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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

Case No.  
05-60200

CALPINE CORPORATION, et al.,  
Debtors.

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November 15, 2006  
United States Custom House  
One Bowling Green  
New York, New York 10004

Hearing Pursuant to Kirkland and Ellis LLP  
Notice of Amended Agenda of Matters Scheduled for  
Hearing.

B E F O R E :

HON. BURTON R. LIFLAND,  
U.S. Bankruptcy Judge



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20 regarding Federaid's commitment to continue the  
21 parade and fireworks show. And soon, your Honor,  
22 we will be in the second year of the Calpine  
23 debtors' restructuring.

24 The month of December is also  
25 relevant, your Honor, because, as this court knows,

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1 CALPINE CORPORATION

2 the Calpine debtors' exclusive period to file a  
3 plan of reorganization expired by the end of this  
4 year. Accordingly, in the next week or two, we do  
5 intend to file a motion requesting that the court  
6 extend exclusivity to June 30th of 2007, which is  
7 the latest date under the new Bankruptcy Code  
8 amendment to which exclusivity can be extended. We  
9 are hopeful that the court will hear the  
10 exclusivity motion at the court's previously  
11 scheduled December 6th hearing.

12 As your Honor indicated at the last  
13 hearing, and as we ourselves recognize, this  
14 hearing and the December 6th exclusivity hearing is  
15 a good time to step back for a moment, take stock  
16 of the case, and look at the big picture. The  
17 exclusivity hearing will be an opportunity to  
18 discuss what the debtors have done, where they are  
19 now, and how they see this case progressing over  
20 the coming months.

21 To that end, your Honor, we filed a  
22 written status report yesterday afternoon with the



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23 court discussing some of the recent developments in  
24 the case. We felt it was important to do so for a  
25 couple of reasons. First, so that the court and

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1 CALPINE CORPORATION  
2 our major stakeholders would have an opportunity to  
3 read and reflect on the recent events in the case,  
4 at least from our perspective, in advance of this  
5 hearing so that the matters to be brought before  
6 the court this morning could be considered in a  
7 broader context.

8 And second, your Honor, so that  
9 those creditors, equity holders, and other parties  
10 in interest who are unable to attend hearings in  
11 person and listen to this oral status report will  
12 still have an opportunity to consider recent  
13 developments in the case. So even though we filed  
14 this written status report yesterday afternoon,  
15 your Honor, with your permission I would just like  
16 to take a few minutes to give your Honor and the  
17 parties present in the court a general status  
18 report on the case, again, from the debtors'  
19 perspective, and talk a bit about how the Calpine  
20 debtors and their professionals interact,  
21 communicate, and consult with the committees in  
22 this case, if that would be all right, your Honor.

23 THE COURT: That would be most  
24 appreciated.

25 MR. CIERI: Thank you, your Honor.

1 CALPINE CORPORATION

2 Your Honor, before discussing the  
3 case, I would like to take a moment to introduce,  
4 or in some cases, reintroduce several people that  
5 are present in the court. For reasons I will get  
6 to in a few minutes, I believe that you will be  
7 seeing much more of these people as we begin the  
8 second year of the restructure.

9 First, your Honor, I would like to  
10 introduce Mr. Robert May, who is the chief  
11 executive officer of Calpine.

12 THE COURT: Mr. May?

13 MR. MAY: Good morning, your Honor.

14 MR. CIERI: Your Honor, second I  
15 would like to introduce Mr. Scott Davido, who is  
16 the chief restructuring officer of Calpine. I will  
17 note that you have heard Mr. Davido's testimony in  
18 this case and in all likelihood will hear from Mr.  
19 May and him again before this case is over.

20 Third, I would like to introduce Mr.  
21 Gregg Doody, who, your Honor, is the general  
22 counsel of Calpine. I'm certain you haven't had an  
23 opportunity yet to meet Mr. Doody.

24 MR. DOODY: Good morning, your  
25 Honor.

1 CALPINE CORPORATION  
2 THE COURT: Good morning.  
3 MR. CIERI: As the court is aware,  
4 Messrs. May, Davido and Doody have been hired by  
5 Calpine either right before or sense the Chapter 11  
6 was filed. They are the three senior Calpine  
7 employees most responsible for overseeing the  
8 Calpine debtors reorganization efforts. As we get  
9 closer to the plan process next year, and as we  
10 roll up our sleeves, we should expect greater  
11 attendance from Messrs. May, Davido and Doody at  
12 hearings, either behind the bar or in the witness  
13 box.

14 Also, your Honor, there are with me  
15 several of my partners from Kirkland and Ellis,  
16 some of whom you'll hear from this morning, and who  
17 together with myself are responsible for the day to  
18 day Calpine debtors Chapter 11 cases. Your Honor,  
19 each one of them have direct responsibility for one  
20 or more areas of this restructuring. We have  
21 divvied up the responsibilities among the party of  
22 attorneys at Kirkland and Ellis. I do want to  
23 ensure the court, however, that we all have a sense  
24 of the big picture of what's going on and how these  
25 various boxes interact with each other.

13

1 CALPINE CORPORATION  
2 Your Honor, if I can turn just to  
3 general case matters, if you don't have any further

4 questions.

5 THE COURT: No, have no further  
6 questions. And I appreciate, what you are doing  
7 for me is filling out the pyramid.

8 MR. CIERI: Thank you very much,  
9 your Honor. Ultimately, as I said, from the  
10 company's perspective, it's Mr. May, with Mr. Doody  
11 and Mr. Davido, and from Kirkland and Ellis there  
12 are obviously several of us who have spent a vast  
13 majority of our time on the Calpine debtors' cases,  
14 but I view myself as ultimate responsible.

15 Your Honor, turning to general case  
16 matters, as I mentioned, we are filing an  
17 exclusivity motion next week, which will hopefully  
18 be set for hearing on December 6th. But in advance  
19 of that, I would like to give this court my view of  
20 the big picture status. And let me start for a  
21 moment where we began and move to where we are now  
22 and where we hope to get. This case was filed on  
23 December 20th, 2005 and was the sixth largest  
24 reorganization case by an asset size in history.  
25 It involves almost 275 debtors and to say nothing

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1 CALPINE CORPORATION  
2 of the hundreds of non debtor affiliated entities,  
3 and approximately 18 billion dollars of funded  
4 debt. The debtors operate approximately 90 gas  
5 fired and geothermal power plants across North  
6 America, and to give you a sense of the debtors'

7 size, Calpine is the country's largest consumer of  
8 natural gas, and the world largest supplier of  
9 geothermal energy. We operate obviously in the  
10 energy industry, which is an industry that is  
11 extremely complex semi regulated and in constant  
12 transition, and in an industry where one of  
13 Calpine's main costs is natural gas, because that's  
14 how we fuel most of our plants, your Honor, and  
15 where one of Calpine's --

16 THE COURT: Excuse me. I just paid  
17 my gas bill; it was 2.44 cents a gallon for liquid  
18 gas. What do you pay as a consumer?

19 MR. CIERI: Your Honor, I actually  
20 gave my wife some grief this weekend over the fact  
21 that she hadn't filled out the little form in the  
22 suburb in which we live as to picking a program  
23 out, but I think it's 4 dollars.

24 THE COURT: 4 dollars?

25 MR. CIERI: 4 dollars.

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1 CALPINE CORPORATION

2 THE COURT: I guess I have a bargain  
3 where I live.

4 MR. CIERI: You obviously have a  
5 tougher spouse.

6 Your Honor, clearly our  
7 profitability is subject to the price of gas; it's  
8 the main fuel we utilized, and, in addition, our  
9 main source of revenue, you know, what we can

10 charge for electricity, is volatile and subject to  
11 the vagueries of the market, and, your Honor, not  
12 only subject the vagueries of the market, but the  
13 vagueries of the weather.

14 Over the last several years, your  
15 Honor, the fact that this is a volatile industry  
16 has lead several of our competitors to file for  
17 Chapter 11. By the beginning of 2005, prior to the  
18 commencement of these Chapter 11 cases, this  
19 company faced several difficult issues; a wholesale  
20 power market with over capacity, a significantly  
21 over leveraged balance sheet, and very little  
22 liquidity. And although the debtors did, during  
23 the early part of 2005, try to dispose of assets in  
24 order to improve liquidity, they were hampered from  
25 doing so by many of the covenants contained in

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1 CALPINE CORPORATION  
2 their project and financing arrangements. Indeed,  
3 as the court may recall, it was litigation in the  
4 Delaware chancery court in the fall of 2005 over  
5 the use of certain proceeds from the sale of the  
6 Rosetta properties that worsened the company's  
7 liquidity and ultimately lead to the commencement  
8 of the Chapter 11 case. So, your Honor, back in  
9 last December, some 11 months ago, we commenced  
10 Chapter 11 cases to fix our balance sheets, improve  
11 our liquidity, rationalize our asset portfolio, and  
12 improve our contractual obligations, and, your

13 Honor, to have some breathing space to restructure  
14 our commercial and power plant operations.

15 So where are we now, your Honor? In  
16 our own mind, we have viewed these cases as having  
17 five primary phases, and the first phase is what I  
18 call the business stabilization and Chapter 11  
19 transition phase. And obviously that phase began  
20 on December 20th through the final DIP financing  
21 and cash collateral hearings in March, and during  
22 this phase the company stabilized its business  
23 operations and then transitioned itself into a  
24 Chapter 11 debtor in position with all the rights  
25 and duties associated with that particular role.

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CALPINE CORPORATION

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And during this phase, with the  
3 court's assistance, we obtained the requisite first  
4 day relief, and most importantly, most of that  
5 relief centered the on the 2 billion dollar debtor  
6 in possession financing and the cash collateral  
7 arrangements with the various prepetition lenders.  
8 During this phase, your Honor, the Calpine debtors,  
9 under Mr. May's leadership, also concentrated on  
10 improving and maintaining relationships with their  
11 customers and contract counterparties to ensure  
12 them that from their perspective business would  
13 continue with minimal disruption. Your Honor,  
14 improvement in customer relationships has  
15 translated into tremendously improved operating

16 results, and those operating results, your Honor,  
17 are set forth in some detail in the status report  
18 that we filed yesterday afternoon.

19                   During this first phase, your Honor,  
20 we also spent considerable time addressing our  
21 workforce, without whom there would be no company.  
22 The company put in place, again, with this court's  
23 blessing, a series of employee benefit plans, bonus  
24 structures and severance programs all to set stem  
25 exceedingly high rates of attrition in the early

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1                   CALPINE CORPORATION  
2 phases of the case, particularly in Calpine's  
3 Houston trading operations, and the Calpine debtors  
4 brought in new management and restructured their  
5 senior management responsibilities. Indeed, your  
6 Honor, prior to the hearing Mr. May reminded me  
7 that at Calpine they eliminated 106 director  
8 positions, thereby dramatically streamlining the  
9 management of the Calpine debtors. In fact, your  
10 Honor, continuing during the spring and summer, Mr.  
11 May revamped the composition of Calpine senior  
12 management team, including all of this direct  
13 reports and substantially below that level, your  
14 Honor.

15                   During this first phase, your Honor,  
16 we also began working with our new stakeholders,  
17 most important of which are the unsecured  
18 creditors' committee, the ad hoc second lien



19 committee, and the equity committee, to keep them  
20 informed about developments in the case and to set  
21 up a process to work elaborately with those  
22 stakeholders towards the development of a plan of  
23 reorganization that maximizes value, your Honor,  
24 for all stakeholders.

25 And let me pause, your Honor, just

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1 CALPINE CORPORATION  
2 for a second. I must say that in my years of  
3 practice, I cannot remember a Chapter 11 case where  
4 there has been more cooperation, communication, and  
5 consultation between the debtors and the committees  
6 as I've seen in this case. There is, your Honor,  
7 literally daily communication and coordination  
8 between the Calpine debtors and their major  
9 stakeholders at various level; whether it's  
10 presentations by the debtors' business people to  
11 the committee's about a particular asset sale, or  
12 the professionals regarding a particular motion.

13 We have, under Mr. May's direction,  
14 your Honor, worked very hard to maintain a very  
15 open, transparent and iterative process. For  
16 example, your Honor, there are weekly presentations  
17 by the company's business people and professionals  
18 to the committees advisors regarding major  
19 transactions, settlements and other activities that  
20 we are contemplated. There are separate weekly  
21 meetings between the professionals to discuss

22 pleadings filed in the case and to obtain the  
23 committee's feedback to those pleas. There are  
24 also in person meetings with the certain committees  
25 every other month or so, where the Calpine debtors

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1 CALPINE CORPORATION  
2 actually make formal presentations to the committee  
3 members and consider their input.

4 And that is nothing to say, in  
5 addition we have every day communications that  
6 aren't formal between the business people and  
7 professionals at every level to ensure the that  
8 committees are informed of the latest developments  
9 and to have an opportunity to provide feedback to  
10 the company. And while we may disagree with on  
11 various matters with the committees, and  
12 undoubtedly you are going to hear about some of  
13 these disagreements this morning, at least from my  
14 perspective, I believe that they are honest  
15 disagreements central to the restructure and not  
16 disagreements related to process issue like notice,  
17 information sharing, due diligence, and the like.  
18 Your Honor, that's the first phase.

19 The second phase is what I call the  
20 commencement of the Chapter 11 restructuring. And  
21 during this phase, the debtors turn their attention  
22 to hard work of the restructuring. And taking  
23 advantage of all the tools available to restructure  
24 the company's operation, balance sheet, and

25 liquidity needs. And during this phase, the

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CALPINE CORPORATION

2 company started identifying those aspects of the  
3 business that needed immediate restructuring  
4 attention. And as the court may recall, fairly  
5 early on, the company designated a dozen or so what  
6 we call designated process, which were the assets  
7 the company first considered for disposition either  
8 through sale, restructuring, or a turnover to the  
9 lender or lessor. Simultaneous with this designate  
10 process the process was undergoing, the Calpine  
11 debtors turned their attention to the leases and  
12 contracts to determine, your Honor, which contracts  
13 were appropriate for assumption, rejection or  
14 assignment. Again, consistent with the Calpine  
15 debtor's earlier view of the ultimate asset pool at  
16 the end of the case.

17 To date, your Honor, the Calpine  
18 debtors have made substantial progress in  
19 evaluating and reviewing 28 thousand contracts, and  
20 have begun to make preliminary decisions about  
21 assumption and rejection. We are also, your Honor,  
22 have been focused upon improving our liquidity, and  
23 the court recalls the disputes between the company  
24 and first lien holders regarding the payoff of  
25 their debt, the cutting off of their professional

1 CALPINE CORPORATION  
2 fees, and the commencement of litigation concerning  
3 whether or not those first liens were entitled to a  
4 make whole.

5 Third stage, your Honor, from our  
6 perspective is the business plan development stage,  
7 and that's the phase we find ourselves in. This  
8 stage started several months ago, once the case  
9 settled down, and the company had fully  
10 transitioned itself into a debtor in possession  
11 operating in Chapter 11. During this stage, the  
12 company and its management team turned its  
13 attention to building a business plan for this  
14 company from the ground up. The business plan will  
15 create the platform for the plan of reorganization,  
16 but most importantly, it creates its platform for  
17 the reorganization now and beyond.

18 We have worked very hard on the  
19 business plan to date, but that hard work still  
20 continues. Several months ago, your Honor, the  
21 company agreed to have the business plan concluded,  
22 and presented to the company's committees in early  
23 to mid December, and I am pleased to report to the  
24 court that we currently expect to remain on track  
25 to meet that target. Once we are in the position

1 CALPINE CORPORATION

2 to share the business plan with our committees, we  
3 expect it will take several months for the  
4 committees, in particular to do conduct their due  
5 diligence and understand the business plan and its  
6 underlying assumptions. In fact, your Honor, in  
7 order to expedite this process, the dialogue  
8 related to the business plan assumptions has  
9 already begun evening before we've delivered the  
10 business plan. But realistically, I do not expect  
11 the due diligence process to be complete until  
12 sometime during the first quarter of next year.

13 We hope that after this due  
14 diligence process is complete, all of our  
15 committees will be in agreement with the nature,  
16 scope, projection, and assumption contained in the  
17 business plan; however, as the court knows from its  
18 many years of experience mand with the variety of  
19 stakeholders that we have in this case, and the  
20 fact that these stakeholders are at various levels  
21 in our capital structure, well, there may not be  
22 complete agreement on the business plan and its  
23 underlying assumptions. So, suffice to say, that  
24 next year may be a very busy year for the Calpine  
25 debtors and for this court, particularly as all the

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1 CALPINE CORPORATION  
2 various restructuring activities of the company  
3 begin to converge in a plan of reorganization.  
4 Once we begin this business plan,

5 due diligence, your Honor, we hope to turn  
6 ourselves to the fourth stage of this case, and  
7 that's formulation of the plan of reorganization.  
8 During this fourth phase we will develop and  
9 formulate a plan of reorganization based on the  
10 business plan, our valuation of the company, and  
11 estimates of claims against the estate. One of the  
12 challenges we do face in the cases is understanding  
13 not just third party claims against the estate, but  
14 the significant number and amount of intercompany  
15 claims and past intercompany activity among the  
16 debtors and their non debtor affiliates.

17 Your Honor, there are literally  
18 millions of lines of journal entries that reflect  
19 intercompany activity among the various Calpine  
20 debtors and their non debtor affiliates. In fact,  
21 your Honor, for the years 2004 and 2005, to give  
22 you a sense of it, there are 1.4 trillion dollars  
23 of intercompany claims reflected on the company's  
24 books and records. And obviously, your Honor,  
25 consistent with our practice to date, we expect to

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1 CALPINE CORPORATION  
2 spend quite a bit of time discussing the plan of  
3 reorganization and its claim situation with our  
4 various committees, and who will undoubtedly want  
5 to engage in further due diligence.

6 Once, your Honor, obviously we are  
7 able to propose a plan of reorganization and the

8 court confirms that plan, we will emerge to that  
9 final stage, and that is the emergence from Chapter  
10 11, and we hope to do so, your Honor, as a healthy  
11 company positioned to compete for the long term.  
12 But at this point it's a little premature to  
13 speculate that far ahead.

14 So, your Honor, if you have any  
15 questions for me or for any member of the  
16 management team, we will be ma pleased to answer  
17 them at this time, or we can move onto the agenda,  
18 but we are available for any questions that you may  
19 have.

20 THE COURT: No, I have no particular  
21 inquiry. I appreciate being briefed on the cross  
22 pollination that goes on with respect to the  
23 matters that ultimately come before this court in  
24 an open forum.

25 MR. CIERI: Your Honor, we literally

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1 CALPINE CORPORATION  
2 have weekly communications, weekly organized  
3 communications with the various major  
4 constituencies, and we hope that has lead to less  
5 disputes being heard by this court and more  
6 efficient use of this court's time.

7 Thank you, your Honor.

8 MR. STAMER: Again, for the record,  
9 Michael Stamer from Akin Gump for the committee.

10 If I may be permitted to give a

11 brief response. It's not much of a counterpoint, I  
12 just think for the record if I could speak for a  
13 couple of minutes it would be very helpful.

14 THE COURT: Well, this is not Sunday  
15 morning where all the political shows go on with  
16 point and counterpoint, but go on.

17 MR. STAMER: Your Honor, I promise  
18 not to call Mr. Cieri names.

19 Your Honor, as described by Mr.  
20 Cieri, the status report is -- it's not advocacy  
21 piece, it is the status from the perspective of the  
22 debtor. We received a copy of the written report  
23 for the first time when we walked into court today.  
24 I have no intention, to the extent I even disagree  
25 with anything, to go through that right now. What

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1 CALPINE CORPORATION

2 I would like to do, just for the record, is reserve  
3 our rights at a later date to contest the items  
4 that Mr. Cieri put on the record either through the  
5 written status report or through his comments.

6 Your Honor, the committee agrees  
7 with a great deal of what Mr. Cieri has said. The  
8 debtors have made real progress in a number of  
9 areas. They have worked constructively with their  
10 committees, with their major constituents. We have  
11 collectively worked out virtually every dispute  
12 that we have had with the company, and it has not  
13 spilled into litigation before this Bankruptcy



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14 Court. We have limited our fighting, if you will,  
15 our arguments, to conference rooms, to conference  
16 calls, and been able to work constructively, again,  
17 to present most of the matters before this court on  
18 consensual basis.

19 As your Honor as seen and will see  
20 later today, we are not at all happy with the way  
21 in which the company is dealing with first lien  
22 avoidance issue. But as Mr. Cieri said, there will  
23 be times when we disagree and this is one of those  
24 times. For the most part, your Honor, it has been  
25 a very constructive ten months in bankruptcy. We

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1 CALPINE CORPORATION  
2 are now, again, as Mr. Cieri described, entering a  
3 critical phase in these cases; formulation of a  
4 business plan, determination of which, if any,  
5 assets will be sold, and ultimately plan  
6 formulation.

7 It is our view that their continued  
8 cooperation, their continued openness is even more  
9 critical at this stage of the process than during  
10 the last ten months. We are hopeful that the  
11 constructive dialogue will continue, your Honor; if  
12 in fact it does not, I believe the court will be  
13 one of the first to know.

14 Those are the only remarks I have.  
15 Thank you, your Honor.

16 THE COURT: Thank you, sir.

17 MR. KAPLAN: Your Honor, for the  
18 record, Gary Kaplan of Fried Frank on behalf of the  
19 equity committee. I feel I would be remiss if I  
20 didn't get up and comment.

21 THE COURT: We don't feel badly.

22 MR. KAPLAN: I just feel, your  
23 Honor, that a lot of what Mr. Cieri said, while I  
24 agree with, I don't want your Honor to get the  
25 impression that it's sort of a love fest behind the

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1 CALPINE CORPORATION  
2 scenes with the committees constantly getting  
3 information and updates. From the equity  
4 committees' perspective, it's been a fight. And  
5 it's been a continuing ongoing battle to get some  
6 of the access that some of the other constituents  
7 have gotten. I think Mr. Cieri and his team have  
8 gone a long way to try to get us the information,  
9 but I don't want your Honor to sort of view this as  
10 everybody's getting the information on a timely  
11 basis, there are no issues. It has been, certainly  
12 from the equity committee's perspective, an ongoing  
13 battle to get into the room to get into  
14 discussions, to have meetings. So that's the only  
15 thing. I just didn't want the record to reflect  
16 that everything is perfect and then have the equity  
17 committee that is going to read the transcript and  
18 say, hey, what gives? What are they talking about?  
19 So just for the record, again, I'm

132327  
20 not here to complaint about it, I just didn't want  
21 the record to reflect that everything was perfect  
22 in the land between all the committees and the  
23 debtor given the state of affairs.

24 THE COURT: This sounds like a  
25 typical marriage.

30

1 CALPINE CORPORATION

2 MR. KAPLAN: Except we don't have  
3 Moroccan divorces here.

4 THE COURT: Does anyone else want to  
5 be heard?

6 MR. CIERI: Your Honor, I will turn  
7 the podium over to my partner, Mr. Seligman, to run  
8 through the agenda. But this is the nicest thing a  
9 bunch of creditors and equity holders have ever  
10 said about a debtor, so we should move on.

11 Thank your, your Honor, for the  
12 time.

13 THE COURT: All right.

14 MR. SELIGMAN: Good morning, your  
15 Honor. David Seligman of Kirkland and Ellis on  
16 behalf of the debtors.

17 Your Honor, I would like to run  
18 through some of the matters in the agenda, and  
19 there will be various people presenting various  
20 matters, but I wanted to start off, and given the  
21 fact that we've taken up so much of your time  
22 already, I'll try to do keep matters brief.

23                                   Your Honor, I wanted to run through  
24                                   some of the uncontested matter that are up this  
25                                   morning. Matter number 1 is the debtors' motion

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1                                   CALPINE CORPORATION  
2                                   for an order approving releases of certain claims  
3                                   with respect to a settlement between and among the  
4                                   debtors, Pacific Gas and Electric, and the  
5                                   California Independent System Operator Corporation  
6                                   and the California Electricity Oversight Board,  
7                                   Docket Number 2946.

8                                   Your Honor, this, the background  
9                                   here --

10                                  THE COURT: Let me go back, then, in  
11                                  view of the matter that you are presenting now, to  
12                                  an item in Mr. Cieri's status report, and that is  
13                                  the very early rejection motion which is now on  
14                                  appeal in the Second Circuit. And I understood  
15                                  there were executory contracts with respect to gas,  
16                                  and that six have been resolved, and Pacific Gas is  
17                                  one of those, I assume.

18                                  MR. SELIGMAN: Yes, that was one of  
19                                  the ones resolved.

20                                  THE COURT: And I take it that's  
21                                  resolved.

22                                  MR. SELIGMAN: Yes, that's been  
23                                  resolved.

24                                  THE COURT: So then what's left in  
25                                  circuit?

1 CALPINE CORPORATION

2 MR. SELIGMAN: I believe the two  
3 that are left are with the California Department of  
4 Water Resources; and I think that there has been  
5 ongoing discussions, but I don't think that there's  
6 been any resolution. So until that time, we are  
7 waiting for the Second Circuit.

8 THE COURT: Have you gone through  
9 the Circuit's procedure with respect to informal  
10 mediation?

11 MR. SELIGMAN: I don't believe we  
12 have done so yet, your Honor, but we can  
13 investigate that and report back to your Honor.

14 THE COURT: When is the matter  
15 supposed to be argued; do you know?

16 MR. SELIGMAN: It was argued  
17 already.

18 THE COURT: You've argued it  
19 already. So it's already gone through that  
20 procedure.

21 MR. SELIGMAN: Yes. We are just  
22 waiting for a ruling.

23 THE COURT: Thank you.

24 MR. SELIGMAN: But you are right,  
25 your Honor, this settles that issue. Again, it's a

1 CALPINE CORPORATION  
2 global settlement in front of the FERC on a variety  
3 of issues. It resolves several hundred million  
4 dollars of claims asserted in the bankruptcy case,  
5 and we are awaiting for the FERC to rule on the  
6 settlement.

7 The one piece of it that we are  
8 bringing to this court's attention was that there  
9 was a mutual release of claims there of claims,  
10 other than the settlement itself, the company  
11 didn't believe it had any claims to release,  
12 because it was resolved in the form of new pricing  
13 on future contracts. But we did feel that it was  
14 appropriate if there was a release of claims by the  
15 estate to bring that before your Honor. So that is  
16 the one piece of the settlement that we wanted to  
17 bring in front of your Honor.

18 There have been no objections and we  
19 submit that it --

20 THE COURT: Does anyone want to be  
21 heard?

22 I'll entertain the order approving  
23 the settlement.

24 MR. SELIGMAN: Thank you, your  
25 Honor. May I approach?

34

1 CALPINE CORPORATION  
2 THE COURT: Sure. Has Mr. Cieri  
3 assigned an approacher or are you going to do that?

4 MR. SELIGMAN: I'll take care of it.

5 THE COURT: I've approved the order.

6 MR. SELIGMAN: Thank you, your

7 Honor.

8 Your Honor, the second matter up is  
9 the debtor's second omnibus objection. It had  
10 basically objected to two categories of claims,  
11 duplicate claims and amended claims.

12 We have received no objection or no  
13 responses to the claim objection and would ask that  
14 the court enter that order.

15 THE COURT: Does anyone want to be  
16 heard?

17 The same routine.

18 MR. SELIGMAN: Thank you, your  
19 Honor. I would just note that your Honor requested  
20 last time to ensure that the orders approving  
21 claims objections comply with the model orders, and  
22 we did communicate with your clerk and got it  
23 straightened away, and they do comply with the mock  
24 of the form order.

25 THE COURT: Thank you. That's only

35

1 CALPINE CORPORATION  
2 intended to make it easy for any potential inquiry  
3 about the fate of a particular claim to make it  
4 easily identifiable.

5 MR. SELIGMAN: Exactly, your Honor.

6 MR. CIERI: Your Honor, it will be

7 the same approacher.

8 THE COURT: Thank you, Mr. Seligman.

9 MR. SELIGMAN: Thank you.

10 THE COURT: I've approved the order.

11 MR. SELIGMAN: Thank you, your  
12 Honor.

13 The third matter up on the agenda is  
14 the debtors' motion --

15 THE COURT: Now, if you can get your  
16 computer to put all of the data in the heading,  
17 then all anybody has to do is look at the front  
18 page and pick out his number and know what happened  
19 to his claim.

20 MR. SELIGMAN: Exactly. And  
21 everything else would be footnoted.

22 THE COURT: You can't do that then.

23 MR. SELIGMAN: It would run on for  
24 too many pages.

25 THE COURT: It already does.

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1 CALPINE CORPORATION

2 MR. SELIGMAN: Yes, that's true.

3 Your Honor, what we are going to  
4 going to do for claim objection orders that refer  
5 to a lot of objections, we are going to refer to  
6 the title to the exhibits. If it's a simple  
7 objection referring to a hand full of matters, we  
8 will put the claim in the heading.

9 THE COURT: I've approved the order.



10 MR. SELIGMAN: Thank you, your  
11 Honor.

12 Matter Number 3, your Honor, is the  
13 debtors' motion for entry of an order approving a  
14 comprehensive settlement agreement by and among  
15 Calpine and various individuals who work for Power  
16 Systems Manufacturing Company, we call PSM. Your  
17 Honor we have received no objections to this  
18 motion.

19 As background, PSM was a company  
20 that Calpine purchased in 2000. PSM designs,  
21 manufactures and sells power engine turbine  
22 components. As part of that original purchase,  
23 there were various forms of consideration promised  
24 to the senior managers and engineers of that  
25 company. Some of it had been paid prepetition and

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1 CALPINE CORPORATION  
2 some had not been, so there were outstanding claims  
3 as of the petition date.

4 The company has determined that PSM  
5 is not going to be part of its core operations for  
6 long term, so it's beginning the a sale process for  
7 PSM and a marketing process. The company felt it  
8 was important to keep the senior management around  
9 to help facilitate the sale, because without that  
10 senior management, who basically are the company,  
11 it would significantly affect the value received in  
12 the sale. So this comprehensive settlement

13 basically allows certain of the claims as unsecured  
14 claims against the estate against particular  
15 debtors. It also contains an assurance to try and  
16 get the buyer ultimately of PSM to pick up some of  
17 the promised liabilities, and we believe that that  
18 is a sound exercise of our business judgment in  
19 order to incentivise the employees to maximize sale  
20 price.

21 Again, we've received no objections,  
22 and respectfully request that your Honor approve  
23 the motion.

24 THE COURT: Does anyone want to be  
25 heard?

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1 CALPINE CORPORATION

2 From the presentation it appears to  
3 fall within the parameters of an appropriate  
4 resolution, and I will approve the order.

5 MR. SELIGMAN: Thank you, your  
6 Honor. May I approach?

7 THE COURT: Yes.

8 I've approved the order.

9 MR. SELIGMAN: Thank you, your  
10 Honor.

11 Matter number 4 is the debtors'  
12 motion to modify the cash collateral order. This  
13 is an uncontested motion. It relates to some of  
14 the contested matters you are going to hear later,  
15 but this is a discrete issue. This is basically

16 the debtor's motion seeking extension of the third  
17 modified cash collateral order to extend the  
18 deadline for the debtors to challenge certain  
19 aspects of the first lien holders to May 15th,  
20 2007. It's only with respect to claims related to  
21 liens underlying the collateral trust agreement on  
22 the debtors' fixtures in alleging that they were  
23 not properly perfected. So just with respect to  
24 that issue we are asking for an extension of time  
25 to challenge the lien to the cash collateral order.

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1 CALPINE CORPORATION

2 Both the trustee for the first lien  
3 note holders and the ad hoc committee of the second  
4 lien holders have consented to the extension, and  
5 there were no other objections, so we ask that the  
6 court approve the extension order.

7 THE COURT: Does anyone want to be  
8 heard?

9 MR. STAMER: Your Honor, just one  
10 minor clarification. I believe the motion seeks to  
11 extend the deadline for both the debtors and the  
12 committee to object to the fixture lien. And with  
13 that we have no objection.

14 MR. SELIGMAN: That's correct, your  
15 Honor.

16 THE COURT: Well, except as to form,  
17 this request for an extension is similar to the one  
18 that the creditors' committee is seeking in

19 connection with a broader array of matters.

20 MR. SELIGMAN: That is correct,  
21 although that obviously is being contested, so we  
22 will address those issues in a global context of  
23 that in a standing motion in a couple matters.

24 THE COURT: Well, in formulation,  
25 it's pretty much the same as the creditors'

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1 CALPINE CORPORATION  
2 committee's request, and essentially, as the I view  
3 the matters that are there before me, the  
4 creditors' committee is essentially asking for an  
5 extension of this particular motion to embrace the  
6 matters that they seek to be extended; isn't that  
7 correct?

8 MR. SELIGMAN: That's correct.

9 THE COURT: So if I don't approve  
10 this right now and I end up dealing with the other  
11 motion later on, we can possibly, possibly be  
12 dealing with just one order.

13 MR. SELIGMAN: We could be. If your  
14 Honor want's to carry this one to the discussion  
15 later, that's fine.

16 THE COURT: It's clear to the court  
17 that there is no particular objection to this  
18 particular branch of relief; is that correct?

19 MR. SELIGMAN: That's correct, your  
20 Honor.

21 MR. STAMER: And we would be happy

22 to deal with the motion to modify the cash  
23 collateral to extend deadlines together, your  
24 Honor.

25 THE COURT: Well, approve this, but

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1 CALPINE CORPORATION

2 I will await signing the order until I deal we the  
3 other.

4 MR. SELIGMAN: Thank you, your  
5 Honor. We'll hold that.

6 THE COURT: Which is in item number,  
7 what is it?

8 MR. SELIGMAN: It's item 7, 8 and 9  
9 all together.

10 Your Honor, the next two matters are  
11 going to be handled by my partner, Bennett Spiegel.

12 MR. SPIEGEL: Good morning, your  
13 Honor. Bennett Spiegel, Kirkland and Ellis LLP.

14 Rounding up the uncontested matters,  
15 your Honor, item 5, this is our part 2 of two  
16 parts. On October 25th we were before the court  
17 seeking approval of bidding procedures with respect  
18 to the sale of certain turbines. Today we are here  
19 for the second part of that seeking an order  
20 authorizing the sale of those same turbines free of  
21 clear of lien, claims and incumbrances and other  
22 interests and granting related relief.

23 Your Honor, as you will recall, you  
24 approved bidding procedures on October 25th. Under

25 those bidding procedures, over bids were due on

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1 CALPINE CORPORATION  
2 November 10th in connection with a proposed  
3 auction, but no over bids were received, and thus,  
4 no auction was held. There are no objections to  
5 the relief requested in the sale motion, thus, we  
6 seek approval of the proposed sale of these four  
7 turbines to the stalking horse purchaser, and  
8 pardon my Spanish pronunciation, Consorcio Pacific  
9 Rim Energy Yucatel HTE, a Venezuelan corporation  
10 that we refer to as Pacific Rim.

11 The purchase price is 48 million  
12 dollars, your Honor, pursuant to terms and  
13 conditions of the turbine purchase and sale  
14 agreement, which, as amended, was attached to the  
15 sale order submitted previously to the court as  
16 Exhibit 1. We have, I believe, no changes to the  
17 form of sale order as was previously submitted, and  
18 again, no objections.

19 THE COURT: Does anyone want to be  
20 heard?

21 The application is granted.

22 MR. SPIEGEL: May I approach?  
23 Different approacher this time, your Honor.

24 THE COURT: I'm waiting to see if Mr  
25 Cieri is going to approach.

1 CALPINE CORPORATION

2 MR. CIERI: Your Honor, that means  
3 I'll actually do work.

4 THE COURT: At paralegal rates?  
5 I've approved the order.

6 MR. SPIEGEL: Thank you, your Honor.  
7 Your Honor, the next item on the  
8 agenda, item 6, is a motion that was filed under  
9 seal. There were no objections by the limited  
10 noticed parties that did receive copies of the  
11 motion and all of the related exhibits.

12 If your Honor has questions or would  
13 like further discussion of this particular motion,  
14 notwithstanding that there is no opposition, we  
15 could put this to the end of the calendar and meet  
16 either in chambers or in a cleared courtroom. If  
17 your Honor has no questions or concerns, I could  
18 submit the others.

19 THE COURT: I have no questions or  
20 concerns. You can either submit the order, or if  
21 you want to deal with it --

22 MR. DUBLIN: Good morning, your  
23 Honor. Phil Dublin of Akin Gump for the committee.

24 I just wanted to note for the record  
25 that the committee spent a great deal of time on

1 CALPINE CORPORATION

2 this issue with the debtors and the committee  
3 members and we are supportive of the sale order.

4 MR. SPIEGEL: Your Honor, I'm going  
5 to approach with two items. One is the actual  
6 order approving the motion related to that, and  
7 it's indicated as a related document on the agenda  
8 is the 5th stipulation and order extending time  
9 under 11 U.S.C. Section 365(d)(4) for a lease on  
10 non residential real property related to RockGen  
11 Energy LLC, both are the in the folder.

12 THE COURT: Does anyone want to be  
13 heard?

14 I am prepared to, and will,  
15 entertain the orders.

16 MR. SPIEGEL: Thank you, your Honor.

17 THE COURT: Having reviewed the  
18 underlying bases.

19 I've approved the order.

20 MR. SPIEGEL: Thank you very much,  
21 your Honor.

22 We now turn to item 7 on the agenda,  
23 which is the first of the contested matters. Your  
24 Honor, this is a motion for entry of an order  
25 approving the PPA reinstatement agreement between

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1 CALPINE CORPORATION  
2 certain of the debtors, Otay Mesa Energy Center  
3 LLC, a non debtor, and San Diego Gas and Electric  
4 Company, authorizing intercompany transfers of



5 assets comprising the Otay Mesa project to Otay  
6 Mesa Energy Center LLC free and clear of all liens,  
7 claims and incumbrances and other interests,  
8 authorizing the assumption and assignment of  
9 certain executory contracts and unexpired leases in  
10 connection therewith, authorizing Calpine  
11 Corporation to make capital contributions to Otay  
12 Mesa Energy Center, LLC, and granting related  
13 relief.

14 Your Honor, the debtors have  
15 received a formal objection to this particular  
16 motion from the State Building Construction Trades  
17 Council of California, which I'll address in a  
18 moment or two.

19 As brief background, your Honor, the  
20 Otay Mesa project is an undeveloped project in San  
21 Diego County, California that the debtors wish to  
22 develop and from which we wish to realize  
23 significant equity value. If the motion is  
24 granted, the debtors believe that they will be  
25 going far to being able to develop and construct a

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1 CALPINE CORPORATION  
2 power plant which will receive, for the benefit of  
3 Calpine Power Corporation, Calpine, their estates  
4 and creditors, what is estimated to be  
5 approximately 113 to 130 million dollars in  
6 estimated equity value related to the project. If  
7 the relief requested is not granted, the debtors

8 will have to scrap the project and simply recover  
9 scrap value for the related assets.

10                   The relief requested seeks approval  
11 of a PPA reinstatement agreement, and the  
12 highlights of that PPA reinstatement agreement are  
13 as follows: It seeks to authorize Calpine Power  
14 Corp. to pledge its membership interest in what we  
15 refer to OMEC, Otay Mesa Energy Center, LLC, to  
16 third party project financing to parties without  
17 further order of the court in connection with  
18 OMEC's incurrence of project financing, it seeks to  
19 authorize Calpine to pose a 25 million dollar  
20 letter of credit in support of the amended and  
21 restated power purchase agreement to be entered  
22 into by and between OMEC and San Diego Gas and  
23 Electric, it seeks to authorize Calpine as a  
24 sublessor to enter into and immediately assign to  
25 San Diego Gas and Electric a ground sublease and

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1                   CALPINE CORPORATION  
2                   easement agreement with to OMEC, which sublease  
3                   will contain, among other things, a foot fall  
4                   option for the project, it authorizes the  
5                   assignment by Calpine of the ground lease and  
6                   easement agreement to San Diego Gas and Electric,  
7                   it authorizes Calpine to assume certain  
8                   interconnection agreements and to assign them to  
9                   OMEC at closing, it authorizes the debtor parties  
10                  to take any and all other actions and to execute

11 any and all resolutions and documents necessary to  
12 effectuate the transactions contemplated in the  
13 reinstatement agreement.

14 The other major agreement that is  
15 part of the relief being requested is approval of  
16 what we refer to as the contribution and transfer  
17 agreement, which was attached as Exhibit E, between  
18 certain transferring debtors and OMEC. The  
19 authorization sought in the CTA, the contribution  
20 and transfer agreement are transfer of certain  
21 facility assets to be used in the development,  
22 construction and operation of the Otay Mesa project  
23 free and clear of all liens, the assumption by the  
24 applicable transferring debtor of the assigned  
25 contracts and the assignment of such assigned

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1 CALPINE CORPORATION  
2 contracts to OMEC, it also seeks authorization for  
3 Calpine to make additional capital contributions to  
4 OMEC, which is a wholly owned subsidiary of CPC  
5 through CPC, which is wholly owned subsidiary of  
6 Calpine in an aggregate sum not to exceed the sum  
7 of 35 million dollars to advance the development  
8 and engineering of the Otay Mesa project and to  
9 ensure OMEC will be able to obtain project  
10 financing. It seeks to confirm that certain  
11 intercompany payables due from OMEC to Calpine in  
12 an aggregate amount of approximately 28.4 million  
13 dollars are characterized as equity in the CPC

14 entity, and thus, actually, or ultimately, as an  
15 investment in OMEC. It also seeks other related  
16 relief.

17 Your Honor, the transfers, the  
18 agreements that we seek to enter into, we believe  
19 are in the sound business judgment of the debtors.  
20 We have no objection to the transfers, to the  
21 business deal, to the 363 relief. The one  
22 objection we do have, your Honor, is from the State  
23 Building Construction Trades Council of California.  
24 There are certain agreements that, for purposes of  
25 this hearing, will assume arguendo, our collective

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1 CALPINE CORPORATION  
2 bargaining agreement.

3 THE COURT: I don't know if that's  
4 the case; I've read the papers, but assuming  
5 arguendo if they are.

6 MR. SPIEGEL: That the State  
7 Building Construction Trades Council is seeking to  
8 force the debtors, by virtue of its objection of  
9 this motion, to assume and assign to OMEC. The  
10 motion seeks no relief with respect to these  
11 contracts, the motion is neutral with respect to  
12 these contracts, we seek neither to assume them,  
13 neither to modified them, neither to reject them,  
14 yet the Building Trades Council is here using its  
15 objection effectively as an end run round, it's  
16 obligations under Section 365(d)(2) of the

17 Bankruptcy Code to try to compel the debtors to  
18 assume or reject these agreements within a  
19 specified period of time, essentially today.

20 Our view is, your Honor, that this  
21 is an issue that they can bring up on ordinary  
22 notice, which we are happy to address. The debtors  
23 should not, at this premature phase of this  
24 project, be forced that make a decision with  
25 respect to this these agreements. We have not yet

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1 CALPINE CORPORATION  
2 even identified a winning bidder for our  
3 engineering procurement and construction contract  
4 phase of this deal. The closing of this deal is  
5 not expected to occur until May of 2007. No labor  
6 has been hired, it is not likely that any labor  
7 will be hired until May of 2007, so we can't  
8 possibly be in breach of any of these purported  
9 collective bargaining agreements at this time, nor can  
10 we for the next couple of months. So there is  
11 plenty of time in the future for us to sit down  
12 talk with the Trades Council and resolve any  
13 concerns they may have. And can if we can't  
14 resolved those across the bargaining table,  
15 certainly they have the ability to come in here and  
16 seek assumption or rejection or modification as the  
17 case may be, and nothing in the order that we have  
18 submitted to the court impacts or impairs those  
19 rights in any way.

20 THE COURT: Does anyone want to be  
21 heard?

22 MR. MAY: Yes, your Honor.

23 For the record, Lawrence May of  
24 Cole, Schotz, Meisel, Forman and Leonard. Our firm  
25 represents the California State Construction and

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1 CALPINE CORPORATION

2 Building Council in this matter.

3 At the outset, your Honor, I want to  
4 state for the record that it is not the position of  
5 our client that we are forcing or asking the debtor  
6 at this point in time to assume or reject the  
7 collective bargaining agreement. What we are  
8 saying, however, your Honor, is that what Calpine  
9 purports or proposes to do by transferring the  
10 project to its OMEC non debtor subsidiary, amounts  
11 to a unilateral modification of the collective  
12 bargaining agreement that we have with Calpine, and  
13 thus violates 1113 and 1113(f) of the Bankruptcy  
14 Code. And I say that because of this your Honor,  
15 the project labor agreement, which is a pre  
16 irrelevant hiring agreement in which the Supreme  
17 Court in the Boston Harbor cases and a whole bunch  
18 of other cases that's held, are collective  
19 bargaining agreements, it's a unique form of  
20 collective bargaining agreements common to the  
21 construction industry, has a provision in the  
22 agreement in Section 21.1, which expressly requires

23 Calpine, should it contribute the assets which  
24 constitute the Otay Mesa project, to a subsidiary  
25 or to an affiliate, to get an express assumption of

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1 CALPINE CORPORATION

2 the obligations under the contract by that  
3 affiliate.

4 what Calpine is trying to do in this  
5 case and in this motion is to take these particular  
6 assets and take it from pocket A and put it into  
7 pocket B into a non debtor subsidiary, but not have  
8 that non debtor subsidiary placed in the same  
9 position as Calpine would be placed in in the event  
10 that the project were not transferred. There is a  
11 requirement in the contract in the collective  
12 bargaining agreement, which provides that the  
13 contributee, in this case OMEC, expressly assume  
14 the obligations thereunder, and it also requires  
15 that Calpine, as a party to the collective bargaining  
16 agreement, get that express assumption.

17 so what Calpine is doing here, and  
18 there are provisions in the order which expressly  
19 say that OMEC shall not have any successor  
20 liability, that OMEC shall not have any liability  
21 under any labor law for any obligations that  
22 Calpine had. what they are trying to do here is to  
23 modify the collective bargaining agreement, to red  
24 line that provision out of the agreement, so that  
25 their subsidiary would now have the particular

1 CALPINE CORPORATION  
2 contract and the project, free and clear of  
3 Calpine's obligations to honor the collective  
4 bargaining agreement. And what the Second Circuit  
5 has held in the Ionosphere case, which is now  
6 pretty well established law in this circuit and in  
7 other circuits, is that unless you go through the  
8 steps in 1113, you cannot modify a collective  
9 bargaining agreement during the course of the case.

10 The debtor must accept the  
11 collective bargaining agreement as it was written  
12 and as it exists, unless they want to reject the  
13 agreement and then go through the 1113  
14 requirements. But what's happening here is we are  
15 taking an assets which is in a debtor entity, we  
16 are transferring it to non debtor entity, and we  
17 are transferring it free and clear of the  
18 obligations that the debtor had to honor the  
19 collective bargaining agreement.

20 Now consider what is proposed here  
21 on this application, Judge. Calpine, a party to  
22 the collective bargaining agreement, intends to  
23 transfer the business covered by the collective  
24 bargaining agreement to itself in the form of OMEC.  
25 In the course of doing this transfer and



1 CALPINE CORPORATION  
2 accomplishing this transfer, it seeks to have OMEC  
3 free and clear of the obligations under the  
4 collective bargaining agreement. Maybe there's a  
5 simple solution here, and maybe the solution is  
6 that OMEC, as non debtor, be bound to the 1113  
7 requirements as if it were Calpine. In that case  
8 if OMEC wanted to come back to this court to seek  
9 to modify or alter it the collective bargaining  
10 agreement, it couldn't do it on its own, it would  
11 have to come back and meet the requirement of 1113,  
12 because there should be no difference between  
13 Calpine and OMEC.

14 If Calpine were permitted to  
15 transfer this asset in this project to its  
16 affiliate, to a non debtor affiliate, then what  
17 really we would be doing here is we would be  
18 writing a large portion of 1113 out of the  
19 Bankruptcy Code, because what this would do, this  
20 would say that as a debtor comes to the bankruptcy  
21 court, it has a collective bargaining agreement, it  
22 forms or has an existing non debtor subsidiary  
23 which may or may not be bankruptcy remote, it says  
24 I'm going to take this particular business that I  
25 have and I'm going to transfer, in this case

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1 CALPINE CORPORATION  
2 contribute it, to my non debtor subsidiary. And in  
3 the course of contributing it my non debtor

4 subsidiary, I'm not going to have that non debtor  
5 subsidiary assume the collective bargaining  
6 obligations, because I'm going to ask the court to  
7 bless this transfer to make it free and clear of  
8 liens, claims and incumbrances, which is an odd  
9 issue in this case, because the debtor is also  
10 seeking protection understand under 363(m) and (f),  
11 but 363(m) and (f) only apply to sales or leases,  
12 and the debtor admits in its papers that this is  
13 neither a sale nor a lease, this is a capital  
14 contribution by the debtor to a subsidiary.

15 So we have a debtor taking an asset,  
16 removing it from the bankrupt estate, putting it in  
17 a non debtor entity, and in the process modifying  
18 the collective bargaining agreement in doing that.  
19 It just can't do what it wants to do. It's not  
20 that we're saying that it has to assume the  
21 agreement, we're just saying you can't do what you  
22 want to do under the circumstances right now.

23 THE COURT: So what you are saying  
24 is they are breaching an existing agreement.

25 MR. MAY: That are modifying, yes.

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2 THE COURT: There are remedies for  
3 breaching; they may be odd in the case that we have  
4 here because there are no operations and there is  
5 nobody laboring anywhere, and I think that you've  
6 stepped really outside the realm of reality in the

7 context of what we are dealing with here and now.  
8 1113 and 1114 are all very, very  
9 interesting statutes, but not everything falls  
10 under the number, and I think, Mr. May, you are  
11 stretching quite a bit to do that here, and even  
12 if, as the debtor says, that we are assuming  
13 arguendo that these are collective bargaining  
14 agreements, and I'm not saying one way or the other  
15 that they are or they are not, I haven't even seen  
16 them or looked at them, so I can't pass on that.  
17 But even for purposes of this argument, I think you  
18 are stretching it quite a bit.

19 MR. MAY: If I may, your Honor.

20 THE COURT: I've read all your  
21 papers. Do you have anything else, Mr. May?

22 MR. MAY: Yes.

23 THE COURT: Go ahead.

24 MR. MAY: The 2002 project labor  
25 agreement, which is the agreement at issue, was

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1 CALPINE CORPORATION  
2 attached as Exhibit G to our papers. The Supreme  
3 Court has held that those kinds of agreements are  
4 in fact collective bargaining agreements. The  
5 issue with respect to rejection or modification or  
6 1113 is a different issue with respect to the  
7 rejection or modification under --

8 THE COURT: There's a successor  
9 provision in that 2002 agreement, isn't there?

10 MR. MAY: The 2002 says that in the  
11 event Calpine wants to transfer the project, it  
12 must get an express assumption by the transferee or  
13 the contributee of the obligations under the  
14 collective bargaining agreement. That's exactly  
15 what it says. They are not doing that. That's the  
16 if violation.

17 Now under 1113 the burdens are  
18 shifted based on the Ionosphere case, because that  
19 case and all the other cases all uniformly hold  
20 that if you want to modify or change a collective  
21 bargaining agreement, and let's keep the assuming  
22 arguendo today that this is a collective bargaining  
23 agreement, that if you want to modify or change  
24 those provisions it's not up to the union to make  
25 or labor organization to make a motion with respect

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1 CALPINE CORPORATION  
2 to holding them in breach. The statute says that  
3 you have to live by the terms of the agreement  
4 until such time as the employer, as the debtor,  
5 makes a motion seeking to modify or terminate. And  
6 before it can make that motion to modify or  
7 terminate, it has to go through the steps of 1113.

8 So what should have happened here,  
9 your Honor, is they should have come to us and  
10 said, look we want to transfer these assets to our  
11 non debtor subsidiary so that the non debtor is not  
12 going to be governed by the 1113 requirements. We

13 want to negotiate with you as to what the changes  
14 might be. But they haven't done that. They have  
15 basically said, well, we are not breaching  
16 anything; they haven't even consented and said that  
17 OMEC is going to be bound by 1113 or OMEC is going  
18 to be bound by the collective bargaining agreement  
19 whether or not it's assumed or rejected today.

20 So what happens is -- it's nice to  
21 say six months from now or three months from now,  
22 and Calpine will walk in the courtroom and say,  
23 well, we might want to assume or reject this  
24 agreement or we are going to reject the agreement,  
25 but the fact is they won't do any of those things

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1 CALPINE CORPORATION  
2 because it makes no sense. why would you assume or  
3 reject a collective bargaining agreement with  
4 respect to a project or an assets that you no  
5 longer own? It will just disappear from the face  
6 of this case. OMEC, who will now own the project,  
7 will be free to go out into the marketplace not  
8 under the collective bargaining agreement, and will  
9 claim this court said it had no successor liability  
10 under that agreement, that this court has made a  
11 finding that it is not going to be bound by the  
12 labor agreements and will not have to honor the  
13 agreements.

14 The issue will be outside of the  
15 scope of this case, and how all this will happen is

16 pretty unique. We are taking an asset that the  
17 debtor owns, we are not selling this asset, we're  
18 just putting it over here in our non debtor  
19 subsidiary. And by doing that we are relieving  
20 ourselves of the obligations under 1113. With all  
21 due respect, Judge, I don't think it's us that is  
22 stretching here, I think the debtor is stretching  
23 here. I think the debtor is stretching and  
24 twisting 1113 all out of shape.

25 THE COURT: The debtor is saying

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2 1113 is not really implicated here at all at this  
3 point.

4 Thank you, Mr. May, I'll hear the  
5 other side.

6 MR. SPIEGEL: Your Honor, I don't  
7 know that I have anything further to add to the  
8 record.

9 THE COURT: Oh, I think that you  
10 should add to the record, because Mr. May has  
11 indulged in some form speculation, and on the other  
12 hand, in making this motion, you too have indulged  
13 in some speculation. You've painted what the  
14 possibilities might be. If somebody is going to  
15 bid on this project and you don't know if that  
16 bidder is going to come in with union help or  
17 nonunion help, and so everybody is sort of holding  
18 their fire, so you too have speculated as to how

19 this might play out.

20 MR. SPIEGEL: Your Honor, we have  
21 said that this motion is neutral with respect to  
22 1113. Those rights are intact. And so if there  
23 comes -- there will come a time, the speculation  
24 that counsel made is that this thing is somehow  
25 going to fall into a black hole and never be heard

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2 from again, because that's what will be convenient.  
3 That's not our position.

4 THE COURT: well, lawyers have a  
5 tendency to paint horribles. You are painting one;  
6 he has painted one.

7 MR. SPIEGEL: We are fully prepared  
8 to represent to this court that we will take a  
9 position with respect to these contracts by the end  
10 of February 2007, as to whether or not we intend to  
11 assume them, modify them or reject them. And we  
12 will be back before this court to do that.  
13 Alternatively, if counsel is worried that we are  
14 not going to do that, counsel has the right, under  
15 365(d)(2), to bring it before this court if for  
16 some reason we don't.

17 THE COURT: well, that's your  
18 principal argument here, and I tend to agree with  
19 you, that counsel does have that right, did have  
20 that right.

21 I do agree that there's a high

22 degree of speculation being tossed about here, but  
23 that the objection is one that may be made at an  
24 appropriate time; at this point in time it's  
25 premature. This is a project that is just a shadow

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2 on the wall; it has not, and it may not ever come  
3 to some form of fruition, and I'm not going to  
4 speculate. I do agree, assuming that this is a  
5 collective bargaining agreement or these are  
6 collective bargaining agreements, I do agree that  
7 they have not been put up for assumption or  
8 rejection by either party to them.  
9 The application is granted.  
10 MR. MAY: Your Honor --  
11 MR. SPIEGEL: Excuse me.  
12 MR. MAY: I just wanted to ask for a  
13 point of clarification primarily to counsel, but  
14 I'll address it to through the court. Is it the  
15 debtors' position that OMEC will be -- there's no  
16 assumption or rejection today, that we agree on,  
17 but that OMEC will be bound to the project labor  
18 agreement in the same fashion and manner in which  
19 Calpine is bound today in that the transfer of  
20 these assets to OMEC will not effect that position.  
21 In other words, we're just changing the name from  
22 Calpine to OMEC without any changing of OMEC's  
23 rights to move under 1113 to assume, modify or  
24 reject, and our rights to go through the 1113



25 requirements, because if that what he is saying,

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2 then I think we have no objection to what they are  
3 doing.

4 But our concern is that 1113 will  
5 somehow disappear, and the rights under 1113 will  
6 disappear because these assets will no longer be in  
7 a debtor entity, but in a non debtor affiliate.  
8 But if that non debtor is affiliate is willing to  
9 act as if it were Calpine under the PLA, then I  
10 think we have no problem with that, and that's not  
11 been clear, and that's why I'm asking for the  
12 clarification.

13 MR. SPIEGEL: Frankly, your Honor,  
14 the request is strange and unclear to me. We are  
15 not agreeing to anything suggested by counsel. The  
16 record is what it is.

17 THE COURT: He is saying that OMEC  
18 is your instrumentality, and that you are  
19 responsible for OMEC with respect to ultimately  
20 making the motion to assume or reject, and that  
21 that will implicate OMEC in that context.

22 MR. SPIEGEL: Well, what's  
23 interesting, your Honor, is there's two  
24 possibilities here; either these agreements reside  
25 with Calpine or one of the debtor entities, or they

1 CALPINE CORPORATION  
2 have been automatically somehow transferred to OMEC  
3 by virtue of the project assets being transferred  
4 to OMEC, when that happens, which will not happen  
5 until May of 2007 in any event.

6 If, according to counsel's  
7 interpretation of the documents, the transfer is  
8 automatic and sort of circumvents entirely the 1113  
9 process, well then he has nothing to worry about,  
10 the collective bargaining agreements, if that's  
11 what they are, wind up with OMEC. If, on the other  
12 hand, that they don't transfer automatically, that  
13 there is an 1113 process, the relief the court is  
14 granting today is neutral as to that process, and  
15 we will be back here another day to resolve it.

16 THE COURT: I agree.

17 MR. MAY: I'm more confused than  
18 ever, Judge, because they have provisions in their  
19 order which --

20 THE COURT: Well, I think, Mr. May,  
21 that you and your clients ought to await the  
22 outcome of this project as to whether it ever goes  
23 forward or not.

24 MR. MAY: Well, your Honor --

25 THE COURT: As it is right now, the

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2 collective bargaining agreements are in the Calpine  
3 pocket. They haven't assumed or rejected it. You  
4 haven't moved one way or the other in that regard.  
5 The application is granted.

6 MR. SPIEGEL: Thank you, your Honor.  
7 May I approach with an order?

8 THE COURT: Yes.

9 MR. SPIEGEL: Your Honor, I've  
10 handed you along with an order, a black line of the  
11 order showing the changes from the form of the  
12 order that was submitted with the motion. There  
13 are really own two changes that I would like to  
14 bring to the court's attention. One is in  
15 paragraph 18 which clarifies, this is the new  
16 paragraph 18, that "All assigned contracts assumed  
17 and assigned pursuant to this order are as each  
18 such assigned contract has been amended, modified,  
19 assigned, ratified affirmed, or otherwise revised  
20 or transferred from its original execution as  
21 applicable, and any amendment, modification,  
22 assignment, ratification, affirmation, revision or  
23 transfer agreement pertaining to any assigned  
24 contract shall likewise be assumed and assigned  
25 pursuant to this order."

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2 And finally, your Honor, there is  
3 language that has been added in at the request of  
4 the DIP lenders, paragraph 33 of the new version of

5 the order, making it clear that the transfers here  
6 are subject to the DIP liens and that those DIP  
7 liens remain in full force and effect in accordance  
8 with the DIP orders until such time that they are  
9 released by the DIP agent and the DIP lenders in  
10 accordance with the terms of the DIP agreement.

11 I think counsel for San Diego Gas  
12 and Electric just wants to make a comment for the  
13 record in connection with that addition to the  
14 order.

15 MR. BENNETT: Yes, your Honor.  
16 Bruce Bennett on behalf of San Diego Gas and  
17 Electric Company. I really have three sentences  
18 about this, and it's really to facilitate the  
19 cooperation going forward and not any change at all  
20 the of the terms of this order.

21 what paragraph 33 does, or at least  
22 what the debtor represented to us what paragraph 33  
23 does and how I read paragraph 33 is it says this  
24 order does not terminate, modify or otherwise  
25 affects the DIP loan. What I wanted to make sure

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2 that everybody remembers is that the agreements  
3 that are being approved by this order require that  
4 this lien be satisfied, discharged, terminated or  
5 removed prior to the closing date. And that still  
6 is a requirement. And it was my understanding that  
7 the DIP lenders understand that as well, and that

8 there will be a separate consensual release, as  
9 opposed to an order, that deals with this lien.

10 So the only disagreement I have is  
11 with Mr. Spiegel's description of it. This lien,  
12 the DIP lien will not survive the transfer  
13 ultimately. The lien has to be discharged, and it  
14 will be, just it will be a separate piece of paper  
15 that does it.

16 MR. SPIEGEL: I think that is the  
17 understanding of all parties. Counsel for the DIP  
18 lenders is present.

19 MR. MACK: Yes, your Honor. David  
20 Mack from Simpson Thacher on behalf Deutsche Bank  
21 and Credit Suisse as DIP agents.

22 That's our understanding as well,  
23 but the company has approached us and --

24 THE COURT: Very well, I've approved  
25 the order.

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2 MR. SPIEGEL: Thank you very much,  
3 your Honor.

4 MR. STAMER: Good morning, once  
5 again, your Honor. Michael Stamer from Akin Gump.  
6 I am joined by my partner, John Berry, who will be  
7 speaking to, I believe it's item 8 on the agenda,  
8 if the court requires.

9 THE COURT: Well, I think we  
10 identified the remainder of the items, I think they

11 are, with respect to the request for an extension,  
12 the request for an SDN, approval, and the like; is  
13 that correct?

14 MR. STAMER: Your Honor, that is  
15 exactly right. Those are items 8 and 9 on the  
16 agenda.

17 THE COURT: Is there anything else,  
18 other than those items, to be taken up this  
19 morning, because we are going to have a chambers  
20 conference on those.

21 MR. SELIGMAN: Your Honor, there are  
22 a few matters up after that. I believe that they  
23 have been resolved, we may have some statements on  
24 the record, but I believe that those are going to  
25 be the only contested matters coming up.

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2 THE COURT: Very well. We'll have a  
3 chambers conference involving the parties in  
4 interest to the motions that are being contested,  
5 the first lien holders, the creditors' committee,  
6 and the debtor.

7 MR. SELIGMAN: Your Honor, would you  
8 like us to go through the other matters first, and  
9 then --

10 THE COURT: Yes, that's what I was  
11 asking.

12 MR. SELIGMAN: All right. We'll  
13 then move on to those matters.

14 Your Honor, matters number 10, 11  
15 and 12, and actually 13 and 14 all relate together  
16 regarding the Rosetta matters. So let me see if I  
17 can dispose of them relatively quickly.

18 Matters 10 and 11 and 12 all relate  
19 to some oil and gas leases, whereas between Calpine  
20 and Rosetta there is not agreement as to who  
21 actually owns those leases, but our purpose for  
22 these matters, 10, 11 and 12, was to just make sure  
23 we weren't prejudiced by the 365(d)(4) deadline, to  
24 the extent it expired. Matter number 10 was our  
25 motion was to assume certain oil and gas leases

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2 with respect to the Islands entity, to the extent  
3 they were oil and gas leases.

4 The motion has not been objected to  
5 by Islands, which was the counterparty. Rosetta  
6 did file a limited objection requesting some  
7 clarifications and reservations of rights, which we  
8 have agreed to and put in the order, and basically  
9 just says that assumption of this agreement doesn't  
10 effect whatever rights Rosetta may have. So I  
11 believe that that matter is uncontested, and,  
12 again, it's just simple assumption and assignment.  
13 we don't believe that there are any cures. And we  
14 request that your Honor approve that order.

15 THE COURT: Does anyone want to be  
16 heard?

17 The application is granted.

18 MS. HOLL: Michelle Holl with Mayer,  
19 Brown, Rowe and Maw on behalf of Rosetta Resources.  
20 And that's correct we did file a limited objection,  
21 but the debtors were agreeable to including our  
22 language in the order, so our objection is  
23 resolved.

24 THE COURT: Thank you.

25 MR. SELIGMAN: Your Honor, perhaps

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2 I'll just wait to hand up all the orders together  
3 to save some time.

4 THE COURT: Sure.

5 MR. SELIGMAN: Matters 11 and 12 are  
6 two stipulations with various counterparties to  
7 extend the 365(d)(4) deadline to assume or reject  
8 various Rosetta's leases, to the extent they are  
9 leases. With respect to both of them, Rosetta did  
10 also file a limited objection requesting some  
11 reservations of rights and some clarifications  
12 basically saying that the extension didn't effect  
13 whatever rights they may have, vis a vis the  
14 debtors or anybody else.

15 I believe that all the parties to  
16 those agreements have signed off on the form of  
17 stipulations with the reservations of Rosetta. And  
18 so we would ask that those stipulations, merely,  
19 again, to extend the deadlines to assume to assume



20 or reject the leases be granted.

21 MS. HOLL: Again, Michelle Holl of  
22 Mayer Brown for Rosetta.

23 we have agreed to the language in  
24 the orders with respect to the stipulation with the  
25 government and with the California State Lands

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2 Commission.

3 we have one additional issue that we  
4 had asked to be included in the order that we are  
5 continuing using to work with the government with  
6 respect to the MMS leases. But in the interest of  
7 getting this order entered today, as the debtors  
8 need for their deadline, we are going to agree to  
9 the order that the language that everyone has  
10 agreed to, and continue to work with the government  
11 to resolve our issue independently.

12 THE COURT: Very well, I'll  
13 entertain the order.

14 MR. SELIGMAN: Thank you, your  
15 Honor. May I approach where I the three orders?

16 THE COURT: Yes.

17 I've approved the orders. And the  
18 stipulation. And as I understand the disk with  
19 respect to the stipulation is on the cut.

20 MR. SELIGMAN: Thank you, your  
21 Honor.

22 Your Honor, the next two matters,

23 matter numbers 13 and 14, relate to an adversary  
24 proceeding between an entity called Pogo Producing  
25 Company and Rosetta. It relates to a dispute

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2 between one of the leases transferred to the debtor  
3 prepetition. There's a pretrial conference up  
4 today on that adversary proceeding, it is  
5 essentially a complaint to enjoin an arbitration  
6 proceeding between Pogo and Rosetta because of the  
7 fact that Calpine has filed for bankruptcy.

8 The matter that's up for this  
9 morning, your Honor, is, number one, our motion,  
10 the debtors' motion to intervene. We believe we  
11 have the right to intervene as a matter of right.  
12 And there have been no objections to the motion to  
13 intervene in that adversary proceeding, so we  
14 request that your Honor approve the entry of that  
15 order authorizing us to intervene.

16 THE COURT: Does anyone want to be  
17 heard with respect to the intervention?

18 MR. SCOTT: Yes, your Honor. Good  
19 morning, your Honor. Brendan Scott of Klestadt and  
20 Winters for the defendant, Pogo Producing Company.

21 We don't have opposition, but I  
22 would like to introduce at this time, Mr. Thomas  
23 Henderson, of counsel to Grossman and Cook,  
24 Houston, Texas. We have recently filed a pro hoc  
25 motion for admission and would like to make a

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2 statement with your permission.

3 MR. HENDERSON: Good morning, your  
4 Honor. Thomas Henderson, Grossman and Cook  
5 representing Pogo Producing.

6 The matters that we have today, we  
7 did file a response to the motion to intervene just  
8 advising that we were not opposing that motion.  
9 The other matter is that we have, it's supposed to  
10 be a pretrial today with the Rosetta folks;  
11 however, we have filed a motion to dismiss which  
12 has been set for submission to the court for  
13 hearing on the 20th of December.

14 we have agreed with the debtor, in  
15 connection with its intervention today, assuming  
16 that the court will grant it, that we will file the  
17 response or answer to that complaint, and assuming  
18 we file the response in a form of a motion to  
19 dismiss, that it will be set for hearing on the  
20 same time, on the 20th of December so we can hear  
21 them in tandem and keep them going forward  
22 together. And I think at least Calpine is in  
23 agreement with us on that schedule.

24 MR. SELIGMAN: Yes, that's correct,  
25 your Honor.

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2 THE COURT: Have you already come to  
3 a conclusion that your answer is going to be a  
4 mirror answer in the intervention?

5 MR. HENDERSON: Your Honor, the --

6 THE COURT: If that's the case, then  
7 certainly I see no problem with it. But if it's  
8 not and raises issues that are germane and  
9 parochial to Calpine, then the timing may not be  
10 appropriate.

11 MR. HENDERSON: Your Honor, in all  
12 likelihood it's going to be virtually a mirror.

13 THE COURT: And I don't want to  
14 bring you all the way up from Texas just to face  
15 another adjourn date.

16 MR. HENDERSON: Well, your Honor, I  
17 think we are going to be filing essentially a  
18 mirror with the exception, in fact our first motion  
19 to dismiss with respect to the Rosetta matter in  
20 regards they relate to, and think that issue may  
21 not be quite germane to Calpine's situation, so we  
22 may have only two of the three bases for relief  
23 that we are seeking, but essentially they would be,  
24 if not mirror, close enough that they will look  
25 alike.

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2 MR. SELIGMAN: That's correct, your  
3 Honor. And I believe we tried to work this out in

4 a way that both motions to dismiss would track at  
5 the same time to avoid duplication.

6 THE COURT: Very well.

7 MR. SELIGMAN: So with that, may I  
8 approach?

9 I'm sorry, go ahead.

10 MR. BUCK: Good morning, your Honor.  
11 Andrew Buck from Morgenstern, Jacobs and Blue,  
12 conflicts counsel for the creditors' committee.

13 THE COURT: You know, somebody  
14 placed that podium over there. It's not necessary  
15 meant to do that. I'm perfectly happy to entertain  
16 your arguments from your position at the table, so  
17 that you don't have to waste a lot of time  
18 jockeying back and forth.

19 MR. BUCK: I'll keep that in mind.  
20 The natural inclination is to approach the podium.

21 Your Honor, again, Andrew Buck of  
22 Morgenstern, Jacobs and Blue, conflicts counsel to  
23 the Creditors' Committee.

24 We support the debtor's intervention  
25 motion, and in fact have communicated with counsel

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2 to the various parties and the debtors here to have  
3 the committee also intervene in this adversary  
4 proceeding and to do it by stipulation.

5 We have not had an opportunity to  
6 circulate that stipulation, but the parties have

7 indicated that they would be willing to do it by  
8 stipulation. And once we have worked out the scope  
9 of that stipulation, we will submit it to the court  
10 for approval.

11 THE COURT: So just one committee is  
12 going to join the party, is that it?

13 MR. BUCK: Yes.

14 THE COURT: Very well.

15 MR. SELIGMAN: Your Honor, may I  
16 approach with the order to authorize the  
17 intervention?

18 THE COURT: The equity committee is  
19 not interested.

20 MR. KAPLAN: Now I need to respond.  
21 Your Honor, to avoid duplication we have tried as  
22 much as we could in this case avoid --

23 THE COURT: I didn't want to you to  
24 think you were left out.

25 MR. KAPLAN: And we appreciate your

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2 concern.

3 MR. SCOTT: Your Honor, if we may,  
4 also we do have a proposed order related to the pro  
5 hoc admission, if we may hand that up.

6 THE COURT: Well, I don't know. You  
7 usually have to show me a receipt for the 25 bucks.  
8 But if you make that representation --

9 MR. SCOTT: We do.

10 THE COURT: -- that the clerk's  
11 office is enriched, I will take your order.

12 This it's the longest pro hac vice  
13 order I've seen.

14 MR. SCOTT: It's a courtesy copy of  
15 the motion, your Honor.

16 THE COURT: Courtesy to whom? I  
17 can't find the signature page. It's buried  
18 somewhere.

19 I've approved the pro hac vice,  
20 although we should increase the price for this one.

21 We'll have a brief intermission,  
22 unless you have more matters.

23 MR. SELIGMAN: I just wanted to note  
24 there were seven adjourned matters on the agenda,  
25 and unless your Honor doesn't have any questions,

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2 that's all we have for this morning.

3 THE COURT: Very well. We will take  
4 an intermission while I have a chambers conference.

5 (Recess taken.)

6 MR. STAMER: Your Honor, we are  
7 happy to report that after a productive chambers  
8 conference and productive discussions among the  
9 various parties, that we believe that we have  
10 resolved the issues that the committee has raised  
11 in calendars number 8 and 9.

12 The parties have agreed, subject to

13 finalizing the order which hopefully will happen  
14 before we leave this building, that the objection  
15 deadline contained in the cash collateral order  
16 will be extended, solely as it relates to causes of  
17 action identified in the committee's pleadings, to  
18 the earlier of May 15th or 30 days after final  
19 resolution of the first lien trustee's appeal, or  
20 appeals rather. The extension applies both to the  
21 debtors and to the committee, your Honor, and that  
22 is our settlement.

23 THE COURT: Does anyone want to be  
24 heard?

25 I thank you, and I appreciate your

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1 CALPINE CORPORATION  
2 good will in working out the alternative to an  
3 engine of litigation at this early part of the  
4 case, and I appreciate everybody's efforts, and  
5 happy Thanksgiving.

6 MR. STAMER: Thank you, your Honor.

7 MR. CIERI: Thank you, your Honor.

8 MR. SELIGMAN: Thank you, your  
9 Honor.

10 MR. CIERI: Thank you, your Honor.

11 MR. DUBLIN: Thank you, your Honor.

12 MR. KAPLAN: Thank you, your Honor.

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C E R T I F I C A T E

STATE OF NEW YORK }  
COUNTY OF WESTCHESTER } SS.:

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

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IN WITNESS WHEREOF, I have  
hereunto set my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006.

\_\_\_\_\_  
DENISE NOWAK