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10 Pacific Gas and Electric Company

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

14 In re
15 PACIFIC GAS AND ELECTRIC
16 COMPANY, a California corporation,
17 Debtor.
18 Federal I.D. No. 94-0742640

19 Case No.: 01-30923 DM
20 Chapter 11 Case
21 [No Hearing Scheduled]

22 **HELLER EHRMAN WHITE & McAULIFFE LLP'S FIRST INTERIM FEE
23 APPLICATION FOR ALLOWANCE AND PAYMENT OF COMPENSATION AND
24 REIMBURSEMENT OF EXPENSES FOR THE PERIOD APRIL 6, 2001,
25 THROUGH JULY 31, 2001**

26 Pursuant to the Order Establishing Interim Fee Application and Expense
27 Reimbursement Procedure, entered July 26, 2001 ("Order re Fee Applications"), Heller
28 Ehrman White & McAuliffe LLP ("Heller Ehrman," or the "Firm") files this First Interim
Fee Application (the "Application") for Allowance and Payment of Compensation and
Reimbursement of Expenses for the Period April 6, 2001, Through July 31, 2001 (the
"Application Period").

29 **I. RETENTION**

30 1. Heller Ehrman is Special Counsel to Pacific Gas and Electric Company,
debtor and debtor-in-possession in the above-referenced bankruptcy case ("PG&E" or the

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1 “Debtor”). Heller Ehrman’s retention as Special Counsel was authorized by this Court’s
2 Order Authorizing Debtor in Possession to Employ Heller Ehrman White & McAuliffe LLP
3 as Special Counsel, entered June 4, 2001 (the “June 4, 2001 Order”), effective *nunc pro tunc*
4 to April 6, 2001.

5 II. PRIOR COMPENSATION

6 2. As of the date of filing this Application, except as otherwise stated in ¶ 70,
7 Heller Ehrman has not received compensation for any services rendered or reimbursement
8 for any expenses incurred since the date of petition, April 6, 2001.¹ Pursuant to the Order re
9 Fee Applications, Heller Ehrman submitted Cover Sheet Applications on July 31, 2001 (for
10 fees and expenses incurred during the period April 6, 2001, to June 30, 2001) and August
11 30, 2001 (for fees and expenses incurred during the period July 1, 2001, to July 31, 2001).²

12 3. PG&E and Heller Ehrman are parties to a contingent fee agreement (entered
13 into on January 1, 1993) (the “Contingent Fee Agreement”) pertaining to Heller Ehrman’s
14

15 ¹ Heller Ehrman anticipates receiving payment from PG&E pursuant to one or more
16 of its Cover Sheet Applications prior to the hearing on this Application. Heller Ehrman will
17 supplement this Application upon receipt of such payment.

18 ² On December 19, 2000, PG&E paid a retainer to Heller Ehrman in the amount of
19 \$350,000. Pursuant to written agreement between the parties dated December 19, 2000, the
20 retainer is not to apply to current billings in the ordinary course, but instead is to apply to
21 Heller Ehrman’s unpaid fees and expenses in the event that PG&E fails to make payment in
22 the ordinary course. By written agreement dated April 5, 2001, the parties modified that
23 arrangement to authorize Heller Ehrman to apply the retainer to payment of unpaid pre-
24 petition fees and expenses on matters that are subject to an hourly billing arrangement. The
25 foregoing arrangement was approved by this Court in its June 4, 2001 Order (approving
26 Application of Debtor in Possession for Authority to Employ Heller Ehrman White &
27 McAuliffe LLP as Special Counsel (Apr. 17, 2001)); *see id.* ¶¶ 9-10; Declaration of Marie L.
28 Fiala ¶ 9 (Apr. 8, 2001). As of the date of submission of this Application, Heller Ehrman
has applied approximately \$154,000 of the retainer to a portion of its unpaid pre-petition
fees and expenses on hourly rate engagements. Heller Ehrman anticipates applying much or
all of the balance of the retainer — \$196,000 — to additional unpaid pre-petition fees and
expenses. Heller Ehrman currently is in the process of calculating the amount of those
additional unpaid fees and expenses, and will supplement this Application with the results of
that calculation prior to the hearing on this Application.

1 representation of PG&E in pursuing insurance recoveries from a number of insurance
2 companies for losses incurred by PG&E as a result of environmental liabilities. The terms
3 of the Contingent Fee Agreement are described in the Supplemental Application of Debtor
4 in Possession for Authority to Employ Heller Ehrman White & McAuliffe LLP as Special
5 Counsel (Insurance Coverage — Contingent Fee), filed May 18, 2001, and approved by this
6 Court in its June 4, 2001 Order. Heller Ehrman does not seek in this Application
7 compensation or expenses in connection with the contingent fee matter, but instead expects
8 to seek compensation and expenses with respect to that matter by a separate fee application
9 to be filed at an appropriate time.

10 III. CASE STATUS

11 3. Heller Ehrman relies on the description of the status of the bankruptcy case
12 provided by PG&E's general bankruptcy counsel, Howard Rice Nemerovski Canady Falk &
13 Rabkin.

14 IV. SUMMARY OF SERVICES PERFORMED

15 4. Heller Ehrman's services to PG&E during the Application Period are
16 described in detail in the billing statements attached to the accompanying Time Records
17 Exhibit of Special Counsel Heller Ehrman White & McAuliffe LLP for the Period April 6,
18 2001, Through July 31, 2001 ("Time Records Exhibit").³

19 5. During the Application Period, Heller Ehrman has provided legal services to
20 PG&E on a number of matters. The bulk of those services has involved efforts to obtain

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22 ³ In accordance with our professional obligations to our client, Heller Ehrman's time
23 records have been extensively edited and redacted to prevent disclosure of confidential
24 information, including information protected by the attorney-client privilege and the work
25 product doctrine. Such information includes, but is not limited to, the specific subject
26 matter of confidential attorney-client or attorney work product discussions; the identity and
27 work product of non-testifying expert consultants; and the exact nature of the issues and
28 theories that have been the subject of our legal research, analysis and advice to our client in
written or oral form. Heller Ehrman submits these time records pursuant to order of the
Bankruptcy Court and without any waiver of any privilege, confidentiality protection or
privacy right that might apply to the information contained therein.

1 rate relief for PG&E from governmental agencies or the courts in the wake of the California
2 energy crisis that caused PG&E's financial condition to deteriorate and precipitated this
3 bankruptcy filing. Heller Ehrman's services have included advice, counseling, and
4 representation regarding regulatory, rate setting and rate refund matters, and litigation
5 related to those and related subject areas. Heller Ehrman has represented PG&E in
6 connection with proceedings before the Federal Energy Regulatory Commission ("FERC")
7 addressing the California energy market crisis and directly affecting PG&E. Heller Ehrman
8 has provided counseling and assistance to PG&E in connection with proceedings at the
9 California Public Utilities Commission ("CPUC") involving PG&E. Heller Ehrman also
10 has represented PG&E in connection with a lawsuit against the Commissioners of the
11 CPUC, which seeks to require the CPUC to comply with federal law and allow PG&E to
12 recover in its retail rates the wholesale electricity costs it incurred in meeting its state-
13 imposed obligation to serve its customers. If PG&E succeeds on its claims as pleaded, that
14 lawsuit ultimately could bring as much as **\$8.3 billion** into PG&E's bankruptcy estate
15 through increased retail rate revenues. Heller Ehrman also has provided bankruptcy-related
16 advice and services to PG&E as an adjunct to its other services.⁴

17 6. Consistent with the Court's Guidelines for Compensation of Professionals (the
18 "Fee Guidelines"), Heller Ehrman's services have been recorded under 19 separate internal
19 matter numbers. Billing statements for each of those matters are attached to the
20 accompanying Time Records Exhibit. The billing statements set forth for each matter, *inter*
21 *alia*, the total number of hours of services recorded by each attorney and paralegal, that
22 person's discounted hourly billing rate to PG&E, and the fees requested for those services.
23 A narrative description of each of those matters follows.

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27 ⁴ See June 4, 2001 Order, at p. 2 (authorizing Heller Ehrman to provide "bankruptcy-
28 related legal services as an adjunct to the other legal services to be performed by Heller
Ehrman").

1 V. NARRATIVE DESCRIPTION OF SERVICES

2 7. **Matter 63: California Market Failures — FERC Docket EL00-95 and**
3 **Related Dockets/Matters. Hours spent: 2,132.40; fees sought: \$541,545.40; expenses**
4 **sought: \$70,634.67.** This matter is used to record time billed in connection with the
5 principal FERC proceeding addressing failures in the California electric market. That
6 proceeding, FERC Docket EL00-95, was brought on August 2, 2000, by San Diego Gas and
7 Electric Company (“SDG&E”) against all sellers in the California wholesale electric
8 markets, seeking FERC intervention in the markets. PG&E intervened in the proceeding,
9 seeking reform of those markets, and monetary relief and refunds based on overcharges by
10 sellers.

11 8. Heller Ehrman has been retained since prior to the petition date to provide
12 extensive legal services to PG&E in connection with this proceeding. Heller Ehrman has
13 provided legal advice, research and strategy input; prepared and filed numerous briefs and
14 other papers; and appeared at hearings on behalf of PG&E. For example, Heller Ehrman
15 prepared extensive papers and advocated on PG&E’s behalf for rehearing of a June 19,
16 2001, FERC order prescribing prospective price mitigation relief affecting PG&E. Heller
17 Ehrman represented PG&E in seeking rehearing of another FERC order, dated July 25,
18 2001, regarding the methodology for calculating refunds to public utilities. Heller Ehrman’s
19 efforts are designed to reduce costs for future wholesale power purchases by PG&E, and to
20 maximize PG&E’s recovery of refunds from wholesale power generators and marketers. A
21 hearing before an administrative law judge at FERC has been set in this matter for mid-
22 November 2001, at which Heller Ehrman will appear as counsel for PG&E.

23 9. PG&E has been and will continue to be an active participant in numerous
24 other proceedings related to FERC Docket ER00-95, in which Heller Ehrman has been
25 retained to provide legal services. For example, Heller Ehrman has prepared and submitted
26 pleadings on PG&E’s behalf responding to filings by the California Independent System
27 Operator Corporation (“ISO”) (the entity responsible for overseeing the transmission grid in
28 California and procuring wholesale electricity in “real time” where necessary to meet

1 demand) affecting PG&E's interests. Heller Ehrman also has been retained to challenge
2 efforts by certain sellers that serve the California markets to obtain FERC renewals of
3 authority to sell wholesale power at market-based rates. In addition, Heller Ehrman has
4 been retained to represent PG&E as an intervenor in a number of federal Circuit Court of
5 Appeals proceedings seeking review of orders in FERC Docket EL00-95 and related
6 dockets.

7 10. In light of the ongoing status of these proceedings and appeals, we anticipate
8 that PG&E will continue to use Heller Ehrman's services in these matters.

9 11. **Matter No. 64: Federal Filed Rate Case. Hours spent: 1,455.10; fees**
10 **sought: \$351,303.30; expenses sought: \$71,302.71.** This matter is used to record time
11 billed in providing legal advice and representation to PG&E in a lawsuit filed by PG&E
12 against the Commissioners of the CPUC, which seeks to require the CPUC to comply with
13 federal law and allow PG&E to recover in its retail rates the wholesale electricity costs it
14 incurred in meeting its state-imposed obligation to serve its customers. The lawsuit stems
15 from the electricity market crisis that started in June 2000, when the wholesale cost of the
16 electricity that PG&E purchased for delivery to its retail customers experienced
17 unanticipated and massive increases. Although PG&E's wholesale costs rose dramatically,
18 PG&E's retail rate revenues were frozen pursuant to AB 1890, California's electricity
19 market deregulation statute. Between June 2000 and March 31, 2001, PG&E's wholesale
20 costs exceeded the amounts available in PG&E's frozen retail rates to pay for such costs by
21 approximately **\$9.2 billion**. As a result of the CPUC's refusal to allow PG&E to recover its
22 wholesale costs in retail rates, PG&E amassed crippling debt, ultimately leading PG&E to
23 file the instant bankruptcy petition on April 6, 2001.

24 12. PG&E retained Heller Ehrman in the summer of 2000 to analyze the legal
25 issues and prepare litigation to challenge the CPUC's actions denying recovery to PG&E of
26 its ever-mounting wholesale electricity costs. In November 2000, Heller Ehrman filed a
27 lawsuit on PG&E's behalf in the United States District Court for the Northern District of
28 California alleging that under well-established principles of federal preemption, including

1 the "filed rate doctrine,"⁵ and other legal theories PG&E is entitled to recover its wholesale
2 transmission and power purchase costs in its retail rate revenues. That case, *PG&E v. Lynch*
3 *et al.*, Civil Action No. C 00 4128 (SBA) (N.D. Cal.), subsequently was transferred to the
4 United States District Court for the Central District of California, where a virtually identical
5 lawsuit by Southern California Edison Company was pending. PG&E filed an amended
6 complaint in the United States District Court for the Central District of California on
7 February 15, 2001, entitled *PG&E v. Lynch et al.*, Civil Action No. CV 01-1083-RSWL
8 (SHx) (C.D. Cal.).

9 13. Heller Ehrman provided legal representation to PG&E in prosecuting that
10 lawsuit, including consultation and advice, preparing and filing pleadings and motion
11 papers, appearances at court hearings and preparing for potential discovery.

12 14. On May 2, 2001, the court dismissed PG&E's lawsuit on ripeness grounds
13 without prejudice to refile. On August 6, 2001, Heller Ehrman refiled PG&E's lawsuit
14 against the CPUC Commissioners in the United States District Court for the Northern
15 District of California. That lawsuit, *PG&E v. Lynch, et al.*, Case No. C 01-03023 PJH (N.D.
16 Cal.) (the "Filed Rate Lawsuit"), currently is pending before the Hon. Phyllis J. Hamilton.

17 15. Since the summer of 2000 and, in particular, during the Application Period,
18 Heller Ehrman has provided a wide range of legal services to PG&E in its role as outside
19 counsel representing PG&E in litigating its claims against the CPUC Commissioners in the
20 Filed Rate Lawsuit. Heller Ehrman has conducted extensive legal research and analysis
21 regarding PG&E's claims; prepared and filed three complaints and numerous briefs on
22 behalf of PG&E; appeared and represented PG&E at court hearings; analyzed the effect of
23 other cases, legislative enactments and agency decisions on PG&E's claims; monitored
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26 ⁵ Under the "filed rate doctrine," a wholesale rate paid by a utility pursuant to a
27 federally-approved tariff is binding on a state utilities commission for retail rate-setting
28 purposes, and a state must allow a utility to recover in its retail rates the wholesale costs
paid by the utility pursuant to the federally-approved tariff.

1 developments in other cases and in the energy industry bearing on PG&E's claims; and
2 prepared for potential discovery.

3 16. Heller Ehrman anticipates significant additional work on the Filed Rate
4 Lawsuit in the coming months, including extensive research and analysis; briefing and
5 arguments on various motions; and providing extensive advice and counseling to PG&E
6 with respect to the litigation.

7 17. **Matter No. 65: Richard D. Wilson v. Pacific Gas and Electric Company**
8 **and PG&E Corporation. Hours spent: 13.20; fees sought: \$2,463.90; expenses**
9 **sought: \$291.10.** In February 2001, PG&E was sued in two related cases alleging that
10 PG&E and its parent, PG&E Corporation, violated California Business & Professions Code
11 Sections 17200, *et seq.*, as a result of certain inter-corporate actions, including dividend
12 payments and an inter-company tax agreement.

13 18. Heller Ehrman was retained to represent PG&E in those lawsuits. Heller
14 Ehrman conducted legal research, provided consultation to PG&E, and drafted a demurrer.
15 However, as a result of this bankruptcy filing, those actions have been stayed and Heller
16 Ehrman has provided no services since May 2001. Plaintiffs have not moved for relief from
17 the stay, and we expect little activity on this matter unless and until they do so.

18 19. **Matter No. 67: Creditworthiness Docket — FERC Docket ER01-889.**
19 **Hours spent: 188.60; fees sought: \$72,895.60.** This docket addresses, among other
20 things, the issue of whether PG&E may be held liable for electricity procured for PG&E's
21 customers after PG&E no longer had the financial resources to assure that it could pay for
22 such power. In January 2001, PG&E became uncreditworthy under existing tariffs, so an
23 alternative buyer had to be found to procure power for PG&E's customers. At about the
24 same time, the California Department of Water Resources ("DWR") was empowered to
25 purchase power on behalf of California's cash-deprived utilities. This proceeding
26 specifically involves a January 4, 2001, filing by the ISO to amend its FERC tariff to relax
27 the creditworthiness provisions so that certain entities, including PG&E, could continue
28 buying electric power from third parties despite the fact that those entities do not meet the

1 tariff's creditworthiness requirements. FERC refused to amend the tariff, leaving in place a
2 requirement that power purchases must be made by a creditworthy entity.

3 20. Heller Ehrman has been retained since prior to the petition date to represent
4 PG&E in connection with the FERC creditworthiness proceedings. During the Application
5 Period, Heller Ehrman has provided legal advice and filed papers on PG&E's behalf in
6 those proceedings. Heller Ehrman's efforts are intended, *inter alia*, to prevent PG&E from
7 being forced to spend money that otherwise would accrue to the estate.

8 21. FERC has stated that it will be issuing further orders in this proceeding. We
9 anticipate performing additional work for PG&E as the proceeding goes forward.

10 22. **Matter No. 68: Qualifying Facility ("QF") Proceedings/Issues. Hours**
11 **spent: 419.40; fees sought: \$138,391.10.** PG&E obtains a certain amount of its wholesale
12 electricity from so-called qualifying facilities ("QFs"), companies with which PG&E has
13 legally-mandated and regulated long-term power purchase contracts. Since December 2000,
14 FERC has issued a number of orders relating to QF contracts in light of the California
15 electricity crisis.

16 23. Heller Ehrman has been retained since prior to the petition date to provide
17 legal advice and representation to PG&E regarding QF matters pending at FERC, with the
18 aim of protecting PG&E's rights vis-à-vis QFs to ensure maximum availability of electricity
19 for delivery to retail customers.

20 24. Heller Ehrman has provided broad assistance to PG&E on QF matters. For
21 example, Heller Ehrman has represented PG&E in connection with: a FERC order granting
22 waivers to QFs, potentially affecting the operation of QFs that had contracted to sell their
23 output to PG&E; filings by certain QFs for authorization to sell power to parties other than
24 PG&E in derogation of existing contracts; motions brought at FERC by QFs seeking relief
25 from California Public Utility Commission decisions concerning the rates to be paid to QFs
26 by utilities such as PG&E; a FERC Notice of Opportunity for Comment on Motions for
27 Emergency Relief and Institution of a Section 210(d) Proceeding; a FERC order granting in
28 part QFs' motions for emergency relief; and interconnection issues raised by FERC; and

1 research and advice regarding the impact of PG&E's bankruptcy case on certain of its QF
2 relationships and clients. Heller Ehrman also has been retained to represent PG&E in
3 litigation and negotiation with QFs in other fora, including the CPUC and this Court.

4 25. We anticipate providing further assistance to PG&E in the coming months in
5 connection with various proceedings involving QF issues.

6 26. **Matter No. 69: CPUC v. El Paso — FERC Docket RP00-241. Hours**
7 **spent: 1,668.80; fees sought: \$452,737.30; expenses sought: \$1,091.58.** This matter is
8 used to record time billed in representing PG&E in a FERC proceeding commenced by the
9 CPUC against El Paso Natural Gas Company and its affiliate, El Paso Merchant Energy,
10 alleging that their exercise of market power improperly increased natural gas prices at the
11 California border. Natural gas is used to power a significant amount of electricity
12 generation in California, and high natural gas prices were one cause of the increase in
13 wholesale electricity prices starting in the summer of 2000. As a purchaser of wholesale
14 electricity and as a direct purchaser of natural gas, PG&E has been affected by high natural
15 gas prices and therefore participates in this proceeding.

16 27. Heller Ehrman was retained before the petition date to provide a full range of
17 legal services to PG&E in this matter, including acting as trial counsel. During the
18 Application Period, Heller Ehrman represented PG&E in propounding and responding to
19 discovery; preparing and responding to written testimony; and acting as PG&E's trial
20 counsel in hearings at FERC. Heller Ehrman also has provided advice and conducted legal
21 research on various issues relating to this proceeding.

22 28. Pursuant to a schedule set by FERC, Heller Ehrman recently prepared
23 additional briefs for submission to FERC. We anticipate additional work on this matter both
24 before and after the Presiding Administrative Law Judge's decision, expected in October
25 2001.

26 29. **Matter No. 70: El Paso Capacity-Related Complaints — FERC Dockets**
27 **RP01-484 & RP01-486. Hours spent: 14.00; fees sought: \$4,202.00.** Heller Ehrman has
28 been retained to provide representation to PG&E in connection with complaints filed at

1 FERC as an outgrowth of the CPUC v. El Paso proceeding (*see supra*, Matter No. 69). Two
2 such complaints have been filed alleging that El Paso Natural Gas Company failed to
3 maintain capacity on its system adequate to serve its contracted firm load. The complaint in
4 Docket No. RP01-484 was filed by a number of shippers to California. PG&E is one of the
5 complainants. The second complaint was filed by customers that receive service from El
6 Paso Gas Company in Texas, New Mexico and Arizona. PG&E filed an intervention in the
7 second complaint and urged consolidation of the two proceedings.

8 30. During the Application Period, Heller Ehrman has provided legal advice with
9 respect to both proceedings (both of which commenced after the petition date), and drafted
10 and filed intervention papers in Docket RP01-486. FERC action is pending. We anticipate
11 additional work on these and possibly other related matters in the coming months.

12 31. **Matter No. 71: Order 637 Compliance Filing and Related Complaints —**
13 **FERC Dockets RP99-507, RP00-139, RP00-336. Hours spent: 21.10; fees sought:**
14 **\$6,993.30.** This matter reflects legal advice to and representation of PG&E in connection
15 with a technical conference proceeding at FERC to address El Paso Natural Gas Company's
16 Order No. 637 compliance filing and related complaints. El Paso's compliance filing bears
17 on El Paso's deliveries of natural gas on its pipeline system and affects PG&E's interests.

18 32. During the Application Period, Heller Ehrman's services included providing
19 legal advice to PG&E and appearing on PG&E's behalf at a technical conference on July 18,
20 2001. Heller Ehrman was retained to represent PG&E in these proceedings prior to the
21 petition date, although our involvement became active only with the commencement of the
22 technical conference proceedings in July 2001.

23 33. These proceedings still are at an early stage. We anticipate being called on to
24 continue our work for PG&E on these proceedings in the months to come.

25 34. **Matter No. 72: Transwestern Pipeline Co. — FERC Docket RP97-288.**
26 **Hours spent: .40; fees sought: \$133.20.** On July 26, 2001, FERC commenced a
27 proceeding to determine whether rate filings by Transwestern Pipeline Company violated
28 FERC regulations and policy, contributing to high natural gas prices in California. PG&E

1 has retained Heller Ehrman to provide legal advice, submit briefing as necessary, and appear
2 at hearings in this proceeding, in which PG&E is interested as a purchaser of wholesale
3 electricity whose cost is affected by natural gas prices, and as a direct purchaser of natural
4 gas.

5 35. This proceeding is at an early stage and, during the Application Period, Heller
6 Ehrman has provided minimal services, in the form of reviewing a FERC transcript and
7 assessing issues implicating PG&E. As the proceeding progresses, Heller Ehrman
8 anticipates being asked to provide additional legal advice, assistance in discovery, and
9 representation at trial.

10 36. **Matter No. 73: Other FERC Gas Dockets/Matters. Hours spent: 5.50;**
11 **fees sought: \$1,804.20.** This matter is used to record time billed in providing advice and
12 assistance on natural gas-related proceedings at FERC not accounted for in other matters.
13 Heller Ehrman has been retained since prior to the petition date to act as regulatory counsel
14 for PG&E on a range of issues relating to natural gas proceedings at FERC. During the
15 Application Period, Heller Ehrman provided PG&E with general FERC-related advice,
16 including advice as to whether PG&E should intervene, comment on, or otherwise
17 participate in FERC proceedings affecting its interests.

18 37. **Matter No. 74: Seller/Generator Issues. Hours spent: 134.30; fees**
19 **sought: \$43,385.50.** This matter is used to record time billed in providing advice to PG&E
20 concerning the role of third parties in the California electricity market crisis, including
21 potential claims for recovery of money or other relief that might be brought against such
22 third parties. Heller Ehrman has been retained to provide such services since prior to
23 PG&E's bankruptcy filing. This engagement arises in part in connection with the instant
24 bankruptcy proceeding and also includes issues that currently do not pertain to any
25 particular lawsuit or regulatory docket.

26 38. Heller Ehrman's work on such matters has ranged from participation in
27 meetings with consultants and other counsel, to providing ongoing legal advice and
28 counseling on various issues. For example, Heller Ehrman has engaged in extensive

1 discussions with PG&E attorneys and other counsel for PG&E regarding potential claims
2 that might be brought against third parties in connection with the California electric power
3 market crisis. Heller Ehrman also has analyzed the relationship of such potential claims to
4 PG&E's Filed Rate Lawsuit (*see* narrative description of Matter 64, *supra*) and to PG&E's
5 bankruptcy proceeding. Heller Ehrman has worked extensively with consultants retained by
6 PG&E in connection with such potential claims. Heller Ehrman also has assisted PG&E in
7 its efforts to obtain discovery relating to participation by generators and marketers in
8 California's PX and ISO markets.

9 39. We anticipate that PG&E will continue to rely on Heller Ehrman for advice on
10 these matters, and, if appropriate, to represent it or consult with other counsel in connection
11 with lawsuits or other actions involving third parties.

12 40. **Matter No. 75: General Corporate Issues. Hours spent: 8.60; fees**
13 **sought: \$5,238.70.** This matter records time billed in providing general corporate advice to
14 PG&E. Heller Ehrman has been retained to provide such services since prior to PG&E's
15 bankruptcy filing. This matter does not correspond to any particular lawsuit or regulatory
16 docket. Rather, it encompasses legal advice and counseling on a wide range of corporate
17 issues, typically episodic and discrete.

18 41. Heller Ehrman's work on such matters both prior to and after the filing of
19 PG&E's bankruptcy petition has ranged from oral advice in response to specific questions
20 posed by PG&E, to providing revisions and comments on documents or preparing more
21 formal memoranda. For example, before and during the Application Period Heller Ehrman
22 has been asked to review various public disclosure filings made with the Securities
23 Exchange Commission and to comment on portions of such filings that describe litigation or
24 regulatory matters in which Heller Ehrman provides legal representation to PG&E; to
25 review and revise PG&E's antitrust compliance policies; and to provide general legal
26 guidance in connection with various securities litigation filings naming PG&E as a
27 defendant, including coordinating with counsel for co-defendants and implementing the
28 bankruptcy stay with respect to such litigation. From time to time, Heller Ehrman also

1 assists PG&E in identifying other types of new litigation filings naming PG&E as a
2 defendant and implementing the bankruptcy stay in those lawsuits.

3 42. We anticipate that PG&E will continue to call on Heller Ehrman for such
4 episodic representation as general corporate issues arise, although it is impossible to predict
5 in advance the nature or extent of such future matters.

6 43. **Matter No. 76: CPUC Docket 01-03-082. Hours spent: 778.00; fees**
7 **sought: \$237,135.90.** This matter is used to record time billed in analyzing, performing
8 legal research, preparing memoranda, and providing advice to PG&E regarding Decision
9 01-03-082 issued by the California Public Utilities Commission on March 27, 2001. That
10 decision adopted certain retroactive regulatory accounting changes proposed by The Utility
11 Reform Network ("TURN"), a consumer advocacy group.⁶ PG&E filed for bankruptcy
12 protection shortly after the decision was issued.

13 44. On April 19, 2001, PG&E (through counsel Howard Rice Nemerovski Canady
14 Falk & Rabkin) filed an application in this Court for a preliminary injunction to stay
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18 ⁶ Specifically, the decision involves the interaction between the Transition Revenue
19 Account ("TRA"), which was used to account for PG&E's revenues from the provision of
20 retail electric service and associated costs, including wholesale power procurement costs as
21 well as transmission and distribution costs, and the Transition Cost Balancing Account
22 ("TCBA"), which was used to account for so-called "stranded costs" or "transition costs,"
23 which are PG&E's historic investments in generation facilities and other past generation-
24 related costs that might become unrecoverable as a result of the introduction of competition
25 into the California retail market.

26 Decision 01-03-082 required PG&E to restate its TRA and TCBA balances by
27 recording the net revenues from PG&E's wholesale sales of electricity generated by
28 PG&E's retained generation facilities in the TRA rather than in the TCBA, as had
previously been the case, and then transferring the net balance in PG&E's TRA to its TCBA
on a monthly basis. The accounting changes are retroactive to January 1, 1998. The CPUC
found that, based on these accounting changes, the conditions for meeting the end of the
retail rate freeze had not been met, and refused to raise PG&E's retail rates sufficiently to
allow PG&E to recover its undercollected wholesale costs.

1 enforcement of Decision 01-03-082.⁷ PG&E and the CPUC extensively briefed issues
2 relating to Decision 01-03-082 to the Court. On June 1, 2001, the Court denied PG&E's
3 preliminary injunction application, and PG&E appealed. The appeal currently is pending
4 before the Hon. Vaughan Walker of the United States District Court for the Northern
5 District of California.

6 45. Heller Ehrman has provided extensive legal representation to PG&E in
7 response to CPUC Decision 01-03-082. That decision involves numerous technical issues
8 involving the interplay of regulatory accounts used to track PG&E's costs and revenues in
9 buying wholesale electricity for its customers, selling electricity, disposing of assets, and
10 other matters. Heller Ehrman has conducted extensive analysis to evaluate the implications
11 of Decision 01-03-082; performed research regarding federal and state law applicable to that
12 decision; prepared memoranda advising PG&E on various issues relating to the decision;
13 consulted with our client; and assisted PG&E's in-house counsel in preparing an application
14 for rehearing of the decision.

15 46. We anticipate that we will be asked to provide additional legal services to
16 PG&E in connection with Decision 01-03-082 in the coming months.

17 47. **Matter No. 77: CPUC OII Proceeding. Hours spent: 65.90; fees sought:**
18 **\$24,118.40.** This matter is used to record time billed in providing legal representation and
19 advice to PG&E relating to an investigation commenced by the CPUC regarding certain
20 transactions between PG&E and its parent company, PG&E Corporation. On April 3, 2001,
21 the CPUC issued an "Order Instituting Investigation" ("OII") directed to PG&E, PG&E
22

23
24 ⁷ PG&E alleged therein that the CPUC's Decision No. 01-03-082 was designed as an
25 attempt to interfere with PG&E's preemption and other claims which are the subject of the
26 Filed Rate Lawsuit, and that the CPUC contended that Decision No. 01-03-082 would have
27 the effect of preventing PG&E from recovering billions of dollars in undercollected
28 wholesale power costs. PG&E further alleged that the CPUC's Decision No. 01-03-082 was
automatically stayed pursuant to 11 U.S.C. §362(a)(1) and (a)(3), and that implementation
of Decision No. 01-03-082 threatened the assets of the bankruptcy estate and interfered with
the bankruptcy court's jurisdiction and therefore should be enjoined.

1 Corporation, and other investor-owned utilities and their holding companies, commencing
2 an investigation to determine whether the utilities and their respective holding companies
3 “have complied with relevant statutes and Commission decisions in the management and
4 oversight of their companies.” The OII stems from the fact that the utilities, as part of the
5 deregulation of the electric industry, changed their corporate forms in the latter part of the
6 1990s to include a CPUC-regulated utility company and an unregulated holding company.

7 48. The OII purports to investigate the payment of dividends by the regulated
8 utilities to their respective corporate parents, the alleged failure of the corporate parents to
9 extend additional capital funding to their regulated utility subsidiaries, the parent
10 corporations’ funding of unregulated subsidiaries, and other corporate transactions. The OII
11 claims to be investigating whether these actions have violated CPUC orders and policies, to
12 determine whether additional rules, conditions, or changes are required in the applicable
13 provisions governing these matters.

14 49. During the Application Period, Heller Ehrman has provided advice and
15 consultation to PG&E, performed legal research, and assisted in PG&E’s response to
16 demands for production of documents and testimony. The CPUC’s Office of Ratepayer
17 Advocates (“ORA”) now is involved in the proceeding. We anticipate that the OII will
18 include an evidentiary hearing before the CPUC sometime within the next six to nine
19 months, and that Heller Ehrman will assume a larger role as the time for hearing nears.

20 50. **Matter No. 78: Other CPUC and California State Law Matters. Hours**
21 **spent: 133.70; fees sought: \$46,338.20.** This matter records services in providing legal
22 advice to PG&E in connection with CPUC regulatory proceedings and orders other than
23 those specified above, and California legislation affecting PG&E’s interests. Heller Ehrman
24 has been retained to provide such services since prior to PG&E’s bankruptcy filing. This
25 matter pertains to a number of specific CPUC dockets, and also includes advice that does
26 not correspond to any particular lawsuit or regulatory docket.

27 51. Heller Ehrman’s work on such matters has encompassed legal advice and
28 counseling on a wide range of issues, most of which are ongoing; consulting on tactical and

1 strategic approaches in proceedings before the CPUC; and providing revisions and
2 comments on court and CPUC pleadings and other documents. For example, Heller Ehrman
3 was asked to prepare an extensive analysis of ABX-6, a California statute that affects the
4 regulatory and rate treatment of the electric generation assets owned by PG&E. Heller
5 Ehrman also was asked to review and comment on a number of draft regulatory and judicial
6 filings that in part address ABX-6 and its potential impact on PG&E. On other occasions,
7 Heller Ehrman has been asked to provide advice related to CPUC regulatory proceedings
8 involving the so-called California Procurement Adjustment ("CPA"). In general terms, the
9 CPA is a component of PG&E's rates added by the California Legislature in response to the
10 energy crisis to recover the costs of the State's purchases of power on behalf of PG&E's
11 customers. As with ABX-6, Heller Ehrman has been asked to review and comment on a
12 number of draft regulatory and judicial filings that in part address CPA. From time to time,
13 Heller Ehrman also has assisted PG&E with regard to other state legislative and regulatory
14 matters, including issues relating to DWR's procurement of electric power on behalf of
15 PG&E's retail customers and the mechanisms by which DWR's costs are quantified and
16 recovered through PG&E's billings to its retail customers.

17 52. We anticipate that PG&E will continue to call on Heller Ehrman for advice in
18 connection with the foregoing matters, as well as future regulatory or legislative actions,
19 although we cannot predict in advance the nature or extent of such future matters or
20 services.

21 53. **Matter No. 79: Other Advice, Consultation, Research re Energy Issues.**
22 **Hours spent: 27.90; fees sought: \$8,911.90.** This matter is used to record time billed for
23 advice, consultation and research on energy issues not covered by other matters. During the
24 Application Period, Heller Ehrman's work on this matter included, for example, consulting
25 with PG&E regarding preparation of responses to requests for information from California
26 legislators. We anticipate periodically being called upon to continue to provide ongoing
27 advice and consultation to PG&E on various energy-related issues.

1 54. **Matter No. 80: CPUC Prudence Review. Hours spent: 295.00; fees**
2 **sought: \$100,540.50; expenses sought: \$7,234.43.** This matter is used to record time
3 billed in providing legal services to PG&E in connection PG&E's 2001 Annual Transition
4 Cost Proceeding currently pending before the CPUC, as well as anticipated future CPUC
5 proceedings that address the reasonableness of PG&E's procurement practices and PG&E's
6 recovery of billions of dollars in procurement and generation-related costs.

7 55. During the Application Period, PG&E has provided oral and written advice to
8 PG&E regarding the factual and legal issues likely to arise in the CPUC proceedings
9 described above; has assisted with development of evidence likely to be relevant to such
10 proceedings; and has assisted with the preparation of written pleadings and testimony
11 submitted by PG&E to the CPUC.

12 56. We anticipate providing sustained ongoing services to PG&E in connection
13 with the foregoing proceedings.

14 57. **Matter No. 81: Ancillary Bankruptcy Services Related to Other Matters,**
15 **and Administration. Hours spent: 273.40; fees sought: \$91,125.10.** The fees reflected
16 in this matter encompass a wide range of services relating to PG&E's Chapter 11 case,
17 typically involving the interrelationship between the bankruptcy case or bankruptcy law and
18 Heller Ehrman's services or expertise in the primary areas for which it was engaged as
19 Special Counsel. More specifically, services recorded in this matter include:

20 a. Advice and consultation with PG&E or its other counsel regarding
21 pending or contemplated litigation in the Chapter 11 case, particularly litigation involving
22 claims or subject matters related to the other matters for which Heller Ehrman is or may be
23 retained;

24 b. Advice and consultation with PG&E or its other counsel regarding
25 litigation or bankruptcy strategy affecting other matters for which Heller Ehrman is or may
26 be retained, or as to which Heller Ehrman's litigation, regulatory or transactional expertise
27 enables it to provide added value to the exercise;

1 c. Advice to PG&E or internally within Heller Ehrman regarding the
2 effect of the bankruptcy filing and bankruptcy law on pending or contemplated litigation,
3 transactions or relationships within the scope of Heller Ehrman's engagement as Special
4 Counsel;

5 d. Research, analysis and advice to PG&E regarding various bankruptcy
6 law issues or matters arising out of or related to litigation, regulatory or transactional
7 matters for which Heller Ehrman was retained as Special Counsel;

8 e. Monitoring developments in the Chapter 11 case and providing internal
9 communication and advice to Heller Ehrman's litigation, regulatory and transactional
10 lawyers regarding the bankruptcy case to facilitate their performance of their services as
11 Special Counsel in their non-bankruptcy areas of responsibility; and

12 f. Research, analysis and advice to PG&E on certain bankruptcy law
13 issues as a backup or second opinion to advice provided by PG&E's other counsel.

14 58. We anticipate being called upon to continue to provide ongoing advice and
15 consultation to PG&E on various matters, issues and questions in this area, but are unable to
16 predict the nature or scope of future services.

17 59. **Matter No. 82: Bankruptcy—Employment and Fee Applications. Hours**
18 **spent: 93.40; fees sought: \$38,063.50.** The services and fees reflected in this matter relate
19 primarily to the preparation and approval of Heller Ehrman's two applications for
20 employment as Special Counsel. In light of Heller Ehrman's extensive practice in the
21 energy and energy regulatory areas, the sheer magnitude of PG&E's business and creditor
22 relationships, and the scrutiny to which this case is subject, the review and analysis of
23 potential conflicts of interest was a particularly complex and painstaking exercise. It
24 required detailed review and understanding of the nature and scope of a number of complex
25 relationships to enable Heller Ehrman to satisfy first itself, and then to prepare appropriate
26 written disclosures to satisfy the United States Trustee ("UST") and ultimately the Court,
27 that Heller Ehrman was qualified as a matter of bankruptcy law to be retained as Special
28

1 Counsel. The retention process, including responding to inquiries by the UST, required a
2 level of time and effort far exceeding the norm, and thus entailed substantially higher legal
3 fees than one would ordinarily expect. At the same time, to put these fees in perspective,
4 this category represents about 1.5% of the total fees sought for this four-month period. A
5 relatively smaller portion of the fees sought in this category — on the order of \$16,000 of
6 the total requested — relates to the preparation of the first interim Cover Sheet Application.
7 None of the fees requested in this Application relates to the time required to prepare this
8 Application; such fees will be reflected in the next Interim Fee Application. Heller Ehrman
9 estimates that the fees involved in the preparation of this Application, including the
10 development of numerous individualized billing categories as described in this Application
11 at the behest of the UST and PG&E, and the reallocation of recorded time to such
12 categories, is approximately \$78,000.00.

13 VI. SUMMARY OF FEES AND EXPENSES REQUESTED

14 60. The Firm billed a total of \$2,317,881.49 in fees and expenses during the
15 Application Period. The total fees represent 7,731.70 hours expended during the
16 Application Period. Those fees and expenses break down as follows:

17 Period	Fees	Expenses	Total
18 4/6/01-7/31/01	\$2,167,327.00	\$150,554.49	\$2,317,881.49

19
20 61. Pursuant to the Order re Fee Applications ¶ 6, Heller Ehrman seeks allowance
21 of interim compensation in the total amount of \$2,317,881.49.

22 62. To date, the Firm is not owed any amounts except those identified in
23 paragraphs 60 and 61 and footnote 1 above.

24 VII. REQUIRED DISCLOSURES AND CERTIFICATION

25 63. In this case, Heller Ehrman has not charged for expenses for: (a) office
26 overhead; (b) secretarial overtime; (c) charges for after-hours and weekend air conditioning
27 and other utilities; (d) cost of meals or transportation provided to attorneys and staff who
28 work late; (e) word processing and similar clerical functions; and (f) amenities such as

1 newspapers, shoe shines, dry cleaning, etc., and the cost of lunches while Heller Ehrman
2 personnel are away from the office.

3 64. By agreement with PG&E, Heller Ehrman's in-house photocopy charges
4 (regularly charged to other clients of the firm at 22¢ per page) have been reduced to 12¢ per
5 page, and facsimiles have been charged at 75¢ per page for outgoing transmissions
6 (regularly charged at \$1.50), with no charge for incoming transmissions.

7 65. Computerized legal research is billed at the standard Westlaw and LEXIS
8 rates without markup or discount. Heller Ehrman receives a volume discount from Westlaw
9 and LEXIS which is not allocable to any particular matter, and which Heller Ehrman does
10 not attribute to any particular client, including PG&E.

11 66. Heller Ehrman believes that the regular hourly rates of the attorneys and
12 paralegals practicing at Heller Ehrman are consistent with those prevailing in the San
13 Francisco Bay Area community for similar services of lawyers and paralegals of reasonably
14 comparable skill and reputation. Heller Ehrman's compensation and expense
15 reimbursement requested in this Application have been billed at rates, in accordance with
16 practices, more favorable than those customarily employed by Heller Ehrman and generally
17 accepted by Heller Ehrman's clients. Pursuant to a Master Fee Agreement with PG&E,
18 Heller Ehrman has agreed to apply a 10% discount from regular hourly rates to the fees of
19 all timekeepers working on the matters for which compensation is sought herein, and to
20 provide a significant additional billing accommodation as described in the following
21 paragraph.

22 67. Specifically, pursuant to the Master Fee Agreement between PG&E and
23 Heller Ehrman, Heller Ehrman has agreed to freeze for two years the billing rates of
24 shareholders working on any given matter at 90% of the shareholder's rate in place when
25 that matter is commenced. The rates of associates and paralegals are not frozen at any time,
26 but are charged at 90% of the rate in place when the work is performed.

27 68. The total fees for which compensation is sought herein are higher than those
28 reflected in the Cover Sheet Applications previously submitted by Heller Ehrman, because

1 the Cover Sheet Applications inadvertently failed to reflect correct billing rates for a number
2 of Heller Ehrman timekeepers on a number of matters.

3 69. Some of the engagements for which Heller Ehrman performed post-petition
4 services commenced in year 2000, while other, separate engagements began in year 2001.
5 However, on July 31, 2001, when Heller Ehrman submitted its initial Cover Sheet
6 Application for approval of fees and costs covering the period April 6, 2001, to June 30,
7 2001, it initially accounted for substantially all of its post-petition fees in two matter
8 numbers (Nos. 13779-0063 and 13779-0064), which had been opened in calendar year
9 2000. Upon request of the United States Trustee and PG&E, Heller Ehrman subsequently
10 segregated the time entries previously recorded in Matters 13779-0063 and 13779-0064 into
11 19 separate matter numbers. In its second Cover Sheet Application, Heller Ehrman
12 submitted bills for the period July 1, 2001, to July 31, 2001, with time recorded in these 19
13 separate matter numbers.

14 70. Upon review of the bills submitted with the Cover Sheet Applications, we
15 became aware that some of the billing rates reflected in those bills did not conform to our
16 Master Fee Agreement with PG&E. Specifically, Heller Ehrman's work for PG&E on all
17 but four matters (13779-0063, -0064, -0069 and -0074) actually commenced in 2001. All
18 shareholder time recorded to the matters that commenced in 2001 should have been
19 recorded at 90% of 2001 rates. In addition, all associate and paralegal time on all matters
20 should have been recorded at 90% of 2001 rates. However, the billing statements
21 previously submitted by Heller Ehrman incorrectly recorded some shareholder, associate
22 and paralegal time at 90% of 2000 rates on matters for which 90% of 2001 rates was the
23 appropriate billing rate.

24 71. The billing statements accompanying this Application reflect the corrected
25 and appropriate rates for all Heller Ehrman shareholders, associates and paralegals on all
26 matters in accordance with Heller Ehrman's Master Fee Agreement with PG&E. A chart
27 showing the previously used and the corrected rates for all timekeepers is attached behind
28

1 Tab 1 to the accompanying Time Records. The corrected bills reflect a total increase of
2 \$134,270.50 in fees over the bills previously submitted with the Cover Sheet Applications.

3 72. Heller Ehrman has neither received nor been promised any compensation from
4 any source in connection with this case or its services to be performed herein, except
5 compensation and reimbursement of expenses to be allowed by this Court and paid from the
6 estate, pursuant to the applicable provisions of the Bankruptcy Code and Rules. To date,
7 Heller Ehrman has received no payments from any source for its fees and expenses in this
8 case, other than (a) those described in footnote 1, *supra*, and (b) a refund of \$7,395 and
9 cancellation of a \$9,825.26 charge in connection with its contingent fee engagement relating
10 to insurance coverage matters (which are not the subject of this Application).

11 73. Heller Ehrman has no agreement or understanding for sharing any fees or
12 expenses which Heller Ehrman may receive in this case with any person other than members
13 and associates of Heller Ehrman.

14 VIII. REQUEST FOR COMPENSATION

15 74. Based on the foregoing, Heller Ehrman requests the Court to approve this
16 Application; to allow it fees and expenses on an interim basis in the respective amounts of
17 \$2,167,327.00 and \$150,554.49; and to authorize PG&E to pay the allowed amounts
18 forthwith.

19 75. Attached behind Tab 1 to the accompanying Time Records Exhibit and as
20 Exhibit A to the Certification of Peter J. Benvenuti ("Benvenuti Certification") is the name
21 of each professional who performed services in connection with the various matters
22 described herein during the period covered by this Application and the hourly rates for each
23 such professional on such matters; (b) attached behind Tab 2 to the Benvenuti Certification
24 is a summary of the fees and expenses, and additional information, for each matter; (c)
25 attached behind Tabs 3-21 to the Time Records Exhibit are the detailed time and expense
26 statements for the Application Period that comply with all Northern District of California
27 Bankruptcy Local Rules and Compensation Guidelines and the Guidelines of the Office of
28 the United States Trustee, except as otherwise stated in the Benvenuti Certification; and (d)

1 Exhibit B to the Benvenuti Certification sets forth the qualifications and experience of all
2 timekeepers for whom compensation is sought.

3 76. The Firm has served a copy of this Application (without Exhibits) on the
4 Special Notice List in this case.

5 77. The interim compensation and reimbursement of expenses sought in this
6 Application is on account and is not final. Upon the conclusion of this case, the Firm will
7 seek fees and reimbursement of the expenses incurred for the totality of the services
8 rendered in the case. Any interim fees or reimbursement of expenses approved by this
9 Court and received by the Firm will be credited against such final fees and expenses as may
10 be allowed by this Court.

11 78. The Firm represents and warrants that its billing practices comply with all
12 Northern District of California Bankruptcy Local Rules and Compensation Guidelines and
13 the Guidelines of the Office of the United States Trustee, except as otherwise stated in the
14 Benvenuti Certification.

15
16 Dated: September 14, 2001

HELLER EHRMAN WHITE & McAULIFFE LLP

17
18 By: Marie L. Fiala

19 Marie L. Fiala
20 Special Counsel for Debtor in Possession
21 Pacific Gas and Electric Company
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