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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re:
PACIFIC GAS & ELECTRIC COMPANY,
a California corporation,
Debtor.

Federal I.D. No. 94-074260

CASE NO. 01-30923 DM
THE HONORABLE DENNIS MONTALI
CHAPTER 11 CASE
**DECLARATION OF STEVE R. DEAN IN
SUPPORT OF VIACOM INC.'S MOTION
FOR ENTRY OF AN ORDER FOR
RELIEF FROM STAY AND FOR
ADEQUATE PROTECTION WITH
RESPECT TO THE DAI OILDALE
PROJECT POWER PURCHASE
AGREEMENT**

Date: October 1, 2001
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor,
San Francisco, California

Acc/ Add: Kids Ogc Mail Center

DECLARATION OF STEVE R. DEAN

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I, Steve R. Dean, declare as follows:

1. Since approximately December 1994, I have been the President of DAI Oildale, Inc. ("DAI"). I make this declaration in support of the Motion (the "Motion") of Viacom, Inc. ("Viacom" or "Movant") for Entry of an Order for Relief from Stay and for Adequate Protection with Respect to the DAI Oildale Project (the "Project") Power Purchase Agreement (the PPA") brought by Movant and Movant's Memorandum of Points and Authorities in support thereof.

2. The facts set forth herein are within my personal knowledge, and if called as a witness, I could testify competently to them.

Description of the Project

3. The Project is a 29,000 kw gas-fired cogeneration facility located in Oildale, Kern County, California, which burns natural gas to produce electricity and steam energy for oilfield operations. The Project is a "qualifying facility" ("QF") as defined in the Public Utilities Regulatory Policies Act of 1978, as amended, 16 U. S.C. § 824(a)(3), et seq. ("PURPA").

The Project's Contractual Relationship with the Debtor

4. The Project provides power to Pacific Gas & Electric Company (the "Debtor" or "PG&E") pursuant to a PPA, dated as of May 7, 1984 and executed by PG&E on June 26, 1985. The PPA was entered into by the Debtor and Catalyst/Kern River West Cogeneration Partnership, the predecessor in legal interest to State Street Bank and Trust Company of California, N.A. ("State Street"). DAI is the agent for State Street as Owner Trustee for the benefit of Movant (successor in beneficial interest to Dexzel Inc.), as well as Operator of the Project's facility. A true and correct copy of the PPA is attached hereto as Exhibit A.

1 5. The PPA runs for a term of 20 years and is set to expire on February 20, 2010.
2 The PPA provides for the sale of up to 32,000 kw of power representing 100% of the total
3 project net electrical production.

4 6. In consideration for the Project's commitment to deliver electricity and the actual
5 deliveries, the Project is entitled to a package of compensation consisting generally of a
6 "capacity" payment and an "energy" payment under the PPA, in compliance with the avoided
7 cost requirements under PURPA. The capacity payment is set at a stipulated amount in the PPA,
8 and the energy payment is set at PG&E's "Short Run Avoided Cost," or "SRAC," as that rate is
9 set by the California Public Utilities Commission (the "CPUC") from time to time. "All-in"
10 prices under the PPA were approximately \$100/MWh in April 2001.

11 12 **The Project's Dependence on the Debtor for its Continued Viability**

13 7. The Project's primary source of income is its PPA with PG&E. Historically,
14 more than 95% of the Project's revenue comes from electricity sales to the Debtor. The
15 remaining portion results from the Project's oil production facilities. Such revenues are used to
16 purchase natural gas (the single largest cost of production) as fuel to run the facility and to pay
17 the other costs associated with the operation and financing of the facility.

18 8. The Project was conceived, designed, built and financed with third-party
19 financing based upon the Debtor's 20-year obligation to purchase electricity from the Project
20 under the PPA. The Project is specifically structured around cash flow from the PPA, and the
21 viability of the Project's operations during its eleven years of existence has at all times been, and
22 currently is, dependent on the revenue derived from the PPA.

23 24 **The Debtor's Breach of the PPA and the Effect on the Project**

25 9. On January 11, 2001, the U.S. Department of Energy issued an emergency order
26 requiring generators to produce electricity due to the shortages in California through February 7,
27 2001. On January 18, 2001, DAI, as the agent for State Street, received a facsimile from the
28 Debtor entitled "Notice to Qualifying Facility Owners" asserting that the Debtor was invoking

1 the *force majeure* provision of the PPA between the Debtor and State Street. In the facsimile,
2 the Debtor stated that "This *force majeure* event does not excuse your performance under the
3 PPA and in this time of extreme supply shortages the power produced by QF facilities is
4 desperately needed to avoid customer outages and curtailments." A true and correct copy of this
5 facsimile is attached hereto as Exhibit B. On January 29, 2001, DAI, as agent for State Street,
6 received another "Notice to Qualifying Facility Owners" confirming that only partial payments
7 would be made under the PPA, but also making clear that PG&E still expected deliveries to be
8 made.

9 10. On February 6, 2001, the Debtor defaulted on the PPA, by non-payment to the
10 Project of the entire amount due for energy and capacity delivered in December 2000. Instead,
11 the Debtor merely tendered a partial payment of \$560,867.74 for December 2000 energy and
12 capacity due – roughly 15% of full amounts due for that month. On March 7, 2001, the Debtor
13 further defaulted on the PPA, by again only making a partial payment for energy and capacity
14 delivered in January 2001. This time, the Debtor tendered a partial payment of \$620,649.71,
15 again, approximately 15% of full amounts owed for that month. The Debtor made no payments
16 at all for energy and capacity delivered in February and March of 2001. Additionally, the Debtor
17 made no payments for energy and capacity delivered from April 1 through April 6, 2001.

18 11. In response to these extraordinary and unforeseen events, State Street received a
19 demand for assurances from its supplier, BP Energy Company ("BP") (formerly Amoco Energy
20 Trading Company), dated February 12, 2001, which would require State Street to provide a
21 credit facility or cash reserves approaching \$10 million within three business days (the amount of
22 January's expenses plus two months' full supply). This amount was essentially equal to the total
23 dollar amount of fuel purchased by the Project from BP in all of 2000. The Project was not in a
24 financial position to be able to comply with BP's new payment demands, or to be forced to bear
25 the brunt of a squeeze play essentially brought about by the Debtor's changed circumstances.

26 12. DAI, as Buyer's Designee for State Street, was therefore forced, by letter dated
27 February 15, 2001, to invoke the *force majeure* provisions in a certain Natural Gas Sales
28 Agreement, as amended, (the "NGSA") dated as of September 5, 1997, by and between BP and

1 State Street, as Owner Trustee for the benefit of Movant. After DAI provided notice to BP
2 regarding its inability to perform due to causes beyond its control, BP elected to suspend further
3 delivery of gas to the Project. Having been stripped of its primary source of revenue, the Project
4 was unable to fund the purchase of natural gas. Thereafter, DAI, as Operator of the facility, shut
5 down the facility and initiated necessary maintenance.

6 13. On March 1, 2001, the Project defaulted on its debt financing. Its unrestricted
7 operating cash reserves were depleted. However, at this time the Project arranged for the loan of
8 certain funds to the Project for the necessary cash pre-payment to secure natural gas for limited
9 peak period operations. This initiative on the part of Movant was undertaken in consideration of
10 the various pleadings from various State elected and regulatory officials for electric power
11 production, as well as the sense that concrete steps were being taken to resolve the crisis and cure
12 the payment defaults of the Debtor under the PPA. Such limited operations continued through
13 the Petition Date.

14 14. As of April 6, 2001 (the "Petition Date"), the Debtor had withheld approximately
15 \$8,807,797 in payments owed under the PPA (the "Prepetition Debt"). Despite PG&E's material
16 defaults, the Project continued to purchase fuel, convert that fuel to electricity and deliver that
17 electricity to PG&E -- unless and until its own financial condition dictated otherwise.

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19 **The Debtor's April 2001 Directive to QFs**

20 15. By letter dated April 11, 2001 (the "April Directive") and addressed to all of the
21 Debtor's QFs, including the Project, the Debtor unilaterally notified the QFs that (1) they would
22 be required to continue delivering electricity under their PPAs prior to a decision by the Debtor
23 to assume or reject the PPAs, (2) they would be paid the contract rate (as per the CPUC's March
24 27, 2001 rate-setting decision) for such deliveries, or an even further reduced amount if the
25 Debtor's circumstances so required, (3) payment would be made 15 days in arrears, and (4) the
26 arrangement would be continued on a month-to-month basis, pending further notice from the
27 Debtor. The April Directive did not address at what price and on what other terms the Project
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1 and other QFs could perform prior to the Debtor's election to assume or reject the PPAs. A true
2 and correct copy of the April Directive is attached hereto as Exhibit C.

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4 **The Debtor's Advance and the Project's Current Situation**

5 16. Given the Project's inability to meet its obligations to gas suppliers, its lenders
6 and other creditors – all directly and proximately caused by Debtor's prepetition defaults under
7 the PPA – the Project was compelled to accept the Debtor's offer to advance \$1,450,000 (the
8 "Advance") in order that natural gas could be purchased and the facility restarted, as reflected in
9 the Debtor's letter to DAI dated May 23, 2001. In accordance with the terms of this letter
10 agreement, this Advance must be repaid over the next six months. A true and correct copy of the
11 Debtor's May 23, 2001 letter to DAI is attached hereto as Exhibit D.

12 17. While the Advance temporarily replenishes the Project's reserves to permit the
13 cash prepayment of natural gas for facility operations, it does nothing to help cure the Project's
14 continuing outstanding obligations to BP, its lenders and other creditors. Only payments of
15 prepetition obligations will answer these issues.

16 18. Except for the Advance, the Project has no resources with which to satisfy the
17 new credit requirements of its suppliers because the Project's cash in unrestricted accounts is
18 substantially exhausted. Moreover, the Project may not be able to make natural gas purchase
19 commitments consistent with prudent risk management (such as the procurement of one month's
20 natural gas at a firm as opposed to daily spot price) in the foreseeable future absent intervention
21 by the Court.

**EXHIBITS
PROVIDED
UPON
REQUEST**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 350 South Grand Avenue, Los Angeles, CA 90071.

On July 30, 2001, I served the foregoing document described as **DECLARATION OF STEVE R. DEAN IN SUPPORT OF VIACOM INC.'S MOTION FOR ENTRY OF AN ORDER FOR RELIEF FROM STAY AND FOR ADEQUATE PROTECTION WITH RESPECT TO THE DAI OILDALE PROJECT POWER PURCHASE AGREEMENT**, on the interested parties in this action by placing true and correct copies thereof enclosed in sealed envelopes addressed as indicated on the:

SPECIAL NOTICE LIST

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I caused the above-mentioned document to be personally served to the offices of the addressee.

BY FACSIMILE: I communicated such document via facsimile to the addressee as indicated on the attached service list.

BY FEDERAL EXPRESS: I caused said document to be sent via Federal Express to the addressee as indicated on the attached service list.

Executed this 30th day of July, 2001, at Los Angeles, CA.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Catherine Ryan