



1 Cogeneration Co., Salinas River Cogeneration Co., and Sargent Canyon Cogeneration Co. (Docket  
2 Number 86), and (3) Live Oak Ltd., High Sierra Ltd., Kern Front Ltd., McKittrick Ltd., Double C  
3 Ltd., Chalk Cliff Ltd., Bear Mountain Ltd. and Badger Creek Ltd. (Docket Number 262).<sup>1</sup>  
4 Collectively, the moving parties on these motions are referred to as the "Movants" and the motions  
5 are referred to as the "Cogeneration Motions."

#### 6 PRELIMINARY STATEMENT

7 Palo Alto urges the Court to modify the automatic stay to permit Movants to deliver  
8 power to the California grid as soon as possible, while preserving for litigation at some later point  
9 the contractual rights and obligations existing between the Movants and the above-captioned debtor  
10 (the "Debtor") under their power purchase agreements ("PPAs"). Palo Alto presents this Joinder  
11 based on its unique understanding of the issues presented in the Cogeneration Motions, in that:

12 (a) Palo Alto has an informed understanding of the financial and case-related  
13 implications of the Cogeneration Motions arising out of its role as a member of the Creditors  
14 Committee and its role as a municipal utility in the same market as the Movants;

15 (b) Palo Alto has unique expertise in the legal issues presented by the  
16 Cogeneration Motions because Palo Alto is a member of the Western Area Power Administration  
17 ("WAPA") and the Northern California Power Agency ("NCPA"), which consist of over 90 state  
18 and local agencies including local municipalities that are party to various PPAs, interconnection  
19 agreements, tariffs, and other contracts with the Debtor for the supply of electricity to the material  
20 portion of the Northern Californian population served and represented by the members of WAPA  
21 and NCPA;<sup>2</sup> and

22 (c) as a municipal utility that supplies power to its residents, Palo Alto has a  
23 special understanding of the hardship that the citizens of the State of California will be forced to  
24 endure this summer, and as long as this case is pending, from the expected power outages,

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26 <sup>1</sup> Palo Alto hereby incorporates by reference the Creditors Committee's Response.

27 <sup>2</sup> These governmental units may form an unofficial committee to address issues of special concern  
28 to them, including maximizing the availability of power during the coming crisis so as to reduce  
the harm expected from the blackouts

1 blackouts and brownouts. The hardship will persist until the causes of this crisis are resolved  
2 through practical solutions consistent with sound public policy and the best interests of the  
3 Debtor's creditors (which, in this instance, coincide).

4 Thus, as a municipality that is representative of other similarly situated  
5 governmental entities, as member of the Creditors Committee, and as an entity with a history of  
6 participating in similar PPAs with the Debtor, Palo Alto has the expertise to expand on one concern  
7 motivating the Creditors Committee's Response—that the people and businesses of California need  
8 more and reliable energy this summer. The Debtor's opposition to the Cogenerator Motions, if  
9 adopted, would result in reduced power and increased blackout problems for everyone. Palo Alto  
10 believes that, without prejudicing the Debtor's legal position against the Movants, the Court should  
11 modify the automatic stay to permit the Movants to produce power and deliver it to the California  
12 grid, which is what the Movants would do if the Debtor were not in bankruptcy, and which results  
13 in more power for Californians this summer.

#### 14 ARGUMENT

15 The blackouts this summer will be destructive to the best interests of creditors in  
16 this case, the Debtor, the Movants, the people and business of California and the state economy.  
17 No informed party, including the Debtor, has any doubt that outages to consumers and businesses  
18 this summer will drastically outpace all of the damage that rolling blackouts have so far caused.  
19 The effects of such outages will impact both creditors' interests and alternatives for resolving this  
20 bankruptcy quickly and appropriately.

21 The Movants are natural gas fired co-generation power facilities, which are  
22 qualifying facilities ("QFs"), and parties to PPAs with the Debtor. The Movants are owed millions  
23 of dollars for electricity delivered to PG&E pre petition, and as a result of not being paid they are  
24 in default to their suppliers. Because they are unable to pay their natural gas suppliers, or are  
25 unable to sell power to the Debtor except at rates lower than production costs, some of the Movants  
26 are not in operation—a paradoxical result at the time of an energy crisis. Even if the Movants  
27 could arrange financing to produce power going forward, the Debtor interprets the Woods

1 Decision<sup>3</sup> to require the Movants to produce power for PG&E at prices that are lower than  
2 production costs. The Cogeneration Motions request an order terminating or modifying the  
3 automatic stay to permit them temporarily to sell power outside of their PPAs with the Debtor.

4 Palo Alto believes that it is in the best interests of the people of the State of  
5 California to maximize the availability of power this summer, and thereby to assuage as much as  
6 possible the damage that will be caused by blackouts to California's people and economy.  
7 Fortunately, what is in the best interests of California's people and economy is also in the best  
8 interests of the creditors. That is, the financially distressed QFs, including Movants, cannot be  
9 expected to continue to ignore their alternative means of reducing losses on energy sales to the  
10 Debtor. To the extent the Debtor perceives that the benefit of the automatic stay is that it preserves  
11 the benefits of the Debtor's contracts with the Movants (and other QFs) by providing the Debtor  
12 with below-cost power, that theoretical benefit will be lost when the QFs file their own chapter 11  
13 bankruptcies and reject their PPAs with the Debtor. Palo Alto thus urges the Court to focus on the  
14 practicalities of the situation. Any informed person can appreciate that the Debtor's position  
15 means worse blackouts and less power without any reciprocal benefits to the interests of the  
16 Debtor's creditors. Modifying the stay will result in more power, lower damages to the Movants,  
17 and will serve the best interests of creditors and those of the people of the State of California.

18 The legal arguments between the Debtor and Crockett can be preserved, causing no  
19 harm to anyone. Indeed, if PG&E were not in bankruptcy, the parties would simply have a contract  
20 dispute on their hands. The Debtor contends that the Woods decision binds Crockett, while  
21 Crockett contends it does not. Resolution of this dispute, while important, must be viewed by the  
22 Court as subordinate to the best interests of creditors and the welfare of the people and economy of  
23 this State.

24 Therefore, while the Court should preserve Movants' and the Debtor's legal rights  
25 and obligations for resolution through ordinary litigation, it should modify the automatic stay to  
26 permit the Movants to resume operations and produce as much power as possible before the power  
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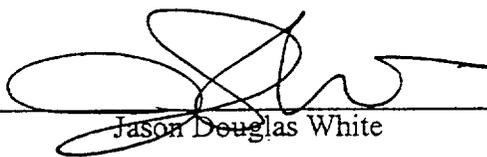
28 <sup>3</sup> California Public Utilities Commission, D.01-03-67 (March 27, 2001).

1 crisis is exacerbated by increased energy use this summer. As a matter of common sense, it is the  
2 proper, fair and practical solution. Modifying the stay will lower the Movants' damages, alleviate  
3 to some extent the summer's power outages, lessen the resulting economic harm to the state's  
4 citizens and economy, and will implement sound public policy, which is consistent with the best  
5 interests of creditors in this case.

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DATED: April 30, 2001

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13 NORTHERN DISTRICT OF CALIFORNIA  
14 (San Francisco Division)

15 In re ) Case No. 01-30923 DM  
16 )  
17 PACIFIC GAS AND ELECTRIC COMPANY, a ) CHAPTER 11  
California corporation, )  
18 Debtor. ) **PROOF OF SERVICE BY MAIL**  
19 Federal I.D. No. 94-0742640 ) Hearing Dates: May 9, 2001 at 9:30 a.m.  
20 ) May 10, 2001 at 1:30 p.m.  
21 )  
22 )  
23 )

24 I, Brenda C. Sanders, declare:

25 I am and was at the time of the service mentioned in this declaration, employed in  
26 the County of San Francisco, California. I am over the age of 18 years and not a party to this  
27 cause. My business address is Brobeck, Phleger & Harrison LLP, Spear Street Tower, One  
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On May 1, 2001, I served a copy(ies) of the following document(s):

JOINDER BY THE CITY OF PALO ALTO TO RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTIONS FOR RELIEF UNDER 11 U.S.C. §§ 362 AND 365 BY: (1) CROCKETT COGENERATION, (2) MID-SET ET AL., AND (3) LIVE OAK LIMITED ET AL.

by placing them in a sealed envelope(s) addressed as follows:

SEE ATTACHED LIST.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on May 1, 2001, at San Francisco, California.

By   
Brenda C. Sanders

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