Hearing Date: August 19, 2003 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: August 14, 2003 at 5:00 p.m. (Prevailing Eastern Time)

Thomas R. Slome (TS-0957)
Lance A. Schildkraut (LS-9350)
SCARCELLA ROSEN & SLOME LLP
333 Earle Ovington Boulevard
Ninth Floor
Uniondale, New York 11553-3622
(516) 227-1600

and

Russell R. Johnson III
3734 Byfield Place
Richmond, Virginia 23233
(804) 747-7208

Co-Counsel for San Diego Gas & Electric
Company and Commonwealth Edison Company

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ALLEGIANCE TELECOM, INC., et al.,	:	Case No. 03-13057 (RDD)
	:	
	:	(Jointly Administered)
Debtors.	:	

MOTION OF CERTAIN UTILITY COMPANIES TO (A) VACATE, PURSUANT TO RULE 9024 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, ORDER DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE AND ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE AND (B) DETERMINE ADEQUATE ASSURANCES OF FUTURE PAYMENT

TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

San Diego Gas & Electric Company ("SDG&E") and Commonwealth Edison Company ("ComEd," and together with SDG&E, the "Utilities"), by counsel, move this Court to (a) vacate,

pursuant to Rule 9024 Federal Rules of Bankruptcy Procedure, the order deeming the utilities adequately assured of future performance and establishing procedures for determining requests for additional adequate assurance, and (b) determine adequate assurance of future payment (the "motion"). In support of their Motion, the Utilities state the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b).

2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

3. Venue of this Motion is proper in this district pursuant to 28 U.S.C. § 1409.

Procedural Facts

4. On May 14, 2003 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court. The Debtors continue to manage their properties and operate their businesses as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. These cases are being jointly administered.

5. On the Petition Date, the Debtors also filed the Motion of the Debtors Pursuant to Sections 105(a) and 366 of the Bankruptcy Code for Order Deeming Utilities Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Utility Motion").

6. Pursuant to the affidavit of service filed by counsel for the Debtors, the Utility Motion was purportedly served on the Utilities on May 21, 2003 via first-class mail.

7. Although the Utilities provided continuous prepetition service to the Debtors and have continued to provide continuous utility service to the Debtors post-petition, the Debtors

failed to effect service on the Utilities in accordance with Rules 7004 and 9014 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules").

8. On May 15, 2003, this Court entered the Order Deeming Utilities Adequately Assured of Future Performance and Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Utility Order").

9. The Utility Order provides, in relevant part, as follows:

> ORDERED that, absent any further order of this Court, all Utility Companies that provide Utility Services to the Debtors, including, but not limited to, those listed on Exhibit "A" annexed to the Motion, may not alter, refuse or discontinue service to, or discriminate against, the Debtors .... (the "First Injunction Provision")

Utility Order at 2.

10. The recital section of the Utility Order states that it appeared "that due and proper notice of the [Utility Motion] has been given under the circumstances," even though the affidavit of service provides that notice of the Utility Motion was not given until after entry of the Utility Order. Utility Order at 1-2.

11. In addition, the Utility Order directed the Debtors to serve the Utility Order on each of the Utilities by first-class mail within 5 business days of entry of the Utility Order.

12. The Utility Order also provided the following:

> ORDERED that, this Order is without prejudice to the rights of any Utility Company to request in writing within twenty-five (25) days of the date hereof additional assurances in the form of deposits or other security ...; and it is further
>
> ORDERED that any Utility Company that does not timely request additional assurance shall be prohibited from altering, refusing or discontinuing service to, or discriminating against, the Debtors and shall be deemed to have been granted adequate assurance under Section 366 of

> the Bankruptcy Code.... (the "Second Injunction Provision"; together with the First Injunction Provision, the "Injunction Provisions")

Utility Order at 3.

Facts Regarding The Debtors

13. As of the Petition Date, the Debtors stated that they had assets of approximately $1.441 billion and total liabilities of approximately $1.397 billion, and, for the three months ending December 31, 2002, reported net revenues of approximately $204.91 million, net losses of approximately $120 million and EBITDA of approximately negative $34 million.

14. The Debtors have significant prepetition indebtedness, most notably consisting of (a) the Senior Credit Facility which, as of the Petition Date, the amount outstanding was approximately $65.3 million and (b) two series of notes: (i) 11 ¾% Senior Discount Notes with a face value of $445 million due on February 15, 2008 and (ii) 12 7/8% Senior Notes with a face value of $205 million due on May 15, 2008.

15. Despite the establishment of a special restructuring committee of the Debtors' Board of Directors, the retention of restructuring advisors and numerous negotiations with their senior lenders and bondholders, the Debtors could not effect a restructuring of their debt so as to avoid bankruptcy.

16. Pursuant to the Amended Final Order Authorizing Use of Cash Collateral by Consent (the "Cash Collateral Order"), the Debtors have obtained approval of their use of cash collateral during these chapter 11 cases, which the Debtors claim will be used to make payments to the Utilities.

17. The Debtors estimate that the average monthly cost of their utility services is approximately $30 million.

18. Pursuant to the 13 week budget that was attached to the Cash Collateral Order as Exhibit "B," the Debtors predict that cash disbursements will, for the most part, exceed their total receipts by as much as $42.7 million.

19. The Cash Collateral Order also provides for a carve-out for payments for fees and expenses incurred by counsel and other professionals through December 31, 2003 or the occurrence of a "Termination Event" as defined in ¶ 18 of the Cash Collateral Order (collectively, the "Expiration Date"), whichever occurs earlier, plus $2 million to cover professional fees and expenses accrued after the Expiration Date. Cash Collateral Order, ¶ 9.

Facts Regarding the Utilities

20. Each of the utilities provided the Debtors with prepetition utility service and currently provide the Debtors with post-petition utility service.

SDG&E

21. The Utility Motion and the Utility Order were purportedly sent to SDG&E at its payment post office box, but no specific individual was identified for service.

22. On June 4, 2003, the Debtors called SDG&E to inform them about the bankruptcy proceeding because the Debtors' accounts, which were not in the name of Allegiance Telecom, were subject to service termination. The Debtors, however, did not identify all of their accounts at that time. After checking its records, SDG&E discovered several additional large accounts that belonged to the Debtors. After locating all of its accounts with the Debtors, SDG&E issued its request for adequate assurance of payment on June 20, 2003. The Debtors, in a letter dated June 24, 2003, stated that they did not have to respond to SDG&E's request because it was purportedly time barred, despite the fact that there is no time limitation set forth in Section

366(b) and any party in interest can move for adequate assurance of payment at any time.

23. Under SDG&E's billing cycles, the Debtors receive approximately one month of utility service before a bill is issued. The Debtors then have 15 days to pay each bill. If an account is not paid within this time frame, an overdue notice is sent that provides the Debtors with 5 days to cure the past due balance. If the past due balance is not paid within the foregoing period, a termination notice is issued, which provides the Debtors with an additional 3 days to cure the payment default.

24. As of the Petition Date, the Debtors were indebted to SDG&E in the sum of $40,430.15 for utility service provided to the Debtors' eighteen (18) accounts.

25. SDG&E requests adequate assurance in the form of a two-month deposit in the sum of $74,392.00 for the eighteen (18) accounts.

ComEd

26. The Utility Motion and the Utility Order were purportedly sent to ComEd to its bill payment center, but no specific address or individual was identified for service. On June 9, 2003, ComEd sent Debtors' counsel a request for adequate assurance of payment. As of the date of this Motion, the Debtors have failed to respond to ComEd's request.

27. The Debtors receive approximately one month of utility service before a bill is issued. The Debtors then have 14 days to pay each bill. If the balance is not paid within the foregoing period, a termination notice is issued, which provides the Debtors with an additional 8 days after the mailing date to cure the payment default.

28. As of the Petition Date, the Debtors were indebted to ComEd in the aggregate sum of approximately $4,169.75 for utility service provided to the Debtors' nine (9) accounts.

ComEd secured the foregoing debt with a cash deposit in the total amount of $733.34.

29. ComEd requests adequate assurance in the form of a two-month deposit in the sum of $11,465.00 for the accounts.

Discussion

I. THE COURT SHOULD VACATE THE UTILITY ORDER BECAUSE THE DEBTORS DID NOT PROPERLY SERVE EITHER THE UTILITY MOTION OR THE UTILITY ORDER ON THE UTILITIES

On the Petition Date, the Debtors filed the Utility Motion and sought, and obtained entry of, the Utility Order despite the fact that service of the Utility Motion was not attempted until May 21, 2003: 7 days after the Utility Motion was filed and 6 days after the Utility Order was entered. Thus, assuming that service was proper, which the Utilities deny, such service was clearly insufficient to provide the Utilities with any appreciable notice and an opportunity to be heard on the Utility Motion or to seek additional adequate assurance in accordance with the terms of the Utility Order.

In any event, it is undisputed that the Debtors failed to properly serve the Utilities with the Utility Motion and the Utility Order. Service was not effected in accordance with Bankruptcy Rules 7004 and 9014. Rather, the Debtors mailed all but one of the Utility Motions and Utility Orders to post office boxes, and in all cases did not address such service to any specific person. Bankruptcy Rules 7004 and 9014 require that service of a motion upon a corporation be made by mail to the attention of an officer, a managing or general agent or to any other agent authorized by appointment or by law. Accordingly, the Utilities were denied any meaningful opportunity to contest the relief sought in the Utility Motion and to seek additional adequate assurance pursuant to the terms of the Utility Order. Therefore, the Court should vacate the Utility Order as to the

Utilities and permit them to be heard on the issues raised in the Utility Motion and this Motion. Furthermore, at a minimum, the Court should hear the Utilities on the issues of adequate assurance of payment because Section 366(b) permits the Utilities to move for a determination of adequate assurance at any time during the case.

II. THE COURT SHOULD VACATE THE UTILITY ORDER BECAUSE THE INJUNCTIVE RELIEF GRANTED IS NEITHER APPROPRIATE NOR WARRANTED

Through the Injunction Provisions in the Utility Order, the Debtors have essentially obtained injunctive/equitable relief, which prohibits the Utilities from discontinuing post-petition service to the Debtors without further order of the Court. Yet, as mentioned above, the Debtors sought and obtained injunctive relief even though service of the Utility Motion was not attempted until after the Utility Order was entered. Moreover, Bankruptcy Rule 7001 requires that all proceedings seeking to obtain injunctive or other equitable relief shall be brought as an adversary proceeding. In re Best Products, 203 B.R. 51 (Bankr. E.D. Va. 1996); In re Norsal Indus., Inc., 147 B.R. 85, 86 (Bankr. E.D.N.Y. 1992); see also In re Conxus Comm., Inc., 262 B.R. 893, 899 (D. Del. 2001). As neither the Utility Motion nor the Utility Order were filed and served in accordance with Bankruptcy Rules 7001, 7004(b)(3) and 9044, the Court should vacate the Injunction Provisions in the Utility Order.

The Injunction Provisions in the Utility Order require the Utilities to seek Court approval before they may terminate service on account of a post-petition default. This procedure effectively enjoins the Utilities from discontinuing service for a post-petition default. Prohibiting the Utilities from altering, refusing or discontinuing utility services on account of prepetition defaults is in accord with the language of Section 366. However, the injunctive relief provided

by the Utility Order is not so limited. Therefore, as the Injunction Provisions were not properly before the Court, the Court should vacate the Utility Order.

Furthermore, the Court should vacate the Utility Order because the Debtors have not set forth any legal or factual support for the extraordinary injunctive relief they improperly obtained in the Utility Order. Presumably, the legal basis for the injunctive relief that is contained in the Utility Order is Section 366 of the Bankruptcy Code. Yet, Section 366 of the Bankruptcy Code does not authorize the imposition of injunctive relief. Robinson v. Michigan Consol. Gas Co., 918 F.2d 579, 588 (6th Cir. 1990); Begley v. Philadelphia Elec. Co., 760 F2d 46, 49 (3d Cir. 1985); In re Conxus Comm., Inc., 262 B.R. 893, 899 (D. Del. 2001) (such relief is also not authorized by Section 105 of the Bankruptcy Code); In the Matter of C.T. Harris, Inc., 2003 Bankr. LEXIS 773 (Bankr. M.D. Ga 2003).

With respect to the factual support, the Utilities were not present at the hearing on the Utility Motion (the "Hearing") because of the Debtors failure to timely and properly serve them with the Utility Motion, so they are not aware of what the Debtors may have presented at the Hearing. The Utility Motion, however, does not contain any facts as to why the Debtors need to obtain an injunction to preclude the Utilities from exercising their state law rights to terminate service for a post-petition payment default. In fact, since the Debtors claim that they will timely pay their post-petition invoices from the Utilities, it is unclear why they would need the injunctive relief they obtained into the Utility Order.

In addition, the Court should vacate the injunctive relief in the Utility Order because it actually deprives the Utilities of their rights under applicable federal and state law. Under applicable federal and state law, the Utilities, in accordance with their state law tariffs and/or

regulations, are entitled to terminate service to the Debtors for nonpayment of post-petition bills without the need to obtain court approval. Robinson, 918 F.2d at 588; Begley, 760 F.2d at 49; 28 U.S.C. § 959.

In addition to the foregoing, there is no need for the injunctive relief because the normal billing cycles of the Utilities, which are governed by applicable tariffs, regulations and/or state laws,[1] provide the Debtors with more than sufficient protections. Under the Utilities' billing cycles, the Debtors receive approximately one month of utility service before the Utility issues a bill for such service. Once a bill is issued, the Debtors have approximately 15 to 28 days to pay the applicable bill. If the Debtors fail to timely pay the bill, a past due notice is issued on the account. If the Debtors fail to cure the arrearage by the applicable cure period set forth in the notice, their service is subject to disconnection. Therefore, under the Utilities' state-mandated billing cycles, the Debtors must be severely delinquent in the payment of their bills and be sent a written warning notice before service would be disconnected for non-payment of post-petition bills.

In contrast, the injunctive relief imposes a severe hardship on the Utilities. Under the Utilities' state mandated billing cycles, the Utilities could provide the Debtors with approximately 2 to 2 ½ months of unpaid service before the Utilities could begin to terminate service to the Debtors for nonpayment of post-petition bills. The injunctive relief in the Utility Order requires the Utilities to incur the foregoing losses before they are permitted to move the

1 See New York State Elec. and Gas Corp. v. McMahon (In re McMahon), 129 F.3d 93 (2d Cir. 1997)("[U]tilities typically do not choose or negotiate with their customers. They are ordinarily required by law to provide service to all persons who request it in terms that are generally fixed.... The terms of service are strictly regulated by state law and the utility has minimal negotiating ability to improve its position.").

Court for the "right" to terminate service to the Debtors for nonpayment of post-petition bills. Particularly, in light of the Debtors' uncertain financial condition, requiring the Utilities to request a hearing each time there is a default on one of accounts after already having suffered a two-month loss on the account imposes an undue hardship on the Utilities and an unreasonable risk of nonpayment. Therefore, for all of the foregoing reasons, the Court should vacate the Injunction Provisions from the Utility Order.

III. THE COURT SHOULD VACATE THE UTILITY ORDER WITH RESPECT TO UTILITIES AND ORDER THE DEBTORS TO PAY THE POST-PETITION DEPOSIT REQUESTS OF EACH OF THE UTILITIES

Section 366(b) of the Bankruptcy Code provides:

> Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

A determination of adequate assurance is within the court's discretion, and is made on a case-by-case basis. In re Utica Floor Maintenance, Inc., 25 B.R. 1010, 1016 (Bankr. N.D.N.Y. 1982); In re Cunha, 1 B.R. 330, 332-33 (Bankr. E.D. Va. 1979). The Utilities acknowledge that the Second Circuit Court of Appeals' decision in Virginia Electric and Power Company v. Caldor, Inc., 117 F.3d 646 (2d Cir. 1997) is controlling authority in this Circuit. The Court in Caldor, however, merely held that a court is afforded reasonable discretion in determining what constitutes adequate assurance of payment in each case and that, in certain exceptional cases, adequate assurance of payment may not require anything more than the protections already afforded the utilities under the Bankruptcy Code. This case, however, does not present the

"exceptional" set of circumstances that was presented in Caldor. Specifically, the significant distinctions between this case and the Debtors in Caldor at the time of the Hearing are:

1. The Debtors' common stock, which is listed on NASDAQ, had only a par value of $.01 per share as of the Petition Date;

2. The Debtors have hired outside consultants to address their financial problems and assist them with a business plan, which indicates that the Debtors' face an extremely uncertain future and puts in doubt the Debtors' ability to successfully reorganize; and

3. The Debtors' expect to be operating at a negative cash flow after payment of disbursements.

It is the Utilities' hope that these Debtors will not end up administratively insolvent as the debtors in the Caldor case. As set forth above, however, these Debtors are not in as good as a position as the Caldor debtors that eventually became administratively insolvent. Accordingly, the Utilities respectfully request that this Court grant them the adequate assurance of payment they seek herein.

In addition to the foregoing, the Utilities are concerned that Debtors' own counsel is uncertain about the Debtors' ability to pay their bills and those of other professionals employed by the Debtors and official committees, as they have obtained a carve-out in the Cash Collateral Order to ensure payment of those post-petition bills. If Debtors' counsel, who has access to inside information of the Debtors, believes it is necessary to secure their post-petition fees and those of other professionals, then it is clear that the Utilities, which do not possess such information, should be entitled to security for providing the Debtors with essential post-petition services.

It should be noted that this is not a situation in which the Debtors and the Utilities owe reciprocal obligations to one another. Rather, unlike the facts that were present in In re Adelphia Business Solutions, Inc., 280 B.R. 63 (Bankr. S.D.N.Y. 2002) and In re Global Crossing, Ltd., No. 02-40188 (REG), none of the Utilities owe debts to any of the Debtors. Thus, the relationship between the Debtors and the Utilities is strictly one-way, with the Debtors owing obligations to several of the Utilities for utility service. By contrast, in Adelphia Business Solutions, the Court found as a fact that "even in the absence of DIP financing [in which case the Debtors acknowledged they would run out of cash and be unable to pay postpetition administrative expenses], the Objecting Utilities would be paid their postpetition payables, by reason of the reciprocal billing for the reciprocal services between the Debtors and the Objecting Utilities." Adelphia Business Solutions, 280 B.R. at 73-74.

Because the Utility Order was entered without proper notice and an opportunity to be heard, the Utilities do not know what evidence the Debtors presented at the hearing to convince the Court that a mere administrative expense priority, without any additional protections, could possibly constitute adequate protection to the Utilities under the facts of this case. Even in Adelphia Business Solutions – where the Court found (1) that the objecting utilities likely owed the Debtors an amount in excess of the amount the Debtors owed the objecting utilities, and (2) that the objecting utilities' failure to pay undisputed invoices of the Debtors played a primary role in precipitating the Debtors' bankruptcy filings – this Court found that an administrative priority alone would not provide the objecting utilities with adequate assurance of payment. Adelphia Business Solutions, 280 B.R. at 71, 79, 86-89. Rather, the Court imposed a series of additional "safeguards," including among others: (1) expedited procedures for termination upon post-

petition payment defaults, (2) additional financial reporting requirements of the Debtors, and (3) an opportunity for the objecting utilities to revisit the issue of adequate assurance of payment in the event of a material adverse change in liquidity of the Debtors (Under Section 366(b), the Utilities can revisit the issue of adequate assurance for any reason after notice and a hearing). Id. at 86-89.

In this case, by contrast, rather than provide expedited procedures for termination upon a post-petition default, the Utility Order provides that the Utilities must seek Court approval even after complying with the normal, lengthy state-mandated default procedures. Further, the Utility Order does not even attempt to impose any additional safeguards, despite the fact that virtually no reliable information currently exists regarding the Debtors' financial condition. Importantly, as a result of this lack of information, the other "safeguards" employed in the Adelphia Business Solutions case would not be sufficient to provide the Utilities with adequate assurance of payment in this case. Thus, for all of the foregoing reasons, the Utilities cannot be provided adequate assurance of payment absent payment of deposits or advance payments. Further, for the reasons discussed below, the two-month deposits requested by the Utilities are reasonable under the circumstances.

Section 366 of the Bankruptcy Code was enacted to balance a debtor's need for utility services from a provider that holds a monopoly on such services with the need of the utility to ensure for itself and its ratepayers that it receives payment for providing these essential services. See In re Hanratty, 907 F.2d 1418, 1424 (3d Cir. 1990). The balance is struck, with respect to a debtor, by not allowing the utility to require the debtor to pay prepetition invoices or exorbitant

deposits[2] in exchange for providing a debtor with an essential service. In consideration for negating the utility's bargaining power, Section 366 provides that utilities are to receive "adequate assurance of payment, in the form of a deposit or other security" from the debtor for having to assume the risk of providing the debtor with post-petition service.

The deposit or other security "should bear a reasonable relationship to expected or anticipated utility consumption by a debtor." In re Coastal Dry Dock & Repair Corp., 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986). In making such a determination, it is appropriate for the Court to consider "the length of time necessary for the utility to effect termination once one billing cycle is missed." Begley, 760 F.2d at 49. Under the Utilities' billing cycles, the Debtors receive approximately one month of utility service before the Utilities issue a bill for such service. Once a bill is issued, the Debtors have approximately 15 to 28 days to pay the applicable bill. If the Debtors fail to timely pay the bill, a past due notice is issued and a late fee is imposed on the account. If the Debtors fail to pay the bill after the issuance of the past due notice, the Utilities issue notices that inform the Debtors that they must cure the arrearage within a certain period of time or their service will be disconnected. Accordingly, under the Utilities' billing cycles, the Debtors could receive 2 to 2 and 1/2 months of unpaid service before their service could be terminated for a post-petition payment default. Therefore, based on the Debtors' anticipated utility consumption in this case, the minimum period of time the Debtors could receive service from the Utilities before termination of service for non-payment of bills ranges from 2 to 2 and ½ months. Hence, the two-month security deposits requested by the Utilities, which are the same

[2] The Utilities are state-regulated entities that can only request a deposit or other security that is permitted by applicable tariffs. Accordingly, the deposits or other security requests made by the Utilities cannot and do not exceed the amount of security they are permitted to request under their tariffs.

amounts they held prepetition, are reasonable. In re Stagecoach Enterprises, 1 B.R. 732, 735-36 (two-month deposit is appropriate where the debtor could receive 60 days of service before termination of services because of the utilities' billing cycle); see also In re Robmac, Inc., 8 B.R. 1, 3-4 (Bankr. N.D. Ga. 1979).

WAIVER OF MEMORANDUM OF LAW

The relief requested in the Motion is neither novel nor complex and the Utilities respectfully request that, due to the authorities cited herein, the court waive the memorandum of law requirements contained in Local Bankruptcy Rule 9013-1(b).

NO PRIOR REQUEST FOR RELIEF

There have been no prior motions filed in this or any other court with respect to the relief sought herein.

WHEREFORE, the Utilities respectfully request this Court to (a) reconsider and vacate the utilities order and award the Utilities the post-petition deposits they have requested from the Debtors herein; and (b) grant such other and further relief as is just and proper.

Dated: Uniondale, New York
August 1, 2003

SCARCELLA ROSEN & SLOME LLP

By: /s/ Thomas R. Slome
Thomas R. Slome (TS-0957)
Lance A. Schildkraut (LS-9350)

333 Earle Ovington Boulevard
Ninth Floor
Uniondale, New York 11553-3622
(516) 227-1600

and

Russell R. Johnson III
3734 Byfield Place
Richmond, Virginia 23233
(804) 747-7208

Co-Counsel for San Diego Gas & Electric Company and Commonwealth Edison Company

G:\Johnson\SDG&E\Allegiance\LIT\MotiontoVacate.doc