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PACIFIC GAS and ELECTRIC COMPANY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PACIFIC GAS and ELECTRIC
COMPANY, a California Corporation,
Debtor.
Federal I.D. No. 94-0742640

Chapter 11
Case No. 01-30923 DM
FIRST INTERIM APPLICATION FOR
COMPENSATION AND EXPENSE
REIMBURSEMENT BY COOLEY GODWARD LLP,
SPECIAL COUNSEL
(April 6, 2001 through July 31, 2001)
Date: October 11, 2001
Time: 10:00 a.m.
Place: 235 Pine Street, 19th Floor
San Francisco, CA 94104
Judge: Dennis Montali

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

Pursuant to the Court's Order Establishing Interim Fee Application and Expense Reimbursement dated July 26, 2001 ("Interim Fee Order"), Sections 330 and 331 of Title 11 of the United States Bankruptcy Code ("Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedures, and the Bankruptcy Local Rules for the Northern District of California, Cooley Godward LLP, special counsel for debtor Pacific Gas and Electric Company ("Debtor") files this First Interim Application for Compensation and Expense Reimbursement ("Application") and respectfully represents:

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COOLEY GODWARD LLP
ATTORNEYS AT LAW
SAN FRANCISCO

683450 v1/SF
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1ST INTERIM FEE APPLICATION
CASE NO. 01-30923 DM

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I. INTRODUCTION

1. Debtor: On April 6, 2001, Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

2. Employment: On May 8, 2001, the Court authorized the Debtor to employ the law firm of Cooley Godward LLP ("Applicant"), as its special counsel herein ("Employment Order"). A copy of the Employment Order is attached as Exhibit A to the Declaration of Martin S. Schenker in Support of Cooley Godward LLP's First Interim Application for Compensation and Expense Reimbursement ("Schenker Declaration").

3. Prior Compensation: This is the First Application for Interim Compensation and Expense Reimbursement ("Application"). By this Application, Applicant requests interim compensation in the amount of \$294,349.00¹ and cost reimbursement in the sum of \$10,856.04. As previously disclosed to the Court, Applicant received a pre-petition retainer from the Debtor. Pursuant to the Interim Fee Order, Applicant has drawn down or intends to draw down on the retainer to pay 90% of the Debtor's fees covered by the Application, \$264,914.10, and 100% of costs, \$10,856.04, with a hold back of approximately \$29,434.90 ("Holdback"). Applicant seeks approval of 100% of the fees and costs, including the Holdback, and payment of said fees and costs incurred during the First Interim Period, and an Order authorizing Applicant to draw down on the retainer and/or directing the Debtor to pay to Applicant such compensation.

4. Current Compensation: During the course of representing the Debtor from April 6, 2001 through July 31, 2001 ("First Interim Period"), Applicant performed the services described in this Application and the time summaries attached to the Schenker Declaration, and summarized in the statements set forth in Exhibits A and B attached to the "Time Records Exhibit for the Period April 6, 2001 to July 31, 2001 by Cooley Godward LLP, Special Counsel" (hereinafter, "Time Records Exhibit"). Applicant also incurred the actual and necessary expenses itemized in the attached expense itemization as set forth in Exhibits B and C attached to the Time Records Exhibit.

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¹ The actual amount of fees incurred during the First Interim Period was \$295,717.00. However, a transition time discount of \$1,368.00 was applied to litigation fees on invoice no. 200108-04428, reducing the aggregate fee amount to \$294,349.00.

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5. Compliance with Guidelines: As a general rule, Applicant's billing practices and hourly rates are identical for bankruptcy and non-bankruptcy clients. The costs charged to bankruptcy clients are either identical to or less than the costs charged to non-bankruptcy clients.

6. 2016 Compensation Statement: Applicant has agreed not to share any compensation awarded with any other person and the source of any award authorized will be estate funds.

II. CURRENT SERVICES

A. Summary

The services rendered by Applicant during the First Interim Period can be grouped into the categories set forth below.² The attorneys and paraprofessionals who rendered services relating to each category are identified, along with the number of hours for each individual and the total compensation sought for each category, in Exhibit A attached to the Time Records Exhibit.

B. Business Operations

Applicant performed various services and advised Debtor in connection with matters relating to the California energy markets and the government's response to the energy crisis. In response to the energy crisis, the California Legislature has restructured California's electric industry in numerous ways, including authorizing the State Department of Water Resources ("DWR") to temporarily purchase power on the wholesale market and resell that power directly to Debtor's customers. Among other things, the new statutory regime (i) authorizes DWR to issue a "revenue requirement" identifying, among other things, the amount of money needed to pay for its actual and projected electricity procurement costs; (ii) vests in DWR the California Public Utilities Commission's ("CPUC's") traditional authority to determine whether procurement costs and charges are "just and reasonable"; (iii) entitles DWR to recover its revenue requirement from California ratepayers; (iv) authorizes DWR to issue bonds to finance the purchase of electric power; and (v) extends the CPUC's rate regulation of Debtor's retained generation assets beyond the previous

² Applicant is assisting the Debtor in dealing with ongoing, highly sensitive and confidential matters. As a consequence, Applicant is unable to specify in great detail the services it is providing to the Debtor, as doing so could seriously compromise Debtor's future business and legal strategy. Applicant would be pleased to provide the Court with additional details of the services it is providing to the Debtor *in camera* or by some other mechanism that will ensure the maintenance of Debtor's confidential information.

expiration date for such regulation. The California Public Utilities Commission ("CPUC") also continues to play an integral role in California's restructured electricity markets.

The manner in which this restructured market is implemented will have an enormous financial effect on Debtor. Applicant performed services and advised the Debtor in connection protecting Debtor's interests in this restructured electric market. These services include the following:

Recently, DWR issued a revenue requirement, pursuant to which DWR intends to bind California ratepayers to repay billions of dollars of DWR's alleged power procurement costs. DWR issued its revenue requirement without providing prior notice to all interested parties, an opportunity to provide comments, or a public hearing on the reasonableness of the DWR's power purchase costs. If the DWR's revenue requirement is excessive, California ratepayers, including PG&E, may be forced to incur inflated electricity costs. To the extent that DWR's revenue requirement is not passed on to ratepayers in the form of higher overall retail electricity rates, an inflated revenue requirement will have the effect of diverting funds from Debtor to DWR.

Applicant performed services and advised the Debtor in connection with developing a strategic plan and analyzing Debtor's legal options with respect to the DWR revenue requirement, a related rate agreement that DWR plans to execute shortly with the CPUC, and other facets of the restructured electricity market. These services include analyzing Debtor's claims associated with DWR's issuance of a revenue requirement, analyzing Debtor's claims arising from the recent Legislative enactments restructuring California's electricity markets, assisting Debtor in various filings made with the CPUC, and preparing a Petition for Writ of Mandate Or, in the Alternative, Writ of Administrative Mandamus, which Applicant filed in the Sacramento County Superior Court on August 21, 2001.

Applicant performed services and advised Debtor in connection with analyzing Debtor's legal options and developing a legal strategy for responding to potential conflicts between orders issued by the CPUC and federal agencies. In a related matter, Applicant performed services and advised Debtor in connection with Debtor's relationship with the CPUC relating to the Federal Energy Regulatory Commission's Regional Transmission Operator proposal. The Federal Energy Regulatory Commission ("FERC") recently directed California's investor-owned utilities, including

Debtor, to provide comments on FERC's consideration of a possible restructuring of the operation of California's transmission grid. The CPUC directed Debtor to provide supply it with a preliminary draft of Debtor's planned comments to FERC before filing these comments with FERC. Debtor believed that the CPUC's request for an advance copy of the comments violated Debtor's First Amendment rights and threatened to interfere with Debtor's efforts to petition government on a matter of great importance to Debtor. Applicant analyzed Debtor's claims associated with the CPUC's directive and advised Debtor on a legal strategy for ensuring that Debtor's right to petition FERC would remain unencumbered.

For its services related to the above services, Applicant spent 639.85 hours, incurring fees in the sum of \$207,140.00.

C. Litigation

BFM Claim:

Applicant represented Debtor in connection with Debtor's claims against the State of California arising from the State's seizure of wholesale electricity contracts, known as Block Forward Market Contracts ("BFM Contracts"). On or about January 31, 2001, Governor Gray Davis, acting pursuant to an earlier declaration of emergency, issued an Executive Order seizing the BFM Contracts from Debtor. These contracts gave Debtor the right to purchase electricity on various future dates at fixed prices. When the wholesale price of electricity skyrocketed in late 2000, the BFM Contracts entitled Debtor to purchase wholesale electricity at prices far below the then prevailing market prices and, as such, were valuable assets. In addition, the California Power Exchange, a non-profit corporation that until recently administered California's wholesale electricity market, along with various electricity generators that sold electricity into that market, claimed an interest in the BFM Contracts and also asserted claims in connection with the State's seizure of these contracts. Applicant has advised Debtor in connection with obtaining compensation from the State for the seizure of its contracts, has represented Debtor in formal proceedings before the California Victim Compensation and Government Claims Board, and is representing the Debtor in an inverse condemnation lawsuit, which Applicant filed on behalf of Debtor in the San Francisco Superior Court on July 16, 2001. Applicant has also advised Debtor in connection with the implications of the Power Exchange and

generators' claims on the Debtor's action against the State.

For its services related to the above services, Applicant spent 221.50 hours, incurring fees in the sum of \$68,669.50³.

D. Fee/Employment Applications

Applicant prepared its employment application, investigated facts, and prepared a declaration in support thereof. Applicant also reviewed and prepared its monthly fee statements, reviewed applicable guidelines in connection with this application, adjusted and organized its monthly statements in accordance with such guidelines, collected documentation necessary for the application, and began preparing this application and the supporting verification.

For its services related to the above services, Applicant spent 58.80 hours, incurring fees in the sum of \$18,539.50 during the First Interim Period.

III. FUTURE SERVICES

Applicant expects that it will continue to assist the Debtor in connection with its claims relating to the BFM Contracts, and by advising the Debtor on its legal and strategic options in connection with actions by the State, including DWR and the CPUC, in California's restructured electricity markets.

IV. ESTABLISHMENT OF FEES

"A compensation award based on a reasonable hourly rate multiplied by the number of hours actually and reasonably expended is presumptively a reasonable fee." *In Re Manoa Finance Company*, 853 F.2d 687 (9th Cir. 1988). Establishing a reasonable hourly rate requires consideration of market rates in the relevant community which are, in turn, at least partly a function of the type of services rendered and the lawyer's experience, skill and reputation.

1. The members, associates, and paraprofessionals of Applicant who have rendered professional services in this case are as follows: Stephen C. Neal, J. Michael Kelly, Martin S. Schenker, Peter H. Carson, Robert L. Eisenbach III, John C. Dwyer, Linda F. Callison, Charles M. Schaible, James C. Maroulis, Gregg S. Kleiner, J. Timothy Nardell, Clay C. Wheeler, Cory E.

³ As stated in footnote 1, a transition time discount of \$1,368.00 was applied to the litigation fees under invoice no. 200108-04428.

1 Manning, Monica K. Hoppe, Maureen P. Alger, Michele E. Moreland, Susan L. Ruebush, Susan E.
2 Gonzalez, Dominique N. Thomas, Daniel R. Kaleba, Jeannine A.R. Douglas, Margaret Baer, Kris
3 T. Cachia, Kelly M. Tanisawa, Sheree M. Cruz-Laucirica, and Tania Shershin.

4 2. Pursuant to Section (b)(3) of the United States Trustee's *Guidelines for Reviewing*
5 *Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330*, a
6 summary sheet of attorneys and paraprofessionals who have worked on this case, their status,
7 billing rate per hour, the total hours each devoted to the case and the total fees requested for each
8 professional, and summaries of the attorneys and paraprofessionals' qualifications are attached
9 hereto as Exhibit B to the Schenker Declaration.

10 V. CONCLUSION AND PRAYER

11 1. In performing the services described above during the First Interim Period,
12 Applicant spent 920.15 hours. Applicant believes that the sum of \$294,349.00¹ is reasonable
13 compensation for its services, calculated on the basis of the hours and hourly rates listed in the
14 attached summary and the time summaries attached to the Declaration.

15 2. In performing its services during the same time period, Applicant incurred actual
16 and necessary expenses of \$10,856.04. An itemized summary of these expenses is set forth on
17 Exhibit C to the Time Records Exhibit.

18 3. Kris Tsao Cachia is a paralegal who assisted Applicant in the preparation of this fee
19 Application. Ms. Cachia bills at the rate of \$110 per hour. Applicant submits that these efforts are
20 properly compensable under In Re Nucorp Energy, Inc. 764 F.2d. 655 (9th Cir. 1985).
21 Approximate fees incurred in preparing this fee application are as follows: Gregg S. Kleiner -
22 \$2,000.00; and Kris Tsao Cachia - \$2,200.00.

23 4. Applicant's First Fee Application, the Schenker Declaration, and Time Records Exhibit
24 were filed with the Court and served on or about September 17, 2001. Concurrently, Applicant
25 served the First Fee Application on the parties listed on the Special Notice List. Pursuant to
26 paragraph 8 of the Interim Fee Order, the time records can be accessed by the public at BMDS,
27 246 First Street, Suite 202, San Francisco, California 94105. In the event a party desires a copy of
28 the time records, that party should contact BMDS at the above address or telephonically at (415)

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1 371-0232 or by facsimile at (415) 371-1973.

2 WHEREFORE, Cooley Godward LLP, prays for interim compensation in the sum of
3 \$294,349.00¹ and expense reimbursement in the sum of \$10,856.04 for the First Interim Period.

4 Dated: September 14, 2001

5 COOLEY GODWARD LLP

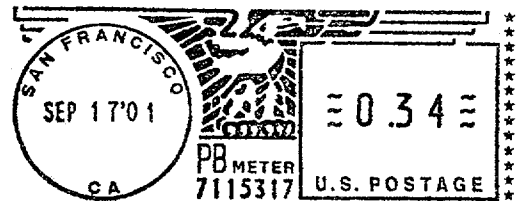
6
7 By: /s/
Gregg S. Kleiner

8 Special Counsel for Debtor
9 PACIFIC GAS and ELECTRIC COMPANY

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