

50-275/323

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PACIFIC GAS AND ELECTRIC COMPANY
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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 In re
14 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation
15 Debtor.
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Case No. 01-30923 DM
Chapter 11 Case

21 Federal I.D. No. 94-0742640

22 NOTICE OF INTENTION TO AMEND AND ASSUME POWER PURCHASE
23 AGREEMENTS BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND
OPERATORS OF VARIOUS QUALIFYING FACILITIES ACCORDING TO THE
24 SCHEDULE FILED HEREWITH, PURSUANT TO (ORAL) ORDER OF THE COURT
MADE AUGUST 3, 2001
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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 amendments and
3 assumptions by Pacific Gas and Electric Company ("PG&E") of certain Power Purchase
4 Agreements by Notice rather than Motion, PG&E hereby gives Notice of its intention to
5 amend and assume, pursuant to 11 U.S.C. Section 365 and Rules 6006 and 9019 of the
6 Federal Rules of Bankruptcy Procedure, the Power Purchase Agreements ("PPAs") between
7 PG&E and the Qualifying Facilities that are listed in the attached Schedule "A" hereto
8 (collectively, the "QFs"). If no objection is received within 10 days from the date hereof,
9 PG&E hereby gives notice of its intention to request entry of an Order approving the said
10 proposed amendments and assumptions, without further notice or hearing.

11 Therefore, PLEASE TAKE NOTICE that:

- 12 1. Each of the QFs operates a co-generation facility with the capacity set forth in
13 Schedule "A" hereto;
- 14 2. Each of the QFs is a counter-party to a PPA, which provides for the purchase of
15 power by PG&E from the respective QF;
- 16 3. Prior to the commencement of the within bankruptcy case, PG&E failed to pay in
17 full the amounts due under the PPAs, resulting in pre-petition claims for payment to the QFs
18 (collectively the "Pre-Petition Payables"), the amounts of which are set forth in Schedule
19 "A";
- 20 4. On June 1, 2001, on application by the QFs, this Court ordered that PG&E make
21 certain payments to the QFs (the "Adequate Protection Payments") in reduction of the Pre-
22 Petition Payables (the "June 1 Order");
- 23 5. On June 13, 2001, the CPUC issued Decision No. 01-06-015 (the "Lynch
24 Decision"), whereby QFs under Standard Offer Contracts with PG&E may request that their
25 contracts be modified to replace the energy pricing term with a five-year average fixed price
26 of 5.37 cents/kWh (the "Price Modification"), as proposed in the March 23, 2001 comments

27 ¹The written form of Order has not been entered as of this date.
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1 of the Independent Energy Producers referred to in Decision No. 01-06-015;

2 6. On July 31, 2001, PG&E and each of the QFs agreed to amend each respective
3 PPA to replace the energy price term with the CPUC price modification for five (5) years
4 (the "PPA Amendments").

5 7. PG&E now proposes to enter into Agreements to assume the PPAs (the
6 "Assumption Agreements") on the following general terms² :

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

10 (b) August 21, 2001 shall be the effective date for the PPA Amendments and
11 PG&E's assumption of the PPA, provided that each QF has the right to terminate its
12 respective Assumption Agreement and PPA Amendment for a 15-day period following the
13 entry of the Bankruptcy Court Order approving the Assumption Agreements in the event that
14 the respective QF cannot obtain satisfactory fuel supply and financial arrangements and
15 approvals, as set forth more fully in Section 1.2 and 1.3 of the Assumption Agreements;

16 (c) As more fully set forth in Sections 3 and 4 of the Assumption Agreements,
17 upon the effective date of assumption of the PPAs, the Pre-Petition Payables shall be
18 elevated to administrative priority status and shall accrue interest and shall be paid by PG&E
19 to the QFs as set forth in Section 3 of the Assumption Agreements, provided that PG&E
20 shall continue to make the Adequate Protection Payments to the QFs in accordance with the
21 June 1 Order and Section 3 of the Assumption Agreements; and

22 (d) The QFs waive certain potential administrative and pre-petition claims,
23 including any claim to receive any difference between a "market rate" and the contract price
24 for energy and capacity delivered to PG&E from and after April 6, 2001 through August 21,
25 2001, the effective date for PG&E's assumption of the PPA.

26 7. PG&E believes that approval of the PPA Amendments and Assumption

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28 ²The language of each respective Assumption Agreement governs in any event.

1 Agreements is in the best interests of the estate, for several reasons. The PPA Amendments
2 and Assumption Agreements permit PG&E and the QFs to take advantage of the Price
3 Modification, eliminating the potential volatility of power costs over the next five (5) years.
4 Moreover, although PG&E believes that it would have prevailed on the issue whether
5 "market rates" could have been charged for post-petition power purchases, the QF's waiver
6 on this issue resolves, without further litigation, a matter that certainly represented a large
7 potential liability to the estate.

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

20 Parties wishing to obtain copies of the PPA Amendments and Assumption Agreements
21 should contact the undersigned at (415) 434-1600.

22 DATED: August 10, 2001.

23 Respectfully,

24 HOWARD, RICE, NEMEROVSKI, CANADY,
25 FALK & RABKIN
26 A Professional Corporation

27 By: _____

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CEIDE ZAPPARONI

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

SCHEDULE A

Qualifying Facility	Capacity	Amount of Pre-Pention Payables
Mid-Set Cogeneration Company	46,000 kW	\$15,647,256.91
Coalinga Cogeneration Company	46,000 kW	\$13,970,709.42
Salinas River Cogeneration Company	49,600 kW	\$13,821,372.69
Sargeant Canyon Cogeneration Company	49,600 kW	\$14,553,794.85