

1 JAMES L. LOPES (No. 63678)
JANET A. NEXON (No. 104747)
2 BARBARA GORDON (No. 52424)
HOWARD, RICE, NEMEROVSKI, CANADY,
3 FALK & RABKIN
A Professional Corporation
4 Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
5 Telephone: 415/434-1600
Facsimile: 415/217-5910

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

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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

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13 In re
14 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
15 Debtor.

16
17 Federal I.D. No. 94-0742640

Case No. 01-30923 DM

Chapter 11 Case

Date: September 10, 2003
Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

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20 NOTICE OF MOTION AND MOTION FOR AUTHORITY TO PAY
FILING FEE AND PRINTER'S COSTS IN CONNECTION WITH THE
21 FILING OF REGISTRATION STATEMENT WITH THE SECURITIES
AND EXCHANGE COMMISSION; MEMORANDUM OF POINTS AND
22 AUTHORITIES IN SUPPORT THEREOF

23 [SUPPORTING DECLARATION OF MICHAEL J. DONNELLY
FILED SEPARATELY]
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MOTION FOR AUTHORITY TO PAY FILING FEES AND PRINTER'S COSTS

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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
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1 PLEASE TAKE NOTICE that on September 10, 2003 at 9:30 a.m., or as soon
2 thereafter as the matter may be heard in the Courtroom of the Honorable Dennis Montali,
3 located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric
4 Company, the debtor and debtor in possession in the above-captioned Chapter 11 case
5 ("PG&E"), will and hereby does move the Court for authority to pay filing fee and printer's
6 costs in connection with the filing of registration statement with the Securities and Exchange
7 Commission (the "Motion").

8 This Motion is based on this Notice of Motion and Motion, the accompanying
9 Memorandum of Points and Authorities, the Declaration of Michael J. Donnelly, filed
10 concurrently herewith, the record of this case and any evidence presented at or prior to the
11 hearing on this Motion.

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

HOWARD
RICE
NEMEROVSKI
CANADY
FAUK
& RABKIN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pacific Gas and Electric Company ("PG&E"), the debtor and debtor in possession
3 in the above-captioned Chapter 11 case, requests authority to pay certain filing fee and
4 printer's costs in connection with the filing of registration statement with the Securities and
5 Exchange Commission ("SEC") for the debt securities to be issued under PG&E's proposed
6 Plan of Reorganization. This request is made pursuant to Bankruptcy Code Section
7 363(b)(1).
8

9 **I. FACTUAL BACKGROUND¹**

10 PG&E filed a voluntary petition for relief under Chapter 11 of the Bankruptcy
11 Code on April 6, 2001. A trustee has not been appointed, and PG&E continues to function
12 as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

13 PG&E, with its parent corporation, PG&E Corporation and Official Committee of
14 Unsecured Creditors (the "Committee"), jointly has proposed a Plan of Reorganization (the
15 "Plan"). The Disclosure Statement for the Plan (the "Disclosure Statement") was approved
16 by the Court on July 31, 2003. The confirmation hearing has been scheduled to commence
17 on November 3, 2003.

18 A significant component of the Plan involves the issuance of debt securities by a
19 Reorganized Debtor as a means of financing the implementation of the Plan.

20 As set forth in PG&E's Motion for Authority to Pay Fees of Designated
21 Underwriters' Counsel, filed on August 19, 2003, PG&E will utilize underwriters and
22 designated underwriters' counsel in connection with the securities offerings. Specifically,
23 PG&E has requested authority to pay underwriters' counsel to assist with, among other
24 items, the preparation of the registration statement and related prospectus to be filed with the
25 SEC by PG&E for the offering of New Money Notes² to the public.

26 ¹ The evidentiary basis and support for the facts set forth in this Motion are contained
27 in the Declaration of Michael J. Donnelly filed concurrently herewith.

28 ² As set forth in the Plan, "New Money Notes" means new debt securities to be issued
(continued . . .)

1 Conditions precedent to the effectiveness of the Plan, include the consummation
2 of the sale of the New Money Notes by the Reorganized Debtor.³ Once the registration
3 statement is filed, there may be a lengthy SEC review process for the securities offering
4 before the registration statement is declared effective. Therefore, in order to meet the
5 foregoing conditions precedent to the effectiveness of the Plan, PG&E intends to file the
6 registration statement as soon as possible. Currently, the legal work and due diligence
7 process is underway in connection with the preparation of the registration statement and
8 PG&E anticipates that the registration statements may be ready for filing by September 30,
9 2003.

10 At the time the registration statement is filed, PG&E will be required to pay filing
11 fees to the SEC. PG&E estimates that the total filing fee may be up to \$1,102,290 based on
12 a total principal amount of \$8.7 billion in debt to be offered subject to increase or decrease in
13 accordance with the actual amount registered (the SEC filing fee increases from \$9.20 for
14 each \$1 million of debt offered to \$126.70 as early as October 1, 2003). In addition, a
15 professional printer will be needed to prepare and file the registration statement with the
16 SEC in the electronic filing format required by SEC Regulation S-T. The printer's costs for
17 these services are a function of the size of the filing, the number of amendments required by
18 the SEC staff and the number of individual revisions made in preparing the filing and
19 amendments; as a result, these fees are difficult to estimate in advance. However, PG&E
20 anticipates that the printer's costs for these services will not exceed \$500,000 prior to
21 confirmation of the Plan. After confirmation, additional amendments will be required and
22 preliminary and final prospectus must be printed to conduct the offering. To the extent
23 necessary, a separate application will be made with respect to these additional costs.

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26 (. . . continued)
27 by the Reorganized Debtor and sold to investors by the underwriters.

28 ³ See Section 8.2 of the Plan describing the conditions precedent to the effectiveness
of the Plan.

1 II.
2 PAYMENT OF SEC FILING FEES AND PRINTER'S COSTS
3 FOR FILING OF REGISTRATION STATEMENT IS
4 APPROPRIATE PURSUANT TO BANKRUPTCY CODE
5 SECTION 363(B)(1)

6 The Court has considerable discretion in approving a request pursuant to Section
7 363(b)(1) of the Bankruptcy Code ("[t]he trustee, after notice and a hearing, may use, sell or
8 lease, other than in the ordinary course of business, property of the estate"). See Dai-Ichi
9 Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding
10 Corp.), 242 B.R. 147, 153 (D. Del. 1999) (affirming the bankruptcy court's decision to
11 approve expenditure for employee incentive programs, noting that bankruptcy court has
12 considerable discretion in approving a Section 363(b) motion).

13 In determining whether to authorize a transaction under Section 363(b)(1), courts
14 require a debtor to show that a sound business purpose justifies such actions, applying the
15 business judgment test. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 389-90
16 (6th Cir. 1986); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722
17 F.2d 1063, 1071 (2d Cir. 1983); see also 3 Lawrence P. King, Collier on Bankruptcy
18 ¶363.02[1][g] (15th ed. rev. 1998).

19 Once the debtor has articulated a rational business justification, a presumption
20 attaches that the decision was made "on an informed basis, in good faith and in the honest
21 belief that the action taken was in the best interests of the [debtor]." See, e.g., Official
22 Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),
23 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing Smith v. Van Gorkom, 488 A.2d 858 (Del.
24 1985)).

25 Sound business justifications support PG&E's request to pay the SEC filing fee
26 and printer's costs described above. These costs must be incurred in order to file the
27 registration statement with the SEC and to proceed with the process of obtaining SEC
28 clearance for the debt securities offerings that are necessary to implement the Plan. PG&E
believes that the registration statement must be filed promptly in order to ensure that PG&E
can timely meet the conditions precedent to the effectiveness of the Plan. Finally, PG&E is

1 solvent and has sufficient cash to pay these expenses without causing any detriment to its
2 creditors.⁴

3 CONCLUSION

4 For all of the foregoing reasons, PG&E respectfully requests that the Court
5 approve the request set forth above to pay the filing fee and printer's costs in connection
6 with the filing of the registration statement with the SEC, and grant such other and further
7 relief as may be just and appropriate.

8 DATED: August 21, 2003

9 Respectfully,

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

12 By: Barbara Gordon
13 BARBARA GORDON

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

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⁴ As reflected in PG&E's June 2003 Monthly Operating Report, PG&E held more than \$3.7 billion in cash reserves as of June 30, 2003.