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13 Ex Rel. Department of Water Resources

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.
21 Federal I.D. No. 94-0742640

Case No. 01-30923 DM
Chapter 11 Case
**NOTICE OF MOTION AND MOTION FOR
RELIEF FROM THE AUTOMATIC STAY
BY THE PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. DEPARTMENT
OF WATER RESOURCES RE
NON-BANKRUPTCY LITIGATION**
Date: October 1, 2001
Time: 1:30 p.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California

1 PLEASE TAKE NOTICE that the State of California, ex rel. the Department of Water
2 Resources (the "State")¹ hereby moves the Court (i) for an order granting relief from the
3 automatic stay so that the State may amend its "Complaint for Declaratory Relief" ("Complaint"),
4 a true and correct copy of which is attached (without exhibits) to the Declaration of Bernice L.
5 Louie Yew filed herewith, to join the Debtor, Pacific Gas and Electric Company ("Debtor" or
6 "PG&E"), as a party defendant; and (ii) to the extent necessary, for an order clarifying that the
7 automatic stay is annulled retroactively with respect to any decisions, judgments and actions
8 rendered by the Administrative Law Judge presiding over the litigation commenced by the Debtor
9 against the State before the State of California Victim Compensation and Government Claims
10 Board (the "Board") in Sacramento.

11 **The Necessity and Purpose of the State's Complaint for Declaratory Relief**

12 The relief from stay sought by the State is necessary so the State can amend its Complaint,
13 the purpose of which is to achieve, in one state forum, a full and final determination of what, if
14 any, recovery shall be awarded, and the entitlement thereto, based upon numerous competing
15 claims of the Debtor and approximately 33 other plaintiffs arising out of the same set of
16 circumstances, and to avoid conflicting and duplicative litigation and recoveries in different
17 jurisdictions. The State does not seek monetary damages against the Debtor's estate. As set forth
18 below, the facts and circumstances warrant the Court's granting of relief from stay for the purpose
19 of joining all parties in a single action in one forum as requested by the State.

20 In February 2001, Governor Gray Davis, addressing the energy crisis plaguing the people
21 of the State of California, exercised the police and regulatory powers vested in him under the
22 California Emergency Services Act, Cal. Gov. Code §§ 8550 et seq., to protect the public health
23 and welfare by commandeering, through Executive Orders, certain block forward market
24 contracts for the future delivery of electricity ("BFM contracts") to ensure that power would
25 remain available within the State of California.

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28 ¹ The term "State" is a defined term only for purposes of referring to the Department of Water
Resources in this motion.

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1 As a result of the commandeering, the State is now the subject of multiple litigation in
2 four different fora. The Debtor, Southern California Edison Company ("SCE") and the California
3 Power Exchange Corporation ("CalPX") (which filed its own chapter 11 petition on March 9,
4 2001 in the United States Bankruptcy Court for the Central District of California) each have filed
5 their own claims before the Board asserting ownership of the commandeered BFM contracts, and
6 therefore, entitlement to damages and compensation from the State. Approximately 33 other
7 entities have also filed claims against the State before the Board asserting ownership of the BFM
8 contracts and entitlement to damages and compensation from the State. In addition to this
9 litigation before the Board, the Debtor, Reliant Energy Services Inc. ("Reliant"), and the Official
10 Committee of Participant Creditors appointed in the CalPX bankruptcy case ("Committee") on
11 behalf of CalPX, each have sued the State in state court asserting ownership of the
12 commandeered BFM contracts and entitlement to damages and compensation from the State.

13 Through its Motion for Relief from Stay, the State seeks to complement and further the
14 relief sought by the Committee through its Motion for "Approval of Stipulation with Pacific Gas
15 and Electric Company and Reliant Energy Services, Inc. for Relief from the Automatic Stay re
16 Non-bankruptcy Litigation," filed on or about August 21, 2001 (the "Committee Motion"). This
17 supplemental Motion by the State is necessary to cure the inadequate relief sought in the
18 Committee's Motion, which failed to address the need to join all parties into a single action in one
19 court for the purposes of judicial economy and for the reasons set forth herein.

20 Joining the litigants into a single action in one court serves not only the interests of the
21 State in avoiding conflicting and duplicative litigation and the possibility of double recoveries,
22 but also the interests of all parties involved in the commandeering litigation. The State is not the
23 only party subject to multiple and conflicting litigation. Each litigant in the above-mentioned
24 actions asserts ownership in the same BFM contracts. The fact that the litigants assert competing
25 claims of ownership in the same BFM contracts means that if a litigant is successful in winning a
26 recovery from the State, that successful litigant may then be subject to new litigation brought by
27 the other competing litigants claiming an interest in the recovery. Thus, if PG&E successfully
28 recovers from the State in the commandeering litigation, PG&E itself could be subject to multiple

1 suits from SCE, the Committee and other market participants who assert competing claims in that
2 recovery.

3 In order to join all parties into a single action, the State must bring its Complaint for
4 Declaratory Relief against all litigants, both debtor and non-debtor. However, in order to name
5 the Debtors PG&E and CalPX as defendants, the State must first seek relief from stay in the
6 respective Debtor's bankruptcy cases. Thus, the State appears for the defensive purpose of
7 seeking relief from stay to pursue an action for declaratory relief in state court against the Debtor
8 PG&E with respect to litigation the Debtor commenced against the State. The State has filed a
9 similar Motion for Relief from Stay in the CalPX bankruptcy case and a Complaint for
10 Declaratory Relief against the non-debtor litigants in the above-mentioned actions.

11 By this Motion for Relief from Stay to amend its Complaint, the State does not seek any
12 monetary damages from the PG&E estate. To the contrary, through its Complaint, the State seeks
13 only a determination of what, if anything, is due, and to whom, in the context of the duplicative
14 and competing actions that have been brought against it, including actions commenced by the
15 Debtor against the State. In short, in the interests of judicial economy, the State seeks to
16 consolidate the various proceedings and to bring all claims and all claimants and parties asserting
17 damages against the State based on the commandeering of the BFM contracts into a single forum
18 unfettered by the automatic stay in the case of plaintiff Debtor.

19 The State also seeks a clarification of the Committee's Motion that the stay shall be
20 annulled retroactively to preserve any and all decisions, judgments and actions rendered by the
21 Administrative Law Judge presiding over the litigation before the Board. Annuling the stay
22 serves the interests of all parties and litigants by avoiding the immense costs and waste of
23 resources that would result if the actions of the Administrative Law Judge were challenged and
24 rendered void as in violation of the stay, thus necessitating the re-litigation of the claims in all
25 subsequent fora.

26 **Grounds for Relief from Stay**

27 The State seeks relief from stay for the defensive purpose of amending its Complaint to
28 pursue an action for declaratory relief in state court against the Debtor, the purpose of which is to

1 promote judicial economy by joining all actual and potential claimants in litigation against the
2 State now pending in four different fora. The State seeks relief from the automatic stay on the
3 grounds that there is "cause" to lift the stay pursuant to 11 U.S.C. §362(d)(1). "Cause" exists to
4 lift the stay because allowing the State to amend its Complaint for Declaratory Relief (1)
5 promotes the congressional policy of allowing state law claimants, including the Debtor, to
6 pursue their state law claims in state court, (2) best serves the interests of judicial economy, and
7 (3) results in little or no harm to the Debtor in comparison to the harm that would result to all
8 parties, including the Debtor, if the stay continues and the State is forced to defend itself against
9 multiple suits in multiple fora, thereby subjecting the State, the Debtor, and the other litigants to
10 the substantial risks of inconsistent verdicts and duplicative and needless litigation.

11 To the extent such relief is necessary, pursuant to 11 U.S.C. 362(d)(1), "cause" also exists
12 to annul the stay retroactively with respect to any decisions, judgments and actions rendered by
13 the Administrative Law Judge presiding over the litigation before the Board. "Cause" exists to
14 annul the stay because, on balance of the equities involved, annulling the stay (1) best serves the
15 interests of judicial economy, and (2) results in little or no harm to the Debtor, who itself
16 commenced this litigation, in comparison to the immense cost and waste of resources that would
17 result if the decisions, judgments and actions rendered by the Administrative Law Judge were
18 challenged and found to be void as in violation of the automatic stay in the PG&E and CalPX
19 bankruptcy cases in light of Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074 (9th
20 Cir. 2000). However the Administrative Law Judge rules, annulling the stay retroactively
21 benefits the Debtor and all litigants because it provides finality to the decisions made in the
22 litigation before the Board.

23 PLEASE TAKE FURTHER NOTICE that this motion is made pursuant to Local
24 Bankruptcy Rule 4001-1. A preliminary hearing on this motion will be held on October 1, 2001,
25 at 1:30 p.m. at 235 Pine Street, 22nd Floor, San Francisco, California. This motion is based upon
26 the memorandum of points and authorities and the Declaration of Bernice L. Louise Yew filed
27 herewith, and on such other pleadings, arguments and evidence as may be presented at the
28 hearing on this motion.

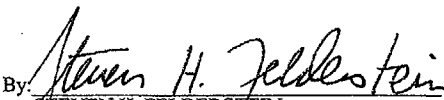
1 PLEASE TAKE FURTHER NOTICE that the State makes this special and strictly limited
2 appearance for the sole purpose of obtaining an order from this Court granting the State relief
3 from the automatic stay to amend its Complaint in state court and retroactively annulling the
4 automatic stay with respect to any decisions, judgments and actions rendered by the
5 Administrative Law Judge presiding over the commandeering litigation before the Board. By
6 making this special and limited appearance, the State is not making a monetary claim against the
7 bankruptcy estate, is not voluntarily invoking the jurisdiction of the Bankruptcy Court, and is not
8 waiving its sovereign immunity. To the contrary, the State hereby asserts its sovereign immunity
9 and rejects any attempt to exercise jurisdiction over it in the Bankruptcy Court.

10 WHEREFORE, the State requests that the Court enter its order (i) granting relief from the
11 automatic stay to allow the State to amend its "Complaint for Declaratory Relief" to join PG&E
12 as a party defendant and, to the extent necessary, (ii) clarifying that the stay is annulled
13 retroactively with respect to any decisions, judgments and actions rendered by the Administrative
14 Law Judge presiding over the commandeering litigation before the Board.

15 Dated: September 12, 2001

Respectfully submitted,

16 THE PEOPLE OF THE STATE OF CALIFORNIA
17 EX REL. THE DEPARTMENT OF WATER
18 RESOURCES

19 By: 
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25 California, ex rel. Department of Water
26 Resources