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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HOWARD
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A Professional Corporation

In re
PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Debtor.

Federal I.D. No. 94-0742640

Case No. 01 30923 DM

Chapter 11 Case

Date: October 29, 2001
Time: 9:30 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California
Judge: Hon. Dennis Montali

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PACIFIC GAS AND ELECTRIC COMPANY'S MOTION REGARDING REQUEST
BY CALIFORNIA DEPARTMENT OF WATER RESOURCES AND ORDER BY
CALIFORNIA PUBLIC UTILITIES COMMISSION THAT PACIFIC GAS AND
ELECTRIC COMPANY ENTER INTO SERVICING AGREEMENT WITH THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES

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1 In accordance with Federal Rule of Evidence 201, Pacific Gas and Electric Company,
2 the debtor and debtor in possession herein ("PG&E") respectfully requests that this Court, in
3 its consideration of PG&E's Motion Regarding Request By California Department Of Water
4 Resources And Order By California Public Utilities Commission That Pacific Gas And
5 Electric Company Enter Into Servicing Agreement With The California Department Of
6 Water Resources filed herewith, take judicial notice of the information contained in the
7 exhibits attached hereto.¹

8 Exhibits 1-3 are true and correct copies of California Public Utilities Commission
9 ("CPUC") decisions:

10 *Exhibit 1:* Opinion Ordering Pacific Gas and Electric Company To Enter Into And
11 Approving The Servicing Agreement With The California Department Of
12 Water Resources (Decision 01-09-015 (September 6, 2001)).

13 *Exhibit 2:* Opinion Adopting Rate Agreement Between The Commission And The
14 California Department Of Water Resources (Draft Decision of ALJ Kenny
15 (August 28, 2001)).

16 *Exhibit 3:* Order Denying Rehearing Of Decision (D.) 01-04-005 (Decision 01-05-037
17 (May 3, 2001)).

18 Courts may take judicial notice of CPUC decisions. *See Nugget Hydroelectric, L.P. v.*
19 *PG&E*, 981 F.2d 429, 435 (9th Cir. 1992) (taking judicial notice of published CPUC
20 decision); *United States v. Camp*, 723 F.2d 741, 744 n.** (9th Cir. 1984) (explaining that
21 courts may take judicial notice of governmental documents including commission reports
22 and orders).

23 Exhibit 4 is a true and correct copy of the Servicing Agreement filed by the
24 Department of Water Resources ("DWR") with the CPUC on June 27, 2001 and attached as

25 _____
26 ¹Pursuant to the Court's Case Management Order (revised April 25, 2001) at 4:2-6, copies of
27 these exhibits are not attached to the service copies of this Request for Judicial Notice. Instead,
28 copies of the exhibits are available and may be obtained by written request to rlopez@hrice.com or
by sending a facsimile to Racquel Lopez at 415/217-5910. Copies of the exhibits will be mailed to
you.

1 Appendix A to CPUC Decision 01-09-015. Courts may take judicial notice of records and
2 reports of administrative bodies. *See Interstate Natural Gas Co. v. Southern Cal. Gas Co.*,
3 209 F.2d 380, 385 (9th Cir. 1953).

4 Exhibits 5-7 are true and correct copies of PG&E's comments regarding CPUC
5 Decisions:

6 *Exhibit 5*: "Response Of Pacific Gas And Electric Company To Chief Administrative
7 Law Judge's Ruling Seeking Comments On Proposed Servicing Agreement
8 With Pacific Gas And Electric Company," filed on July 3, 2001.

9 *Exhibit 6*: "Supplemental Response Of Pacific Gas And Electric Company To Chief
10 Administrative Law Judge's Ruling Seeking Comments On Proposed
11 Service Agreement With Pacific Gas And Electric Company," filed on July
12 12, 2001.

13 *Exhibit 7*: "Comments of Pacific Gas And Electric Company On Draft Decision
14 Ordering Pacific Gas And Electric Company To Enter Into Approving The
15 Servicing Agreement With The California Department of Water Resources,"
16 filed on September 4, 2001.

17 *Exhibit 8*: "Comments Of Pacific Gas And Electric Company On The Draft Decision
18 Of ALJ Kenney Adopting A Rate Agreement Between The Commission
19 And The California Department Of Water Resources," filed on September
20 4, 2001.

21 Courts may take judicial notice of matters of public record outside the pleadings. *See MGIC*
22 *Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *Interstate Natural Gas Co.*,
23 209 F.2d at 385.

24 Exhibit 9 is a true and correct copy of the news article, *FERC To Examine Alleged*
25 *Market Manipulation By Calif ISO*, by Jason Leopold, and published in the Dow Jones
26 Energy Service on September 21, 2001. Judicial notice is authorized by Evid. Code §201 in
27 that the publication of the article is capable of accurate and ready determination by resort to
28 sources whose accuracy cannot reasonably be questioned. *See, e.g., Isuzu Motors Ltd. v.*

1 *Consumers Union of United States*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998) (taking
2 judicial notice of facts “which concern the publication of various television programs and
3 newspapers in California and in this district.”).

4 Exhibit 10 is a true and correct copy of Proclamation of a State Emergency by the
5 Honorable Gray Davis, Governor of the State of California, dated January 17, 2001. *See*
6 *e.g.*, *Givens v. Zerbst*, 255 U.S. 11, 18 (1921) (taking judicial notice of General Orders
7 appropriately issued by the President of the United States).

8 Exhibit 11 is a true and correct copy of the CPUC’s Interim Opinion (Decision 01-03-
9 009 (March 7, 2001)). Courts may take judicial notice of CPUC decisions. *See Nugget*
10 *Hydroelectric, L.P.*, 981 F.2d at 435; *Camp*, 723 F.2d at 744 n.**.

11 Exhibits 12-15 are true and correct copies of the following news articles:

12 *Exhibit 12: The State Rate Hike Will Cover Power Costs, State Says*, by Tim

13 Reiterman and Jerry Hirsch and published in the Los Angeles Times on
14 July 23, 2001.

15 *Exhibit 13: California Secures \$4.3B in Loans*, by Deborah Finestone and published in
16 The Bond Buyer on June 27, 2001.

17 *Exhibit 14: California State Closes on \$4.3-Billion Interim Loan to Buy Power Energy*,
18 from Bloomberg News and published in the Los Angeles Times on June
19 27, 2001.

20 *Exhibit 15: Good Omens for Calif. GOs*, by Deborah Finestone and published in
21 The Bond Buyer on September 7, 2001.

22 Judicial notice is authorized by Evidence Code Section 201 in that the publication of the
23 article is capable of accurate and ready determination by resort to sources whose accuracy
24 cannot reasonably be questioned. *See, e.g.*, *Isuzu Motors Ltd.*, 12 F. Supp. 2d at 1042.

25 Exhibit 16 is a true and correct copy of Appendix A to the Preliminary Official
26 Statement found on the official website of the California Treasurer’s Office:

27 <http://www.treasurer.ca.gov/_pos/ran/appA.pdf>. The Court may take judicial notice of
28 the California Treasurer’s Office’s website pages. *See, e.g.*, *Cairns v. Franklin Mint Co.*,

1 107 F. Supp. 2d 1212, 1216 (C.D. Cal. 2000) (taking judicial notice of pages from a
2 museum's website); *McLaughlin v. Volkswagen of Am., Inc.*, 2000 WL 1793071, n.3 (E.D.
3 Pa. Dec. 6, 2000) (taking judicial notice of contents of the National Highway Transportation
4 Safety Website).

5 Exhibits 17 and 18 are true and correct copies of the following CPUC opinions:

6 *Exhibit 17*: Interim Opinion (Decision 01-03-081 (March 27, 2001)).

7 *Exhibit 18*: Interim Opinion Regarding Proposed Rate Increases (Decision 01-03-082
8 (March 27, 2001)).

9 Courts may take judicial notice of CPUC decisions. *See Nugget Hydroelectric, L.P.*, 981
10 F.2d at 435; *Camp*, 723 F.2d at 744 n.**.

11 Exhibit 19 is a true and correct copy of the August 7, 2001 Memorandum submitted by
12 DWR to the CPUC entitled "Revised Revenue Requirement and Power Purchase Costs
13 Pursuant to Water Code Section 80110 and Public Utilities Code Section 451." Courts may
14 take judicial notice of records and reports of administrative bodies. *See Interstate Natural*
15 *Gas Co.*, 209 F.2d at 385.

16 Exhibit 20 is a true and correct copy of PG&E's Application Of Pacific Gas And
17 Electric Company For Rehearing Of Decision No. 01-03-081, filed with the CPUC on
18 September 23, 2001. Courts make take judicial notice of matters of public record outside the
19 pleadings. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d at 504.

20 Exhibit 21 is a true and correct copy of the CPUC's Order Modifying Decision (D.) 01-
21 03-081 To Correct Clerical Errors, And Denying Rehearing Of The Decision, As Modified
22 (Decision 01-08-025 (August 2, 2001)). Courts may take judicial notice of CPUC decisions.
23 *See Nugget Hydroelectric, L.P.*, 981 F.2d at 435; *Camp*, 723 F.2d at 744 n.**.

24 Exhibit 22 is a true and correct copy of PG&E's Petition For Writ Of Review And
25 Memorandum Of Points And Authorities filed in the Supreme Court of The State of
26 California on September 7, 2001. The Court may take judicial notice of pleadings, orders,
27 and other papers contained in the court files of another action. *See Mullis v. United States*
28

1 *Bankr. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987) (recognizing that “pleadings, orders, and
2 other papers on file in the underlying bankruptcy case” are subject to judicial notice).

3 Exhibit 23 is a true and correct copy of DWR’s proposed revenue requirement
4 submitted to the CPUC on May 2, 2001. Courts may take judicial notice of records and
5 reports of administrative bodies. *See Interstate Natural Gas Co.*, 209 F.2d at 385.

6 Exhibit 24 is a true and correct copy of PG&E’s Motion For Further Proceedings
7 Regarding Implementation Of The California Department Of Water Resources Revenue
8 Requirement Pursuant To Public Utilities Code Section 360.5 And Water Code Sections
9 80002.5 and 80110 filed with the CPUC on June 18, 2001. Courts may take judicial notice
10 of records and reports of administrative bodies. *See Interstate Natural Gas Co.*, 209 F.2d at
11 385.

12 Exhibits 25-26 are true and correct copies of the following CPUC rulings:

13 *Exhibit 25: Administrative Law Judge’s Ruling Regarding Motions To Implement*
14 *Proceeding On California Department Of Water Resources Revenue*
15 *Requirements, dated July 12, 2001.*

16 *Exhibit 26: Joint Assigned Commissioner’s Ruling Soliciting Comments On*
17 *Department Of Water Resources Submittal, dated July 24, 2001.*

18 Courts may take judicial notice of CPUC decisions. *See Nugget Hydroelectric, L.P.*, 981
19 F.2d at 435; *Camp*, 723 F.2d at 744 n.**.

20 Exhibits 27-28 are true and correct copies of the following news releases found on the
21 official website of DWR:

22 *Exhibit 27: <[http://wwwowe.water.ca.gov/newsreleases/2001/7-22-](http://wwwowe.water.ca.gov/newsreleases/2001/7-22-01revenuerequirements.html)*
23 *01revenuerequirements.html> (visited September 23, 2001), featuring the*
24 *release Revenue Requirements Released By DWR Shows No Rate Increase*
25 *Needed To Cover Department’s Power Costs, dated July 22, 2001*

26 *Exhibit 28: <[http://wwwowe.water.ca.gov/newsreleases/2001/8-8-01rev-req-](http://wwwowe.water.ca.gov/newsreleases/2001/8-8-01rev-req-adjust.html)*
27 *adjust.html> (visited September 23, 2001), featuring the release*
28

1 *Department Of Water Resources Files Adjusted Energy Revenue*
2 *Requirement, dated August 8, 2001.*

3 The Court may take judicial notice of DWR's website pages. *See, e.g., Cairns*, 107 F. Supp.
4 at 1216 *McLaughlin*, 2000 WL 1793071 at n.3.

5 Exhibits 29-30 are true and correct copies of the following CPUC decisions:

6 *Exhibit 29:* Draft Decision of ALJ Pulsifer regarding the revenue required to cover the
7 costs of the DWR power purchase program, dated September 4, 2001.

8 *Exhibit 30:* Assigned Commissioner's Ruling Regarding The Draft Rate Agreement
9 Between The Commission And The California Department Of Water
10 Resources, dated July 18, 2001.

11 Courts may take judicial notice of CPUC decisions. *See Nugget Hydroelectric, L.P.*, 981
12 F.2d at 435; *Camp*, 723 F.2d at 744 n.**.

13 Exhibits 31-35 are true and correct copies of comments regarding CPUC decisions:

14 *Exhibit 31 :* "Comments Of Pacific Gas And Electric Company In Response To
15 Assigned Commissioner's Ruling Regarding The Draft Rate Agreement
16 Between The Commission And The California Department Of Water
17 Resources," filed on August 1, 2001.

18 *Exhibit 32:* "Additional Comments Of Pacific Gas And Electric Company In Response
19 To The Assigned Commissioner's Ruling Regarding The Letter Submitted
20 To The Commission By The California Department Of Water Resources
21 On August 10, 2001," filed on August 15, 2001.

22 *Exhibit 33:* "Reply Comments Of The California Department Of Water Resources On
23 The Draft Rate Agreement By And Between The California Department
24 Of Water Resources And The California Public Utilities Commission,"
25 filed on August 15, 2001.

26 *Exhibit 34:* "Comments Of City And County Of San Francisco On The Draft Decision
27 Adopting A Rate Agreement Between The Commission And Department
28 Of Water Resources," filed on August 31, 2001.

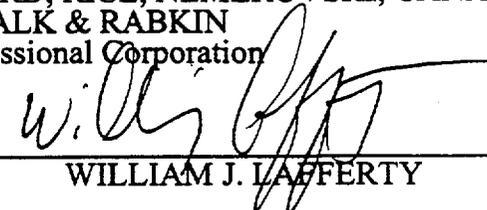
1 Request, filed with the CPUC on September 12, 2001. Courts may take judicial notice of
2 matters of public record outside the pleadings. See *MGIC Indem. Corp. v. Weisman*, 803
3 F.2d at 504; *Interstate Natural Gas Co.*, 209 F.2d at 385.

4 For the foregoing reasons, PG&E respectfully requests that the Court take judicial
5 notice of each of the Exhibits accompanying this Request for Judicial Notice.

6
7 DATED: September 24, 2001.

8 Respectfully,

9 WILLIAM J. LAFFERTY
10 HOWARD, RICE, NEMEROVSKI, CANADY,
11 FALK & RABKIN
12 A Professional Corporation

13
14 By: 

15 WILLIAM J. LAFFERTY

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

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& RABKIN

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Exhibits are not attached to the service copies of this document. You may obtain copies of the Exhibits in one of the following ways: through the "Pacific Gas & Electric Company Chapter 11 Case" link accessible through the Bankruptcy Court's website (www.canb.uscourts.gov), or by written request to Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Attn: Racquel Lopez, Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4065