

1 JAMES L. LOPES (No. 63678)
2 WILLIAM J. LAFFERTY (No. 120814)
3 CEIDE ZAPPARONI (No. 200708)
4 KIMBERLY A. BLISS (No. 207857)
5 HOWARD, RICE, NEMEROVSKI, CANADY,
6 FALK & RABKIN
7 A Professional Corporation
8 Three Embarcadero Center, 7th Floor
9 San Francisco, California 94111-4065
10 Telephone: 415/434-1600
11 Facsimile: 415/217-5910

58-275/323

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

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

22 Case No. 01 30923 DM
23 Chapter 11 Case
24 Date: December 21, 2001
25 Time: 1:30 p.m.
26 Place: 235 Pine Street, 22nd Floor
27 San Francisco, California
28 Judge: Hon. Dennis Montali

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

20 DECLARATION OF JOHN S. PAPPAS IN SUPPORT OF DEBTOR'S MOTION FOR
21 AUTHORITY TO COMPROMISE CLAIMS BETWEEN ESTATE AND VARIOUS
22 QUALIFYING FACILITIES

23
24
25
26
27
28
A001 Add: Pds Ogc Mail Center

1 I, JOHN S. PAPPAS, declare that:

2 1. I am a Manager in the Utility Electric Portfolio Management Department for
3 debtor Pacific Gas & Electric Company ("PG&E"). I have been engaged in this capacity for
4 approximately six years, and have worked on QF matters in one position or another for
5 approximately 15 years. In my position, I am generally responsible for contract and pricing
6 management with respect to Qualifying Facilities ("QFs"). I submit this Declaration in
7 support of the Motion of Pacific Gas and Electric Company for an Order Granting (1)
8 Authority To Compromise Claims Between Estate And Various Qualifying Facilities And;
9 (2) Authority To Enter Into Supplemental Agreements. Except where otherwise indicated, I
10 make this Declaration of my own personal knowledge, and would testify competently to the
11 truth of the matters stated herein if called upon to do so.

12 2. Over the course of the past few months, PG&E, with the Court's approval, has
13 entered into approximately 200 agreements to assume Power Purchase Agreements
14 ("PPAs") between PG&E and various Qualifying Facilities ("QFs"). Those agreements (the
15 "Assumption Agreements") generally provided that, inter alia:

- 16 (a) PG&E would assume the QF's PPA pursuant to 11 U.S.C. Section
17 365(b)(1) and (d)(2) and Rules 6006 and 9019 of the Federal Rules
18 of Bankruptcy Procedure;
- 19 (b) The QFs would waive certain potential administrative and pre-
20 petition claims; and
- 21 (c) PG&E would pay any prepetition defaults (referred to in the
22 Assumption Agreements as "Prepetition Payables") per the terms
23 specified in the Assumption Agreements.

24 3. Although the Assumption Agreements specified that interest was to be paid
25 on the Prepetition Payables, the Assumption Agreements did not specify a rate of interest.
26 Rather, most Assumption Agreements provided that PG&E and the QFs would negotiate the
27 rate of interest in good faith, and that if the parties could not agree, they would bring their
28

1 dispute to the Court for a determination of the rate of interest.¹

2 4. In recent weeks, PG&E and various QFs have engaged in negotiations with
3 respect to the rate and payment of interest under the Assumption Agreements. Those
4 negotiations resulted in agreements (the "Supplemental Agreements") between PG&E and
5 two QF groups—i.e., the Calpine group ("Calpine") and the GWF group ("GWF").
6 Attached hereto as Exhibit A is a true and correct copy of the Supplemental Agreement
7 between Calpine and PG&E, and attached hereto as Exhibit B is a true and correct copy of
8 the Supplemental Agreement between GWF and PG&E.

9 5. The Supplemental Agreements include the following general terms²:

10 (a) The outstanding principal balance of the Prepetition Payables³ shall bear
11 interest at a rate of five percent (5%) per annum (the "Interest Rate") from
12 the respective due dates of the principal amounts set forth on Attachment B
13 to the Assumption Agreements, until paid;

14 (b) All accrued prepetition and postpetition interest due on the Prepetition
15 Payables shall be paid on or before December 31, 2001, and thereafter, all
16 accrued interest on the outstanding unpaid principal amount of the
17 Prepetition Payables shall be payable monthly in arrears on the declining
18 balance of the Prepetition Payables until the Prepetition Payables have been
19 paid in full;

20 (c) Notwithstanding the terms of any plan of reorganization filed by PG&E or
21 by any other party in the Bankruptcy Case, PG&E shall pay the outstanding
22 principal balance of the of the Prepetition Payables in twelve (12) equal

24 ¹Most, but not all, Assumption Agreements contained these terms. For example, for
25 some QFs whose Prepetition Payables were less than \$10,000, the Agreements might have
provided for an accelerated payment without interest.

26 ²The terms of the two Agreements, though substantially similar, are not identical.
27 They do, however, call for the same rate of interest and the same general payment schedule.

28 ³In Calpine's Supplemental Agreement, the Prepetition Payables are netted against
certain Prepetition Receivables owed PG&E by the QF prior to the calculation of accrued
interest.

1 monthly installments on the last day of each month commencing
2 December 31, 2001 and continuing on the last day of each month thereafter
3 until paid in full; and

4 (d) If the Plan Effective Date of any plan confirmed in the case shall occur
5 before the Prepetition Payables and all interest accrued thereon has been
6 paid in full, the remaining balance of the Prepetition Payables and all
7 interest accrued thereon shall be paid on such Plan Effective Date.

8 6. PG&E believes that approval of the Supplemental Agreements is in the best
9 interest of the estate and its creditors because absent such Agreements, PG&E would need to
10 expend considerable time and resources in order to litigate the issue of the rate of interest
11 applicable to the Prepetition Payables. Moreover, although PG&E believes it would have
12 prevailed upon the Court to award a reasonable interest rate, the Supplemental Agreements
13 eliminate the risk that the Court would have awarded a higher interest rate than the
14 Supplemental Agreements provide for.

15 7. In addition to Calpine and GWF, several other QFs have approached PG&E
16 about entering into Supplemental Agreements identical to those attached hereto as Exhibits
17 A and B. Indeed, PG&E anticipates that a number of QFs will seek to enter into
18 Supplemental Agreements with an identical rate of interest and payment schedule. In
19 PG&E's opinion, it is in the best interest of the estate to enter into Supplemental Agreements
20 with other QFs on substantially similar terms for the same reasons stated above.

21 I declare under penalty of perjury under the laws of the State of California that
22 the foregoing is true and correct, and that this declaration was executed this 7th day of
23 December, 2001, in San Francisco, California.

24
25 By:  _____
26 JOHN S. PAPPAS
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
BALK
& RABKIN
A Professional Corporation

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: Nathaniel Hunt, Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4065