

1 MCCUTCHEN, DOYLE, BROWN & ENERSEN, LLP
William Bates, III (SBN 63317)
2 Randy Michelson (SBN 114095)
3 Three Embarcadero Center
San Francisco, California 94111-4067
4 Telephone (415) 393-2000
5 Facsimile: (415) 393-2286

50-275
323

6 BAKER BOTTS L.L.P.
David A. Burns (SBN 03444000)
7 One Shell Plaza
910 Louisiana
Houston, TX 77002
8 Telephone: (713) 229-1267
9 Facsimile: (713) 229-2767

10 Attorneys for
Reliant Energy, Inc.

11
12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14
15 In re PACIFIC GAS & ELECTRIC
16 COMPANY,
17 Debtor.

Case No.: 01-30923 SFM11
Chapter 11

**MEMORANDUM OF POINTS AND
AUTHORITIES BY RELIANT ENERGY,
INC. IN SUPPORT OF DEBTOR'S
MOTION FOR ORDER VACATING THE
APPOINTMENT BY THE UNITED STATES
TRUSTEE OF THE OFFICIAL
COMMITTEE OF RATEPAYERS**

Date: May 18, 2001
Time: 10:00 a.m.
Place: 235 Pine St., 22nd Floor,
San Francisco, California

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24 The Debtor has filed its Memorandum of Points and Authorities in Support of
25 Debtors Motion for Order Vacating the Appointment by the United States Trustee of the Official
26 Committee of Ratepayers (the "Debtor's Memorandum"). The Debtor's Memorandum points out
27 in well-reasoned argument that this Court has the power to review the appointment of the
28 Ratepayers Committee, that the appointment of the Ratepayers Committee is contrary to the

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1 provisions of the Bankruptcy Code, and that the special interest groups that were appointed to the
2 Ratepayers Committee have an appropriate avenue for participation in this chapter 11 case.
3 Reliant will not waste the Court's time by belaboring those arguments, which it supports.
4 However, Reliant would bring the following additional points to the Court's attention.

5 **The Appointment of Special Interest Groups Will Further Politicize This Chapter 11 Case**

6 There is no question that this chapter 11 case is thoroughly enmeshed in political
7 issues, at local, state and federal levels. The Debtor filed its voluntary petition after months of
8 negotiations with the Governor of the State of California and repeated pleas for assistance from
9 the federal government, all in an attempt to find a political solution to its financial crisis.
10 California's energy woes and the Debtor's involvement in them have been front-page news across
11 the nation and have sparked heated political debate on a variety of issues that may not be
12 resolved for months or years to come.

13 Such political wrangling is inevitable and, in its proper place, necessary.
14 However, this Court is not its proper place. The Bankruptcy Code was not enacted to provide a
15 forum for political maneuvering; it was designed to provide an orderly legal process for the
16 resolution of a debtor's financial difficulties. In appointing a Ratepayers Committee composed
17 entirely of special interest groups, the U.S. Trustee has essentially invited into the heart of this
18 bankruptcy case the political bickering and divisiveness that played a major role in the Debtor's
19 inability to craft a solution to its problems outside of bankruptcy.

20 As the Debtor has ably argued in its Memorandum, there is no authority under the
21 Bankruptcy Code for the appointment of any official committee composed of parties other than
22 creditors or equity holders. Therefore, since the Debtor's ratepayers are neither creditors nor
23 equity holders, there is no authority for the appointment of the Ratepayers Committee, no matter
24 what its composition.

25 But here, there cannot even be the sympathetic response that one might have for a
26 committee composed of individuals whose interests might be affected but for whom independent
27 legal representation may not be practical. The Ratepayers Committee appointed by the U.S.
28 Trustee is made up of organizations, not individuals. These organizations have been active in the

1 political fights contributing to the Debtor's troubles, presumably availing themselves of budgets
2 created for lobbying and legal expenses. As the Debtor has pointed out, groups like these can
3 petition the Court for permission to intervene in this case, even though they are not creditors or
4 equity security holders, to protect whatever interests they may serve. Such intervention would,
5 of course, be at their own expense rather than an additional burden on an already heavily
6 burdened estate. Thus, the only purpose that would be served by the appointment of this
7 improperly created committee would be to allow a handful of lobbyists to continue their political
8 campaigns at the expense of the creditors of this estate. This is not a purpose sanctioned by the
9 Bankruptcy Code, and the Court should not condone such an abuse.

10 **Special Interest Groups Should Not Be Promoted to Committee Status**
11 **When Legitimate Creditors Are Excluded.**

12 It is ironic that the U.S. Trustee has seen fit to appoint an official committee to
13 represent ratepayers exclusively while at the same time insisting that the various constituencies
14 of actual creditors must share a single committee. As a consequence, ratepayers (or, more
15 precisely, the special interest groups who purport to speak for the ratepayers) will enjoy greater
16 representation than any single creditor group that actually has a right to be part of an official
17 committee.

18 The Unsecured Creditors Committee appointed by the U.S. Trustee in this case
19 consists, after two amended appointments, of 11 members, including (a) three bank creditors—
20 The Bank of New York, Morgan Guaranty, and Bank of America, N.A., (b) three commercial
21 paper holders—Merrill Lynch, and two governmental entities, the City of Palo Alto, and the
22 State of Tennessee (c) two qualified facilities—PE-Berkeley, Inc., and GWF Power Systems
23 Company, Inc, (d) one power trader—Enron Corp., (e) one generator—Dynergy Power
24 Marketing Inc. and (f) one trade creditor—The Davey Tree Expert Company. Thus, bank
25 creditors hold only three votes and power generators only one vote out of 11 on the creditors
26 committee. Yet, these two groups are owed collectively billions of dollars.

27 Only one of the special interest groups that make up the Ratepayers Committee
28 may be owed anything at all, yet the rate payers hold all of the votes of an entire committee.

1 [See footnote 3 of the Debtor's Memorandum.] Indeed Reliant would be surprised if the cost to
2 the estate of the Debtor of the Ratepayers Committee did not exceed the amount owed that one
3 group.

4 The U.S. Trustee has justified the composition of the Unsecured Creditors
5 Committee on the basis that seventy-five requests to serve on that Committee were received.
6 The natural corollary is that sixty-four actual creditors were denied a place on the Unsecured
7 Creditors Committee, including Reliant and some of the other largest creditors in the case, in
8 order that a single "representative" committee could be appointed.¹

9 This rationale is obviously at odds with whatever thinking resulted in the
10 appointment of the Ratepayers Committee. The appointment of such a Committee gives a single
11 interest—and one that is not even made up of creditors—a single, undiluted voice in the Debtor's
12 reorganization, while every creditor constituency is relegated to one, two or three votes on a
13 large Committee. If the U.S. Trustee's goal in this case truly was to allocate Committee
14 membership among various interest groups in a balanced way, that goal has been completely
15 defeated by the appointment of the Ratepayers Committee.

16 Dated: May 15, 2001.

Respectfully submitted,

17 McCUTCHEM, DOYLE, BROWN & ENERSEN, LLP

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19
20 By: Randy Michelson / BY GTH
21 Randy Michelson
22 Attorneys for Reliant Energy, Inc.
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26 _____
27 ¹ Reliant, having a claim of approximately \$210,000,000, itself is probably the fifth, sixth or seventh largest creditor
28 of the Debtor (depending on the amounts held by other generators) but has been repeatedly denied membership on
the Unsecured Creditors Committee. Indeed, particularly in light of the appointment of a Ratepayers Committee,
Reliant urges the United States Trustee to appoint a committee of electricity suppliers. Such suppliers are both
creditors of the Debtor and, unlike purely financial creditors, the key to the creation of additional supply of
electricity in California.