

50-245/323

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14 UNITED STATES BANKRUPTCY COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 In re
 18 PACIFIC GAS AND ELECTRIC
 19 COMPANY, a California corporation
 20 Debtor.

Case No. 01-30923 DM
 Chapter 11 Case

21 Federal I.D. No. 94-0742640

22 NOTICE OF INTENTION TO ASSUME POWER PURCHASE AGREEMENT OF
 23 UNITED COGEN, INC. PURSUANT TO (ORAL) ORDER OF THE COURT MADE
 24 AUGUST 3, 2001

25
 26
 27 A001
 28 Add: Kids Oyc Mail Center

1 PLEASE TAKE NOTICE that, pursuant to an (oral) Order of this Court made on
2 August 3, 2001¹ providing for a procedure to seek approval of proposed assumptions by
3 Pacific Gas and Electric Company ("PG&E") of Power Purchase Agreements by Notice
4 rather than Motion, PG&E hereby gives Notice of its intention to assume the Power
5 Purchase Agreement ("PPA") of the Qualifying Facility United Cogen, Inc. ("United")
6 pursuant to 11 U.S.C. Section 365 and Rules 6006 and 9019 of the Federal Rules of
7 Bankruptcy Procedure. If no objection is received within 10 days from the date hereof,
8 PG&E hereby gives notice of its intention to request entry of an Order approving the
9 proposed assumption, without further notice or hearing.

10 Therefore, PLEASE TAKE NOTICE that:

- 11 1. United operates a co-generation facility with a capacity of 30,000 kW;
- 12 2. In 1984, United and PG&E entered into a PPA, which provides for the purchase of
13 power by PG&E from United;
- 14 3. Prior to the commencement of the within bankruptcy case, PG&E failed to pay in
15 full the amounts due under the PPA, resulting in a pre-petition claim for payment to United
16 in the amount of \$13,014,189.15 (the "Pre-Petition Payables");
- 17 4. On June 13, 2001, the CPUC issued Decision No. 01-06-015 (the "Lynch
18 Decision"), whereby Qualifying Facilities ("QFs") under Standard Offer Contracts with
19 PG&E may request that their contracts be modified to replace the energy pricing term with a
20 five-year average fixed price of 5.37 cents/kWh (the "Price Modification"), as proposed in
21 the March 23, 2001 comments of the Independent Energy Producers referred to in Decision
22 No. 01-06-015;
- 23 5. On July 14, 2001, PG&E and United agreed to amend the PPA to replace the
24 energy price term with the CPUC fixed price energy option for five (5) years (the "Amended
25 PPA"). The Amended PPA was approved by the Bankruptcy Court by its Order dated
26 July 27, 2001.

27 _____
28 ¹The written form of Order has not been entered as of this date.

1 6. PG&E now proposes to enter into an Agreement to assume the PPA (the
2 "Assumption Agreement") on the following general terms² :

3 (a) PG&E shall assume the PPA as amended, as set forth in the Assumption
4 Agreement, pursuant to 11 U.S.C. section 365(b)(1) and (d)(2) and Rules 6006 and 9019 of
5 the Federal Rules of Bankruptcy Procedure;

6 (b) August 20, 2001 shall be the effective date for PG&E's assumption of the
7 PPA, provided that United has the right to terminate the Assumption Agreement and the
8 PPA Amendment for a 15-day period following the entry of the Bankruptcy Court Order
9 approving the Assumption Agreement in the event that United cannot obtain satisfactory fuel
10 supply and financial arrangements, as set forth more fully in Section 1.2 and 1.3 of the
11 Assumption Agreement;

12 (c) As more fully set forth in Sections 3, 4, and 5 of the Assumption
13 Agreement, upon the effective date of assumption of the PPA, the Pre-Petition Payables (as
14 such amount may be adjusted pursuant to Section 8 of the Assumption Agreement), together
15 with interest, as set forth in the Assumption Agreement, shall be elevated to administrative
16 priority status and shall be paid by PG&E to United as set forth in Section 3 of the
17 Assumption Agreement providing that United's right to dispute the amount of the Pre-
18 Petition Payable is reserved in accordance with Section 8 of the Assumption Agreement; and

19 (d) United waives certain potential administrative and pre-petition claims,
20 including any claim to receive any difference between a "market rate" and the contract price
21 for energy and capacity delivered to PG&E from and after April 6, 2001 through August 20,
22 2001, the effective date for PG&E's assumption of the PPA.

23 7. PG&E believes that approval of the Assumption Agreement is in the best interests
24 of the estate, for several reasons. The Assumption Agreement permits PG&E and United to
25 take advantage of the Price Modification, eliminating the potential volatility of power costs
26 over the next five (5) years. In addition, the Assumption Agreement defers payment of the

27 _____
28 ²The language of the Assumption Agreement governs in any event.

1 "Cure Amount" (i.e., the Pre-Petition Payable). Moreover, although PG&E believes that it
2 would have prevailed on the issue whether "market rates" could have been charged for post-
3 petition power purchases, United's waiver on this issue resolves, without further litigation, a
4 matter that certainly represented a large potential liability to the estate.

5 The proposed Assumption Agreement shall be approved by the Court without a hearing
6 unless a party, within ten (10) days of the service of this Notice, files and serves upon
7 counsel for PG&E and the Official Committee of Unsecured Creditors an objection to the
8 proposed Assumption Agreement, along with any pleadings, declarations or other materials
9 in support of such objection. In the event that an objection to the proposed Assumption
10 Agreement is timely filed and served, counsel for PG&E shall promptly obtain a hearing
11 date from the Court, to be held as soon as the Court's calendar will permit, and shall notify
12 all objecting parties and the Committee of the scheduled hearing date on the objection. In
13 the event that no objection is timely filed and served, counsel for PG&E shall inform the
14 Court of that fact by Declaration, and may request entry of an Order approving the proposed
15 Assumption Agreement, without further notice or hearing.

16 Parties wishing to obtain copies of the Assumption Agreement should contact the
17 undersigned at (415) 434-1600.

18
19 DATED: August 10, 2001.

20 Respectfully,

21 HOWARD, RICE, NEMEROVSKI, CANADY,
22 FALK & RABKIN
23 A Professional Corporation

24 By: 
25 CEIDE ZAPPARONI

26 Attorneys for Debtor and Debtor in Possession
27 PACIFIC GAS AND ELECTRIC COMPANY

28 WD 080901/2-1419920/937250/v1