

1 KARINEH KHACHATOURLIAN (SBN 202634)
JEFFREY M. RATINOFF (SBN 197241)
2 BUCHANAN INGERSOLL & ROONEY LLP
333 Twin Dolphin Dr., Suite 700
3 Redwood Shores, CA 94065
Telephone: (650) 622-2300
4 Facsimile: (650) 622-2499

5 Specially Appearing for Third Party Claimant
DUTCHESS PRIVATE EQUITIES FUND, L.P.

SHERIFF DEPT
CIVIL SECTION
SANTA CLARA COUNTY
2007 JAN 26 AM 10:03

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 EAGLE BROADBAND, INC.,

11 Plaintiff,

12 vs.

13 DOES 1 through 25, inclusive,

14 Defendants.

CASE NO. 1-05-CV-050179

15 **NOTICE OF AND VERIFIED THIRD**
16 **PARTY CLAIM OF SUPERIOR**
17 **SECURITY INTEREST OR LIEN RE**
18 **CALPINE CORPORATION**
[CCP § 720.230]

Complaint filed: October 5, 2005

19 To the Office of the Sheriff for the County of Santa Clara, Civil Division, at 55 West
20 Younger Avenue, San Jose, CA 95110:

21 NOTICE IS HEREBY GIVEN that Dutchess claims a superior security interest on:


22 ANY & ALL accounts, accounts receivable, rights to payment of
23 money, contingent rights, contract rights, deposit accounts, monies
24 due from third parties, due in favor of and for the benefit of
25 judgment debtor EAGLE BROADBAND, INC., or any of the
judgment debtor's business associations, partners, assignees, and
other persons acting on their behalf ...

26 that was levied upon by Defendant ROY THOMAS MOULD ("Mould") on or about December
27 11, 2006 in conjunction with the writ of execution issued by the Clerk of Santa Clara Superior
28 Court on November 30, 2006. The Notice of Levy was served by Mould on Calpine Corporation

1 on or about December 11, 2006.

2 Dated: January 25, 2007

Respectfully submitted by,
BUCHANAN INGERSOLL & ROONEY LLP

3
4
5 By 
JEFFREY M. RATINOFF
6 Specially Appearing for Third Party Claimant
7 DUTCHESS PRIVATE EQUITIES FUND, L.P.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**VERIFIED THIRD PARTY CLAIM OF
SUPERIOR SECURITY INTEREST OR LIEN**

1
2
3 1. I am Douglas H. Leighton, the Managing Director of Dutchess Capital
4 Management LLC, general partner of DUTCHESS PRIVATE EQUITIES FUND, L.P. ("third
5 party claimant" or "Dutchess"), and have personal knowledge of the facts set forth herein.

6 2. Dutchess claims a superior security interest on:

7 ANY & ALL accounts, accounts receivable, rights to payment of
8 money, contingent rights, contract rights, deposit accounts, monies
9 due from third parties, due in favor of and for the benefit of
10 judgment debtor EAGLE BROADBAND, INC., or any of the
11 judgment debtor's business associations, partners, assignees, and
12 other persons acting on their behalf ...

13 that was levied upon by Defendant ROY THOMAS MOULD ("Mould") on or about December
14 11, 2006 in conjunction with the writ of execution issued by the Clerk of Santa Clara Superior
15 Court on November 30, 2006.

16 3. I am informed and believe that on or about December 11, 2006, Mould served a
17 Notice of Levy with a writ of execution for this property on Calpine Corporation.

18 4. Dutchess acquired its superior security interest by virtue of entering into a series
19 of secured financing arrangements with Plaintiff EAGLE BROADBAND, INC. ("Eagle")

20 5. On or about, February 10, 2006, Dutchess provided Eagle with an \$822,500
21 convertible debenture ("February 2006 Convertible Debenture").

22 6. On or about July 24, 2006, Dutchess entered into a promissory note agreement
23 with Eagle, pursuant to which Eagle sold an \$5,500,000 promissory note ("July 2006 Promissory
24 Note").

25 7. On or about, February 10, 2006, Eagle and Dutchess entered into a security
26 agreement ("the Security Agreement"), wherein Dutchess was granted a security interest in the
27 same personal property, contract rights and general intangibles, such as Eagle's accounts
28 receivable and rights of payment from third parties, that Mould sought to levy. A true and
correct copy of the Security Agreement, which describes the collateral in detail, is attached
hereto as Exhibit A.

1 8. On or about February 13, 2006, Dutchess perfected its security interest in the
2 above-stated collateral by filing a UCC Financing Statement. A true and correct copy of this
3 statement is attached hereto as Exhibit B.

4 9. Pursuant to Article 21 of the July 2006 Promissory Note, the Security Agreement
5 was incorporated by reference therein to secure the Note and give Dutchess full right to exercise
6 the Security Agreement in conjunction with the July 2006 Promissory Note. A true and correct
7 copy of the July 2006 Promissory Note is attached hereto as Exhibit C.

8 10. The address in the State of California where service by mail may be made on
9 Dutchess is:

10 Karineh Khachatourian
11 Jeffrey M. Ratinoff
12 Buchanan Ingersoll & Rooney LLP
13 333 Twin Dolphin Dr., Suite 700
14 Redwood Shores, CA 94065

15 11. As of January 3, 2007, the total amount due to Dutchess under the February 2006
16 Convertible Note secured by the security interest and/or lien is \$38,244.07. Interest currently
17 accrues on this balance at the rate of 12% per annum.

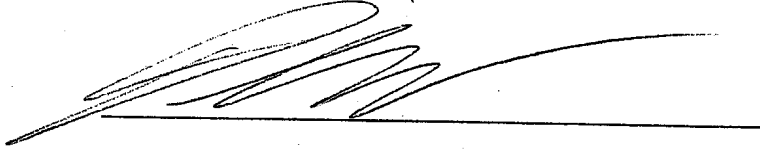
18 12. As of January 3, 2007, the total amount due to Dutchess under the July 2006
19 Promissory Note secured by the security interest is \$4,078,412. The note bears interest at 12%,
20 provides for monthly interest and principal payments of \$250,000 beginning October 31, 2006,
21 and matures on July 24, 2008.

22 13. Dutchess requests that the aforesaid property be released to Eagle.

23
24 I am the Managing Director of Dutchess Capital Management LLC, general partner of
25 Dutchess Private Equities Fund, L.P., a third party claimant in the above entitled action and am
26 authorized to make this verification for and on its behalf. I have read the foregoing Third Party
27 Claim by Secured Party and know the contents thereof. I certify that the same is true and of my
28 own knowledge, except as to those matters which are therein stated upon my information or

1 belief, and as to those matters I believe it to be true.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed on January 24, 2007, at Boston, Massachusetts.

4 

5
6 Douglas H. Leighton

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28