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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In Re:

14 Pacific Gas and Electric Company, a
15 California corporation

16 TIN: 94-0742640

17 Debtor(s).

13 Case No.: 01-30923 DM

14 Chapter 11

15 Date: February 9, 2004
16 Time: 1:30 p.m.
17 Ct Rm: 22
18 Judge: Dennis Montali
19 Place: 235 Pine Street
20 San Francisco CA 94104

21 LEPRINO FOOD COMPANY'S
22 NOTICE OF HEARING AND MOTION FOR
23 DETERMINATION OF ORDINARY COURSE LIABILITY,
24 OR, IN THE ALTERNATIVE, ALLOWANCE AND PAYMENT OF
25 PRE-CONFIRMATION ADMINISTRATIVE CLAIM

26 Please take notice that a hearing on the Motion for Determination of Ordinary Course Liability,
27 Or, in the Alternative, Allowance and Payment of Pre-confirmation Administrative Claim filed by
28 Leprino Foods Company, a Colorado corporation ("Leprino") shall be heard before the Honorable
Dennis Montali, Bankruptcy Judge, in Courtroom 22, United States Bankruptcy Court, 235 Pine Street,
San Francisco, CA 94104 on February 9, 2004 at 1:30 p.m.

By this motion, Leprino seeks an order determining that its claim against Pacific Gas and Electric

1 Company, a California corporation ("Debtor") is an "Ordinary Course Liability" pursuant to the
2 Confirmation Order and Exhibit "A" entered in Debtor's case on December 22, 2003, or in the
3 alternative, for allowance of a pre-confirmation administrative claim against Debtor.

4 In support of the motion, Leprino represents as follows:

5 1. Debtor filed its petition under Chapter 11 of the Bankruptcy Code (11 U.S.C. §101 et seq.)
6 on April 6, 2001.

7 2. On or about August 31, 2001, Leprino entered into an Electricity Sale and Purchase
8 Agreement with Semptra Energy Solutions for Leprino's cheese manufacturing facilities in Lemoore,
9 California, which permitted Leprino to take advantage of direct access electrical utility service at such
10 facility ("the Direct Access Agreement").

11 3. Decision No. 02-03-055 issued March 21, 2002 by the California Public Utilities Commission
12 ("the PUC") provides that direct access agreements signed prior to September 20, 2001 are enforceable.

13 4. To date, Debtor has refused to honor Leprino's rights under the Direct Access Agreement,
14 as more fully set forth in the June 4, 2003 letter of Thomas S. Knox, Leprino's state court counsel, to
15 Debtor, a true and correct copy of which is attached as Exhibit "A".

16 5. Absent Debtor's Chapter 11 case and Bankruptcy Code §362(a), Leprino would have
17 commenced an action in a California Superior Court against Debtor, the PUC, and possibly other parties,
18 seeking injunctive relief to preclude interference with performance of the Direct Access Agreement, and
19 seeking monetary relief for the damages suffered by Leprino as a consequence of not being allowed to
20 obtain the benefits of the Direct Access Agreement.

21 6. It remains Leprino's preference to initiate and prosecute such litigation, and Leprino believes
22 that a California Superior Court is a more appropriate forum for adjudicating the rights of Debtor and
23 the various non-debtor parties, particularly as regards the injunctive relief issues.

24 7. Leprino asserts that its claims against Debtor relating to the Direct Access Agreement fall
25 within the definition of "Ordinary Course Liability" contained in Debtor's Plan and are accordingly
26 excluded from the discharge of Bankruptcy Code §1141(d)(1), and thus that Leprino may now initiate
27 and prosecute the litigation referenced above.

28 8. In the alternative, Leprino is entitled to allowance and payment of pre-confirmation

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**KNOX
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June 4, 2003

Mr. Calvin Yee
ESP Relations Corporate Account Manager
Pacific Gas & Electric
P.O. Box 770000
Mail Code B 19C
San Francisco, California 94177

Re: *Leprino Foods Company's Direct Access Contract*

Dear Mr. Yee:

This office represents Leprino Foods Company ("Leprino"). Leprino owns and operates a cheese processing plant located 351 Belle Haven Drive in Lemoore, California and commonly referred to as the "Lemoore West facility."

I am writing because Pacific Gas & Electric ("PG&E") refuses to honor an agreement between Leprino and Sempra Energy Solutions ("Sempra") that would allow Leprino to operate its Lemoore West facility on direct access service. PG&E's refusal to honor the agreement is contrary to the law and current regulations.

In the Electricity Sale and Purchase Agreement ("Agreement") by and between Leprino and Sempra, Leprino agreed to purchase all of its electricity requirements directly from Sempra effective August 31, 2001. This direct access service Agreement included Leprino's Lemoore West facility. While Lemoore West was under construction, Leprino operated under four utility meters which provided 100% of its electricity requirements: Meter Nos. 93R7773, 87006R, X20083 and X20084. Each of these meters qualified for direct access service pursuant to the Agreement.

As you know, the California Public Utility Commission ("CPUC"), in Decision 02-03-055, suspended direct access service in response to the emergency electric crisis in California, Assembly Bill 1X and CPUC Decision 01-09-060. However, in Decision 02-03-055, the CPUC ruled that existing direct access customers could continue in the direct access market. Although the CPUC refused to allow new or additional accounts to direct access service, PG&E is required to process direct access service agreements relating to pre-September 20, 2001 direct access contracts or agreements. New or additional accounts that require installation of an additional meter or require a new direct access service agreement are not permitted, except to initiate service or to replace or upgrade an existing meter.

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1 administrative claims against Debtor. Leprino seeks, as an administrative non-monetary claim, a
2 permanent injunction against Debtor precluding interference with recognition of and enforcement of the
3 Direct Access Agreement. In addition, Leprino seeks allowance and payment of an administrative
4 monetary claim for the damages suffered by Leprino as a consequence of not being allowed to obtain
5 the benefits of the Direct Access Agreement, an amount which is estimated through December 10, 2003
6 at approximately \$1,510,040. The amount of this monetary claim will continue to increase until Leprino
7 is afforded direct access under the Direct Access Agreement. In the event this court is unable or
8 unwilling to grant Leprino permanent injunctive relief, the amount of Leprino's administrative monetary
9 claim by reason of being permanently precluded from direct access will be substantially greater, and
10 must be determined by this court after evidentiary hearings.

11 9. Leprino reserves the right to present additional evidence in support of this motion, particularly
12 in the event its claims against Debtor are found not to be within the definition of "Ordinary Course
13 Liability".

14 WHEREFORE, Leprino prays:

15 1. For an order determining Leprino's claims against Debtor relating to the Direct Access
16 Agreement are "Ordinary Course Liability" or, in the alternative;

17 2. For an order allowing Leprino's claims against the Debtor relating to the Direct Access
18 Agreement as pre-confirmation administrative claims, with appropriate injunctive relief and monetary
19 relief according to proof;

20 3. For such other and further relief as the court deems just.

21 Dated: *January 9, 2004*

22 DAHL & DAHL
ATTORNEYS AT LAW

23
24 By: *Walter R. Dahl*
25 Walter R. Dahl
Attorneys for Leprino Foods Company

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June 4, 2003
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On December 2, 2002, Dan Zastrow, the Western Region Controller for Leprino, wrote you requesting that PG&E upgrade an existing meter and place it on direct access service at the Lemoore West facility. Leprino provided PG&E proof of its eligibility as a direct access customer in accordance with CPUC Decision 02-03-055. All four meters listed above were active on September 20, 2001. Three of the four meters were consolidated into Meter No. X46043 on April 21, 2002. Mr. Zastrow requested that the fourth meter, Meter No. 93R773, be consolidated into Meter No. X46043 and that Meter No. X46043 be placed on direct access service immediately in accordance with the Agreement and the CPUC's Decision.

In your January 28, 2003 e-mail response to Mr. Zastrow's December 2, 2002 letter, you rejected Leprino's request and determined, based on your interpretation of CPUC Decision 02-03-055, that Meter No. X46043 was not eligible for direct access service. Specifically, you concluded that Meter No. X46043 was a "new account" This interpretation is not supported by CPUC Decision 02-03-055.

The rule you cite from CPUC Decision 02-03-055, Section III, Number 6 regarding the general standstill principle is correct. However, in the same Decision, the Commission construed the rule, adopting an exegesis that allows Leprino to continue with direct access service. The Commission stated:

"Rule should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers."

(Section III, Rule 6 of Decision 02-03-055.)

Leprino, as an existing, eligible direct access customer, requested that the four meters that provided 100% of the electricity to Lemoore West be consolidated into one meter that would provide 100% of the electricity to Lemoore West. Leprino's Lemoore West facility account was on the list of eligible accounts provided to the CPUC and PG&E. Therefore, consolidation of the four meters into Meter No. X46043 is simply a replacement of existing direct access meters at an existing direct access location. Whether PG&E chooses to classify each meter as a separate account or as a single account, the result is the same. Meter No. X46403 must be placed on direct access service since it is merely a "replacement ... of existing meters for [an] existing direct access [customer]." Leprino has not added or requested a "new account" as you suggest; it is simply upgrading and replacing existing meters.

Accordingly, Leprino requests that Meter No. 93R773 be consolidated into Meter No. X46403 and that PG&E allow Leprino to operate Meter No. X46403 on direct access service in accordance with its Agreement and the CPUC Decision.

If Pacific Gas and Electric fails to abide by the CPUC's decision and allow Leprino, an eligible direct access customer, to operate the Lemoore West facility on direct access service pursuant to its contract with Sempra, Leprino will be left with no choice but to pursue all of its available legal remedies.

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Please feel free to call to discuss any questions you may have. Thank you for your attention to this matter.

Yours sincerely,


THOMAS S. KNOX

cc: Brad Olsen

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