

1 RICHARD C. JOSEPHSON, OSB NO. 73374
(Pro hac vice)

2 STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
3 Portland, OR 97204-1268
Telephone: (503) 224-3380
4 Facsimile: (503) 220-2480

5 EDGAR B. WASHBURN, Bar No. 34038
WASHBURN, BRISCOE & MCCARTHY, P.C.
6 55 Francisco Street, Suite 600
San Francisco, Ca 94133
7 Telephone: (415) 421-3200
Facsimile: (415) 421-5044

8 Attorneys for Pacific Lumber Company, a California
9 corporation

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

13 In re:

14 PACIFIC GAS & ELECTRIC COMPANY, a
California corporation,

15 Debtor.

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

NO. 01-30923 DM

Chapter 11 Case

Date: June 20, 2001

Time: 1:30 p.m.

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

18
19 **PROOF OF SERVICE**

20 I hereby certify that I served the foregoing Notice of Motion and Motion for Relief

21 From Stay, Declaration of Gary Clark in Support of Motion for Relief From Stay and

22 Declaration of Richard C. Josephson in Support of Motion For Relief From Stay via

23 messenger to the United States Bankruptcy Court, Attn: PG&E Administrator, 235 Pine Street,

24

25


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Page

1 - **PROOF OF SERVICE**

1 Nineteenth Floor San Francisco, CA 94104 on May 9, 2001 and via first class mail to said
2 persons listed on the attached service list on May 10, 2001.

3 DATED: May 10, 2001.

4 
5 Richard C. Josephson
6 Of Attorneys for Pacific Lumber Company
7
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15
16
17
18
19
20
21
22
23
24
25
26

Page

RCJ

11155/1

RCJ

11155/1

[Counsel for El Paso]

Adam A. Lewis
Morrison & Foerster
425 Market Street, 33rd Floor
San Francisco, CA 94105

[Counsel for Idaho Power]

Adam A. Lewis
Morrison & Foerster
425 Market Street, 33rd Floor
San Francisco, CA 94105

RCJ

11155/1

RCJ

11155/1

Adrienne Vadell Sturges
Sodexo Marriott Services, Inc.
9801 WAian Boulevard, 12th Floor
Gaithersburg, MD 20878

[Counsel for Sempra Energy Trading Corp]

Alan Z. Yudowsky
Anne E. Wells
Stroock & Stroock & Lavan LLP
2029 Century Park East, Suite 1800
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

Alex Makler
Calpine Corporation
6700 Koll Center Parkway, Suite 200
Pleasanton, CA 94566

Arlen Orchard
Sacramento Municipal Utility District
6201 S. Street, Mail Stop B408
Sacramento, CA 95817

RCJ

11155/1

[Counsel for MBIA Insurance Corporation]

Aron Mark Oliner
Buchalter, Nemer, Fields & Younger, A
Professional Corporation
333 Market Street, 29th Floor
San Francisco, CA 94105

RCJ

11155/1

[Counsel for Phil Franey, Treasurer/Tax
Collector for Kern County]

B.C. Barmann, Sr.
County Counsel
Attn: Jerri S. Bradley, Deputy
1115 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

RCJ

11155/1

Bank of America National Trust and Savings
Association
Attn: Peggie Sanders
1850 Gateway Boulevard
Concord, CA 94520

RCJ

11155/1

Bank of America National Trust and Savings
Association
CA5-705-12-10
Attn: Adeline Tourunian
555 CA Street, 12th Floor
San Francisco, CA 94104

RCJ

11155/1

Bank of America
Attn: Clara Strand
555 South Flower Street
Mail Code CA9-706-11-21
Los Angeles, CA 90071

RCJ

11155/1

Bank of America, Admin. Agent
Attn: Katherine Kemerait
Bank of America
555 CA Street, 12th Floor
San Francisco, CA 94104-1502

RCJ

11155/1

RCJ

11155/1

Bank of America, N.A.
Admin. Agent
Kathrine Kemerait
555 CA Street, 12th Floor
San Francisco, CA 94104-1502

Bank One
Corporate Trust Administration
Attn: Janice Ott Rotunno
Mail Code ILI-0126
1 Bank One Plaza
Chicago, IL 60670-0126

RCJ

11155/1

RCJ

11155/1

Bank One, NA
Attn: Robert G. Bussa, Jane Bek
Energy & Utilities
Mail Code IL 1-0363
Bank One Plaza
Chicago, IL 60670

Bankers Trust Co. of CA, NA
Structured Finance Group
Attn: Peter Becker
4 Albany St., 10th Floor
New York, NY 10006

RCJ

11155/1

RCJ

11155/1

Bankers Trust Co.
Trustee Corp. Trust
Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

Bankers Trust Company
Corporate Trust Services
Attn: Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

RCJ

11155/1

RCJ

11155/1

Banque Nationale de Paris
San Francisco Branch
Attn: Debra Wright
180 Montgomery St., 4th Floor
San Francisco, CA 94104

[Attorney for CA Power Exchange]

Ben Whitwell
Whitwell & Emhoff LLP
202 N. Canon Drive
Beverly Hills, CA 90210

RCJ

11155/1

RCJ

11155/1

[Counsel for Enron North America Corp and
Enron Canada Corp.]

Bennett G. Young
LeBoeuf, Lamb, Greene & MacRae, LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

Beth Smayda, Director
MBIA Insurance Corporation
113 King Street
Armonk, NY 10504

RCJ

11155/1

RCJ

11155/1

BMO Nesbitt Burns
Attn: John Harche
700 Louisiana, Suite 4400
Houston, TX 77002

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

RCJ

11155/1

RCJ

11155/1

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

BP Energy Co
Attn: Louis Anderson
501 Westlake Park Blvd
Houston, TX 77079

RCJ

11155/1

RCJ

11155/1

BP Energy Company
Attn: Ken McClanahan
501 Westlake Park Boulevard
Houston, TX 77079

[Counsel for Mirant Corporation]

Brian L. Holman
White & Case LLP
633 West Fifth Street, 19th Floor
Los Angeles, CA 90071

RCJ

11155/1

RCJ

11155/1

[Counsel for Sempra and Southern CA Gas Company]

(Attorney for Bank of America, Admin. Agent)

Bruce Bennett, Esq.
Bennett J. Murphy, Esq.
Hennigan Bennett & Dorman
601 South Figueroa St., Suite 3300
Los Angeles, CA 90017

Bryan Krakauer, Esq.
Sidley & Austin
One First National Plaza
Chicago, IL 60603

RCJ

11155/1

RCJ

11155/1

Bryant Danner
Southern CA Edison
2244 Walnut Grove Ave.
Rosemead, CA 91770

CA Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833

RCJ

11155/1

RCJ

11155/1

CA Independent System Op.
William Regan
P.O. Box 639014
Folsom, CA 95630-9017

CA Independent System Operator
Attn: Margaret A. Rostlcer
4151 Blue Ravine Rd.
Folsom, CA 95630

RCJ

11155/1

RCJ

11155/1

CA Power Exchange
Attn: Don Deach
100 S. Fremont Ave., Bldg. A9
Alhambra, CA 91803-4737

CA Power Exchange
Attn: Lynn Miller
2000 S. Los Robles Avenue
Suite 400
Pasadena, CA 91101-2482

RCJ

11155/1

RCJ

11155/1

CA Power Exchange
Lynn Miller
100 S. Freemont Avenue, Bldg A9
Alhambra, CA 91803-4737

(Attorney for CA Public Utilities
Commission)

CA Public Utilities Commission
Alan Kornberg, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

RCJ

11155/1

RCJ

11155/1

CA Public Utilities Commission
Attn: General Counsel
505 Van Ness Avenue
San Francisco, CA 94102

CA State Board of Equalization
PO Box 942879
Sacramento, CA 94279-8063

RCJ

11155/1

RCJ

11155/1

Calpine Gilroy Cogeneration LP
Robert Brown
6700 Koll Center Plcy #200
San Jose, CA 94566

Calpine Greenleaf Inc.
465 CA St. #600
San Francisco, CA 94104

RCJ

11155/1

Calpine King City Cogen LLC
Robert Brown
6700 Kill Center Plcy #200
San Jose, CA 94568

RCJ

11155/1

Calpine Pittsburg Power Plant
Zahir Ahmadi
50 W. San Fernando St.
San Jose, CA 95113

RCJ

11155/1

[Counsel for Enron North America Corp and
Enron Canada Corp.]

Carl A. Eklund
LeBoeuf, Lamb, Greene & MacRae, LLP
125 West 55th Street
New York, NY 10019

RCJ

11155/1

[Counsel for Unofficial Committee of Pacific Gas &
Electric Company First Mortgage Bondholders]

Chaim J. Fortgang, Esq.
Richard G. Mason, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

RCJ

11155/1

Chevron U.S.A. Production Co.
P.O. Box 840659
Dallas, TX 75284-0659

RCJ

11155/1

Christine C. Yokan
General Electric Capital Business
Asset Funding Corp.
10900 N.E. 4th Street, Suite 500
Bellevue, WA 98004

RCJ

11155/1

RCJ

11155/1

Christopher Beard
Beard & Beard
306 N. Market Street
Frederick, MD 21701

Coast Energy Canada Ins.
Attn: Caroline Pitre
444-7th Avenue S.W., Suite 700
Calgary, Alberta
Canada T2P 0X8

RCJ

11155/1

RCJ

11155/1

Coast Energy Group, A Division of Cornerstone
Propane, L.P.
Attn: Ruben Alonso
1600 Highway 6, Suite 400
Sugarland, TX 77478

Cools Inlet Energy Supply
Attn: Hans O. Saeby
10100 Santa Monica Blvd., 25th Floor
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Tucson Electric Power Company]

Craig H. Millet
Gibson Dunn & Crutcher LLP
Jamboree Center
4 Park Plaza, Suite 1400
Irvine, CA 92614

Crocket Cogen
A CA Limited Partnership
Keith Richards
135 S. LaSalle Street, #1960
Chicago, IL 60603

RCJ

11155/1

[Counsel for Reliant Energy, Inc.]

David A. Burns
Baker Botts LLP
One Shell Plaza
910 Louisiana
Houston, TX 77002

RCJ

11155/1

[Counsel for Interested Party, Department of
Water and Power]

David A. Gill
Richard K. Diamond
Danning, Gill, Diamond & Kollitz LLP
2029 Century Park East, Third Floor
Los Angeles, CA 90067

RCJ

11155/1

[Counsel for Corestaff Services (CA), Inc.]

David J. Hankey
Gohn, Hanleu & Stichel LLP
Suite 1520, The Fidelity Building
210 North Charles Street
Baltimore, MD 21201

RCJ

11155/1

[Counsel for Cook Inlet Energy Supply]

David L. Ronn
Mayer, Brown & Platt
700 Louisiana, Suite 3600
Houston, TX 77002

RCJ

11155/1

[Counsel for CA Independent System Operator, Inc.]

David Neale
Levene, Neale, Bender, Rankin & Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067

RCJ

11155/1

[Attorney for CA Independent System Operator]

David Neale
Levene, Neale, Bender, Rankin Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Bank of Montreal]

David T. Biderman
Perkins Coie LLP
1620 26th Street, Sixth Floor
Santa Monica, CA 90404-4013

Department of Justice
U.S. Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

RCJ

11155/1

RCJ

11155/1

Deutsche Bank AG
NY Branch
Attn: E.S. Med1a
31 West 52nd Street
New York, NY 10019

Deutsche Bank AG
NY Branch
Attn: John Quinn
31 West 52nd Street
New York, NY 10019

RCJ

11155/1

RCJ

11155/1

DK Acquisition Partners, L.P.
c/o M.H. Davidson & Co.
Attn: Tony Yoseloff
885 Third Avenue, Suite 3300
New York, NY 10022

[Counsel for Arizona Public Service Co.]

Don Gaffney
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004

RCJ

11155/1

RCJ

11155/1

Duane H. Nelsen
GWF Power Systems Company, Inc.
4300 Railroad Ave.
Pittsburgh, CA 94565-6006

[Counsel for Williams Energy Services and Williams
Energy Marketing]

Dulcie D. Brand
Ricky L. Shackelford
James L. Poth
Jones Day Reavis & Pogue
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013

RCJ

11155/1

RCJ

11155/1

Dynergy Canada Marketing & Trade
Attn: Steve Barron
350 - 7th Avenue S.W.
Calgary, Alberta
Canada, T2P 3N9

Dynergy Marketing & Trade
Attn: Steve Barron
1100 Louisiana Street, Suite 5800
Houston, TX 77002

RCJ

11155/1

RCJ

11155/1

[Counsel for CA Independent System Operator, Inc.]

Edwin Berlin
Richard Wyron
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007

El Paso Merchant Energy Gas LP
Darrel Rogers
2500 City West Blvd., Suite 1400
Houston, TX 77042

RCJ

11155/1

RCJ

11155/1

El Paso Merchant Energy, L.P.
Attn: John Harrison
1010 Travis Street
Houston, TX 77002

[Counsel for City of Santa Clara]

Elaine M. Seid
McPharlin, Sprinkles & Thomas LLP
10 Almaden Boulevard, Suite 1460
San Jose, CA 95113

RCJ

11155/1

RCJ

11155/1

Enron Canada Corporation
3500 Canterra Tower
400 3rd Ave. S.W.
Calgary, AB T2P 4H2
Canada

Evan C. Hollander
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036

RCJ

11155/1

RCJ

11155/1

[Counsel for BNY]

[Counsel for Corestaff Services (CA), Inc.]

Evan Hollander
White & Case
1155 Avenue of the Americas
New York, NY 10036

Evelyn H. Biery
Corestaff Services (CA), Inc.
Fulbright & Jaworski LLP
1301 McKinney, Suite 5100
Houston, TX 77010

RCJ

11155/1

RCJ

11155/1

Fernando De Leon
Attorney at Law
CA Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814

Franchise Tax Board
PO Box 942857
Sacramento, CA 94257-2021

RCJ

11155/1

RCJ

11155/1

[Counsel for City of Palo Alto and its municipality utility]

G. Larry Engel
Roberto J. Kampfner
Brobeck, Phleger & Harrison LLP
One Market
Spear Street Tower
San Francisco, CA 94105

[Counsel for Certain Underwriters at Lloyd's
and Interested Insurance Companies]

Gary P. Blitz
Piper Marbury Rudnick & Wolfe LLP
1200 19th Street, N.W.
Washington, D.C. 20036

RCJ

11155/1

RCJ

11155/1

Geysers Power Company LLC
Joe McClendon
6700 Koll Center Pky #200
Pleasanton, CA 94566

[Counsel for GE Power Systems and GE Supply
Divisions]

Glenn M. Reisman
Two Corporate Drive
P.O. Box 861
Shelton, CT 06484

RCJ

11155/1

RCJ

11155/1

[Counsel for AES New Energy, Inc.]

Gordon P. Erspamer
Morrison & Foerster LLP
101 Ygnacio Valley Road, Suite 450
P.O. Box 8130
Walnut Creek, CA 94595

Grant Kolling
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

RCJ

11155/1

RCJ

11155/1

Gregory W. Jones
El Paso Merchant Energy
1001 Louisiana, Suite 2754B
Houston, TX 77002

GWF Power Systems LP
4300 Railroad Ave.
Pittsburg, CA 94565

RCJ

11155/1

RCJ

11155/1

[Counsel for Indenture Trustee for 7.90% Deferrable Interest
Subordinated Debendures Series A]

Harold L. Kaplan
Jeffrey M. Schwartz
Mark F. Hebbeln
Gardner, Carton & Douglas
321 North Clark Street, 34th Floor
Chicago, IL 60610

Heather Brown
Williams Energy Marketing and Trading Co.
One Williams Center, Suite 4100
Tulsa, OK 74172

RCJ

11155/1

RCJ

11155/1

[Counsel for Corestaff Services (CA), Ins.]

[Counsel for Powerex Corp.]

Heinz Binder
Robert G. Harris
Binder & Malter
2775 Park Avenue
Santa Clara, CA 95050

Howard J. Weg
Peitzman, Glassman & Weg
1900 Avenue of the Stars, Suite 650
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Constellation Power Source, Ins.]

ICC Energy Corporation
Attn: Karl Butler
302 N. Market Street, Suite 500
Dallas, TX 75202-1846

Hydee R. Feldstein
Katherine A. Traxler
Kelly Aran
Paul, Hastings, Janofsky & Walker LLP
Twenty Third Floor
555 South Flower Street
Los Angeles, CA 90071

RCJ

11155/1

RCJ

11155/1

Internal Revenue Service
Fresno, CA 93888

Internal Revenue Service
Spec Proc / Bankruptcy
1301 Clay Street, Suite 1400
Oakland, CA 94612

RCJ

11155/1

RCJ

11155/1

[Counsel for party in interest]

J. Christopher Kennedy
Irell & Manella LLP
1800 Avenue of the Stars, 9th Floor
Los Angeles, CA 90067

[Counsel for United States of America]

J. Christopher Kohn
Tracy J. Whitaker
Brendan Collins
Civil Division
Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044

RCJ

11155/1

RCJ

11155/1

[Counsel for United States of America]

J. Christopher Kohn
Tracy J. Whitaker
Brendan Collins
Department of Justice
1100 L Street, N.W. Room 10004
Washington, D.C. 20005

[Counsel for Tucson Electric Power Company]

J. Matthew Derstein
Roshka Heyman & DeWulf PLC
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004

RCJ

11155/1

RCJ

11155/1

[Counsel for Bank of Montreal]

James E. Till, Esq.
Perkins Coie LLP
1211 SW Fifth Ave., Suite 1500
Portland, OR 97204

James R. Thompson
Idaho Power Company
1221 W. Idaho Street
Boise, ID 83702

RCJ

11155/1

RCJ

11155/1

[Proposed Investment Banker to Committee]

[Counsel for International Brotherhood of
Electrical Workers, Local 47 and Local 1245]

Jeffrey M. Wilson
Saybrook Capital LLC
303 Twin Dolphin Drive, Suite 600
Redwood City, CA 94065

Jeffry A. Davis
Gray Cary Ware & Freidenrich LLP
401 B Street, Suite 1700
San Diego, CA 92101

RCJ

11155/1

RCJ

11155/1

JoAnn P. Russell
Duke Energy Trading and Marketing LLC
10777 Westheimer, Suite 650
Houston, TX 77042

[Counsel for Carriage Homes, Inc.]

John F. Shellabarger
Carriage Homes, Inc.
Law Offices of John F. Shellabarger
928 Garden Street, Suite 3
Santa Barbara, CA 93101

RCJ

11155/1

RCJ

11155/1

[Counsel for Enron North America Core and Enron
Canada Corp.]

John G. Kaugberg
LeBoeuf, Lamb, Greene & MacRae, LLP
125 West 55th Street
New York, NY 10019

John P. Dillman
Linerbarger Heard Goggan Blair
Graham Pena & Sampson, LLP
P.O. Box 3064
Houston, TX 77253

RCJ

11155/1

[Counsel for El Paso]

Adam A. Lewis
Morrison & Foerster
425 Market Street, 33rd Floor
San Francisco, CA 94105

RCJ

11155/1

[Counsel for Idaho Power]

Adam A. Lewis
Morrison & Foerster
425 Market Street, 33rd Floor
San Francisco, CA 94105

RCJ

11155/1

Adrienne Vadell Sturges
Sodexo Marriott Services, Inc.
9801 Wai'an Boulevard, 12th Floor
Gaithersburg, MD 20878

RCJ

11155/1

[Counsel for Sempra Energy Trading Corp]

Alan Z. Yudowsky
Anne E. Wells
Stroock & Stroock & Lavan LLP
2029 Century Park East, Suite 1800
Los Angeles, CA 90067

RCJ

11155/1

Alex Makler
Calpine Corporation
6700 Koll Center Parkway, Suite 200
Pleasanton, CA 94566

RCJ

11155/1

Arlen Orchard
Sacramento Municipal Utility District
6201 S. Street, Mail Stop B408
Sacramento, CA 95817

RCJ

11155/1

RCJ

11155/1

[Counsel for MBIA Insurance Corporation]

Aron Mark Oliner
Buchalter, Nemer, Fields & Younger, A
Professional Corporation
333 Market Street, 29th Floor
San Francisco, CA 94105

[Counsel for Phil Franey, Treasurer/Tax
Collector for Kern County]

B.C. Barmann, Sr.
County Counsel
Attn: Jerri S. Bradley, Deputy
1115 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

RCJ

11155/1

RCJ

11155/1

Bank of America National Trust and Savings
Association
Attn: Peggie Sanders
1850 Gateway Boulevard
Concord, CA 94520

Bank of America National Trust and Savings
Association
CA5-705-12-10
Attn: Adeline Tourunian
555 CA Street, 12th Floor
San Francisco, CA 94104

RCJ

11155/1

RCJ

11155/1

Bank of America
Attn: Clara Strand
555 South Flower Street
Mail Code CA9-706-11-21
Los Angeles, CA 90071

Bank of America, Admin. Agent
Attn: Katherine Kemerait
Bank of America
555 CA Street, 12th Floor
San Francisco, CA 94104-1502

RCJ

11155/1

RCJ

11155/1

Bank of America, N.A.
Admin. Agent
Kathrine Kemerait
555 CA Street, 12th Floor
San Francisco, CA 94104-1502

Bank One
Corporate Trust Administration
Attn: Janice Ott Rotunno
Mail Code ILI-0126
1 Bank One Plaza
Chicago, IL 60670-0126

RCJ

11155/1

RCJ

11155/1

Bank One, NA
Attn: Robert G. Bussa, Jane Bek
Energy & Utilities
Mail Code IL 1-0363
Bank One Plaza
Chicago, IL 60670

Bankers Trust Co. of CA, NA
Structured Finance Group
Attn: Peter Becker
4 Albany St., 10th Floor
New York, NY 10006

RCJ

11155/1

RCJ

11155/1

Bankers Trust Co.
Trustee Corp. Trust
Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

Bankers Trust Company
Corporate Trust Services
Attn: Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

RCJ

11155/1

RCJ

11155/1

Banque Nationale de Paris
San Francisco Branch
Attn: Debra Wright
180 Montgomery St., 4th Floor
San Francisco, CA 94104

[Attorney for CA Power Exchange]

Ben Whitwell
Whitwell & Emhoff LLP
202 N. Canon Drive
Beverly Hills, CA 90210

RCJ

11155/1

RCJ

11155/1

[Counsel for Enron North America Corp and
Enron Canada Corp.]

Bennett G. Young
LeBoeuf, Lamb, Greene & MacRae, LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

Beth Smayda, Director
MBIA Insurance Corporation
113 King Street
Armonk, NY 10504

RCJ

11155/1

RCJ

11155/1

BMO Nesbitt Burns
Attn: John Harche
700 Louisiana, Suite 4400
Houston, TX 77002

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

RCJ

11155/1

RCJ

11155/1

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

BP Energy Co
Attn: Louis Anderson
501 Westlake Park Blvd
Houston, TX 77079

RCJ

11155/1

RCJ

11155/1

BP Energy Company
Attn: Ken McClanahan
501 Westlake Park Boulevard
Houston, TX 77079

[Counsel for Mirant Corporation]

Brian L. Holman
White & Case LLP
633 West Fifth Street, 19th Floor
Los Angeles, CA 90071

RCJ

11155/1

RCJ

11155/1

[Counsel for Sempra and Southern CA Gas Company]

Bruce Bennett, Esq.
Bennett J. Murphy, Esq.
Hennigan Bennett & Dorman
601 South Figueroa St., Suite 3300
Los Angeles, CA 90017

(Attorney for Bank of America, Admin. Agent)

Bryan Krakauer, Esq.
Sidley & Austin
One First National Plaza
Chicago, IL 60603

RCJ

11155/1

RCJ

11155/1

Bryant Danner
Southern CA Edison
2244 Walnut Grove Ave.
Rosemead, CA 91770

CA Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833

RCJ

11155/1

RCJ

11155/1

CA Independent System Op.
William Regan
P.O. Box 639014
Folsom, CA 95630-9017

CA Independent System Operator
Attn: Margaret A. Rostlcer
4151 Blue Ravine Rd.
Folsom, CA 95630

RCJ

11155/1

RCJ

11155/1

CA Power Exchange
Attn: Don Deach
100 S. Freemont Ave., Bldg. A9
Alhambra, CA 91803-4737

CA Power Exchange
Attn: Lynn Miller
2000 S. Los Robles Avenue
Suite 400
Pasadena, CA 91101-2482

RCJ

11155/1

RCJ

11155/1

CA Power Exchange
Lynn Miller
100 S. Fremont Avenue, Bldg A9
Alhambra, CA 91803-4737

(Attorney for CA Public Utilities
Commission)

CA Public Utilities Commission
Alan Kornberg, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

RCJ

11155/1

RCJ

11155/1

CA Public Utilities Commission
Attn: General Counsel
505 Van Ness Avenue
San Francisco, CA 94102

CA State Board of Equalization
PO Box 942879
Sacramento, CA 94279-8063

RCJ

11155/1

RCJ

11155/1

Calpine Gilroy Cogeneration LP
Robert Brown
6700 Koll Center Plcy #200
San Jose, CA 94566

Calpine Greenleaf Inc.
465 CA St. #600
San Francisco, CA 94104

RCJ

11155/1

RCJ

11155/1

Calpine King City Cogen LLC
Robert Brown
6700 Kill Center Pley #200
San Jose, CA 94568

Calpine Pittsburg Power Plant
Zahir Ahmadi
50 W. San Fernando St.
San Jose, CA 95113

RCJ

11155/1

RCJ

11155/1

[Counsel for Enron North America Corp and
Enron Canada Corp.]

[Counsel for Unofficial Committee of Pacific Gas &
Electric Company First Mortgage Bondholders]

Carl A. Eklund
LeBoeuf, Lamb, Greene & MacRae, LLP
125 West 55th Street
New York, NY 10019

Chaim J. Fortgang, Esq.
Richard G. Mason, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

RCJ

11155/1

RCJ

11155/1

Chevron U.S.A. Production Co.
P.O. Box 840659
Dallas, TX 75284-0659

Christine C. Yokan
General Electric Capital Business
Asset Funding Corp.
10900 N.E. 4th Street, Suite 500
Bellevue, WA 98004

RCJ

11155/1

RCJ

11155/1

Christopher Beard
Beard & Beard
306 N. Market Street
Frederick, MD 21701

Coast Energy Canada Ins.
Attn: Caroline Pitre
444-7th Avenue S.W., Suite 700
Calgary, Alberta
Canada T2P 0X8

RCJ

11155/1

RCJ

11155/1

Coast Energy Group, A Division of Cornerstone
Propane, L.P.
Attn: Ruben Alonso
1600 Highway 6, Suite 400
Sugarland, TX 77478

Cools Inlet Energy Supply
Attn: Hans O. Saeby
10100 Santa Monica Blvd., 25th Floor
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Tucson Electric Power Company]

Craig H. Millet
Gibson Dunn & Crutcher LLP
Jamboree Center
4 Park Plaza, Suite 1400
Irvine, CA 92614

Crocket Cogen
A CA Limited Partnership
Keith Richards
135 S. LaSalle Street, #1960
Chicago, IL 60603

RCJ

11155/1

RCJ

11155/1

[Counsel for Reliant Energy, Inc.]

David A. Burns
Baker Botts LLP
One Shell Plaza
910 Louisiana
Houston, TX 77002

[Counsel for Interested Party, Department of Water and Power]

David A. Gill
Richard K. Diamond
Danning, Gill, Diamond & Kollitz LLP
2029 Century Park East, Third Floor
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Corestaff Services (CA), Inc.]

David J. Hankey
Gohn, Hanley & Stichel LLP
Suite 1520, The Fidelity Building
210 North Charles Street
Baltimore, MD 21201

[Counsel for Cook Inlet Energy Supply]

David L. Ronn
Mayer, Brown & Platt
700 Louisiana, Suite 3600
Houston, TX 77002

RCJ

11155/1

RCJ

11155/1

[Counsel for CA Independent System Operator, Inc.]

David Neale
Levene, Neale, Bender, Rankin & Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067

[Attorney for CA Independent System Operator]

David Neale
Levene, Neale, Bender, Rankin Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Bank of Montreal]

David T. Biderman
Perkins Coie LLP
1620 26th Street, Sixth Floor
Santa Monica, CA 90404-4013

Department of Justice
U.S. Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

RCJ

11155/1

RCJ

11155/1

Deutsche Bank AG
NY Branch
Attn: E.S. Medla
31 West 52nd Street
New York, NY 10019

Deutsche Bank AG
NY Branch
Attn: John Quinn
31 West 52nd Street
New York, NY 10019

RCJ

11155/1

RCJ

11155/1

DK Acquisition Partners, L.P.
c/o M.H. Davidson & Co.
Attn: Tony Yoseloff
885 Third Avenue, Suite 3300
New York, NY 10022

[Counsel for Arizona Public Service Co.]

Don Gaffney
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004

RCJ

11155/1

RCJ

11155/1

Duane H. Nelsen
GWF Power Systems Company, Inc.
4300 Railroad Ave.
Pittsburgh, CA 94565-6006

[Counsel for Williams Energy Services and Williams
Energy Marketing]

Dulcie D. Brand
Ricky L. Shackelford
James L. Poth
Jones Day Reavis & Pogue
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013

RCJ

11155/1

RCJ

11155/1

Dynergy Canada Marketing & Trade
Attn: Steve Barron
350 - 7th Avenue S.W.
Calgary, Alberta
Canada, T2P 3N9

Dynergy Marketing & Trade
Attn: Steve Barron
1100 Louisiana Street, Suite 5800
Houston, TX 77002

RCJ

11155/1

RCJ

11155/1

[Counsel for CA Independent System Operator, Inc.]

Edwin Berlin
Richard Wyron
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007

El Paso Merchant Energy Gas LP
Darrel Rogers
2500 City West Blvd., Suite 1400
Houston, TX 77042

RCJ

11155/1

RCJ

11155/1

El Paso Merchant Energy, L.P.
Attn: John Harrison
1010 Travis Street
Houston, TX 77002

[Counsel for City of Santa Clara]

Elaine M. Seid
McPharlin, Sprinkles & Thomas LLP
10 Almaden Boulevard, Suite 1460
San Jose, CA 95113

RCJ

11155/1

RCJ

11155/1

Enron Canada Corporation
3500 Canterra Tower
400 3rd Ave. S.W.
Calgary, AB T2P 4H2
Canada

Evan C. Hollander
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036

RCJ

11155/1

RCJ

11155/1

[Counsel for BNY]

[Counsel for Corestaff Services (CA), Inc.]

Evan Hollander
White & Case
1155 Avenue of the Americas
New York, NY 10036

Evelyn H. Biery
Corestaff Services (CA), Inc.
Fulbright & Jaworski LLP
1301 McKinney, Suite 5100
Houston, TX 77010

RCJ

11155/1

RCJ

11155/1

Fernando De Leon
Attorney at Law
CA Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814

Franchise Tax Board
PO Box 942857
Sacramento, CA 94257-2021

RCJ

11155/1

RCJ

11155/1

[Counsel for City of Palo Alto and its municipality utility]

G. Larry Engel
Roberto J. Kampfner
Brobeck, Phleger & Harrison LLP
One Market
Spear Street Tower
San Francisco, CA 94105

[Counsel for Certain Underwriters at Lloyd's
and Interested Insurance Companies]

Gary P. Blitz
Piper Marbury Rudnick & Wolfe LLP
1200 19th Street, N.W.
Washington, D.C. 20036

RCJ

11155/1

RCJ

11155/1

Geysers Power Company LLC
Joe McClendon
6700 Koll Center Pky #200
Pleasanton, CA 94566

[Counsel for GE Power Systems and GE Supply
Divisions]

Glenn M. Reisman
Two Corporate Drive
P.O. Box 861
Shelton, CT 06484

RCJ

11155/1

RCJ

11155/1

[Counsel for AES New Energy, Inc.]

Gordon P. Erspamer
Morrison & Foerster LLP
101 Ygnacio Valley Road, Suite 450
P.O. Box 8130
Walnut Creek, CA 94595

Grant Kolling
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

RCJ

11155/1

RCJ

11155/1

Gregory W. Jones
El Paso Merchant Energy
1001 Louisiana, Suite 2754B
Houston, TX 77002

GWF Power Systems LP
4300 Railroad Ave.
Pittsburg, CA 94565

RCJ

11155/1

RCJ

11155/1

[Counsel for Indenture Trustee for 7.90% Deferrable Interest
Subordinated Debendures Series A]

Harold L. Kaplan
Jeffrey M. Schwartz
Mark F. Hebbeln
Gardner, Carton & Douglas
321 North Clark Street, 34th Floor
Chicago, IL 60610

Heather Brown
Williams Energy Marketing and Trading Co.
One Williams Center, Suite 4100
Tulsa, OK 74172

RCJ

11155/1

RCJ

11155/1

[Counsel for Corestaff Services (CA), Ins.]

Heinz Binder
Robert G. Harris
Binder & Malter
2775 Park Avenue
Santa Clara, CA 95050

[Counsel for Powerex Corp.]

Howard J. Weg
Peitzman, Glassman & Weg
1900 Avenue of the Stars, Suite 650
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Constellation Power Source, Ins.]

Hydee R. Feldstein
Katherine A. Traxler
Kelly Aran
Paul, Hastings, Janofsky & Walker LLP
Twenty Third Floor
555 South Flower Street
Los Angeles, CA 90071

ICC Energy Corporation

Attn: Karl Butler
302 N. Market Street, Suite 500
Dallas, TX 75202-1846

RCJ

11155/1

RCJ

11155/1

Internal Revenue Service
Fresno, CA 93888

Internal Revenue Service
Spec Proc / Bankruptcy
1301 Clay Street, Suite 1400
Oakland, CA 94612

RCJ

11155/1

RCJ

11155/1

[Counsel for party in interest]

J. Christopher Kennedy
Irell & Manella LLP
1800 Avenue of the Stars, 9th Floor
Los Angeles, CA 90067

[Counsel for United States of America]

J. Christopher Kohn
Tracy J. Whitaker
Brendan Collins
Civil Division
Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044

RCJ

11155/1

RCJ

11155/1

[Counsel for United States of America]

J. Christopher Kohn
Tracy J. Whitaker
Brendan Collins
Department of Justice
1100 L Street, N.W. Room 10004
Washington, D.C. 20005

[Counsel for Tucson Electric Power Company]

J. Matthew Derstein
Roshka Heyman & DeWulf PLC
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004

RCJ

11155/1

RCJ

11155/1

[Counsel for Bank of Montreal]

James E. Till, Esq.
Perkins Coie LLP
1211 SW Fifth Ave., Suite 1500
Portland, OR 97204

James R. Thompson
Idaho Power Company
1221 W. Idaho Street
Boise, ID 83702

RCJ

11155/1

[Proposed Investment Banker to Committee]

Jeffrey M. Wilson
Saybrook Capital LLC
303 Twin Dolphin Drive, Suite 600
Redwood City, CA 94065

RCJ

11155/1

[Counsel for International Brotherhood of
Electrical Workers, Local 47 and Local 1245]

Jeffry A. Davis
Gray Cary Ware & Freidenrich LLP
401 B Street, Suite 1700
San Diego, CA 92101

RCJ

11155/1

JoAnn P. Russell
Duke Energy Trading and Marketing LLC
10777 Westheimer, Suite 650
Houston, TX 77042

RCJ

11155/1

[Counsel for Carriage Homes, Inc.]

John F. Shellabarger
Carriage Homes, Inc.
Law Offices of John F. Shellabarger
928 Garden Street, Suite 3
Santa Barbara, CA 93101

RCJ

11155/1

[Counsel for Enron North America Core and Enron
Canada Corp.]

John G. Kaugberg
LeBoeuf, Lamb, Greene & MacRae, LLP
125 West 55th Street
New York, NY 10019

RCJ

11155/1

John P. Dillman
Linerbarger Heard Goggan Blair
Graham Pena & Sampson, LLP
P.O. Box 3064
Houston, TX 77253

RCJ

11155/1

RCJ

11155/1

[Counsel for El Paso]

Adam A. Lewis
Morrison & Foerster
425 Market Street, 33rd Floor
San Francisco, CA 94105

[Counsel for Idaho Power]

Adam A. Lewis
Morrison & Foerster
425 Market Street, 33rd Floor
San Francisco, CA 94105

RCJ

11155/1

RCJ

11155/1

Adrienne Vadell Sturges
Sodexo Marriott Services, Inc.
9801 W Aian Boulevard, 12th Floor
Gaithersburg, MD 20878

[Counsel for Sempra Energy Trading Corp]

Alan Z. Yudowsky
Anne E. Wells
Stroock & Stroock & Lavan LLP
2029 Century Park East, Suite 1800
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

Alex Makler
Calpine Corporation
6700 Koll Center Parkway, Suite 200
Pleasanton, CA 94566

Arlen Orchard
Sacramento Municipal Utility District
6201 S. Street, Mail Stop B408
Sacramento, CA 95817

RCJ

11155/1

[Counsel for MBIA Insurance Corporation]

Aron Mark Oliner
Buchalter, Nemer, Fields & Younger, A
Professional Corporation
333 Market Street, 29th Floor
San Francisco, CA 94105

RCJ

11155/1

[Counsel for Phil Franey, Treasurer/Tax
Collector for Kern County]

B.C. Barmann, Sr.
County Counsel
Attn: Jerri S. Bradley, Deputy
1115 Truxtun Avenue, Fourth Floor
Bakersfield, CA 93301

RCJ

11155/1

Bank of America National Trust and Savings
Association
Attn: Peggie Sanders
1850 Gateway Boulevard
Concord, CA 94520

RCJ

11155/1

Bank of America National Trust and Savings
Association
CA5-705-12-10
Attn: Adeline Tourunian
555 CA Street, 12th Floor
San Francisco, CA 94104

RCJ

11155/1

Bank of America
Attn: Clara Strand
555 South Flower Street
Mail Code CA9-706-11-21
Los Angeles, CA 90071

RCJ

11155/1

Bank of America, Admin. Agent
Attn: Katherine Kemerait
Bank of America
555 CA Street, 12th Floor
San Francisco, CA 94104-1502

RCJ

11155/1

RCJ

11155/1

Bank of America, N.A.
Admin. Agent
Kathrine Kemerait
555 CA Street, 12th Floor
San Francisco, CA 94104-1502

Bank One
Corporate Trust Administration
Attn: Janice Ott Rotunno
Mail Code ILI-0126
1 Bank One Plaza
Chicago, IL 60670-0126

RCJ

11155/1

RCJ

11155/1

Bank One, NA
Attn: Robert G. Bussa, Jane Bek
Energy & Utilities
Mail Code IL 1-0363
Bank One Plaza
Chicago, IL 60670

Bankers Trust Co. of CA, NA
Structured Finance Group
Attn: Peter Becker
4 Albany St., 10th Floor
New York, NY 10006

RCJ

11155/1

RCJ

11155/1

Bankers Trust Co.
Trustee Corp. Trust
Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

Bankers Trust Company
Corporate Trust Services
Attn: Safet Kalabovic
4 Albany Street, 4th Floor
New York, NY 10006

RCJ

11155/1

RCJ

11155/1

Banque Nationale de Paris
San Francisco Branch
Attn: Debra Wright
180 Montgomery St., 4th Floor
San Francisco, CA 94104

[Attorney for CA Power Exchange]

Ben Whitwell
Whitwell & Emhoff LLP
202 N. Canon Drive
Beverly Hills, CA 90210

RCJ

11155/1

RCJ

11155/1

[Counsel for Enron North America Corp and
Enron Canada Corp.]

Beth Smayda, Director
MBIA Insurance Corporation
113 King Street
Armonk, NY 10504

Bennett G. Young
LeBoeuf, Lamb, Greene & MacRae, LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

RCJ

11155/1

RCJ

11155/1

BMO Nesbitt Burns
Attn: John Harche
700 Louisiana, Suite 4400
Houston, TX 77002

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

RCJ

11155/1

RCJ

11155/1

BNY Western Trust Company
Attn: Rose Ruelos, Corp. Trust Administration
550 Kearny St., Suite 600
San Francisco, CA 94108-2527

BP Energy Co
Attn: Louis Anderson
501 Westlake Park Blvd
Houston, TX 77079

RCJ

11155/1

RCJ

11155/1

BP Energy Company
Attn: Ken McClanahan
501 Westlake Park Boulevard
Houston, TX 77079

[Counsel for Mirant Corporation]

Brian L. Holman
White & Case LLP
633 West Fifth Street, 19th Floor
Los Angeles, CA 90071

RCJ

11155/1

RCJ

11155/1

[Counsel for Sempra and Southern CA Gas Company]

Bruce Bennett, Esq.
Bennett J. Murphy, Esq.
Hennigan Bennett & Dorman
601 South Figueroa St., Suite 3300
Los Angeles, CA 90017

(Attorney for Bank of America, Admin. Agent)

Bryan Krakauer, Esq.
Sidley & Austin
One First National Plaza
Chicago, IL 60603

RCJ

11155/1

RCJ

11155/1

Bryant Danner
Southern CA Edison
2244 Walnut Grove Ave.
Rosemead, CA 91770

CA Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833

RCJ

11155/1

RCJ

11155/1

CA Independent System Op.
William Regan
P.O. Box 639014
Folsom, CA 95630-9017

CA Independent System Operator
Attn: Margaret A. Rostlcer
4151 Blue Ravine Rd.
Folsom, CA 95630

RCJ

11155/1

RCJ

11155/1

CA Power Exchange
Attn: Don Deach
100 S. Freemont Ave., Bldg. A9
Alhambra, CA 91803-4737

CA Power Exchange
Attn: Lynn Miller
2000 S. Los Robles Avenue
Suite 400
Pasadena, CA 91101-2482

RCJ

11155/1

RCJ

11155/1

CA Power Exchange
Lynn Miller
100 S. Freemont Avenue, Bldg A9
Alhambra, CA 91803-4737

(Attorney for CA Public Utilities
Commission)

CA Public Utilities Commission
Alan Kornberg, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

RCJ

11155/1

RCJ

11155/1

CA Public Utilities Commission
Attn: General Counsel
505 Van Ness Avenue
San Francisco, CA 94102

CA State Board of Equalization
PO Box 942879
Sacramento, CA 94279-8063

RCJ

11155/1

RCJ

11155/1

Calpine Gilroy Cogeneration LP
Robert Brown
6700 Koll Center Plcy #200
San Jose, CA 94566

Calpine Greenleaf Inc.
465 CA St. #600
San Francisco, CA 94104

RCJ

11155/1

Calpine King City Cogen LLC
Robert Brown
6700 Kill Center Plcy #200
San Jose, CA 94568

RCJ

11155/1

Calpine Pittsburg Power Plant
Zahir Ahmadi
50 W. San Fernando St.
San Jose, CA 95113

RCJ

11155/1

[Counsel for Enron North America Corp and
Enron Canada Corp.]

Carl A. Eklund
LeBoeuf, Lamb, Greene & MacRae, LLP
125 West 55th Street
New York, NY 10019

RCJ

11155/1

[Counsel for Unofficial Committee of Pacific Gas &
Electric Company First Mortgage Bondholders]

Chaim J. Fortgang, Esq.
Richard G. Mason, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

RCJ

11155/1

Chevron U.S.A. Production Co.
P.O. Box 840659
Dallas, TX 75284-0659

RCJ

11155/1

Christine C. Yokan
General Electric Capital Business
Asset Funding Corp.
10900 N.E. 4th Street, Suite 500
Bellevue, WA 98004

RCJ

11155/1

RCJ

11155/1

Christopher Beard
Beard & Beard
306 N. Market Street
Frederick, MD 21701

Coast Energy Canada Ins.
Attn: Caroline Pitre
444-7th Avenue S.W., Suite 700
Calgary, Alberta
Canada T2P 0X8

RCJ

11155/1

RCJ

11155/1

Coast Energy Group, A Division of Cornerstone
Propane, L.P.
Attn: Ruben Alonso
1600 Highway 6, Suite 400
Sugarland, TX 77478

Cools Inlet Energy Supply
Attn: Hans O. Saeby
10100 Santa Monica Blvd., 25th Floor
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Tucson Electric Power Company]

Craig H. Millet
Gibson Dunn & Crutcher LLP
Jamboree Center
4 Park Plaza, Suite 1400
Irvine, CA 92614

Crocket Cogen
A CA Limited Partnership
Keith Richards
135 S. LaSalle Street, #1960
Chicago, IL 60603

RCJ

11155/1

RCJ

11155/1

[Counsel for Reliant Energy, Inc.]

David A. Burns
Baker Botts LLP
One Shell Plaza
910 Louisiana
Houston, TX 77002

[Counsel for Interested Party, Department of Water and Power]

David A. Gill
Richard K. Diamond
Danning, Gill, Diamond & Kollitz LLP
2029 Century Park East, Third Floor
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Corestaff Services (CA), Inc.]

David J. Hankey
Gohn, Hanleu & Stichel LLP
Suite 1520, The Fidelity Building
210 North Charles Street
Baltimore, MD 21201

[Counsel for Cook Inlet Energy Supply]

David L. Ronn
Mayer, Brown & Platt
700 Louisiana, Suite 3600
Houston, TX 77002

RCJ

11155/1

RCJ

11155/1

[Counsel for CA Independent System Operator, Inc.]

David Neale
Levene, Neale, Bender, Rankin & Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067

[Attorney for CA Independent System Operator]

David Neale
Levene, Neale, Bender, Rankin Brill LLP
1801 Avenue of the Stars, Suite 1120
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Bank of Montreal]

David T. Biderman
Perkins Coie LLP
1620 26th Street, Sixth Floor
Santa Monica, CA 90404-4013

Department of Justice
U.S. Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

RCJ

11155/1

RCJ

11155/1

Deutsche Bank AG
NY Branch
Attn: E.S. Med1a
31 West 52nd Street
New York, NY 10019

Deutsche Bank AG
NY Branch
Attn: John Quinn
31 West 52nd Street
New York, NY 10019

RCJ

11155/1

RCJ

11155/1

DK Acquisition Partners, L.P.
c/o M.H. Davidson & Co.
Attn: Tony Yoseloff
885 Third Avenue, Suite 3300
New York, NY 10022

[Counsel for Arizona Public Service Co.]

Don Gaffney
Snell & Wilmer LLP
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004

RCJ

11155/1

RCJ

11155/1

Duane H. Nelsen
GWF Power Systems Company, Inc.
4300 Railroad Ave.
Pittsburgh, CA 94565-6006

[Counsel for Williams Energy Services and Williams
Energy Marketing]

Dulcie D. Brand
Ricky L. Shackelford
James L. Poth
Jones Day Reavis & Pogue
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013

RCJ

11155/1

RCJ

11155/1

Dynergy Canada Marketing & Trade
Attn: Steve Barron
350 - 7th Avenue S.W.
Calgary, Alberta
Canada, T2P 3N9

Dynergy Marketing & Trade
Attn: Steve Barron
1100 Louisiana Street, Suite 5800
Houston, TX 77002

RCJ

11155/1

RCJ

11155/1

[Counsel for CA Independent System Operator, Inc.]

Edwin Berlin
Richard Wyron
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007

El Paso Merchant Energy Gas LP
Darrel Rogers
2500 City West Blvd., Suite 1400
Houston, TX 77042

RCJ

11155/1

RCJ

11155/1

El Paso Merchant Energy, L.P.
Attn: John Harrison
1010 Travis Street
Houston, TX 77002

[Counsel for City of Santa Clara]

Elaine M. Seid
McPharlin, Sprinkles & Thomas LLP
10 Almaden Boulevard, Suite 1460
San Jose, CA 95113

RCJ

11155/1

RCJ

11155/1

Enron Canada Corporation
3500 Canterra Tower
400 3rd Ave. S.W.
Calgary, AB T2P 4H2
Canada

Evan C. Hollander
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036

RCJ

11155/1

RCJ

11155/1

[Counsel for BNY]

[Counsel for Corestaff Services (CA), Inc.]

Evan Hollander
White & Case
1155 Avenue of the Americas
New York, NY 10036

Evelyn H. Biery
Corestaff Services (CA), Inc.
Fulbright & Jaworski LLP
1301 McKinney, Suite 5100
Houston, TX 77010

RCJ

11155/1

RCJ

11155/1

Fernando De Leon
Attorney at Law
CA Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814

Franchise Tax Board
PO Box 942857
Sacramento, CA 94257-2021

RCJ

11155/1

RCJ

11155/1

[Counsel for City of Palo Alto and its municipality utility]

G. Larry Engel
Roberto J. Kampfner
Brobeck, Phleger & Harrison LLP
One Market
Spear Street Tower
San Francisco, CA 94105

[Counsel for Certain Underwriters at Lloyd's
and Interested Insurance Companies]

Gary P. Blitz
Piper Marbury Rudnick & Wolfe LLP
1200 19th Street, N.W.
Washington, D.C. 20036

RCJ

11155/1

RCJ

11155/1

Geysers Power Company LLC
Joe McClendon
6700 Koll Center Pky #200
Pleasanton, CA 94566

[Counsel for GE Power Systems and GE Supply
Divisions]

Glenn M. Reisman
Two Corporate Drive
P.O. Box 861
Shelton, CT 06484

RCJ

11155/1

RCJ

11155/1

[Counsel for AES New Energy, Inc.]

Gordon P. Erspamer
Morrison & Foerster LLP
101 Ygnacio Valley Road, Suite 450
P.O. Box 8130
Walnut Creek, CA 94595

Grant Kolling
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

RCJ

11155/1

RCJ

11155/1

Gregory W. Jones
El Paso Merchant Energy
1001 Louisiana, Suite 2754B
Houston, TX 77002

GWF Power Systems LP
4300 Railroad Ave.
Pittsburg, CA 94565

RCJ

11155/1

RCJ

11155/1

[Counsel for Indenture Trustee for 7.90% Deferrable Interest
Subordinated Debendures Series A]

Harold L. Kaplan
Jeffrey M. Schwartz
Mark F. Hebbeln
Gardner, Carton & Douglas
321 North Clark Street, 34th Floor
Chicago, IL 60610

Heather Brown
Williams Energy Marketing and Trading Co.
One Williams Center, Suite 4100
Tulsa, OK 74172

RCJ

11155/1

RCJ

11155/1

[Counsel for Corestaff Services (CA), Ins.]

Heinz Binder
Robert G. Harris
Binder & Malter
2775 Park Avenue
Santa Clara, CA 95050

[Counsel for Powerex Corp.]

Howard J. Weg
Peitzman, Glassman & Weg
1900 Avenue of the Stars, Suite 650
Los Angeles, CA 90067

RCJ

11155/1

RCJ

11155/1

[Counsel for Constellation Power Source, Ins.]

Hydee R. Feldstein
Katherine A. Traxler
Kelly Aran
Paul, Hastings, Janofsky & Walker LLP
Twenty Third Floor
555 South Flower Street
Los Angeles, CA 90071

ICC Energy Corporation
Attn: Karl Butler
302 N. Market Street, Suite 500
Dallas, TX 75202-1846

RCJ

11155/1

RCJ

11155/1

Internal Revenue Service
Fresno, CA 93888

Internal Revenue Service
Spec Proc / Bankruptcy
1301 Clay Street, Suite 1400
Oakland, CA 94612

RCJ

11155/1

RCJ

11155/1

[Counsel for party in interest]

J. Christopher Kennedy
Irell & Manella LLP
1800 Avenue of the Stars, 9th Floor
Los Angeles, CA 90067

[Counsel for United States of America]

J. Christopher Kohn
Tracy J. Whitaker
Brendan Collins
Civil Division
Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044

RCJ

11155/1

RCJ

11155/1

[Counsel for United States of America]

J. Christopher Kohn
Tracy J. Whitaker
Brendan Collins
Department of Justice
1100 L Street, N.W. Room 10004
Washington, D.C. 20005

[Counsel for Tucson Electric Power Company]

J. Matthew Derstein
Roshka Heyman & DeWulf PLC
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004

RCJ

11155/1

RCJ

11155/1

[Counsel for Bank of Montreal]

James E. Till, Esq.
Perkins Coie LLP
1211 SW Fifth Ave., Suite 1500
Portland, OR 97204

James R. Thompson
Idaho Power Company
1221 W. Idaho Street
Boise, ID 83702

RCJ

11155/1

RCJ

11155/1

[Proposed Investment Banker to Committee]

Jeffrey M. Wilson
Saybrook Capital LLC
303 Twin Dolphin Drive, Suite 600
Redwood City, CA 94065

[Counsel for International Brotherhood of
Electrical Workers, Local 47 and Local 1245]

Jeffry A. Davis
Gray Cary Ware & Freidenrich LLP
401 B Street, Suite 1700
San Diego, CA 92101

RCJ

11155/1

RCJ

11155/1

JoAnn P. Russell
Duke Energy Trading and Marketing LLC
10777 Westheimer, Suite 650
Houston, TX 77042

[Counsel for Carriage Homes, Inc.]

John F. Shellabarger
Carriage Homes, Inc.
Law Offices of John F. Shellabarger
928 Garden Street, Suite 3
Santa Barbara, CA 93101

RCJ

11155/1

RCJ

11155/1

[Counsel for Enron North America Core and Enron
Canada Corp.]

John G. Klaufberg
LeBoeuf, Lamb, Greene & MacRae, LLP
125 West 55th Street
New York, NY 10019

John P. Dillman
Linerbarger Heard Goggan Blair
Graham Pena & Sampson, LLP
P.O. Box 3064
Houston, TX 77253

In re:)
PACIFIC GAS AND ELECTRIC)
COMPANY, a California)
corporation)
Debtor(s))
_____)

Bankruptcy No.: 01-30923 DM
R.S. No.:
Hearing Date: [?]
Time: [?]

Relief From Stay Cover Sheet

Instructions: Complete caption and Section A for all motions. Complete Section B for mobile homes, motor vehicles, and personal property. Complete Section C for real property. Utilize Section C as necessary. If moving party is not a secured creditor, briefly summarize the nature of the motion in Section D.

(A) Date Petition Filed: 04/06/01 Chapter: 11
Prior hearings on this obligation: N/A Last Day to File §523/§727 Complaints: N/A

(B) Description of personal property collateral (e.g. 1983 Ford Taurus): N/A

Secured Creditor [] or lessor []

Fair market value:	\$ _____	Source of value:	_____
Contract Balance:	\$ _____	Pre-Petition Default:	\$ _____
Monthly Payment:	\$ _____	No. of months:	_____
Insurance Advance:	\$ _____	Post-Petition Default:	\$ _____
		No. of months:	_____

(C) Description of real property collateral (e.g. Single family residence, Oakland, CA): N/A

Fair market value: \$ _____ Source of value: _____ If appraisal, date: _____

Moving Party's position (first trust deed, second, abstract, etc.):

Approx. Bal.	\$ _____	Pre-Petition Default:	\$ _____
As of (date): _____		No. of months:	_____
Mo. payment:	\$ _____	Post-Petition Default:	\$ _____
Notice of Default (date): _____		No. of months:	_____
Notice of Trustee's Sale: _____		Advances Senior Liens:	\$ _____

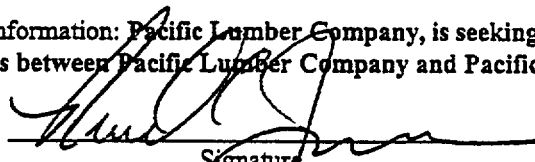
Specify name and status of other liens and encumbrances, if known (e.g. trust deeds, tax liens, etc.):

Position	Amount	Mo. Payment	Defaults
1 st Trust Deed: _____	\$ _____	\$ _____	\$ _____
2 nd Trust Deed: _____	\$ _____	\$ _____	\$ _____

(Total)	\$ _____	\$ _____	\$ _____

(D) Other pertinent information: Pacific Lumber Company, is seeking relief from the stay to effectuate a setoff of mutual prepetition debts between Pacific Lumber Company and Pacific Gas and Electric Company.

Dated: _____


Signature
Richard C. Josephson OSB No. 73374
Print or Type Name

Attorney for Pacific Lumber Company

1 RICHARD C. JOSEPHSON, OSB 73374
(Pro hac vice)

HON. DENNIS MONTALI

2 STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
3 Portland, OR 97204-1268
Telephone: (503) 224-3380
4 Facsimile: (503) 220-2480

5 EDGAR B. WASHBURN, Bar No. 34038
WASHBURN, BRISCOE & MCCARTHY, P.C.
6 55 Francisco Street, Suite 600
San Francisco, Ca 94133
7 Telephone: (415) 421-3200
Facsimile: (415) 421-5044

8
9 Attorneys for Pacific Lumber Company, a California
corporation

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

13 In re:
14 PACIFIC GAS & ELECTRIC COMPANY, a
California corporation,

Debtor.

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

NO. 01-30923 DM

Chapter 11 Case

Date: June 20, 2001

Time: 1:30 p.m.

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

18 NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY

19 PLEASE TAKE NOTICE that on June 20, 2001, at 1:30 p.m. or as soon thereafter as
20 the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at 235
21 Pine Street, 22nd Floor, San Francisco, California, Pacific Lumber Company, a California
22 corporation ("Pacific Lumber"), will and hereby does move (the "Motion"), pursuant to
23 sections 362(d)(1) and 553 of the Bankruptcy Code and Rule 4001(a) of the Federal Rules of
24 Bankruptcy Procedure, for entry of an order granting Pacific Lumber relief from the automatic
25
26

Page

1 - NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY

1 stay, and other equitable and legal relief. This Motion is based on this Notice of Motion and
2 Motion, the Declarations of Gary Clark and Richard C. Josephson, the records and files in this
3 case and any admissible evidence presented to the Court at or before the hearing on this
4 Motion.
5

6 By this Motion, Pacific Lumber moves the Court for relief from the automatic stay and
7 alleges:

8
9 **Jurisdiction and Venue**

10 1. On April 6, 2001 (the "Petition Date"), Pacific Gas and Electric Company
11 ("PG&E" or the "Debtor") filed a voluntary petition for relief under Chapter 11 of the
12 Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor
13 has been operating its business as a debtor in possession.

14 2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and
15 157(a) and United States District Court for the Northern District of California Local Rule
16 4001-1. Venue is proper in this Court under 28 U.S.C. § 1409. This is a core matter within
17 the meaning of 28 U.S.C. § 157(b)(2)(A) and (G). The substantive basis for the relief
18 requested is sections 362(d)(1) and 553 of the Bankruptcy Code. Rule 4001(a) of the Federal
19 Rules of Bankruptcy Procedure is applicable.
20

21 **Facts**

22 3. Pacific Lumber and PG&E are parties to that certain Standard Offer #1 contract
23 ("SO-1"), As-Delivered Capacity and Energy Power Purchase Agreement dated January 17,
24 1986, as amended (the "PPA"). The PPA provides generally that (i) Pacific Lumber will meet
25
26

Page

2 - NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY

1 qualifying facility requirements and (ii) Pacific Lumber will sell and PG&E will purchase as-
2 delivered capacity and energy.

3
4 4. Under the PPA, Pacific Lumber agrees to produce energy from biomass wood
5 and sell the energy to PG&E, and PG&E agrees to pay Pacific Lumber for as-delivered
6 capacity and energy at rates authorized from time to time by the California Public Utilities
7 Commission ("CPUC") and which are derived from PG&E's avoided costs as approved by the
8 CPUC.

9
10 5. As of the Petition Date PG&E was indebted to Pacific Lumber under the PPA in
11 the amount of \$5,399,257.05 for energy delivered by Pacific Lumber pursuant to the PPA
12 before 9 a.m. on April 6, 2001. As of the date of this Motion, this full amount remains due
13 and owing by PG&E.

14
15 6. As of the Petition Date, Pacific Lumber was indebted to PG&E in the amount of
16 \$128,422.86 for delivery of energy by PG&E to Pacific Lumber's facilities pursuant to
17 PG&E's tariffs, as detailed on attached Exhibit A. As of the date of this Motion, this amount
18 remains due and owing by Pacific Lumber.¹

19
20
21 ¹ To preserve its right of setoff, Pacific Lumber has temporarily withheld payment of
22 the amount due pursuant to its rights under *Citizens Bank of Maryland v. Strumpf*, 516 U.S.
23 16, 18-19, 116 S.Ct. 286, 288-89 (1995). Pacific Lumber promptly notified PG&E and its
24 counsel that while it was not effecting a setoff, it is temporarily withholding payment to
25 preserve its right of setoff pending the resolution of a motion for relief from stay. See letters
26 dated April 30, 2001 from John A. Campbell, President & Chief Executive Officer of Pacific
Lumber received by Ivan Marruffo, Senior Major Account Representative of PG&E attached
to the Declaration of Gary Clark and letter dated May 1, 2001 from Stoel Rives LLP to James
Lopes, Esq. of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, P.C. attached to the
Declaration of Richard C. Josephson.

Argument

7. Section 362 of the Bankruptcy Code provides for the termination, modification or annulment of the automatic stay under certain circumstances. Section 362(d) provides, in relevant part, as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property;
and

(B) such property is not necessary to an effective reorganization[.]

Section 553 of the Bankruptcy Code provides that the Bankruptcy Code does not alter the right of a creditor to offset prepetition amounts owing to it by a debtor against prepetition amounts owing by it to the debtor, except in certain limited circumstances, none of which apply here.² Setoff is allowed where the following conditions are met: (i) the creditor has a

² Section 553 of the Bankruptcy Code provides:

(a) Except as otherwise provided in this section and in section 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that -

(1) the claim of such creditor against the debtor is disallowed;

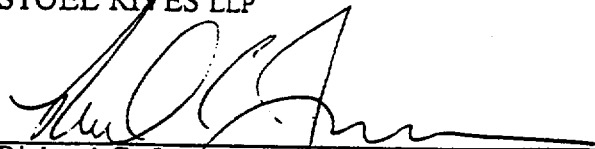
1 prepetition claim against the estate, (ii) the debtor owes a prepetition debt to the creditor, (iii)
2 the claim and the debt are mutual, i.e. owing to the same parties in the same capacity, and (iv)
3 both the claim and the debt are valid and enforceable.

4 Pacific Lumber is entitled to relief from the automatic stay to effect a setoff of the
5 amounts owing by it to PG&E for delivery of energy pursuant to PG&E's tariff against the
6 amounts owing to it from PG&E under the PPA. All conditions of Section 553 are met here.
7 First, the debts are mutual: Pacific Lumber has a prepetition claim against the Debtor and owes
8 a prepetition debt to the Debtor. Second, both claims are valid and enforceable.
9

10 WHEREFORE, Pacific Lumber respectfully requests that this Court enter an order
11 (i) lifting the automatic stay to allow Pacific Lumber to set off the amounts owing from it to
12 the Debtor, as described in Exhibit A, against the Debtor's prepetition obligations to Pacific
13 Lumber and (ii) granting such other relief as the Court deems proper.
14

15 DATED: May 8, 2001.

16 STOEL RIVES LLP

17 
18 Richard C. Josephson, OSB No. 73374
19 Attorneys for Pacific Lumber Company
20

21 (2) such claim was transferred, by an entity other than the debtor, to such
22 creditor -

23 (A) after the commencement of the case; or

24 (B)(i) after 90 days before the date of the filing of the petition and
25 (ii) while the debtor was insolvent; or

26 (3) the debt owed to the debtor by such creditor was incurred by such creditor -

(A) after 90 days before the date of the filing of the petition;

(B) while the debtor was insolvent; and

(C) for the purpose of obtaining a right of setoff against the debtor.

Page

5 - NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY

1 RICHARD C. JOSEPHSON, OSB NO. 73374
(Pro hac vice)
2 STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
3 Portland, OR 97204-1268
Telephone: (503) 224-3380
4 Facsimile: (503) 220-2480

5 EDGAR B. WASHBURN, Bar No. 34038
WASHBURN, BRISCOE & MCCARTHY, P.C.
6 55 Francisco Street, Suite 600
San Francisco, Ca 94133
7 Telephone: (415) 421-3200
Facsimile: (415) 421-5044
8
9 Attorneys for Pacific Lumber Company, a California
corporation

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

13 In re:	NO. 01-30923 DM
14 PACIFIC GAS & ELECTRIC COMPANY, a California corporation,	Chapter 11 Case
15	Date: June 20, 2001
16 Debtor.	Time: 1:30 p.m.
17 Federal I.D. No. 94-0742640	Place: 235 Pine Street, 22nd Floor San Francisco, California

18
19 **DECLARATION OF GARY CLARK IN SUPPORT OF**
20 **MOTION FOR RELIEF FROM STAY**

21 Gary Clark declares as follows:

22 1. I am the Vice President of Finance and Administration of Pacific Lumber
23 Company, a California corporation ("Pacific Lumber"). I have personal knowledge of the
24 matters set forth herein and am competent to testify thereto. I make this declaration in support
25 of the Motion for Relief from Stay (the "Motion") filed by Pacific Lumber in this case.
26

Page 1 - **DECLARATION OF GARY CLARK IN SUPPORT OF MOTION FOR RELIEF
FROM STAY**

1 2. Pacific Lumber and Pacific Gas & Electric Company ("PG&E") are parties to
2 that certain Standard Offer #1 contract ("SO-1"), As-Delivered Capacity and Energy Power
3 Purchase Agreement dated January 17, 1986, as amended (the "PPA"). The PPA provides
4 generally that (i) Pacific Lumber will meet qualifying facility requirements and (ii) Pacific
5 Lumber will sell and PG&E will purchase as-delivered capacity and energy.
6

7 3. Under the PPA, Pacific Lumber agrees to produce energy from biomass wood
8 and sell the energy to PG&E, and PG&E agrees to pay Pacific Lumber for as-delivered
9 capacity at prices authorized from time to time by the California Public Utilities Commission
10 ("CPUC") and which are derived from PG&E's full avoided costs as approved by the CPUC.
11 PG&E further agrees to pay Pacific Lumber for energy at prices equal to PG&E's full short
12 run avoided operating costs as approved by the CPUC.
13

14 4. As of April 6, 2001 PG&E was indebted to Pacific Lumber under the PPA in
15 the amount of \$5,399,257.05 for energy delivered by Pacific Lumber pursuant to the PPA
16 through March 31, 2001. PG&E also owes Pacific Lumber for energy delivered between
17 April 1 and 9 a.m. on April 6, 2001. Under the PPA PG&E calculates this amount and
18 advises Pacific Lumber of the amount due with supporting detail. As of the date of the
19 Motion, this full amount remains due and owing by PG&E.
20

21 5. As of April 6, 2001, Pacific Lumber was indebted to PG&E in the amount of
22 \$128,422.86 for energy delivered by PG&E to Pacific Lumber's facilities pursuant to PG&E's
23 tariffs and other charges, as reflected on attached Exhibit A. As of the date of the Motion, this
24 amount remains due and owing by Pacific Lumber.
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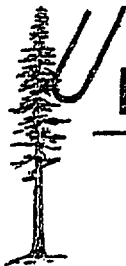
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EXHIBIT AP.G. & E.

	<u>Acct. #</u>	
<u>FORTUNA</u>		
Log Deck-3/7 to 4/5/01	FLJ-47-10651-1	17.32
Boiler(Gas)-3/7 to 4/5/01	FLJ-47-10601-2	16,697.78
Lumber Mill(Gas)-3/7 to 4/5/01	FLJ-46-08911-3	684.41
Outdoor light-3/7 to 4/5/01	FLJ-46-08002-0	8.00
Scales-3/7 to 4/5/01	FLJ-47-11301-3	88.94
Dry Kilns-1/4 to 4/5/01	FLJ-47-10461-1	34,041.57
Mill-3/15 to 4/13/01	MLJ-T3-24601-5	43,128.20
<u>SCOTIA</u>		
By-Products Office(Gas)-3/7 to 4/5/01	FLJ-33-17323-3	47.75
Sales office-108 Main St.(Gas)-3/7 to 4/5/01	FLJ-33-82561-0	150.33
Cogen-3/2 to 4/2/01	BLJ-N1-11001-3	2,694.21
Machine Shop(Gas)-3/7 to 4/5/01	FLJ-33-43641-6	6,194.54
<u>CARLOTTA</u>		
Mill-3/15 to 4/13/01	MLJT460052-8	23,614.94
<u>BY-PRODUCTS</u>		
Hwy 101 & Van Duzen-3/7 to 4/5/01	FLJ-44-47502-0	7.29
Van Duzen-Storage-3/7 to 4/5/01	FLJ-44-74805-4	6.72
Hwy 101 & Van Duzen(Office)-3/7 to 4/5/01	FLJ-44-47602-9	56.15
<u>KNEELAND</u>		
3 Mile S/Kneeland-3/21 to 4/18/01	RLF-23-19805-8	2.51
<u>FORTUNA PURCH. PROP.</u>		
3825 Dyerhill Loop Rd-3/16 to 4/18/01	NLM-84-65920-8	3.25
<u>CARETAKER-MIRANDA</u>		
Residence-3/2 to 4/2/01	BLM-67-47602-0	107.74
Ranch House-3/2 to 4/2/01	BLM-67-47802-8	36.18
Barnum Rd.-3/2 to 4/2/01	BLM-67-47812-6	9.03
Barnum Rd. 3M-3/2 to 4/2/01	BLM-67-47902-7	4.61
<u>MT. PIERCE</u>		
Mt. Pierce-3/23 to 4/23/01	TLJ-51-79241-8	68.83
Non-Energy Collection Unit-4/1 to 4/30/01	ULF-6204921-7	749.15
(Monthly fee for hooking our system up to PG & E's system)		Monthly fee 3,745.74

TOTAL OF BILLS FROM PG & E CURRENTLY HOLDING

\$128,422.86

**PALCO**

THE PACIFIC LUMBER COMPANY

P.O. Box 37, Soota, CA 95565 (707) 764-2222

April 30, 2001

Via FAX #445-5528

Mr. Ivan Marruffo
Senior Major Account Representative
Pacific Gas and Electric Company
Humboldt District
2555 Myrtle Avenue
Eureka, CA 95501

RE: Account No. FLJ 46 08911-3

Dear Mr. Marruffo:

We are in receipt of your service termination notice for this account.

Pacific Gas and Electric Company ("PG&E") was indebted to Pacific Lumber Company ("Pacific Lumber") on April 6, 2001, the date of PG&E's Chapter 11 petition, in an amount in excess of \$500,000. We have enclosed a schedule showing the amounts owed by Pacific Lumber to PG&E on that date under its various accounts. By virtue of California law and Section 553 of the Bankruptcy Code, Pacific Lumber has the right to set off the amounts owed by it to PG&E against the amounts which were owing by PG&E to Pacific Lumber on the date of PG&E's Chapter 11 filing. Pacific Lumber has not and is not exercising its right of set off, but is withholding payment of such amounts, as permitted by applicable law, to protect its right of set off. Pacific Lumber will shortly file with the Bankruptcy Court a motion for relief from the automatic stay to authorize the set off. In the interim, Pacific Lumber is not required to pay PG&E the amounts owing as of the close of business on April 5, 2001, and PG&E is not entitled to terminate service for non-payment. Pacific Lumber expects that PG&E will comply with its legal obligations in this respect.

Please feel free to contact me if you have any questions.

Sincerely,

THE PACIFIC LUMBER COMPANY


JOHN A. CAMPBELL
President & Chief Executive Officer

JAC:kw

Our forests, our future - 130 years and growing

1 RICHARD C. JOSEPHSON, OSB NO. 73374
(Pro hac vice)
2 STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
3 Portland, OR 97204-1268
Telephone: (503) 224-3380
4 Facsimile: (503) 220-2480

5 EDGAR B. WASHBURN, Bar No. 34038
WASHBURN, BRISCOE & MCCARTHY, P.C.
6 55 Francisco Street, Suite 600
San Francisco, Ca 94133
7 Telephone: (415) 421-3200
Facsimile: (415) 421-5044
8
9 Attorneys for Pacific Lumber Company, a California
corporation

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

13 In re:

14 PACIFIC GAS & ELECTRIC COMPANY, a
California corporation,

15 Debtor.
16
17 Federal I.D. No. 94-0742640
18

NO. 01-30923 DM

Chapter 11 Case

Date: June 20, 2001

Time: 1:30 p.m.

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

19 **DECLARATION OF RICHARD C. JOSEPHSON IN SUPPORT OF**
20 **MOTION FOR RELIEF FROM STAY**

21 I, Richard Josephson, hereby declare:

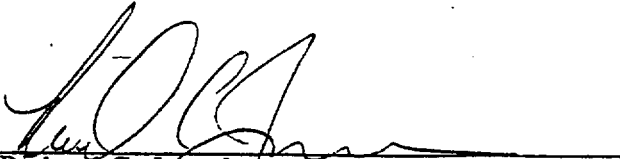
22 1. I am a member of Stoel Rives LLP, counsel for Pacific Lumber Company
23 ("Pacific Lumber") in this case. I have personal knowledge of the matters set forth herein and
24 am competent to testify thereto. I make this declaration in support of the Motion for Relief
25 from Stay filed by Pacific Lumber in this case.
26

Page 1 - **DECLARATION OF RICHARD C. JOSEPHSON IN SUPPORT OF MOTION
FOR RELIEF FROM STAY**

1 2. Attached is a true copy of a letter dated May 1, 2001 from me to
2 James Lopes, Esq.

3 I declare under penalty of perjury under the laws of the United States of
4 America and the State of California that the foregoing is true and correct.
5

6
7 DATED: May 7, 2001.

8 
9 Richard C. Josephson
10 Of Attorneys for Pacific Lumber Company
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STOEL RIVES LLP

ATTORNEYS

STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE, SUITE 2600
PORTLAND, OREGON 97204-1268
Phone (503) 224-3380 Fax (503) 220-2480
TDD (503) 221-1045
Internet: www.stoel.com

May 1, 2001

RICHARD C. JOSEPHSON
Direct Dial
(503) 294-9537
email rcjosephson@stoel.com

VIA FACSIMILE

James Lopes, Esq.
Howard, Rice, Nemerovski, Canady, Falk & Rabkin, P.C.
Seventh Floor, Three Embarcadero Center
San Francisco, CA 94111

Re: Pacific Gas and Electric Company - United States Bankruptcy Court
Case No. 01-30923 DM

Dear Mr. Lopes:

We represent Pacific Lumber Company ("Pacific Lumber") in matters relating to Pacific Gas and Electric Company's ("PG&E") Chapter 11 case. Enclosed are:

1. Copy of letter sent by Pacific Lumber to PG&E with respect to service termination notices for non-payment of amounts owing from Pacific Lumber to PG&E as to which Pacific Lumber has a right of set off under 11 U.S.C. § 553 and California law; and
2. Schedule of Pacific Lumber's pre-petition obligations to PG&E.

PG&E was on April 6, 2001 and remains indebted to Pacific Lumber under the As Delivered Capacity and Energy Power Purchase Agreement dated July 17, 1986 in the amount of \$5,399,257.05. We are preparing a motion for relief from automatic stay to permit Pacific Lumber to set off the pre-petition amounts owing between the parties. We would ask that: (1) you promptly advise PG&E that, under applicable law, Pacific Lumber has the right to withhold payment of the amounts due to protect its right of set off and that PG&E should not terminate service pending resolution of the set off (we understand that Pacific Lumber's chief financial officer has spoken with PG&E's account representative and been advised that PG&E will not terminate service pending resolution of the set off) and (2) whether, in lieu of

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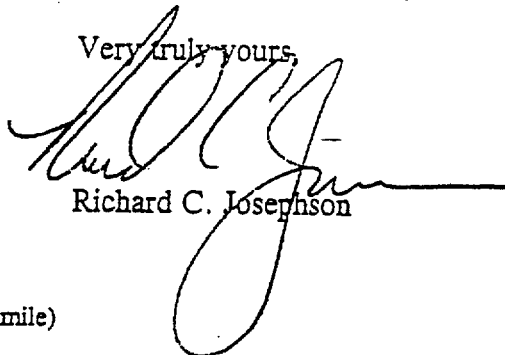
James Lopes, Esq.

May 01, 2001

Page 2

requiring Pacific Lumber to file a motion for relief from stay, PG&E would be willing to stipulate to the set off. I look forward to hearing from you at your early convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard C. Josephson", with a large, stylized loop at the end.

Richard C. Josephson

Enclosures

cc: Mr. Gary Clark (via facsimile)