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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.

Case No. 01-30923 DM

Chapter 11

HEARING

Date: July 21, 2003

Time: 1:30 p.m.

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

Federal I.D. No. 94-0742640

20 DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER
21 MODIFYING STIPULATION: (I) AUTHORIZING USE OF CASH
22 COLLATERAL PURSUANT TO 11 U.S.C. § 363 AND BANKRUPTCY
23 RULE 4001 AND (II) GRANTING ADEQUATE PROTECTION
24 PURSUANT TO 11 U.S.C. §§ 361 AND 363, TO ENABLE AUGUST 2003
25 PRINCIPAL PAYMENT ON CERTAIN MORTGAGE BONDS;
26 SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

27 [SUPPORTING DECLARATION OF KENT M. HARVEY FILED
28 HEREWITH]

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The Motion is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities (set forth below) and Declaration of Kent M.

MOTION TO MODIFY STIPULATION RE USE OF MORTGAGE BONDHOLDERS' CASH COLLATERAL

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 **INTRODUCTION²**

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.³

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23 ² 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 ³ 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.

1 II.

2 **FACTUAL BACKGROUND**

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

6 2. On May 9, 2001, this Court issued its Order on Debtor's Motion for Order
7 Approving Stipulation: (I) Authorizing and Restricting Use of Cash Collateral Pursuant to 11
8 U.S.C. § 363 and Bankruptcy Rule 4001 and (II) Granting Adequate Protection Pursuant to
9 11 U.S.C. §§ 361 and 363 (the "Original Stipulation"), approving PG&E's entry into and
10 performance under the Stipulation. The Original Stipulation provides for PG&E's continued
11 use of cash collateral in which the Indenture Trustee has an interest (on behalf of the holders
12 of the Bonds) pursuant to certain conditions and restrictions. Among other things, the
13 Original Stipulation provides for the timely payment of interest and sinking fund payments
14 as provided under the Indenture. The annual amount of interest and sinking fund payments
15 currently accruing on the Bonds is approximately \$260 million.

16 3. On February 1, 2002, the Debtor filed the Prior Motion (as defined in footnote 1
17 above) for an order modifying the Original Stipulation to permit the Debtor's timely
18 payment of \$333 million in principal amount of mortgage bonds that matured on March 1,
19 2002. On February 26, 2002, the Court issued its order so modifying the Original
20 Stipulation by adding the following language to paragraph 21 of the Original Stipulation:
21 "In addition the principal amount of the Bonds scheduled to mature on March 1, 2002 in the
22 approximate amount of \$333 million shall be payable on the terms set forth in the
23 Indenture." (The Original Stipulation as so modified is hereinafter referred to as the
24 "Stipulation.")

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

27 5. PG&E's obligations under the Indenture are substantially oversecured. The total
28 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.⁴

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 ⁴ 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:⁵

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 ⁵ 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), 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.

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
A Professional Corporation

18 By: 
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JEFFREY L. SCHAFER

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

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