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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 In re
13 PACIFIC GAS AND ELECTRIC COMPANY, a
California corporation,
14 Debtor.
15 Tax Identification No. 94-742640
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Case No. 01-30923 DM

Chapter 11

OPPOSITION OF CREDITOR
RELIANT ENERGY SERVICES, INC.
TO MOTION FOR AUTHORITY TO
ASSUME POWER PURCHASE
AGREEMENTS BETWEEN PG&E
AND CERTAIN QUALIFYING
FACILITIES

Date: August 3, 2001
Time: 1:30 p.m.
Place: Courtroom 22
Judge: Hon. Dennis Montali

A001 Add: Kids Ogc Mail Center

1 Creditor Reliant Energy Services, Inc. (“Reliant”) submits this Opposition to
2 PG&E’s Motion for Authority to Assume Power Purchase Agreements Between PG&E and
3 Certain Qualifying Facilities.

4 **I. ARGUMENT.**

5 While Reliant does not object in principle to a streamlined process for seeking
6 and obtaining approval of the Court for the debtor’s assumption of the Power Purchase
7 Agreements (“PPAs”), it opposes the procedure that PG&E has proposed.¹

8 **A. Section 365 Requires Court Approval of the Debtor’s**
9 **Assumption of Executory Contracts, and Generally Requires**
10 **Notice and a Hearing.**

11 By the express terms of 11 U.S.C. § 365, a trustee’s assumption of executory
12 contracts is “subject to the court’s approval.” 11 U.S.C. § 365(a). Court approval generally
13 follows notice and a hearing. *Sea Harvest Corp. v. Riviera Land Co.*, 868 F.2d 1077, 1079 (9th
14 Cir. 1989); Fed. R. Bankr. Proc. 6006(a) (“A proceeding to assume . . . an executory contract . .
15 .is governed by Rule 9014”); Fed. R. Bankr. Proc. 9014 (“relief shall be requested by motion,
16 and reasonable notice and opportunity for hearing”); B.L.R. 6006-1(a).

17 The debtor’s Motion seeks to effectively eliminate that notice and hearing
18 requirement. The debtor asks the Court to pre-authorize its assumption of approximately 200
19 PPAs concerning as much as hundred of millions of dollars in pre-petition debt with only 48-
20 hours notice to the creditors’ committee and its counsel, and no other, and no meaningful
21 opportunity for objections to or a hearing on any such assumption. PG&E has cited no authority
22 that such a blanket pre-approval of unseen agreements is permitted under section 365.

23 Moreover, it has provided no reason why such an extreme deviation from the normal notice and

24 ¹ Reliant does not oppose the Motion to the extent that PG&E seeks authorization to pay
25 immediately pre-petition payables of less than \$10,000 to the QFs whose contracts have been
26 assumed.

1 hearing procedure would be beneficial or appropriate other than the relatively insignificant
2 benefit to the estate of not having to provide a broader notice. Motion at 6:3-4.

3 **B. PG&E Has Not Identified a Need to Pre-Approve Its**
4 **Assumption of the 200 PPAs with No Notice or Opportunity to**
5 **Object.**

6 Reliant cannot know now if it would find anything objectionable about the 200
7 PPA contracts that PG&E is negotiating with the remaining QFs. It must be kept in mind that
8 the debtor is not merely assuming existing executory contracts with these QFs; rather it is
9 negotiating and entering into new contracts to supersede the pre-petition contracts. PG&E
10 effectively is asking the Court to approve the amended PPAs before the Court or any other party
11 other than the committee has had an opportunity even to see them. These PPAs represent
12 hundreds of millions of dollars of estate property which will be elevated from unsecured claims
13 to administrative priority status. Interested parties should have notice and an opportunity to
14 object to the new PPAs if warranted. Notice should be sent to those on the Special Notice list, as
15 these parties have indicated a desire to receive notice on matters such as this which will have
16 such a significant impact on the estate. B.L.R. 6006-1(a) (“A motion to assume, reject or assign
17 an executory contract or unexpired lease shall be on notice to . . . any party who has requested
18 notice pursuant to Fed. R. Bankr. P. 2002”).

19 The debtor has asked for pre-approval of the PPAs on the condition that they be
20 “on terms no less favorable to PG&E than those that this Court has already approved.” This
21 condition allows for an almost unlimited variety of terms and conditions in the PPAs and does
22 not offer enough guidance for the Court to analyze meaningfully their effect on the estate to pre-
23 approve the assumption of 200 new PPAs. While the CPUC rulings place some constraints on
24 the new PPAs, the debtor is still free to include terms that may or may not prejudice other
25 creditors.

26 Moreover, PG&E has not identified any basis for such an extreme deviation from
the standard 20-day notice and hearing procedure for approval of such transactions. The fact that

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1 the June 13 CPUC decision initially had set a July 14 deadline for PG&E to enter into new PPAs
2 with QFs may have justified the expedited process for court approval of the agreements PG&E
3 entered into before that date. However, the Motion indicates that no deadline appears to apply
4 for the 200 PPAs for which PG&E now seeks pre-approval. Motion at 2:17:24. If the CPUC
5 were to set a new deadline, or a specific PPA required a quick approval for reasons such as the
6 QF's needing it to secure financing, then expedited approval for those specific PPAs could be
7 separately sought. For the remainder, PG&E is still free to seek approval for multiple PPAs in a
8 single motion, which would save time and expense. However, these still should be subject to the
9 normal notice and hearing procedures.

10 **II. CONCLUSION**

11 For the reasons stated above, Reliant requests that the Court deny the debtor's
12 motion.

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14 DATED: August 2, 2001

McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

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Reliant Energy Services, Inc.

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