, the Office of the United States
3 Trustee and the Official Committee of Unsecured Creditors) at least five (5) days prior to the
4 scheduled hearing date. If there is no timely objection to the requested relief, the Court may
5 enter an order granting such relief without further hearing.

6 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 PG&E commenced this Chapter 11 case by the filing of a voluntary petition on April 6,
10 2001. PG&E continues to manage and operate its property as a debtor in possession
11 pursuant to Sections 1107 and 1108 of the Bankruptcy Code. PG&E submits this brief in
12 support of its Motion For An Order Authorizing Compromise Of Claims Of California
13 Regional Water Quality Control Board Regarding The Diablo Canyon Power Plant (the
14 "Motion"). By the Motion, PG&E seeks authorization to enter into, be bound by, and make
15 payments under, that certain Consent Judgment with the CRWQCB, a copy of which is
16 attached as Exhibit A to the Declaration of James Becker filed concurrently herewith (the
17 "Becker Decl."). In addition, the Motion seeks modification of the automatic stay, to the
18 extent applicable, to allow a civil action, and simultaneously therewith, the Consent
19 Judgment, to be filed in the Superior Court. The CRWQCB has asserted certain claims
20 against the PG&E arising from the intake and discharge of seawater associated with PG&E's
21 operation of the Diablo Canyon Power Plant (the "Plant"). The Consent Judgment would
22 settle these claims and require PG&E to implement and fund various actions designed to
23 enhance and preserve a coastal marine habitat, including the dedication of a conservation
24 easement that restricts the future development of land owned by PG&E and the funding of
25 over \$6,250,000 for projects and monitoring to protect the beneficial uses of coastal marine
26 waters in the vicinity of the Plant. As certain of the activities complained of occurred pre-
27 petition, the granting of this Motion could be deemed to involve the granting of authority to
28 pay pre-petition claims prior to the confirmation of a plan in this case.

FACTUAL BACKGROUND

A. General.

PG&E owns and operates the Diablo Canyon Power Plant, consisting of two existing electrical power generation units using up to 2,540,000 gallons per day of seawater for the primary purpose of main condenser cooling. The Plant is located approximately 12 miles southwest of San Luis Obispo. PG&E also owns certain unimproved land located in the vicinity of the Plant consisting of approximately 2,013 acres (the "Encumbered Land"). In connection with its operation of the Plant, PG&E holds a National Pollution Discharge Elimination System Permit and related California Waste Discharge Requirements (collectively, the "Permit").

Pursuant to the Permit, PG&E discharges heated seawater from the Plant back into the ocean. The Permit contains numerous conditions and limitations relating to the discharge of heated seawater. These limitations and conditions relate to such matters as (i) the temperature of the discharged water, (ii) the existence of objectionable aquatic growth or the degradation of indigenous biota or marine communities that may result from the discharges, (iii) the adverse effects on the beneficial uses of the receiving water that may result from the discharges, and (iv) the creation of a nuisance or pollution. The CRWQCB has alleged that the discharges of heated seawater from the Plant, which have occurred over the course of many years,² have violated some of these limitations and conditions due to the alleged degradation of marine habitat beneficial uses. Based on these violations, the CRWQCB has asserted causes of action against PG&E pursuant to the California Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000 et seq.), the federal Clean Water Act (33 U.S.C. §§1251 et seq.), and Section 12600 of the California Government Code. PG&E disputes all such allegations of non-compliance with and violation of the Permit and applicable laws.

²The discharges that the CRWQCB is complaining of commenced well prior to the filing of the petition in this bankruptcy case and are continuing to this day.

1 B. Consent Judgment.

2 After lengthy negotiations, PG&E and the CRWQCB have agreed to a settlement of
3 CRWQCB's claims as described in detail in the Consent Judgment. The basic terms of the
4 settlement are as follows:

5 1. Conservation Easement. PG&E would grant a conservation easement on
6 the Encumbered Land to the San Luis Obispo Land Conservancy, a non-profit third party, in
7 the form attached at Exhibit A to the Consent Judgment (the "Conservation Easement").
8 The principal purpose of the Conservation Easement would be to restrict the development,
9 use and other activities on the Encumbered Land so as to preserve, protect and enhance the
10 "conservation values" of the property in perpetuity. The principal "conservation value" of
11 the Encumbered Land is the existing condition of the land in its open space and largely
12 undeveloped state. Accordingly, the Conservation Easement would significantly restrict the
13 use and development of the Encumbered Land. PG&E would make a one-time payment of
14 \$200,000 to be used by the easement holder for easement oversight costs, including
15 monitoring, documentation and annual reporting, participation in meetings, protective
16 measures and emergency measures to protect conservation values. If for any reason any
17 federal or state governmental entity or court requires PG&E to comply with more stringent
18 standards with respect to the intake and outtake of seawater than exist under the Plant's
19 permit, or requires PG&E to use cooling water system technology that is more costly or
20 burdensome than the system which existed at the Plant as of August, 2000, PG&E could
21 rescind the Conservation Easement, in which event the CRWQCB may re-assert any claims
22 it may have had against PG&E existing prior to the effective date of the Consent Judgment.

23 2. Project Funding. In addition to the granting and funding of the
24 Conservation Easement, PG&E would fund over \$6,050,000 for other projects and
25 monitoring to protect beneficial uses of coastal marine waters in the vicinity of Diablo Cove
26 and to otherwise protect the environment from harm. These costs are described as follows:

27 (a) Marine Resource Preservation and Enhancement Dedicated Fund.

28 PG&E would establish a dedicated fund of \$4,050,000 for the purpose of preserving and

1 enhancing marine resources. The fund would be used on projects that would directly
2 improve permanent preservation, restoration, enhancement, monitoring, and research of
3 marine life, habitat and water quality in coastal waters of San Luis Obispo County. The fund
4 would be administered by an entity selected and agreed upon by PG&E and the CRWQCB.
5 The fund could be used for monitoring, reporting on and evaluating the Conservation
6 Easement, including uses and activities on the Encumbered Land, erosion and sediment
7 discharge from or onto the Encumbered Land and the conservation values of the
8 Encumbered Land, including terrestrial and near-shore marine intertidal and subtidal
9 resources.

10 (b) Abalone Restoration Project. PG&E would contribute \$350,000 to the
11 Abalone Restoration Project administered by the California Department of Fish and Game.

12 (c) Central Coast Ambient Monitoring Program. PG&E would contribute
13 \$150,000 per year for 10 years to the Central Coast Ambient Monitoring Program
14 ("CCAMP"), which was established to monitor water quality in the California Central Coast
15 Region.

16 (d) Research Facility. PG&E would make its marine biology laboratory
17 research facility available to local educational and scientific groups for a period of 10 years
18 and would provide a start-up grant of \$100,000 for such usage and up to \$5,000 per year for
19 water and electricity costs.

20 Of such funds, \$4,855,000 would be deposited into an escrow account within 20 days
21 after the Consent Judgment is fully executed. If the Consent Judgment does not become
22 effective for any reason, the escrowed funds would be returned to PG&E.

23 3. Receiving Water Monitoring Program. PG&E would no longer be required to
24 perform certain ecological studies and water monitoring as it is currently required to do
25 pursuant to Monitoring and Reporting Program No. 90-09, as PG&E's responsibilities with
26 respect to such matters would be replaced by its participation in CCAMP, described above.

27 4. Final Resolution. The Consent Judgment would constitute a full, final and
28 binding resolution between the CRWQCB and the Debtor of any statutory or common law

1 claims that have been or could have been asserted arising from any entrainment or
2 impingement impact of the Plant's existing cooling water intake system and the Plant's
3 discharge of heated seawater.

4 5. Conditions Precedent. The Consent Judgment is subject to the following
5 conditions precedent: (i) the entry of a final order granting this Motion; (ii) the entry of the
6 Consent Judgment in Superior Court; (iii) to the extent necessary, a written order from the
7 Public Utilities Commission authorizing the encumbrance reflected by the Conservation
8 Easement; (iv) a renewal by the CRWQCB of the Permit and the adoption by the CRWQCB
9 of certain findings with respect to such renewal as specified in the Consent Judgment,
10 including a finding that the cumulative effects of the discharge of up to 2.5 billion gallons of
11 cooling water per day at a temperature not in excess of 22 degrees Fahrenheit complies with
12 the Permit and all relevant state and federal laws and that the Plant's existing cooling water
13 intake structure constitutes the "best technology available" for the purpose of Section 316(b)
14 of the Clean Water Act (33 U.S.C. §1326(b)); (v) a 30-day public comment period; and (vi)
15 PG&E providing evidence that it will convey the Conservation Easement free and clear of
16 encumbrances, except for those specified in the Consent Judgment. In the event that the
17 conditions precedent are satisfied prior to the confirmation of a plan in this case, PG&E
18 would be required to grant the Conservation Easement and fund the projects notwithstanding
19 such lack of confirmation.

20
21 C. The Consent Judgment Is In The Best Interest Of The Estate.

22 The CRWQCB claims that the discharges of heated seawater from the Plant violate
23 certain conditions of the Permit and related statutory provisions. If the CRWQCB's claims
24 are correct, such violations would have gone on for several years and would be continuing to
25 this day. Section 13385(b) of the California Water Code provides for penalties of up to
26 \$25,000 for each day in which such a violation occurs. In addition, where the volume
27 discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed
28 \$25.00 multiplied by the number of gallons in excess of 1,000 gallons may be imposed. Cal.

1 Water Code §13385(b). Thus, in the event the Consent Judgment is not approved and the
2 CRWQCB pursues a civil action against PG&E, the amount of penalties that the CRWQCB
3 might seek to impose on PG&E could be significant. While PG&E would vigorously
4 contest the imposition of the penalties, the ultimate outcome of such a proceeding is
5 uncertain and, furthermore, PG&E would have to incur substantial litigation costs in
6 defending the matter. A lawsuit would also consume considerable management resources,
7 diverting those persons from other business of PG&E.

8 In addition, it is possible that the CRWQCB would seek to assert administrative
9 priority claims against PG&E with respect to post-petition investigation and/or remediation
10 of the effects of the seawater discharges, or that the CRWQCB would attempt to force
11 PG&E, through injunctive proceedings, to ameliorate the effects of the discharges in ways
12 that could prove expensive. Finally, depending on the remedies sought by the CRWQCB,
13 the Plant's operations could be put at risk. There is no certainty that PG&E would
14 ultimately prevail in any such proceedings.

15 For these and other reasons, PG&E believes that the settlement of the CRWQCB
16 claims in accordance with the Consent Judgment is in the best interests of PG&E and its
17 estate. PG&E also notes that the public will benefit by the settlement in that the amount paid
18 will fund various environmental projects aimed at enhancing and preserving the coastal
19 marine habitat near and around the Plant.

20 21 ARGUMENT

22 A. The Court Should Approve The Settlement.

23 Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve any settlement or
24 compromise related to a reorganization or liquidation.³ Myers v. Martin (In re Martin), 91
25 F.3d 389, 393 (3d Cir. 1996); Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel

26
27 ³Bankruptcy Rule 9019(a) simply states, in part, that "[o]n motion by the trustee and
28 after notice and a hearing, the court may approve a compromise or settlement." Fed. R.
Bankr. P. 9019(a).

1 Burnham Lambert Group, Inc.), 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Indeed,
2 compromises and settlements are a common and favored occurrence in bankruptcy cases
3 because they allow a debtor and its creditors to avoid the financial and other burdens
4 associated with litigation over contentious issues and expedite the administration of the
5 bankruptcy estate. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v.
6 Anderson, 390 U.S. 414, 424 (1968); Martin v. Kane (In re A & C Props.), 784 F.2d 1377,
7 1380-81 (9th Cir. 1986).

8 In reviewing a proposed settlement, the bankruptcy court's inquiry focuses only upon
9 whether the compromise is fair and equitable and in the best interest of the estate. TMT
10 Trailer, 390 U.S. at 424; A & C Props., 784 F.2d at 1380-81; Nellis v. Shugrue, 165 B.R.
11 115, 121 (S.D.N.Y. 1994). In making this determination, however, the bankruptcy court is
12 not required to conduct a mini-trial on the merits of the underlying dispute or an independent
13 investigation into the reasonableness of the settlement. Port O'Call Inv. Co. v. Blair (In re
14 Blair), 538 F.2d 849, 851 (9th Cir. 1976); see also In re Purofied Down Prods. Corp., 150
15 B.R. 519, 522 (S.D.N.Y. 1993); Drexel Burnham, 134 B.R. at 505.

16 Rather, the standards for such approval have been described as lenient and intended to
17 encourage approval of settlements in bankruptcy cases. See Purofied Down, 150 B.R. at
18 522-23. The bankruptcy court need only canvass the legal and factual issues underpinning
19 the compromise to ensure that the proposed settlement does not fall "below the lowest point
20 in the range of reasonableness." Nellis, 165 B.R. at 121-22 (quoting Cosoff v. Rodman (In
21 re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983)); Purofied Down, 150 B.R. at 522;
22 Official Unsecured Creditors' Comm. of Pennsylvania Truck Lines, Inc. v. Pennsylvania
23 Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.), 150 B.R. 595, 598 (E.D. Pa. 1992),
24 aff'd mem., 8 F.3d 812 (3d Cir. 1993); Drexel Burnham, 134 B.R. at 505. In making this
25 determination, significant deference may be given to the informed judgment of the debtor in
26 possession and its counsel that a proposed compromise is fair and equitable. Martin, 91 F.3d
27 at 395; Nellis, 165 B.R. at 122; Purofied Down, 150 B.R. at 522-23; Drexel Burnham, 134
28 B.R. at 505.

1 Over the years, four significant criteria have been developed by the courts for
2 consideration in determining whether a proposed settlement falls below the lowest point in
3 the range of reasonableness: (1) the probability of success on the merits; (2) the difficulties,
4 if any, to be encountered in the matter of collection; (3) the complexity of the litigation
5 involved, and the expense, inconvenience and delay necessarily attending it; and (4) the
6 paramount interest of the creditors and a proper deference to their reasonable views. A & C
7 Props., 784 F.2d at 1381; see also Martin, 91 F.3d at 393; Nellis, 165 B.R. at 122;
8 Pennsylvania Truck Lines, 150 B.R. at 598. As demonstrated below, each of the applicable
9 criteria is satisfied here.⁴

11 1. The Probability Of Success On The Merits.

12 The Consent Judgment fully and finally resolves a significant and complex dispute
13 between the Debtor and CRWQCB without the need for expensive, distracting and time-
14 consuming litigation. In the event this matter were litigated, there is no guarantee that
15 PG&E could avoid fines in excess of the amounts it would be required to pay under the
16 Consent Judgment or the imposition of expensive remedial actions or technological changes,
17 particularly with regard to the Plant's cooling water intake structure.

20 2. The Complexity Of The Litigation, And The Expense, Inconvenience And
Delay Attending It.

21 The Consent Judgment resolves a complicated and technical legal dispute involving
22 claims under the federal Clean Water Act, the California Water Code, and the California
23 Government Code relating to events occurring over many years. Any litigation over this
24 matter likely would involve the testimony of several experts as to the impact of the heated
25 seawater discharges on the marine environment. Accordingly, in agreeing to the Consent
26

27 ⁴The second factor typically considered by courts—difficulty associated with
28 collection—is not applicable here.

1 Judgment, the Debtor has made what it believes is an economically prudent business
2 judgment that the estate's assets are better utilized in facilitating a settlement rather than
3 defending an action brought by the CRWQCB and prosecuting or defending an appeal of
4 such an action

5
6 3. The Settlement Is In The Best Interest Of The Creditors.

7 The last criteria considered by bankruptcy courts reviewing a proposed settlement is
8 the paramount interest of creditors, with a deference to their reasonable views. A & C
9 Props., 784 F.2d at 1381; Drexel Burnham, 134 B.R. at 505-06. While a creditor's objection
10 to a proposed settlement must be considered, it is not controlling and will not bar approval of
11 settlements that "do not fall below the lowest point in the range of reasonableness." A & C
12 Props., 784 F.2d at 1382; Drexel Burnham, 134 B.R. at 505.

13 The compromise reached in the Consent Judgment benefits not only the estate but all
14 creditors. The Consent Judgment contains a full, final and binding resolution of claims with
15 respect to the discharges, which will preserve estate assets by avoiding further litigation
16 costs and potentially large fines.

17
18 B. The Court Should Allow Payment Of Funds Prior To Plan Confirmation
19 Notwithstanding That Some Of CRWQCB's Claims May Be Pre-Petition Claims.

20 As discussed above, the CRWQCB's claims against PG&E arise primarily out of the
21 discharge of heated sweater from the Plant into the ocean which has occurred over the
22 course of many years and which continues to this day. Thus, it can be argued that some of
23 the CRWQCB's claims are prepetition, and therefore, to some extent, the proposed
24 settlement may be deemed to involve the payment of a prepetition claim prior to the
25 confirmation and implementation of a plan of reorganization in this case. There are several
26 reasons why PG&E believes it is appropriate for the Court to authorize a settlement in this
27 instance.

28 First, the CRWQCB would not agree to the settlement unless PG&E would agree to

1 fund the environmental projects and grant the Conservation Easement promptly following
2 the satisfaction of the conditions precedent (described above), even if a plan of
3 reorganization has not been confirmed at such time.⁵ Without a settlement, the CRWQCB
4 would likely file a civil regulatory enforcement action against PG&E in the Superior Court,
5 which would subject PG&E to substantial risk of a judgment that is materially worse than
6 the proposed settlement provided for in the Consent Judgment. In addition, PG&E would be
7 required to expend substantial monies in defending such a lawsuit.

8 While PG&E could argue that any such action by the CRWQCB would be in violation
9 of the automatic stay (11 U.S.C. §362(a)) to the extent such action relates to prepetition
10 conduct, the CRWQCB would take the position that the action is exempt from the automatic
11 stay pursuant to Section 362(b)(4) because it is pursuant to a governmental unit's police or
12 regulatory power and, with regard to postpetition discharges, that such action is not subject
13 to the automatic stay. 11 U.S.C. §362(b)(4); United States v. Nicolet, Inc., 857 F.2d 202 (3d
14 Cir. 1988); Penn Terra, Ltd. v. Dep't of Env'tl. Res., 733 F.2d 267 (3d Cir. 1984); United
15 States v. LTV Steel Co., Inc., 269 B.R. 576 (Bankr. W.D. Pa. 2001); Safety-Kleen, Inc. v.
16 So. Carolina Bd. of Health & Env'tl. Control, 274 F.3d 846 (4th Cir. 2001); In re First
17 Alliance Mortgage Co., 263 B.R. 99 (B.A.P. 9th Cir. 2001). Furthermore, to the extent such
18 an action was not subject to the Section 362(b)(4) exception, the CRWQCB could move the
19 Bankruptcy Court for relief from stay and, because any action would help liquidate what is
20 now a substantial contingent claim in the bankruptcy, it is likely that the CRWQCB would
21 obtain such relief, as long as it did not attempt to enforce any monetary judgment obtained in
22 the action. PG&E believes that it is in the best interest of the estate to avoid a full litigation
23 of the dispute with the CRWQCB for the reasons discussed above.

24 Second, if the Consent Judgment is not approved, the CRWQCB could incur costs
25 relating to the investigation and/or remediation⁶ of the seawater discharges which could be

26 ⁵ The project funds must be placed in escrow even before the conditions precedent are
27 met, but they would be returned to PG&E if the conditions were not met.

28 ⁶PG&E believes that there are no adverse effects stemming from the discharges that
(continued . . .)

1 substantial and could then seek to recover such costs as administrative priority claims in the
2 bankruptcy. See In re Conroy, 144 B.R. 966, 970 (Bankr. W.D. Pa. 1992) (post-petition
3 clean-up costs incurred by governmental agency on property of the bankruptcy estate were
4 entitled to administrative priority status where action was necessary to the preservation of
5 the bankruptcy estate and conferred an actual post-petition benefit on it). PG&E would
6 argue that the CRWQCB would not be entitled to any administrative priority claim for any
7 of such expenses because the claims are at least partly based on pre-petition conduct and the
8 remedial actions do not benefit the estate. See Burlington Northern R.R. Co. v. Dant &
9 Russell, Inc. (In re Dant & Russell, Inc.), 853 F. 2d 700, 706-07 (9th Cir. 1988) (post-
10 petition clean-up costs of lessor of property resulting from lessee's pre-petition operations
11 and pre-petition breach of lease are pre-petition damages not entitled to administrative
12 expense priority); In re Gull Indus., Inc. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386,
13 388 (B.A.P. 9th Cir. 1994) (neighbor's post-petition clean-up costs resulting from pre-
14 petition leak from debtor's petroleum tanks should be regarded as having occurred pre-
15 petition). There is no assurance that PG&E would prevail in such a dispute.

16 Third, the CRWQCB might seek an injunction against PG&E to force it to ameliorate
17 the effects of the pre-petition seawater releases. CRWQCB would argue that an injunction is
18 not a claim and, therefore, is not subject to discharge of bankruptcy, particularly where the
19 conduct complained of is ongoing. See United States v. LTV Corp. (In re Chateaugay
20 Corp.), 944 F.2d 997, 1008 (2d Cir. 1991) (holding that any order that requires the debtor to
21 end or ameliorate pollution currently existing or emanating from its own property is not a
22 dischargeable claim). PG&E would argue, however, that the holding in Chateaugay and
23 similar cases relating to injunctions does not apply in the Ninth Circuit. See In re Goodwin,
24 163 B.R. 825, 833-34 (Bankr. D. Idaho 1993) (injunction held to be a claim subject to
25 discharge in circumstances involving historical contamination).

26 In short, absent a prompt payment of the project funds and granting of the
27 (. . . continued)
28 would need to be remediated, but the CRWQCB may have other views.

1 Conservation Easement by PG&E, the CRWQCB would not agree to a settlement of its
2 claims. Absent such settlement, it is likely that PG&E would be engaged in an extended and
3 expensive litigation, the ultimate result of which could be significantly worse for PG&E than
4 the settlement proposed in the Consent Judgment. In addition, there is some degree of
5 uncertainty as to whether PG&E would be forced to expend funds, in addition to funds
6 expended in defending any litigation, to pay administrative priority claims of CRWQCB or
7 to pay the costs of investigating and/or ameliorating the effects of the seawater discharges
8 pursuant to an injunction. Thus, PG&E believes that it is in the best interest of the estate to
9 agree to the Consent Judgment and to pay the amounts provided under the Consent
10 Judgment in the manner specified.

11 Finally, PG&E notes that both of the competing reorganization plans proposed in this
12 case provide for the payment in full of all pre-petition claims. Therefore, the possible early
13 payment of the CRWQCB claim by virtue of the funding of the environmental projects and
14 the granting of the Conservation Easement would not have a material effect on other
15 creditors or the estate.

16
17 C. Payment Of Potential Pre-Petition Claims Pursuant To Consent Judgment Should
18 Be Authorized Pursuant To Section 105 Of The Bankruptcy Code And The
19 Court's Inherent Equitable Powers.

20 As discussed above, the proposed settlement may be deemed to involve the payment of
21 a pre-petition claim prior to the implementation of a confirmed plan of reorganization in this
22 case. To the extent that Bankruptcy Rule 9109(a) would not authorize such a payment,
23 Section 105(a) of the Bankruptcy Code may be relied on for such authority. Section 105(a)
24 authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or
25 appropriate to carry out the provisions of this title." The purpose of Section 105 is "to assure
26 the bankruptcy courts power to take whatever action is appropriate or necessary in aide of
27 the exercise of their jurisdiction." 2 Lawrence P. King, Collier on Bankruptcy ¶105.01, at
28 105-5 to 105-6 (15th ed. rev. 2000). For the reason stated above, the proposed settlement
embodied in the Consent Judgment, including the prompt funding of \$6.25 million for the

1 environmental programs described above and the granting of the Conservation Easement, is
2 in the best interests of the Debtor and its estate. Accordingly, if for any reason this Court
3 determines that the prompt funding of the \$6.25 million and the granting of the Conservation
4 Easement by PG&E called for pursuant to the Consent Judgment is not authorized pursuant
5 to Bankruptcy Rule 9109(a), PG&E requests that the Court authorize such payment pursuant
6 to the Court's authority and discretion under Section 105(a) of the Bankruptcy Code.

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HOWARD
RICE
NEMEROVSKI
CANADY
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& RAEBKIN
A Professional Corporation

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CONCLUSION

The Debtor has carefully considered the risks, complexity and expense associated with further litigation of the disputes between it and the CRWQCB. In the Debtor's sound business judgment, these factors tip the scale heavily in favor of approval of the proposed Consent Judgment as fair, reasonable and equitable and in the best interests of the estate and its constituencies. For these reasons, the Debtor respectfully requests that the Court grant its Motion and approve the Consent Judgment in the form attached as Exhibit A to the Becker Declaration and the modification of the automatic stay, to the extent applicable, to allow the filing of the action and, simultaneously therewith, the Consent Judgment.

DATED: April 3, 2003.

Respectfully,

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

By: Kenneth A. Neale for
JEFFREY L. SCHAFFER

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

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS HAS NO OBJECTION
TO THE FOREGOING MOTION AND THE RELIEF REQUESTED THEREIN.

MILBANK, TWEED, HADLEY & McCLOY LLP

Attorneys for OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

WD 040303/4-1419925/Y13/1050623/v4

1 **CONCLUSION**

2 The Debtor has carefully considered the risks, complexity and expense associated with
3 further litigation of the disputes between it and the CRWQCB. In the Debtor's sound
4 business judgment, these factors tip the scale heavily in favor of approval of the proposed
5 Consent Judgment as fair, reasonable and equitable and in the best interests of the
6 estate and its constituencies. For these reasons, the Debtor respectfully requests that the
7 Court grant its Motion and approve the Consent Judgment in the form attached as Exhibit 1
8 to the Becker Declaration and the modification of the automatic stay, to the extent
9 applicable, to allow the filing of the action and, simultaneously therewith, the Consent
10 Judgment.

11 DATED: _____, 2003.

12 Respectfully,

13 HOWARD, RICE, NEMEROVSKI, CANADY,
14 FALK & RABKIN
15 A Professional Corporation

16 By: _____
17 JEFFREY L. SCHAFER

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

20 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS HAS NO OBJECTION
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22 MILBANK, TWEED, HADLEY & McCLOY LLP

23 
24 _____
25 Attorneys for OFFICIAL COMMITTEE OF
26 UNSECURED CREDITORS

27 WD 031003/1-1419925/1050623/v4