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50-275
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[Proposed] Attorneys for the Official
 Committee of Participant Creditors

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

In re)	CASE NO. SF 01-30923 DM
)	
PACIFIC GAS AND ELECTRIC COMPANY,)	CHAPTER 11
a California corporation,)	
)	Date: [No hearing required -
Debtor.)	Time: LBR 9014-1(b)(3)]
)	Place: 235 Pine Street, 22nd Floor
Federal I.D. No. 94-0742640)	San Francisco, California
)	
)	
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)	

NOTICE OF MOTION AND MOTION BY OFFICIAL COMMITTEE OF PARTICIPANT CREDITORS OF CALIFORNIA POWER EXCHANGE CORPORATION FOR APPROVAL OF STIPULATION WITH PACIFIC GAS AND ELECTRIC COMPANY AND RELIANT ENERGY SERVICES, INC. FOR RELIEF FROM THE AUTOMATIC STAY RE NON-BANKRUPTCY LITIGATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ATON ARBISSER

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1 PLEASE TAKE NOTICE that The Official Committee of Participant Creditors (the
2 "Committee") of the California Power Exchange Corporation ("CalPX"), hereby moves the Court
3 for an order approving its stipulation (the "Stipulation") with Pacific Gas And Electric Company
4 ("PG&E") and Reliant Energy Services, Inc. ("Reliant"). A true and correct copy of the Stipulation
5 is attached hereto as Exhibit 1. Bankruptcy Local Rule 9014-1 of the United States Bankruptcy
6 Court for the Northern District of California prescribes the procedures to be followed in connection
7 with this Motion. Any objection to the requested relief or request for hearing on this matter must be
8 filed and served upon counsel for the Committee within 20 days of the date of mailing of this notice.
9 Any request for hearing or objection must be accompanied by any declarations or memoranda of law
10 the party objecting or requesting wishes to present in support of its position. If there is not a timely
11 objection to the requested relief or a request for hearing, the Court may enter an order granting the
12 relief by default. The Committee will give at least 10 days written notice of hearing to the objecting
13 or requesting party, and to any trustee or committee appointed in this case, in the event an objection
14 or request for hearing is timely made.
15

16 A described more fully below, the Committee was appointed in the CalPX case to represent
17 the interests of the market participants ("Participants") that assert they are owed money for sales into
18 the markets administered by CalPX or are owed money for sales into the real time market
19 administered by the California Independent System Operator for which CalPX acted as scheduling
20 coordinator for investor owned utilities. The Committee has been authorized by the Bankruptcy
21 Court in CalPX's case to prosecute certain claims and litigation on behalf of CalPX's bankruptcy
22 estate. The Stipulation would modify the automatic stay to permit the Committee as representative
23 of the CalPX estate, the Participants, Reliant and PG&E to move forward in certain respects with
24 non-bankruptcy litigation against the State of California (the "State") relating to Block Forward
25 Market Contracts seized by the State. As set forth in more detail in the accompanying
26 Memorandum of Points and Authorities, the parties seek approval of this Stipulation out of an
27 abundance of caution, and in response to concerns raised by the State before the State of California
28 Victim Compensation and Government Claims Board (the "Victim Compensation Board"). PG&E

1 is the chapter 11 debtor in possession in this case, and CalPX is the chapter 11 debtor in possession
2 in Case No. LA 01-16577 ES, now pending in the United States Bankruptcy Court for the Central
3 District Of California. Through the Stipulation, the parties seek to modify the automatic stay arising
4 in both cases. A motion similar to this one has been or will be filed in the CalPX bankruptcy case,
5 and so the relief sought by this Motion is contingent on the granting of the corresponding motion in
6 the CalPX case.

7
8 Pursuant to an order entered on June 29, 2001 in the CalPX bankruptcy case, the Committee
9 was authorized to litigate, on behalf of CalPX's bankruptcy estate, claims against the State relating
10 to its seizure of certain Block Forward Market Contracts. The Committee assumed the task of
11 prosecuting such claims before the Victim Compensation Board, and has now filed a lawsuit in state
12 court against the State. PG&E has also filed a claim before the Victim Compensation Board, and
13 also filed a lawsuit in state court against the State relating to the seizure of the Block Forward
14 Market Contracts. In addition, approximately 27 of the Participants have filed claims before the
15 Victim Compensation Board relating to the seizure of the Block Forward Contracts; and one
16 Participant (Reliant) has filed a state court lawsuit against the State. To the extent that the automatic
17 stay arising in CalPX's bankruptcy might apply to the claim and action filed by PG&E against the
18 State, and to the extent that the automatic stay arising in PG&E's bankruptcy might apply to the
19 claims and actions prosecuted by the Committee on behalf of the CalPX estate or by Reliant, or to
20 the claims filed by Participants against the State, the Stipulation would modify the stay retroactively
21 in each case to permit those claims and actions against the State to move forward in certain respects,
22 as described more fully in the Stipulation. PG&E supports the granting of the relief requested in this
23 Motion.

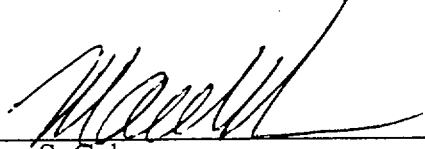
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1 Wherefore, the Committee requests that the Court enter its order approving the Stipulation,
2 contingent on the approval of the Stipulation by the bankruptcy court in CalPX's bankruptcy case.

3 DATED: August 17, 2001

4 KAYE SCHOLER LLP
5 Marc S. Cohen

6 
7 _____
8 By: Marc S. Cohen
9 [Proposed] Attorneys for the
10 Official Committee of Participant Creditors
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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

Prior to its bankruptcy, CalPX operated commodities markets in which wholesale electricity was bought and sold. Through its CalPX Trading Services division, CalPX operated a market for trading of forward contracts for the future delivery of electricity ("Block Forward Market Contracts"). CalPX operated under the terms of tariffs approved by the Federal Energy Regulatory Commission. CalPX and the Committee contend that under the terms of those tariffs, in the event that a market participant failed to perform its obligations, CalPX was permitted to sell or liquidate any Block Forward Market Contracts of the defaulting participant.

PG&E is an investor-owned utility that traded in electricity in the markets formerly administered by CalPX. In 2000, PG&E entered into Block Forward Market Contracts for purchase of wholesale electricity for various periods during 2001. Because of subsequent increases in the wholesale price of electricity, those Block Forward Market Contracts increased in value. CalPX contends that beginning no later than January 2001, PG&E defaulted on obligations to CalPX, and that CalPX then commenced liquidation of those Block Forward Market Contracts. However, on February 5, 2001, CalPX received Executive Order D-21-01 from the Governor of the State, commandeering the PG&E Block Forward Market Contracts.

On or about March 15, 2001, CalPX filed Government Claim No. G513305 against the State before the State of California Victim Compensation And Government Claims Board, based on the commandeering by the State of the Block Forward Market Contracts (the "CalPX Claim"). On March 28, 2001, PG&E filed Government Claim No. G513644 before the Victim Compensation Board based on the commandeering by the State of the Block Forward Market Contracts. Some 27 individual Participants also filed Victim Compensation Board claims against the State.

1 CalPX filed its chapter 11 bankruptcy petition on March 9, 2001. On or about March 26,
2 2001, the Committee was appointed by the office of the United States Trustee. The Committee's
3 members are as follows: Automated Power Exchange, Avista Energy, Inc., Enron Power Marketing,
4 Inc., Los Angeles Department of Water and Power, Mirant Americas Energy Marketing LP, Powerex
5 Corp., Reliant Energy Services, Inc., Salton Sea Power Generation, and Sempra Energy Trading
6 Corp. The Committee thereafter entered into a stipulation with CalPX, whereby the Committee was
7 authorized to prosecute claims and litigation based on the commandeering of the Block Forward
8 Market Contracts, on behalf of CalPX's bankruptcy estate. Following a hearing, the Court entered
9 an order on June 29, 2001 approving that stipulation. Since the order was entered, the Committee
10 has assumed the prosecution of the CalPX Claim.

11
12 On April 6, 2001, PG&E filed its chapter 11 bankruptcy petition in the United States
13 Bankruptcy Court for the Northern District of California, San Francisco Division, Case No. 01-
14 30923 DM. On July 16, 2001, PG&E filed an action in the Superior Court for the County of San
15 Francisco entitled Pacific Gas and Electric Company v. The State of California and Does 1 through
16 10, inclusive, Case No. 322921 (the "PG&E Action"). CalPX is not named as a party in the PG&E
17 Action.

18
19 Thereafter, on July 20, 2001, the Committee filed an inverse condemnation action on behalf
20 of CalPX against the State in the State of California Superior Court for the County of Los Angeles,
21 California Power Exchange Corporation v. State of California and Does 1 through 10, inclusive,
22 Case No. BC 254509 (the "CalPX Action"). PG&E is not named as a party in the CalPX Action.

23
24 In addition, Reliant Energy Services, Inc., a Participant, has commenced an action in the
25 Superior Court of the State of California, County of Los Angeles, Reliant Energy Services, Inc. v.
26 The State of California and Does 1 through 10, Case No. BC 254563 (the "Reliant Action"). Neither
27 PG&E nor CalPX is named as a party in the Reliant Action. It is anticipated the other Participants
28 may file similar actions against the State.

To resolve any issues about the effect of the automatic stay on the actions of the litigants so far, the Stipulation generally provides (1) that the rejection of the claims of PG&E, CalPX and the Participants by the Victim Compensation Board as unduly complex does not violate the automatic stay in either the PG&E or CalPX bankruptcy cases; (2) that the filing and service of the state court complaints by PG&E, CalPX's Committee and Reliant has not violated the stay, and (3) that the parties will negotiate in good faith to resolve any further issues concerning the application of the automatic stay before resorting to litigation of those issues.

Section 362(d) of the Bankruptcy Code provides in relevant part that “[o]n request of a party in interest ... the court shall grant relief from the stay ... such as by terminating, annulling, modifying, or conditioning such stay – (1) for cause....” 11 U.S.C. §362(d)(1). In this instance, to the extent that the stay applies, the parties have stipulated to relief from stay for the following reasons:

- The refusal of the Victim Compensation Board to act places PG&E, the Committee and CalPX's estate, and the Participants at a disadvantage in their state court lawsuits: although PG&E and the Committee believe that the argument would be meritless, the State may nevertheless seek a dismissal of those actions on the grounds that administrative remedies have not been exhausted.

1 • None of the claims and actions against the State that are the subject of the Stipulation
2 seek relief against the PG&E bankruptcy estate or the CalPX bankruptcy estate;

3 • The various claims against the State that have been asserted by CalPX and PG&E
4 arise under state law and federal non-bankruptcy law, and can be more readily and expeditiously
5 litigated outside of the bankruptcy Court.

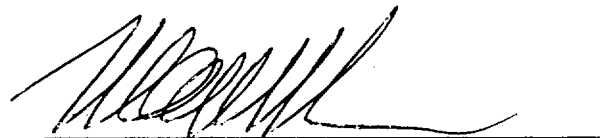
6 • Even if the stay did apply in these circumstances, the State may contend that the
7 Eleventh Amendment of the United States Constitution prevents the respective bankruptcy courts
8 from determining the claims of PG&E, CalPX and the Participants against the State without its
9 consent.

10 • Under these circumstances, denying this Motion and applying the stay would benefit
11 only the State, while harming both bankruptcy estates.

12
13 Thus, for all the foregoing reasons, the Court should approve the Stipulation, contingent on approval
14 of the Stipulation by the court in the CalPX bankruptcy case.

15
16
17 DATED: August 17, 2001

18 KAYE SCHOLER LLP
19 Marc S. Cohen

20 
21 By: Marc S. Cohen
22 [Proposed] Attorneys for the
23 Official Committee of Participant Creditors
24
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DECLARATION OF ATON ARBISSER

I, Aton Arbisser, declare:

1. I am an attorney duly admitted to practice in the State of California and before the United States District Court for the Central District of California. I am a partner in the firm of Kaye Scholer LLP, which is proposed counsel to the Official Committee of Participant Creditors (the "Committee") in connection with the chapter 11 bankruptcy case of California Power Exchange Corporation ("CalPX"), and in connection with the litigation described below. I have personal knowledge of the facts contained in this declaration, and if called as a witness, could and would testify to these facts under oath.

2. I am informed and believe that prior to its bankruptcy, CalPX operated markets in which wholesale electricity was bought and sold; that through its CalPX Trading Services division, CalPX operated a market for trading of forward contracts for the future deliver of electricity ("Block Forward Market Contracts"); that CalPX operated under the terms of tariffs approved by the Federal Energy Regulatory Commission; and that under the terms of those tariffs, in the event that a market participant failed to perform its obligations, CalPX was permitted to sell or liquidate any Block Forward Market Contracts of the defaulting participant.

3. I am further informed and believe that in 2000, Pacific Gas and Electric Company ("PG&E") entered into Block Forward Market Contracts for purchase of wholesale electricity for various periods during 2001; and that because of subsequent increases in the wholesale price of electricity, those Block Forward Market Contracts increased in value.

4. CalPX contends that beginning no later than January 2001, PG&E defaulted on obligations to CalPX, and that CalPX then commenced liquidation of those Block Forward Market

1 Contracts; however, on or about February 5, 2001, CalPX received Executive Order D-21-01 from
2 the Governor of the State, commandeering the PG&E Block Forward Market Contracts.

3
4 5. On or about March 15, 2001, CalPX filed Government Claim No. G513305 (the
5 "CalPX Claim") against the State before the State of California Victim Compensation And
6 Government Claims Board (the "Victim Compensation Board"), based on the commandeering by the
7 State of the Block Forward Market Contracts. On March 28, 2001, PG&E filed Government Claim
8 No. G513644 before the Victim Compensation Board based on the commandeering by the State of
9 the Block Forward Market Contracts. Approximately 27 individual market participants also filed
10 Victim Compensation Board claims against the State.

11
12 6. CalPX filed its chapter 11 bankruptcy petition on March 9, 2001. On or about
13 March 26, 2001, the Committee was appointed by the office of the United States Trustee, to
14 represent the interests of the market participants (the "Participants") that are owed money for sales
15 into the markets administered by CalPX or that are owed money for sales into the real time market
16 administered by the California Independent System Operator for which CalPX acted as scheduling
17 coordinator for investor owned utilities. The Committee's members are as follows: Automated
18 Power Exchange, Avista Energy, Inc., Enron Power Marketing, Inc., Los Angeles Department of
19 Water and Power, Mirant Americas Energy Marketing LP, Powerex Corp., Reliant Energy Services,
20 Inc., Salton Sea Power Generation, and Sempra Energy Trading Corp.

21
22 7. The Committee thereafter entered into a stipulation with CalPX, whereby the
23 Committee was authorized to prosecute claims and litigation based on the commandeering of the
24 Block Forward Market Contracts, on behalf of CalPX's bankruptcy estate. Following a hearing, the
25 Court entered an order on June 29, 2001 in the CalPX bankruptcy case, approving that stipulation.

26
27 8. Since the order was entered, the Committee has assumed the prosecution of CalPX's
28 claims against the State before the State of California Victim Compensation And Government

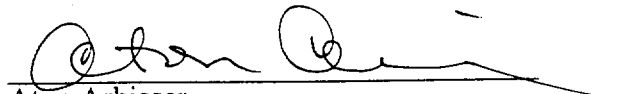
1 Claims Board. In addition, on July 20, 2001, the Committee filed an inverse condemnation action
2 against the State in the State of California Superior Court for the County of Los Angeles, California
3 Power Exchange Corporation v. State of California, Case No. BC 254509 (the "CalPX Action").
4 PG&E is not named as a party in the CalPX Action.

5
6 9. On July 16, 2001, PG&E filed an action in the Superior Court for the County of San
7 Francisco entitled Pacific Gas and Electric Company v. The State of California and Does 1 through
8 10, inclusive, Case No. 322921 (the "PG&E Action"). CalPX is not named as a party in the PG&E
9 Action. In addition, Reliant Energy Services, Inc., a participant in Cal PX, has commenced an action
10 in the Superior Court of the State of California, County of Los Angeles, Reliant Energy Services,
11 Inc. v. The State of California and Does 1 through 10, Case No. BC 254563 (the "Reliant Action").
12 Neither PG&E nor CalPX is named as a party in the Reliant Action. The Committee anticipates that
13 other participants may file similar actions against the State.

14
15 10. By letter dated July 13, 2001, the State has objected to the Victim Compensation
16 Board taking action to reject the claims of CalPX, PG&E and the Participants, unless it receives
17 assurance from the respective bankruptcy courts that it can do so without violating the automatic
18 stay. A true and correct copy of that letter is attached hereto as Exhibit 2.

19
20 11. The Committee has entered into a Stipulation with PG&E and Reliant that is the
21 subject of the Motion to which this Declaration is attached. A true and correct copy of that
22 Stipulation is attached hereto as Exhibit 1. I am informed and believe that PG&E supports the
23 granting of the relief requested in the Motion.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th
25 day of August, 2001 at Los Angeles, California.

26
27 
28 Aton Arbisser

Pacific Gas and Electric Company ("PG&E"), by and through Cooley Godward LLP, its counsel, the Official Committee of Participant Creditors (the "Committee") of the California Power Exchange Corporation ("Cal PX"), in the Committee's capacity as representative of the Cal PX bankruptcy estate with respect to the litigation described herein, by and through its chair, Howard Weg, and Reliant Energy Services, Inc. ("Reliant"), by and through its counsel McCutchen, Doyle, Brown & Enersen, LLP, hereby enter into this Stipulation, based on the following facts:

A. Cal PX is a debtor-in-possession in a chapter 11 bankruptcy case now pending in the United States Bankruptcy Court for the Central District of California, Case No. LA 01-16577 ES, filed on March 9, 2001.

B. PG&E is a debtor-in-possession in a chapter 11 bankruptcy case now pending in the United States Bankruptcy Court for the Northern District of California, San Francisco Division, Case No. 01-30923 DM, filed on April 6, 2001.

C. Cal PX has filed Government Claim No. G513305, and PG&E has filed Government Claim No. G513644 before the State of California Victim Compensation and Government Claims Board, based on the seizure by the State of California of Contracts traded in the Block Forward Market formerly run by Cal PX Trading Services, a division of Cal PX. The claim of Cal PX was amended to provide that the claim was made on behalf of Cal PX and "on behalf of all market participants for whose benefit Cal PX had the right to liquidate the commandeered Block Forward contracts" ("Participants"). Individual Participants also filed

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claims. Collectively, the claims before the Victim Compensation and Government Claims Board are referred to as the "Government Claims".

D. PG&E has commenced an action in the Superior Court of the State of California, County of San Francisco, entitled "Pacific Gas and Electric Company v. The State of California, and Does 1-10, inclusive," Case No. 322921 (the "PG&E Action").

E. The Committee has commenced an action in the Superior Court of the State of California, County of Los Angeles, entitled, "California Power Exchange Corporation v. State of California and Does 1 through 10, inclusively, Case No. BC 254509 (the "Cal PX Action").

F. Reliant Energy Services Inc., a Participant, has commenced an action in the Superior Court of the State of California, County of Los Angeles entitled, "Reliant Energy Service Inc. v. The State of California and Does 1 through 10, Case No. BC 254563 (the "Reliant Action").

G. Pursuant to an order entered on June 29, 2001, the Committee is authorized to prosecute and defend in the name of Cal PX certain actions including the Government Claims and the Cal PX Action.

WHEREFORE, the parties agree and stipulate as follows:

1. Any action by the Victim's Compensation and Government Claims Board to reject the Government Claims as unduly complex does not violate the automatic stay arising under 11 U.S.C. §362 in either the PG&E or Cal PX chapter 11 case.

2. The filing and service of the PG&E Action does not violate the automatic stay of 11 U.S.C. §362 in the Cal PX chapter 11 case, so long as Cal PX is not a party to that action.

3. The filing and service of the Cal PX Action does not violate the automatic stay of 11 U.S.C. §362 in the PG&E chapter 11 case, so long as PG&E is not a party to those actions.

4. The filing and service of the Reliant Action, in as much as it asserts claims as a Participant, does not violate the automatic stay of 11 U.S.C. §362 in the PG&E chapter 11 case, so long as PG&E is not a party to those actions.

5. Except as specifically set forth herein, PG&E and Cal PX each reserve their rights with respect to any further matters relating to the automatic stay of 11 USC §362 as it applies in their respective chapter 11 cases. PG&E and the Committee (on behalf of Cal PX) will attempt in good faith to consensually resolve any issues pertaining to the application of the automatic stay of 11 U.S.C. §362 in connection with the PG&E Action and the Cal PX Action. Before litigating any issue pertaining to the application of the automatic stay of 11 U.S.C. §362 in the action of any Participant who has signed a stipulation with PG&E, PG&E will attempt in good faith to consensually resolve the issue with the affected Participant.

Dated: August 2, 2001

By: Linda F. Callison
Linda F. Callison
Counsel For Pacific Gas and Electric
Company

OFFICIAL COMMITTEE OF
PARTICIPANT CREDITORS OF THE
CALIFORNIA POWER EXCHANGE
CORPORATION BY POWEREX CORP.,
ITS CHAIR

By: Howard J. Weg
Howard J. Weg
PRETZMAN, GLASSMAN & WEG LLP
Its counsel

**McCLUTCHEN, DOYLE, BROWN &
ENERSEN LLP**

By: William Bates III
Counsel For Reliant Energy Services, Inc.

IT IS SO STIPULATED:

Dated: August ____, 2001

COOLEY GODWARD LLP

By: _____

Linda F. Callison
Counsel For Pacific Gas and Electric
Company

OFFICIAL COMMITTEE OF
PARTICIPANT CREDITORS OF THE
CALIFORNIA POWER EXCHANGE
CORPORATION

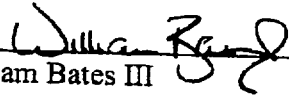
By: _____

Howard J. Weg, Its Chair

Dated: August 8, 2001

McCUTCHEN, DOYLE, BROWN &
ENERSEN, LLP

By: _____


William Bates III
Counsel For Reliant Energy Services, Inc.

IT IS SO STIPULATED:

Dated: August ____, 2001

COOLEY GODWARD LLP

By: _____

Linda F. Callison
Counsel For Pacific Gas and Electric
Company

OFFICIAL COMMITTEE OF
PARTICIPANT CREDITORS OF THE
CALIFORNIA POWER EXCHANGE
CORPORATION

By: _____

Howard J. Weg, Its Chair

Dated: August ____, 2001

MC CUTCHEON, DOYLE, BROWN &
ENERSON LLP

By: _____

William Bates
Counsel For Reliant Energy Services, Inc.

STATE OF CALIFORNIA-- BUSINESS TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF TRANSPORTATION

GRAT DAVIS, GOLDMAN

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P.O. BOX 1438, SACRAMENTO, CA 95812-1438
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July 13, 2001

Janice F. Hill, Staff Counsel
Victim Compensation and Government Claims Board
Legal Division
630 K Street, Fifth Floor
Sacramento, CA 95814

Dear Ms. Hill:

In re: California Power Exchange Corporation - Government Claim No. G513305
Southern California Edison Company - Government Claim No. G513420
Pacific Gas and Electric Company - Government Claim No. G513644
And Related Consolidated Claims

I am writing this letter in response to your letter to Garrett L. Hanken, dated June 18, 2001, a letter from Anita Ahuja dated June 13, 2001, to Susan D. Rossi, and a form letter dated June 14, 2001, and addressed to certain Power Exchange market participants who had filed claims with the Board. Those letters acknowledge receipt of numerous claims and outline the Board staff's decision to consolidate the claims filed by the market participants, to process the individual claims as a group claim under Government Claim No. G513305, and to designate the California Power Exchange Corporation as coordinator of this group claim. The letters notified the interested parties that these consolidated claims were removed from the calendar of the Board's June 22, 2001, hearing.

At the May 18, 2001, hearing held before Administrative Law Judge Román, the claimants requested that the Board summarily reject their claims on the ground they contain complex issues of law and fact. In response to the State's objection that not all potential claimants were present, and following further discussion and argument by counsel, Judge Román ordered Garrett L. Hanken, counsel for the California Power Exchange (PX), who asserted he had authority to act on behalf of the participants in the PX market, to submit a fourth claim on behalf of these participants by May 31, 2001.

EXHIBIT "2"

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Janice F. Hill
July 13, 2001
Page 2

The claims were then set to be considered by the Board for complex issue rejection at the June 22, 2001, hearing.

Instead of filing a fourth group claim on behalf of the market participants, the PX amended its existing claim to include them without identifying them by name. In addition, some 27 parties filed separate claims on their own. However, because Mr. Hanken had represented at the hearing that there were 70 parties who had filed participant agreements with the PX, the State at this point cannot determine either the identity of the market participants or whether all potential claimants have presented claims to the Board. Because filing a claim with the Board is a prerequisite to filing a complaint in Superior Court, it is essential that the State know precisely which parties have filed claims and which parties' claims are being considered or rejected by the Board.

The PX and Pacific Gas and Electric Company (PG&E) have filed for protection under Chapter 11 of the Bankruptcy Code, raising a question as to the application of the automatic stay imposed by section 362 (11 U.S.C., § 362). The State maintains its position that the Board has the authority to determine its own jurisdiction and consequently can decide whether this consolidated claims proceeding is subject to the automatic stay. However, if it turns out that these claims are within the scope of either respective automatic stay, any action taken in violation of the stay is void. (*In re Gruniz* (9th Cir., 2000) 202 F.3d 1074, 1082.) Moreover, under the *Gruniz* decision, determinations as to the applicability of the automatic stay to a proceeding made by a non-bankruptcy court are subject to review by a bankruptcy court and not entitled to preclusive effect. (*In re Gruniz, supra*, 202 F.3d at 1082-1084.) Thus, any ruling made by the Board in this proceeding would be subject to challenge by the PX or PG&E, either of whom could seek to have the Board's ruling declared void *ab initio* by the bankruptcy court.


In light of the PX's and PG&E's positions stated at the hearing and in PG&E's April 13, 2001, letter, and the impact of the Ninth Circuit Court's decision in *Gruniz*, the burden is on the PX and PG&E to establish clearly that the Board and the California Superior Court are not barred by the respective automatic stay from taking action on these claims, whether it be by rejection for issue complexity or by a hearing and decision on the merits. Because the PX and PG&E themselves filed for bankruptcy protection, they have the responsibility for obtaining relief from each respective automatic stay. In light of the request by each of these claimants that the Board reject their respective claims

Janice F. Hill
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on the ground of issue complexity, any stay requested from the bankruptcy court should be sufficiently broad to encompass any litigation filed in Superior Court following the Board's rejection of the claim.

The State requests that the Board abstain from taking any further action on any of these claims until (1) debtors PX and PG&E obtain orders from each respective bankruptcy court clearly stating that the automatic stay does not bar this Board or any state court from adjudicating the claims being presented in this matter and (2) all potential claimants have filed claims with the Board and it is clear on whose behalf each claim is being filed. If this matter proceeds to litigation in Superior Court, it is imperative that the State know exactly who has filed a claim and which claims are being rejected. After the debtors have obtained this blanket relief from each automatic stay and all potential claimants have been clearly identified and have filed claims with the Board, the State would have no objection to the Board rejecting all claims on the ground they contain complex issues of law and fact.

Very truly yours,


RICHARD B. WILLIAMS
Acting Deputy Attorney General

c: See Attached List.

**ATTACHMENT
TO JANICE F. HILL LETTER**

Susan D. Rossi, Managing Attorney
California Power Exchange Corporation
200 S. Los Robles Avenue, Suite 400
Pasadena, CA 91101

Ray Lowry, Controller
Sierra Pacific Industries
19794 Riverside Avenue
Anderson, CA 96007

Martin S. Schenker, Esq.
Cooley Godward LLP
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Morgan Stanley Capital Group, Inc.
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McDermott, Will & Emery
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Rosemead, CA 91770

Alex Goldberg
Senior Regulatory Counsel
Williams Energy Services Company
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Tulsa, OK 74172

Steve Cohen, Assistant Chief Counsel
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Sacramento, CA 95814

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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 1999 Avenue of the Stars, Suite 1700, Los Angeles, California 90067.

On August 20, 2001, I served the foregoing document described as NOTICE OF MOTION AND MOTION BY OFFICIAL COMMITTEE OF PARTICIPANT CREDITORS OF CALIFORNIA POWER EXCHANGE CORPORATION FOR APPROVAL OF STIPULATION WITH PACIFIC GAS AND ELECTRIC COMPANY AND RELIANT ENERGY SERVICES, INC. FOR RELIEF FROM THE AUTOMATIC STAY RE NON-BANKRUPTCY LITIGATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ATON ARBISSER on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

[SEE ATTACHED SERVICE LIST]

X **(BY MAIL)** In accordance with the regular mail collection and processing practices of this business office, with which I am familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices.

FEDERAL

 X 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.

Executed on August 20, 20001, at Los Angeles, California.

TERESA C. KENT
Name

Teresa Kent
Signature