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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 In re
11 PACIFIC GAS AND ELECTRIC CO.,
12 Debtor.

Case No. 01-30923

Chapter 11

R.S. No. _____

Date: July 18, 2001

Time: 1:30 p.m.

Place: 22nd Floor

235 Pine Street

San Francisco, CA

Judge: Hon. Dennis Montali

17 **DECLARATION OF MAXWELL M. BLECHER IN SUPPORT OF**
18 **MOTION OF MODESTO IRRIGATION DISTRICT FOR RELIEF FROM STAY**

19 I, Maxwell M. Blecher, declare as follows:

20 1. I am an attorney licensed to practice law in the State of California and before the
21 above-entitled Court, and am a principal of the law firm of Blecher & Collins, P.C. In such capacity,
22 I am personally familiar with each of the facts stated herein, to which I could competently testify if
23 called upon to do so in a court of law.

24 2. Since its inception on August 3, 1998, I have acted as lead counsel for Modesto
25 Irrigation District ("MID") in litigation brought by MID against Pacific Gas & Electric Company, the
26 debtor herein (the "Debtor"), and Dynegy Power Services, Inc., as well as in the appeal (the "Pending
27 Appeal") that followed therefrom in the United States Court of Appeals for the Ninth Circuit.

28 3. On August 3, 1998, MID, a municipal utility district which provides electricity and

1 other services to industrial, commercial and residential customers in the greater Modesto area,
2 commenced an action against the Debtor in the United States District Court for the Northern District
3 of California, entitled *Modesto Irrigation District v. Pacific Gas & Electric and Dynegy Power*
4 *Services, Inc.*, No. C-98-3009-MHP, seeking, *inter alia*, a monetary judgment and injunctive relief
5 under the Sherman Antitrust Act for damages arising out of the Debtor's refusal to interconnect
6 transmission lines with MID at a designated substation in Pittsburg, California. MID's original
7 complaint was dismissed on motion of the defendants, and an amended complaint was filed by MID
8 on March 4, 1999. The defendants, including the Debtor through retained counsel, Heller, Ehrman,
9 White & McAuliffe, then moved to dismiss the action a second time, asserting, *inter alia*, that the
10 amended complaint failed to properly allege a conspiracy and that, in any event, the defendants'
11 conduct was protected by the *Noerr-Pennington* doctrine which immunizes efforts to prevent
12 competition by involving governmental or regulatory processes.

13 4. On August 20, 1999, the District Court granted the defendants' motion to dismiss
14 without leave to amend, finding that MID, as plaintiff, had (1) failed to allege a conspiracy under
15 Section 1 of the Sherman Act (although MID had in fact properly alleged such a conspiracy under
16 Section 2 of the Sherman Act), (2) failed to adequately allege antitrust injury (i.e., harm to
17 consumers), and (3) failed to negate the defendants' assertion of protection under the *Noerr-*
18 *Pennington* doctrine.

19 5. MID thereafter timely filed a notice of appeal of the dismissal of its amended
20 complaint, commencing the Pending Appeal. The Pending Appeal was then fully briefed, and oral
21 argument on the appeal took place before the United States Court of Appeals for the Ninth Circuit in
22 San Francisco on March 15, 2001. At the conclusion of argument, the Court of Appeals took the
23 matter under submission.

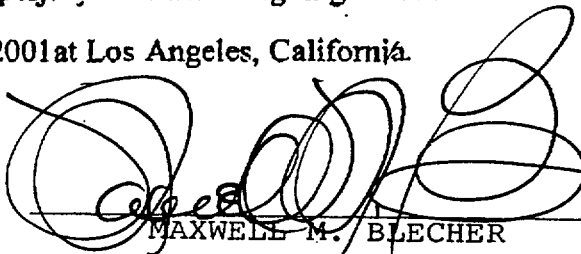
24 6. On April 6, 2001, the Debtor commenced its within chapter 11 case, triggering the
25 automatic stay provisions of Section 362(a) of the Bankruptcy Code. On the basis of that stay, on
26 May 7, 2001, the Court of Appeals suspended consideration of the appeal and invited the parties to
27 seek relief from that stay, stating the following:
28

1 The appeal is withdrawn from submission because of the automatic stay
2 resulting from Pacific Gas & Electric Company's bankruptcy filing. Each of the
3 parties is requested to advise this court if relief from the stay is obtained.

4 Order, filed in the Pending Appeal on May 7, 2001.

5 7. As a result, the Pending Appeal is presently suspended and the issues underlying that
6 appeal remain unresolved, although the parties have fully briefed and argued the matter to the Court
7 of Appeals.

8 8. I declare under penalty of perjury that the foregoing is true and correct, and that this
9 declaration was executed on June 25, 2001 at Los Angeles, California.

10 
11 MAXWELL M. BLECHER

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
PACIFIC GAS AND ELECTRIC CO.

Bankruptcy No.: 01-30923
R.S. No.:
Hearing Date: July 18, 2001
Time: 1:30 p.m.

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 D 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: None Last Date to File §523/§727 Complaints:

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.): N/A

Approx. Bal: \$ _____

Pre-Petition Default: \$ _____

As of (date): _____

No. of months: _____

No. 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.): N/A

Position

Amount

No. Payment

Defaults

1st Trust Deed:

2nd Trust Deed:

(Total)

(Total)

D Other pertinent information: Motion seeks relief to prosecute pending Ninth Circuit appeal

Dated: June 27, 2001

Signature

MERLE C. MEYERS, ESQ.

Attorney for Modesto Irrigation District